

WSR 21-18-005

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed August 18, 2021, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-020.

Title of Rule and Other Identifying Information: WAC 246-817-581 Novel coronavirus disease 2019 vaccination. The dental quality assurance commission (commission) is proposing to adopt a new rule to allow dentists to delegate administration of novel coronavirus disease 2019 (COVID-19) vaccination to licensed dental hygienists with close supervision and demonstration of competency.

Hearing Location(s): On October 22, 2021, at 8:35 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the dental quality assurance commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead. To access the meeting: Please join the meeting from your computer, tablet, or smartphone. Please register for the dental quality assurance commission meeting to be held on October 22, 2021, at 8:30 a.m. PDT at <https://attendee.gotowebinar.com/register/5843394544406820366>.

Date of Intended Adoption: October 22, 2021.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, dental@doh.wa.gov, by October 11, 2021.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov, by October 11, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission-proposed rule allows dentists to delegate administration of COVID-19 vaccination to licensed dental hygienists with close supervision and demonstration of competency. The proposed rule also provides for acceptance of approved vaccination protocols and screening to meet the dentist's requirement to diagnose and authorize treatment.

Reasons Supporting Proposal: In response to the COVID-19 pandemic, dentists are among the essential health providers who can safely administer vaccinations and help address this public health emergency. Mass vaccination across the state has taken cooperation and coordination across the entire health system. Dentists and delegated dental hygienists can increase capacity for priority populations who may not otherwise be connected to the traditional health care system and will establish additional avenues and opportunities for future need. Permanent rule making allows dentists to continue delegating COVID-19 vaccinations to dental hygienists after the governor ends the state of emergency. Vaccinations and potential booster vaccinations will be necessary to prevent another outbreak. Efforts to prevent another outbreak, including increased health care worker capacity and vaccination availability in new settings, need to continue to preserve public health, safety, and the general welfare of patients and dental staff.

The commission filed emergency rule making as WSR 21-06-012 on February 19, 2021, and extended emergency rule making as WSR 21-13-091 on June 18, 2021, for COVID-19 vaccination delegation. The commission

intends for the emergency rule to be in place until the permanent rule is adopted.

Statutory Authority for Adoption: RCW 18.29.050 and 18.32.0365.

Statute Being Implemented: RCW 18.32.002.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting 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, dental@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A small business economic impact statement was not prepared. A significant cost analysis has been completed. The proposed rule does not impose costs to businesses or to licensed dentists or licensed dental hygienists. Licensed dentists are not required to vaccinate or delegate to dental hygienists COVID-19 vaccinations. Dental hygienists are not required to perform administration of COVID-19 vaccinations.

August 18, 2021

David L. Carsten, DDS, Chair
Dental Quality Assurance Commission

OTS-2845.4

NEW SECTION

WAC 246-817-581 Novel coronavirus disease 2019 vaccination. (1)

A supervising dentist may delegate the administration of a vaccination of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's close supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

(2) For the purpose of administering vaccination for the novel coronavirus disease 2019, a dentist's approval of the vaccination protocol and screening meets the dentist's requirement to diagnose the condition to be treated and personal authorization of the procedure as required by close supervision under WAC 246-817-510(1).

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WSR 21-18-050

PROPOSED RULES

CLARK COLLEGE

[Filed August 25, 2021, 2:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [21-07-086 on] March 18, 2021.

Title of Rule and Other Identifying Information: Amending chapter 132N-156 WAC, Parking and traffic rules and regulations.

Hearing Location(s): On October 27, 2021, at 5:00 p.m., Zoom meeting, <https://us02web.zoom.us/j/86215694232?pwd=dkcxVDhxOWxaR0pLWU9LZGhFRFhiQT09>, Meeting ID 862 1569 4232, Passcode 185028, One tap mobile +12532158782,,86215694232#,,,,*185028# US (Tacoma), +13462487799,,86215694232#,,,,*185028# US (Houston).

Date of Intended Adoption: October 27, 2021.

Submit Written Comments to: Galina Burley, 1933 Fort Vancouver Way, Baird Building, Room 161, Vancouver, WA 98663, email gburley@clark.edu, phone 360-992-2123, fax 360-992-2884, by October 20, 2021.

Assistance for Persons with Disabilities: Contact Megan Jasurda, phone 360-992-2065, fax 360-992-2879, email dss@clark.edu for employees hr@clark.edu. Video phone can be requested at achilders@clark.edu, by October 20, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132N-156 WAC to reflect recent changes in Clark College's internal policies and procedures, organizational structure, and management of parking, traffic regulations, fees, and fines.

Reasons Supporting Proposal: Amending chapter 132N-156 WAC will bring the rules in line with recent changes in Clark College's policies and procedures.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

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

Name of Proponent: Clark College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Galina Burley, 1933 Fort Vancouver Way, Baird Building, Room 161, Vancouver, WA 98663, 360-992-2123.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.328(5).

August 25, 2021

Galina Burley

Executive Vice President

OTS-3270.2

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-310 Authority. Pursuant to RCW 28B.50.140(10) the board is granted authority to establish rules and regulations for pedestrians and vehicular and nonvehicular traffic over property owned, operated, and/or maintained by the college.

The enforcement of these rules and regulations shall be the responsibility of the (~~security/safety office~~) security and safety department.

Security (~~officers~~) personnel are authorized to issue parking and traffic citations, impound and/or immobilize vehicles, and control and regulate facilities use, traffic, and parking as prescribed in these rules and regulations.

Any person interfering with ((a)) college security (~~officers~~) personnel in the discharge of the provisions of these rules and regulations shall be in violation of RCW 9A.76.020, Obstructing governmental operation, and may be subject to arrest by a peace officer.

Failure by students to abide by these rules and regulations may be considered to be a violation of the code of student conduct (chapter 132N-120 WAC, as applicable).

Compliance with these rules and regulations is considered a standard part of job performance for all employees. Failure by faculty or staff of the college to abide by these rules and regulations may result in disciplinary action or other authorized sanctions.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-310, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-310, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-310, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-310, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-310, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-330 Liability of the college. The college assumes no liability for vehicles parking or traveling on college property, nor shall it be held responsible for the loss of goods or property from vehicles parked on college property.

The college, the (~~security/safety office~~) security and safety department, security (~~officers~~) personnel, or other employees or agents shall not be held liable for any damages, claims, or losses occurring to or from vehicles or equipment when rendering motorist assistance, impounding vehicles, or performing any duties as described

in these rules and regulations. This section also applies to nonvehicular modes of transportation.

The college provides only limited maintenance to college parking lots during periods of inclement weather. Persons using the college parking lots do so at their own risk. The college will not be responsible for any liability or damage claims arising from weather or other natural disaster-related causes or conditions.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-330, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-330, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-330, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-330, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-330, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 97-23-018, filed 11/10/97, effective 12/11/97)

WAC 132N-156-400 Authorized use of facilities. Only those vehicles as defined and regulated in RCW 46.04.670 and as defined herein, may be operated in parking lots or in traffic areas by licensed drivers. No vehicle, with the exception of nonmotorized bicycles, wheelchair conveyances, and certain maintenance vehicles, may be operated on intracampus property, pathways, or sidewalks without the specific permission of the (~~security/safety office~~) security and safety department.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-018, § 132N-156-400, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-400, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-400, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-400, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 87-19-103, filed 9/18/87)

WAC 132N-156-410 Vehicle speed limitations. No vehicle shall be operated on the campus in excess of (~~ten~~) 10 miles per hour. When safety circumstances dictate, a speed less than (~~ten~~) 10 miles per hour should be maintained.

[Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-410, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 93-20-080, filed 10/4/93, effective 11/4/93)

WAC 132N-156-420 Regulatory signs and directions. Drivers of vehicles shall obey regulatory signs and markings at all times and shall comply with directions given by security ~~((officers))~~ personnel in the control and regulation of traffic and parking.

[Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-420, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-420, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-420, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-440 Traffic accidents. Persons involved in traffic accidents on college property are to report the accident to the ~~((se-
curity/safety office))~~ security and safety department. Security personnel will investigate the incident and, in the case of injury, extensive property damage, apparent criminal activity, or unusual circumstances, file an accident report with the appropriate law enforcement agency with 24 hours in accordance with RCW 46.52.030. ~~((In addition, RCW 46.52.030 requires that accidents on college property involving injury or property damage in excess of five hundred dollars be reported to local law enforcement agencies within twenty-four hours.))~~ Security ~~((officers))~~ personnel are authorized to obtain and share with all parties to an accident information on the insurance coverage of the parties.

Nothing in this section should be interpreted so as to delay the immediate reporting of traffic accidents which involve injury or loss of life to appropriate noncollege authorities.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-440, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-440, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-440, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-440, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-440, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-450 Traffic offenses. When safety considerations warrant, security ~~((officers))~~ personnel may issue a citation for any of the following traffic offenses:

- (1) Failure to yield right of way (posted).
- (2) Failure to yield right of way to pedestrian.
- (3) Failure to yield right of way to vehicle.

- (4) Failure to obey one-way directional arrows.
 (5) Failure to yield right of way to emergency vehicle.
 (6) Driving with excessive speed.
 (7) Failure to stop at traffic signal/sign.
 (8) Failure to use due care and caution.
 (9) Driving without lights after dark.
 (10) Having a passenger or animal outside of vehicle while in motion.
 (11) Driving with an obstructed view.
 (12) Driving on shoulder, or sidewalk or intracampus sidewalk or lane without authorization.
 (13) Disobeying flagger, peace officer, security (~~officer~~) personnel, firefighter, or other agent of the college.
 (14) Damaging college property including, but not limited to, landscape and plant material, curbs, sidewalks, utilities, etc.
 (15) Driving while under the influence of intoxicants or with an open container of intoxicants.
 (16) Allowing an unattended vehicle to roll, obstruct traffic, or damage property.
 (~~(All traffic offenses carry a fifty-dollar fine.)~~) (17) Driving while distracted. Fines associated with traffic offenses shall be set and approved by the board, or its designee in accordance with WAC 132N-156-700. Students that commit traffic offenses may be referred to student conduct for violations of the code of student conduct, chapter 132N-125 WAC.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-450, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-450, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-450, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-450, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-450, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 97-23-018, filed 11/10/97, effective 12/11/97)

WAC 132N-156-460 Bicycles and nonvehicular transportation usage.

Bicycles may be ridden any place where vehicles are permitted. They may also be ridden on campus sidewalks or pathways, though pedestrians always have the right of way. An audible signal shall be used by bicyclists to warn pedestrians of oncoming bicycles. Bicyclists shall not ride in a reckless manner or engage in stunts or dangerous acts, or operate at speeds greater than (~~ten~~) 10 miles per hour or such lower speed as is reasonable and prudent under the circumstances. With the exception of wheelchair conveyances and certain college service vehicles, no other nonvehicular modes of transportation as specified in the preceding "definitions" will be allowed on college property.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-018, § 132N-156-460, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-460, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-460, filed 10/7/91, effective 11/7/91. Statutory Authority:

Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-460, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-500 Allocation of parking space. The parking spaces available on college properties shall be assigned by the (~~office of administrative services~~) executive vice president of operations, or designee, in a manner which will best attain the objectives of these regulations. The (~~plant~~) facilities services department is authorized to mark various parking areas on college property with numbers or titles or by posting signs, or marking the pavement.

Open parking - Open parking is limited to those parking areas not otherwise marked as reserved for faculty/staff, physically disabled persons, special use, service vehicle, or visitor. Users of open parking are not required to display a parking permit.

Faculty/staff parking - Faculty, staff and administrators using college-owned or leased parking facilities between 7:00 a.m. and 10:00 p.m. Mondays through Fridays during fall, winter, and spring quarters are to purchase parking permits. The purchase of a permit for designated parking does not ensure the regular availability of a parking space.

Faculty/staff parking spaces are marked on the pavement with an F/S. Only college employee vehicles displaying a valid parking permit may park in faculty/staff parking spaces. Faculty/staff parking spaces shall be considered open parking spaces from (~~10:00~~) 5:30 p.m. to 7:00 a.m. and on weekends during fall, winter, and spring quarters, and at all times during summer quarter.

(~~Vehicles with approved faculty/staff parking permits are permitted to park in open parking areas only when the designated parking faculty/staff spaces are full.~~)

Visitor parking - All visitors, including guests, salespersons, maintenance or service personnel and all other members of the public, may park on college property in open parking, in designated special use visitor zones, or as directed by the (~~security/safety office~~) security and safety department.

Use of vehicle as habitation - No vehicle or vehicle trailer may be used as a place of habitation on any college facility without permission from the (~~security/safety office~~) security and safety department.

(~~Handicapped~~) Accessible parking - (~~Physically disabled persons parking zones~~) Accessible parking spaces, parking spaces for use by a vehicle displaying a valid accessible parking permit, may be occupied only by vehicles displaying a valid temporary parking permit issued by the college or a valid permanent or temporary permit issued by the state of Washington in compliance with RCW 46.16.381 and 46.16.390. Temporary parking permits are available in health services. Valid parking permits issued by other states will be honored.

If all accessible parking spaces are occupied, those with a valid, properly displayed placard or permit may also park in metered parking spaces without paying for time parked in the space. If all accessible parking spaces and metered spaces are occupied, those with a valid, properly displayed placard, or permit, may park in faculty/staff spaces.

Motorcycle parking - Motorcycle parking zones are reserved for motorcycles and motor-driven cycles. (~~These vehicles~~) Motorcycles are (~~not~~) to occupy (~~regular automobile parking spaces or other~~) those areas (~~not designed~~) designated for motorcycle parking specifically.

Service vehicle parking - Service vehicle parking zones are limited to use by authorized college service or contractor vehicles only.

Electric vehicle charging stations - These spaces are for the specific purpose of charging electric vehicles. These areas are designated by green paint on the pavement in accordance with RCW 46.08.185(1). These are not parking spaces. Those using charging stations are expected to remove their vehicles immediately after the vehicle has been charged. The use of charging equipment outside of the designated charging station area is prohibited and is subject to citation and fine.

Meter spaces - There are metered parking spaces located on campus. The meters have marked designated time limits. The meters provide spaces to those individuals who have short-term parking needs on campus. Meter hours are Monday through Thursday, 8:00 a.m. to 5:30 p.m., and Friday 8:00 a.m. to 5:00 p.m.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-500, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-500, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-500, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-500, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-500, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-530 Impounding of disabled/abandoned vehicles. No disabled or inoperative vehicle shall be parked on college property for a period in excess of (~~twenty-four~~) 24 hours, unless permission is granted by the (~~security/safety office~~) security and safety department. Vehicles which have been parked in excess of (~~twenty-four~~) 24 hours may be impounded and stored at the expense of either or both the owner or operator thereof. Notice of intent to impound will be posted on the vehicle at least (~~twenty-four~~) 24 hours prior to impoundment unless a vehicle is illegally or hazardously parked. Neither the college nor college employees shall be responsible for claims, loss or damage of any kind resulting from such impounding and storage.

Vehicles under repair in the college's instructional program must be (~~parked in a designated area and must have an approved "vehicle in repair" notice visibly posted within the vehicle. This includes vehicles upon which service has been completed and which are awaiting pick up by the owners~~) clearly identified and parked in an area designated for these vehicles.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-530, filed 9/28/00, effective 10/29/00. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-530, filed 10/4/93, effective 11/4/93; WSR 91-21-022, §

132N-156-530, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-530, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 17-22-093, filed 10/30/17, effective 11/30/17)

WAC 132N-156-550 Illegal parking. No person shall stop, place, or park a vehicle at any place where official signs, curbs, or pavement markings prohibit parking, or within (~~fifteen~~) 15 feet of a fire hydrant, or at any place for which the vehicle does not have a valid parking permit. Any vehicle not parked in a parking stall shall be considered illegally parked.

Drivers who are instructed by a security (~~officer~~) personnel to (~~either~~) move an illegally parked vehicle (~~or not to park in violation of this section~~), and refuse, will have their vehicle immediately impounded or immobilized.

(~~Security officers may issue citations resulting in fines if the vehicle is found in the commission of any of the following parking violations:~~) Under the authority granted by RCW 28B.50.140(10), security personnel may issue a citation for parking violations that include the following and any other offenses provided in chapter 46.61 RCW as amended:

- (1) Parking in a faculty/staff parking zone without a valid permit.
- (2) Parking a disabled or inoperable vehicle on campus in excess of (~~twenty-four~~) 24 hours without appropriate permission.
- (3) Parking any vehicle in such a manner as to obstruct, impede, hinder, or prevent the use of another parking space. This violation includes, but is not limited to, parking over the line, parking an oversized vehicle in a space too small, allowing part of a vehicle to protrude into another space, and parking too close to another vehicle.
- (4) Parking in a space not designated for parking.
- (5) Parking in an area not authorized.
- (6) Blocking vehicular or pedestrian traffic.
- (7) Parking within (~~fifteen~~) 15 feet of a fire hydrant.
- (8) Parking in a fire lane, sidewalk, or intracampus avenue.
- (9) Parking in a "No Parking" zone.
- (10) Parking on the grass.
- (11) Parking overnight without (~~security office permission and/or permit~~) authorization.
- (12) Parking of a bicycle illegally.
- (13) Parking in physically disabled persons parking zone without an authorized parking permit.
- (14) Use of a vehicle for habitation without permission.
- (15) Illegal use of or failure to display permit.
- (16) Creating a safety hazard in the opinion of (~~the~~) security (~~officer~~) personnel.

(17) Allowing a vehicle alarm to sound, repeatedly or for an extended period of time (false alarm).

(18) Parking in a metered parking spot without payment of the meter fee stated on the meter during the posted time limits.

(~~All parking citations carry a twenty-dollar fine, with the exception of physically disabled persons parking violations which carry a fifty-dollar fine.~~) (19) Parking in an area designated as an "Elec-

tric Vehicle Charging Station" while not actively charging an electric vehicle.

Illegally parked vehicles which require removal will be done so at the owner's or operator's expense.

[Statutory Authority: RCW 28B.50.140. WSR 17-22-093, § 132N-156-550, filed 10/30/17, effective 11/30/17. Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-550, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-550, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-550, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-550, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-550, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 97-23-018, filed 11/10/97, effective 12/11/97)

WAC 132N-156-560 Hazardous parking. No person shall stop, place, or park a vehicle so as to obstruct traffic along or upon any street, firelane, or sidewalk or at any location as described in RCW 46.61.570. Due to the severe risk to public safety created by any vehicle parking in violation of this section, security ((officers)) personnel are authorized to cite and immediately impound said vehicle. Security ((officers)) personnel will complete a vehicle impound report, including the reason for the impoundment. Removal and impoundment will be at the owner's or operator's expense.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-018, § 132N-156-560, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-560, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-560, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-560, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-570 Bicycle parking. Bicycles shall be parked in bicycle racks or other facilities provided for the purpose. Bicycles may only be parked inside a building if specific areas (i.e., indoor bicycle lockers) have been provided and are available or if a college employee (faculty or staff) has expressed written permission from their immediate supervisor to park a bicycle inside a building.

Before authorizing an employee to park inside of a building, supervisors must ensure that any bicycles parked inside will not interfere with the daily operations of the work area(s) nor will they obstruct any evacuation or egress routes in any way. Bicycles are not to be taken onto any elevator at any time.

At no time shall a bicycle be parked ((in a building,)) against a building, near a building exit, on a path or sidewalk, or chained (or

otherwise secured) to trees, lamp standards, utilities, stairway railings, or sign posts. Any bicycle found in violation of this section may be cited for illegal parking and impounded by the (~~security/safety office~~) security and safety department without warning.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-570, filed 9/28/00, effective 10/29/00. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-570, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-570, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-570, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-600 Faculty and staff parking permits. All college faculty, staff, and administrators using college parking facilities at any time between 7:00 a.m. and (~~10:00~~) 5:30 p.m. Mondays through Fridays during fall, winter, and spring quarters are to purchase and display a valid parking permit. The fact that an employee may be eligible to park in a physically disabled persons parking zone will not relieve the employee of this requirement. A valid faculty/staff parking permit may not, by itself, constitute authority to park in other parking facilities leased or owned by the college.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-600, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-600, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-600, filed 10/4/93, effective 11/4/93. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-600, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 93-20-080, filed 10/4/93, effective 11/4/93)

WAC 132N-156-610 Permit parking on campus. The correct parking permit must be properly displayed in accordance with permit instructions.

Temporary parking permits are issued by the (~~security/safety office~~) security and safety department and must be displayed in accordance with permit instructions.

Parking permits are not transferable and shall not be utilized by any person except the person designated on the parking permit application. The college reserves the right to deny any application, or to revoke any permit at any time, if actions resulting from such application or permission constitute present, imminent danger of unlawful activity, or if a prospective user has previously violated college parking policies or other written rules or regulations. All outstanding college parking fines must be paid before a parking permit will be issued or renewed.

No bailment is created by the sale or issuance of a permit.

[Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-610, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-610, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-610, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-620 Fees for parking permits. The fees charged by the college for the issuance of permits shall be those established by the board of trustees. Parking permits are issued as a license to park at college facilities.

Fees collected will be utilized for parking operations including parking enforcement, parking lot maintenance, security and safety improvements and for those transportation demand management and commute trip reduction activities and programs permitted by law.

~~((Current faculty/staff parking permit fees are seven dollars and fifty cents per quarter for one vehicle, and an additional one dollar per quarter for each additional vehicle.))~~ Permits are required for fall, winter, and spring quarters. Administrators, exempt staff, permanent classified staff, and tenure-track faculty may ~~((purchase))~~ acquire permanent permits. Adjunct faculty and temporary classified staff may ~~((purchase))~~ acquire annual or quarterly permits. ~~((Annual permits may be purchased by full-time temporary faculty and adjunct faculty who have received approval from the security/safety manager.))~~

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-620, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-620, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-620, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-620, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-620, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 97-23-018, filed 11/10/97, effective 12/11/97)

WAC 132N-156-630 Parking fee payment. ~~((Faculty and staff can purchase annual or quarterly parking permits at either the college bookstore or at the cashier's office in the Baird Administration Building. Annually contracted faculty and staff members may select the payroll deduction plan for payment of the permanent permit. Those selecting this payment plan must complete a payroll deduction authorization form before issuance of a permit. The form is available in the security/safety office and the personnel services office.))~~ Unless otherwise authorized by the president of the college or their designee, employees will be given the option of having parking fees deducted on either a pretax or post-tax basis.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-018, § 132N-156-630, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-630, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-630, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-630, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 93-20-080, filed 10/4/93, effective 11/4/93)

WAC 132N-156-640 Temporary parking permits. Any permit holder may obtain a temporary parking permit from the (~~(security/safety of-fee)~~) security and safety department for an (~~(unregistered)~~) unpermitted vehicle when (~~(the registered)~~) their permitted vehicle is unavailable due to repairs or for (~~(another)~~) other valid reasons. These permits are (~~(good)~~) valid for a period of two weeks.

[Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-640, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-640, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-640, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-645 Guest parking permits. College faculty or staff who have invited a guest speaker, lecturer, presenter, or other special guest to the college may apply to the (~~(security/safety of-fee)~~) security and safety department for a guest parking permit. A guest parking permit will entitle the holder to park in faculty/staff parking, and to park in visitor parking without registering, in order to facilitate their appearance at the college. Permits will be valid only for the day(s) specified on the permit. Guest parking permits will not be issued for personal guests of college employees or for staff employed by the college on a temporary basis.

Requestors will provide the (~~(security/safety office)~~) security and safety department with the name of the guest and the date, time, place, and nature of appearance at the college. Permits may be picked up at the (~~(security/safety office)~~) security and safety department, or (~~(security/safety)~~) security and safety department can mail or email the permit directly to the guest. Staff should apply for guest parking permits far enough in advance of the appearance to allow for delivery of the permit.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-645, filed 9/28/00, effective 10/29/00.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-650 Revocations. Parking permits are licenses and the property of the college and may be revoked for any of the following reasons:

(1) The purpose for which the permit was issued changes or no longer exists.

(2) The permit is used on an ((unregistered)) unauthorized vehicle or by an unauthorized individual.

(3) A parking permit application form was falsified.

(4) These parking regulations were violated.

(5) The parking permit was counterfeited or altered or transferred without authorization.

(6) ((There has been)) Failure to comply with a specific determination, decision, or directive by college officials.

((~~Appeals of parking permit revocations may be made within twenty days to the security/safety manager for a brief adjudicative procedure. Appeals to the vice president of administrative services must be filed within twenty-one days of the date of notice of revocation. The decision of the vice president is final.~~))

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-650, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-650, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-650, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-650, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-650, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 93-20-080, filed 10/4/93, effective 11/4/93)

WAC 132N-156-700 Policy. The board of trustees, or its designee, shall set and approve fair and uniform fines for violations of these rules and shall provide adequate means for the enforcement and/or collection of such fines. If a violation of these rules and regulations is committed, the ((~~security/safety office~~)) security and safety department is authorized to issue ((a)) citations as prescribed in these rules.

Any violation occurring after the second citation for any parking violation may result in the violator's vehicle being impounded or immobilized and held until all outstanding citations have been paid and/or the loss of parking privileges on college property/facilities.

[Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-700, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-700, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-700, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 97-23-018, filed 11/10/97, effective 12/11/97)

WAC 132N-156-710 Payment of fines. Persons cited for violations of these rules and regulations may respond either by filing a written appeal with the ~~((security/safety manager))~~ director of security and safety or their designee, or by paying a fine within ~~((fifteen))~~ 15 calendar days of receipt of the citation. All fines are payable to Clark College. Fines can be paid by mail or in person at the cashier's office ~~((in the Baird Administration Building))~~. Fines that are mailed must be received within ~~((fifteen))~~ 15 calendar days of receipt of the citation. If a person chooses to appeal a citation in accordance with WAC 132N-156-730 Appeals, any imposed fine, whether reduced or not, will not be due until a decision of the appeal has been rendered.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-018, § 132N-156-710, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-710, filed 10/4/93, effective 11/4/93. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-710, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 97-23-018, filed 11/10/97, effective 12/11/97)

WAC 132N-156-720 Reduction in fines. Fines for parking and traffic offenses will be reduced by ~~((five dollars))~~ an amount approved by the president of the college or their designee if paid in person within ~~((forty-eight))~~ 48 hours, excluding weekends and holidays. No reduction will be made on mail-in payments.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-018, § 132N-156-720, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-720, filed 10/4/93, effective 11/4/93. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-720, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-730 Appeals. Alleged violators may appeal to the ~~((security/safety manager))~~ director of security and safety or their designee for a brief adjudicative procedure within ~~((twenty))~~ 20 cal-endar days ~~((of))~~ from the date of the citation. The ~~((security/safety manager))~~ director of security and safety or their designee may uphold the citation/fine, may dismiss, suspend, ((impose any lesser)) or re-duce the imposed fine, and/or grant an extension of time within which to pay the fine.

Appeals of the decision of the ~~((security/safety manager))~~ direc-tor of security and safety or their designee are to be submitted to the ~~((vice president of administrative services without posting of fine))~~ president of the college or their designee within ~~((twenty-~~

one)) 20 calendar days. Written notification of the ((vice)) president's or their designee's decision shall be made within ((twenty)) 20 calendar days of the appeal and shall be final.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-730, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-730, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-730, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-730, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-730, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-750 Unpaid fines. If any fine remains unpaid, any or all of the following actions may be taken by the ((security/safety office)) security and safety department.

- (1) ~~((A hold may be placed on transcripts.~~
 - ~~((2))~~) Registration for the following quarter may be delayed.
 - ~~((3))~~) (2) Parking privileges may be revoked.
 - ~~((4))~~) (3) The amount ((due)) owed as a result of fines due and payable may be deducted from paychecks of college employees.
 - ~~((5))~~) (4) Outstanding fines may be referred to a collection agency.
 - ~~((6))~~) (5) The vehicle may be immobilized or impounded.
- ~~((If a violator has two or more unpaid fines, his/her vehicle will be impounded or immobilized and held until all outstanding fines are paid. Immobilization of a vehicle may result in an additional \$20.00 fine.))~~ These procedures will be applicable to all students, faculty, and staff or other persons utilizing college facilities who receive fines for violations of these rules and regulations. Visitors who have received citations for parking violations may return the citation to the ((security/safety office)) security and safety department with name, address, and a brief explanation. The ((security/safety manager may void the citation as a courtesy notice)) director of security and safety may, at their discretion, void the citation.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-750, filed 9/28/00, effective 10/29/00; WSR 97-23-018, § 132N-156-750, filed 11/10/97, effective 12/11/97. Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-750, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-750, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-750, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 93-20-080, filed 10/4/93, effective 11/4/93)

WAC 132N-156-760 Special circumstances. During special ((eeea-sions)) circumstances that result in extraordinary traffic conditions

and during emergencies, the ~~((security/safety office))~~ security and safety department is authorized to impose special traffic and parking regulations ~~((and))~~ that may include additional parking restrictions to mitigate and reduce the risk of inconvenience, personal injury or property damage. Whenever possible, prior notice of these regulations or restriction changes shall be posted. Such authorization is ~~((of a))~~ temporary ~~((nature))~~ and should last only as long as the situation necessitates.

[Statutory Authority: RCW 28B.50.140(10) and chapters 28B.50 and 28B.10 RCW. WSR 93-20-080, § 132N-156-760, filed 10/4/93, effective 11/4/93; WSR 91-21-022, § 132N-156-760, filed 10/7/91, effective 11/7/91. Statutory Authority: Chapters 28B.50 and 28B.10 RCW. WSR 87-19-103 (Order 87-02, Resolution No. 87-02), § 132N-156-760, filed 9/18/87.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-800 Policy. College faculty or staff who coordinate special events involving the participation of dignitaries from off-campus may request that parking spaces be reserved for those participants on the day of the event. All requests for reserved parking will be made in writing to the office of the president or their designee at least a week in advance. Aside from traffic revisions necessary for construction and maintenance work, the ~~((security/safety office))~~ security and safety department will not reserve parking spaces without prior approval from the president's office or their designee.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-800, filed 9/28/00, effective 10/29/00.]

AMENDATORY SECTION (Amending WSR 00-20-034, filed 9/28/00, effective 10/29/00)

WAC 132N-156-810 Process. The requesting party will forward a copy of the approved request to the ~~((security/safety manager))~~ director of security and safety for implementation. After receiving an approved request, the ~~((security/safety manager))~~ director of security and safety will contact the requesting party to confirm the details and ~~((to))~~ assign the reserved spaces. All attempts will be made to accommodate the needs of the participants and the event, but the final decision on the allocation of spaces rests with the ~~((security/safety manager))~~ director of security and safety.

Reserved spaces will be established only for arrival of participants to the event ~~((; no "in and out" areas will be maintained))~~.

On the day of the event, the ~~((security/safety office))~~ security and safety department will set up barricades or otherwise designate the reserved spaces. Unless other arrangements are made, it will be the responsibility of the requesting party to provide personnel to meet those individuals authorized to park in the reserved spaces and to remove the barricades to allow them to park. If the requesting party wants to have a security ~~((officer staff))~~ personnel supervise the

parking spaces, they must make prior arrangements for staffing. Security (~~officers~~) personnel will be assigned to such duty only if available, and their time will be charged to the requesting (~~party~~) party's budget.

[Statutory Authority: Chapter 28B.50 RCW. WSR 00-20-034, § 132N-156-810, filed 9/28/00, effective 10/29/00.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132N-156-740 Security/parking advisory committee.

WSR 21-18-073

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed August 26, 2021, 6:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-076.

Title of Rule and Other Identifying Information: WAC 246-817-440 Dentist continuing education requirements, the dental quality assurance commission (commission) is proposing a rule amendment to allow full continuing education credit for recorded interactive webinars, making it the same as for live interactive webinars. The amended language will also clarify that full credit also applies to live interactive webinars too.

Hearing Location(s): On October 22, 2021, at 8:35 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead. To access the meeting: Please join meeting from your computer, tablet, or smartphone. Please register for commission meeting October 22, 2021, 8:30 a.m. PDT at <https://attendee.gotowebinar.com/register/5843394544406820366>.

Date of Intended Adoption: October 22, 2021.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, dental@doh.wa.gov, by October 11, 2021.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email Jennifer.santiago@doh.wa.gov, dental@doh.wa.gov, by October 11, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language added to WAC 246-817-440 (4)(b)(i) will allow recorded interactive webinars to obtain full continuing education credit, making it the same as live interactive webinars. The amended language will also clarify that full credit also applies to live interactive webinars too.

Reasons Supporting Proposal: This proposed rule amendment is necessary to allow dentists to obtain full, one hour continuing education credit for recorded interactive webinars. Current rule allows dentists to earn 30 minutes for every one hour of self-study continuing education completed, including online courses, towards the total of continuing education hours. Live interactive webinars are already allowed for full continuing education credit under WAC 246-817-440 (4)(a).

A rules petition was received on November 13, 2020, requesting amendments to WAC 246-817-440 to allow full, one hour credit for self-study online continuing education courses. The commission determined that recorded interactive webinars may be just as beneficial as live interactive webinars.

The commission is mandated under RCW 18.32.002 to regulate the competency and quality of professional health care providers, including but not limited to continuing education.

Statutory Authority for Adoption: RCW 18.32.0357, 18.32.0365, and 18.32.180.

Statute Being Implemented: RCW 18.32.002.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting 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, dental@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. A significant cost analysis has been completed. The proposed rule amendment does not increase costs to licensed dentists. Licensed dentists currently must complete 63 hours of continuing education every three years. The proposed rule amendment allows an exception for full continuing education credit for completed recorded interactive webinars. The proposed rule amendments do not impose more-than-minor costs as defined in RCW 19.85.020(2).

August 26, 2021

David Carsten, DDS, Chairperson
Dental Quality Assurance Commission

OTS-3190.1

AMENDATORY SECTION (Amending WSR 18-12-116, filed 6/6/18, effective 1/1/19)

WAC 246-817-440 Dentist continuing education requirements. The goal of continuing education is to encourage the lifetime professional development of the licensed dentist, and to enhance the clinical and overall skills needed to protect the health and safety of all patients.

(1) A licensed dentist shall complete a minimum of sixty-three hours of continuing education every three years.

(a) The three-year continuing education reporting period for a dentist licensed in Washington before 2019 begins January 1, 2019, and verification of completion of continuing education hours will be due on the dentist's annual license renewal date in 2022, and every three years thereafter. The three-year continuing education reporting period for a dentist initially licensed in Washington in 2019 or later begins upon date of licensure.

(b) A licensed dentist shall attest to the completion of sixty-three hours of continuing education every three years as a part of their license renewal requirement.

(c) The dental quality assurance commission (commission) may randomly audit up to twenty-five percent of licensed dentists every three years for compliance after the license is renewed as allowed by chapter 246-12 WAC, Part 7.

(d) A licensed dentist shall comply with the requirements of chapter 246-12 WAC, Part 7.

(e) The commission will not authorize or approve specific continuing education courses.

(2) A licensed dentist shall complete the commission approved dental jurisprudence examination once every three years. One hour of continuing education will be granted toward the sixty-three hour requirement.

(3) Continuing education must contribute to the professional knowledge and development of the licensed dentist or enhance services provided to patients. Continuing education must be completed in one or more of the following subject categories:

(a) Education courses relating to the practice of dentistry;

(b) Emergency management, advanced cardiac life support (ACLS), and pediatric advanced life support (PALS);

(c) Health care provider basic life support (BLS). BLS certification is required in WAC 246-817-720. One hour of continuing education for each BLS certification course will be granted. A licensed dentist may not count more than three hours every three years in this category;

(d) Infection control, federal/state safety standards, and radiation protection;

(e) Pharmacology, prescribing practices, and pain management;

(f) Ethics;

(g) Patient care related education including risk management, methods of health delivery, multicultural, and suicide prevention education;

(h) Washington state dentistry law;

(i) Practice management and billing practices. A licensed dentist may not count more than twenty-one hours every three years in this category.

(4) Continuing education in subject categories identified in subsection (3) of this section may be completed using any of the following activities or methods:

(a) Attendance at local, state, national, or international continuing education courses, live interactive webinars, dental study clubs, postdoctoral education, and dental residencies;

(b) Self-study by various means, relevant to dentistry, without an instructor physically present.

(i) Self-study can be continuing education provided online or through the mail provided by a continuing education provider. Thirty minutes will count for every one hour completed for this activity, except for live or recorded interactive webinars;

(ii) Self-study can be reading a book that contributes to the professional knowledge and development of the licensed dentist, or enhance services provided to patients. A two-page synopsis of what was learned written by the licensed dentist is required. Two hours of continuing education for each book and synopsis will be granted. A licensed dentist may not count more than six hours every three years for this activity.

(c) Teaching, presenting, or lecturing in a course, only if the presentation or lecture is created or authored by the dentist claiming the continuing education hours. A licensed dentist may not count more than twenty-one hours every three years in this activity;

(d) Direct clinical supervision of dental students and dental residents. A licensed dentist may not count more than twenty-one hours every three years in this activity;

(e) Publishing a paper in a peer review journal. A licensed dentist may count fifteen hours the year the paper is published and may not count more than a total of thirty hours every three years in this activity. A copy of the publication is required;

(f) Reading and critically evaluating any hypothesis-driven scientific journal article on a topic that has relevance to dentistry and is published in a peer-reviewed journal devoted to dentistry, medicine, or useful to dentistry. A licensed dentist may not count more than twenty-one hours every three years.

(i) Before completing this activity, the licensed dentist must complete at least four hours of education in evidence-based dentistry or medicine that includes journal article evaluation. The four-hour education may count toward the required sixty-three hour requirement. The four-hour education is a one-time requirement. A licensed dentist may not count more than four hours every three years.

(ii) A licensed dentist may count one hour for each article that the dentist completes a "Critical Evaluation of a Journal Article" questionnaire. The questionnaire may be obtained from the commission. The completed questionnaire is required;

(g) Volunteer dental patient care. A licensed dentist may not count more than twenty-one hours every three years; and

(h) The commission will accept a current certification or recertification from any specialty board approved and recognized by the American Dental Association (ADA), the American Board of Dental Specialties (ABDS), or other specialty board certification or recertification approved by the commission as sixty-two hours of continuing education. The commission will also accept the award of Fellow of the Academy of General Dentistry, Master of the Academy of General Dentistry, or the Lifelong Learning and Service Recognition Award as sixty-two hours of continuing education. The certification, recertification, or award must be obtained in the three-year reporting period.

(5) Proof of continuing education is a certificate of completion, letter, or other documentation verifying or confirming attendance or completion of continuing education hours. Documentation must be from the organization that provided the activity, except in subsection (4)(b)(ii), (e), and (f)(ii) of this section, and must contain at least the following:

- (a) Date of attendance or completion;
- (b) Hours earned; and
- (c) Course title or subject.

[Statutory Authority: RCW 18.32.002 and 18.32.0365. WSR 18-12-116, § 246-817-440, filed 6/6/18, effective 1/1/19. Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-440, filed 7/23/13, effective 8/23/13. Statutory Authority: RCW 18.32.002 and 18.32.0365. WSR 06-07-036, § 246-817-440, filed 3/8/06, effective 4/8/06. Statutory Authority: RCW 18.32.0365. WSR 01-16-007, § 246-817-440, filed 7/19/01, effective 8/19/01.]

WSR 21-18-074

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed August 26, 2021, 7:17 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-817-230 Dentist retired active status. The dental quality assurance commission (commission) is proposing amendments to WAC 246-817-230 to incorporate dental continuing education requirements from WAC 246-817-440 and to update the reference to chapter 246-12 WAC, Part 5 to specific required rules.

Hearing Location(s): On October 22, 2021, at 8:35 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead. Please join meeting from your computer, tablet, or smartphone. Please register for commission meeting October 22, 2021, 8:30 a.m. PDT at <https://attendee.gotowebinar.com/register/5843394544406820366>.

Date of Intended Adoption: October 22, 2021.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, dental@doh.wa.gov, by October 11, 2021.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email Jennifer.santiago@doh.wa.gov, dental@doh.wa.gov, by October 11, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing amendments to update requirements in WAC 246-817-230 Dentist retired active status, to align with WAC 246-817-440 Dentist continuing education requirements. Proposed changes include updating continuing education hours from 21 hours annually to 63 hours every three years as currently required in WAC 246-817-440. Additional proposed amendments include replacing reference to chapter 246-12 WAC, Part 5 with the specific references to WAC 246-12-120, 246-12-130, and 246-12-140, excluding WAC 246-12-120 (2)(c) and (d).

Reasons Supporting Proposal: In 2019, the commission changed continuing education hours listed in WAC 246-817-440 from 21 continuing education hours annually to 63 continuing education hours every three years. WAC 246-817-230 currently requires compliance with WAC 246-817-440 but references 21 continuing education hours annually. Amendments are necessary to correctly reference the 63 continuing education hours every three years and align requirements for dentists with active licenses. Additionally, the commission is proposing amendments to more accurately reference WAC 246-12-120, 246-12-130, and 246-12-140, excluding WAC 246-12-120 (2)(c) and (d) instead of the reference to chapter 246-12 WAC, Part 5. Anticipated future changes to chapter 246-12 WAC will change the subtitles (i.e. Part 5) in the chapter. It is necessary to accurately reflect the subsections that must be complied with.

Statutory Authority for Adoption: RCW 18.32.0365, 18.32.0357, and 18.130.250.

Statute Being Implemented: RCW 18.32.002.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

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

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

Explanation of exemptions: The proposed rule is exempt under RCW 34.05.310 (4)(c) and (d) because the dentist continuing education rule was amended in 2019 to 63 hours of continuing education every three years. The proposed amendment incorporates this change into this rule. Proposed amendments also incorporate correct references to chapter 246-12 WAC.

August 26, 2021

David Carsten, DDS, Chairperson
Dental Quality Assurance Commission

OTS-3243.1

AMENDATORY SECTION (Amending WSR 15-12-092, filed 6/2/15, effective 7/3/15)

WAC 246-817-230 Dentist retired active status. (1) To obtain a retired active status license, a licensed dentist must comply with (~~chapter 246-12 WAC, Part 5~~) WAC 246-12-120, 246-12-130, and 246-12-140, excluding WAC 246-12-120 (2)(c) and (d).

(2) A licensed dentist with a retired active status license may practice under the following conditions:

- (a) In emergent circumstances calling for immediate action; or
- (b) In intermittent circumstances on a nonpermanent basis.

(3) A licensed dentist with a retired active license may not receive compensation for dental services.

(4) A licensed dentist with a retired active status license must renew every year on or before the practitioner's birthday according to WAC 246-12-130 and 246-817-990 and must complete (~~twenty-one~~) sixty-three hours of continuing education as required in WAC 246-817-440 every three years (~~with renewal~~).

[Statutory Authority: RCW 18.32.065 and 18.130.250. WSR 15-12-092, § 246-817-230, filed 6/2/15, effective 7/3/15.]

WSR 21-18-075

PROPOSED RULES

SECRETARY OF STATE

[Filed August 27, 2021, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-081.

Title of Rule and Other Identifying Information: Permanent adoption of WAC changes related to WAC 434-230-015 Ballots and instructions, 434-250-135 Ballot return postage, 434-250-105 Voting centers, 434-261-005 Definitions, 434-262-070 Official county canvass report, 434-324-026 Voter registration form, 434-335-323 Preparing the logic and accuracy test, 434-381-180 Editing statements and arguments; adopting new WAC 434-250-370 HUB reimbursement program; and repealing WAC 434-250-360 HUB grant program in WAC.

Hearing Location(s): On October 5, 2021, at 11:00 a.m., at 520 Union Avenue, Olympia, 98504. The hearing will be conducted using WebEx, to join the hearing a person can call the following telephone number 206-207-1700 and enter the attendance code 1461 07 1992. People will be able to hear and comment.

Date of Intended Adoption: October 6, 2021.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email Fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

August 27, 2021

Mark Neary

Assistant Secretary of State

OTS-3238.2

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-230-015 Ballots and instructions. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A (~~citizen of the~~) United States citizen;

A (~~resident of the state of~~) Washington (~~and~~) state resident that meets the requirements for voting mandated by state law;

At least 18 years old on election day, or 17 years old at the primary and 18 years old by the day of the November general election;

Voting only once in this election and not voting in any other United States jurisdiction;

Not (~~under the authority of~~) serving a sentence of total confinement under the jurisdiction of the Department of Corrections for a Washington felony conviction or currently incarcerated for a federal or out-of-state felony conviction;

Not disqualified from voting due to a court order; and

(~~Not voting in any other jurisdiction in the United States for this election.~~) Aware it is illegal to forge a signature or cast another person's ballot(~~-~~) and that attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

(d) Explain how the voter may make a mark, witnessed by two other people, if the voter is unable to write their signature;

(e) Explain that a power of attorney cannot be used to sign a ballot for someone else;

(f) Explain how to place the ballot in the security envelope/sleeve and place the security envelope/sleeve in the return envelope;

(g) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Explain how the voter may update their address;

(i) If applicable, include language with the reissued ballot notifying the voter that the reissued ballot is their current ballot;

(j) If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;

(k) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

(l) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

(m) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(n)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice president appear on the general election ballot, the following must be added to the statement required by (n)(i) of this subsection:

"The election for president and vice president is different. Candidates for president and vice president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6)(a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "**READ:** Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice president but immediately above the first partisan congressional, state or county office: "**READ:** Each candidate for president and vice president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) Counties may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

Counties may use ballot envelopes with the previous declaration through December (~~2020~~) 2021.

[Statutory Authority: RCW 29A.04.611. WSR 19-12-115, § 434-230-015, filed 6/5/19, effective 7/6/19; WSR 18-24-007, § 434-230-015, filed 11/26/18, effective 12/27/18; WSR 18-10-003, § 434-230-015, filed 4/19/18, effective 5/20/18; WSR 17-12-090, § 434-230-015, filed 6/6/17, effective 7/7/17; WSR 15-24-001, § 434-230-015, filed 11/18/15, effective 12/19/15; WSR 14-06-040, § 434-230-015, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-230-015, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-230-015, filed 9/1/09, effective 10/2/09; WSR 08-15-052, § 434-230-015, filed 7/11/08, effective 8/11/08.]

OTS-3204.1

AMENDATORY SECTION (Amending WSR 19-19-033, filed 9/11/19, effective 10/12/19)

WAC 434-230-135 Ballot return postage. (~~((1))~~) The secretary of state will work with each county auditor to identify the most cost effective U.S. Postal Service business reply permit type for their county. Once the appropriate business reply mail permit type is determined, each county auditor must:

~~((a))~~ (1) Establish and maintain the U.S. Postal Service business reply mail permit identified and use it exclusively for ballot return postage(~~(~~

~~(b) Connect the business reply mail permit to the secretary of state's U.S. Postal Service enterprise payment system (or succeeding) account;~~

~~(c))~~; and

(2) Use ballot return envelopes approved by the U.S. Postal Service for the business reply mail permit established in ~~((a) of this subsection; and~~

~~(d) Provide an independent count of the ballots returned by mail for each election, separate and distinct from the number provided by U.S. Postal Service, if requested by the secretary of state for audit purposes.~~

~~(2) County auditors may use their existing envelope stock until February 15, 2020, if return envelope design changes are required to comply with this rule) subsection (1) of this section.~~

[Statutory Authority: RCW 29A.04.611. WSR 19-19-033, § 434-230-135, filed 9/11/19, effective 10/12/19.]

OTS-3191.2

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

WAC 434-250-105 Voting centers. (1) If a location offers replacement ballots, reissued ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center.

(2) At least one voting center must be open during business hours during the voting period, which begins eighteen days before, and ends at 8:00 p.m. on the day of the special, primary, or general election. Additional voting centers, and additional locations that are not voting centers, established by the county auditor to provide other services are not required to be open for the full eighteen-day voting period. In addition to the requirements of RCW 29A.40.160, each voting center must:

(a) Be an accessible location. "Accessible" means the combination of factors which create an environment free of barriers to the mobility or functioning of voters. The environment consists of the routes of travel to and through the buildings or facilities used for voting. The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a voting center. A voting center is fully accessible if all responses in each category are "Yes";

(b) Be located in a public building or building that is leased by a public entity including, but not limited to, libraries;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Issue ballots that include a declaration in the ballot materials;

(e) Offer disability access voting in a location or manner that provides for voter privacy. For each voting center, the county auditor must have a contingency plan to accommodate accessible voting in the event that an accessible voting unit malfunctions or must be removed from service;

(f) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(g) Have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095, if the voting center offers voting on a direct recording electronic voting device. The county auditor shall require the voter to print and sign the ballot declaration provided in WAC 434-230-015. Ballot declaration signatures may not be maintained in the order in which they were signed. Before the voter may vote on a direct recording electronic voting device, the county auditor must either:

(i) Verify the signature on the ballot declaration against the signature in the voter registration record; or

(ii) Require the voter to provide photo identification, consistent with RCW 29A.40.160.

(h) Provide (~~either a voters' pamphlet or sample ballots~~) voters' pamphlets;

(i) Provide sample ballots if a full sample ballot is not published in the local voters' pamphlet;

(j) Provide voter registration services pursuant to RCW 29A.08.140. If the voter registration system is unable to process applications, the county auditor shall offer conditional registration and balloting services;

~~((j))~~ (k) Display a HAVA voter information poster, containing an example of an actual ballot or a sample ballot in substantially the same format as an actual ballot;

~~((k))~~ (l) Display the date of that election;

~~((l))~~ (m) During a primary that includes a partisan office, and a general election that includes a partisan office, display the appropriate party preference notice provided in WAC 434-230-015. The party preference notices may also be posted on-screen in direct recording electronic voting devices;

~~((m))~~ (n) Provide instructions on how to properly mark the ballot; and

~~((n))~~ (o) Provide election materials in alternative languages if required by the Voting Rights Act.

(3) Where it appears that a particular voter is having difficulty casting their vote, and as a result, is impeding other voters from voting, the staff may provide assistance to that voter in the same manner as provided by law for those voters who request assistance. Where it appears that a voter is impeding other voters from voting to simply cause delay, the staff shall ask the voter to expedite the voting process. In the event the voter refuses to cooperate, the staff shall, whenever practical, contact the county auditor, who may request assistance from the appropriate law enforcement agencies if he or she deems such action necessary.

(4) At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots; however, any voter who is in a voting center or in line at a voting center at 8:00 p.m. must be allowed to vote and deposit their ballot. Voted ballots, including provisional, mail-in, and direct recording electronic and paper records, must be placed into secured transport carriers for return to the county auditor's office or another designated location.

(5) The requirements for staffed ballot deposit sites per WAC 434-250-100 apply to voting centers.

(6) The county auditor may establish which services will be provided at additional locations, which days and hours the additional locations will be open, and shall publish the information for voters.

[Statutory Authority: RCW 29A.04.611. WSR 19-12-115, § 434-250-105, filed 6/5/19, effective 7/6/19. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-250-105, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-250-105, filed 2/26/14, effective 3/29/14; WSR 12-14-074, § 434-250-105, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-250-105, filed 12/6/11, effective 1/6/12.]

OTS-3149.2

NEW SECTION

WAC 434-250-370 Hub reimbursement program. (1) Each year that funding has been made available by the legislature for support of student engagement hubs, a county that is required to operate a student engagement hub under RCW 29A.40.180, may request reimbursement from the secretary of state. Reimbursement under this section is limited to the operation of a student engagement hub during any portion of the in-person voter registration period associated with each general election.

(2) Reimbursement may be requested as either:

(a) Direct costs identified in the election cost reimbursement submitted pursuant to chapter 29A.04 RCW and compliant with the *BARS Manual* requirements related to cost reimbursement; or

(b) A reimbursement request separate from the election cost reimbursement request. This must be accompanied by supporting documentation, which may include invoices, written narratives, cost allocation, or other information, for each billed cost, a description of hub operations, dates and hours of operation, and a copy of the hub agreement.

(3) Prior to each general election, the secretary of state may identify a portion of the funding made available by the legislature to support student engagement hubs for statewide communication, outreach, or system upgrades related to student engagement hubs.

(4) All funding remaining after statewide communication, outreach, or system upgrades, must be used for reimbursement of operation costs as requested by counties operating student engagement hubs.

(5) In the event that available funding is less than the total of all reimbursements requested, available funding must be distributed using a proportional allocation method.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-360 Hub grant program.

OTS-3220.2

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed as part of the initial processing;

(2) "Ballot duplication" is the process of making a true copy of valid votes from a physically damaged ballot or a ballot that is unreadable or uncountable by the tabulation system onto a paper or electronic blank ballot to ensure the ballot may be correctly tabulated by the tabulation system. The original ballot may not be altered. Teams of two or more people working together must duplicate ballots according to voter intent as per WAC 434-261-086. A log of duplicated ballots must be signed by the two or more people who duplicated the ballots;

(3) "Ballot resolution" is the process of making changes on a voted electronic ballot image to ensure the ballot is tabulated according to the voter's intent. The changes must reflect the voter intent as per WAC 434-261-086 and the original ballot may not be altered. Changes must be made by teams of two or more people working together. A log of resolved ballots must be signed by the two or more people resolving the ballots;

(4) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(5) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(6) "Valid signature" on a ballot declaration for a registered voter eligible to vote in the election is:

(a) A signature verified against the voter's signature in the voter registration file attesting to the voter registration oath; or

(b) A mark witnessed by two people.

(7) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one";

(8) "Undervote" is no selections made for a race or measure;

(9) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures;

(10) "Seal log" is a log documenting each time a numbered seal is attached or removed from a ballot container. The log must include the seal number, date, and identifying information of persons attaching or removing the seal. Following certification of the election, the seal log must include documentation as to why the seal was removed from a ballot container.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-005, filed 12/18/18, effective 1/18/19. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-261-005, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611, 29A.08.420, 29A.24.131, 29A.40.110, 29A.46.020, and 29A.80.041. WSR 10-14-091, § 434-261-005, filed 7/6/10, effective 8/6/10. Statutory Authority: RCW 29A.04.611. WSR 09-18-098, § 434-261-005, filed 9/1/09, effective 10/2/09; WSR 09-12-078, § 434-261-005, filed 5/29/09, effective 6/29/09; WSR 09-03-110, § 434-261-005, filed 1/21/09, effective 2/21/09; WSR 07-24-044, § 434-261-005, filed 11/30/07, effective 12/31/07; WSR 07-09-036, §

434-261-005, filed 4/11/07, effective 5/12/07; WSR 06-23-094, § 434-261-005, filed 11/15/06, effective 12/16/06; WSR 06-11-042, § 434-261-005, filed 5/10/06, effective 6/10/06; WSR 05-17-145, § 434-261-005, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 29.04.210, 29.36.150. WSR 02-07-029, § 434-261-005, filed 3/12/02, effective 4/12/02. Statutory Authority: RCW 29.04.080 and 29.04.210. WSR 99-08-089, § 434-261-005, filed 4/6/99, effective 5/7/99. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, § 434-261-005, filed 10/13/97, effective 11/13/97.]

OTS-3192.1

AMENDATORY SECTION (Amending WSR 20-14-035, filed 6/24/20, effective 7/25/20)

WAC 434-262-070 Official county canvass report. (1) Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon;

(b) Provides the total number of registered voters and votes cast in the county;

(c) Contains the oath required by RCW 29A.60.200, signed by the county auditor and attested to by the chair or designee who administered the oath; and

(d) Shall have a space where the official seal of the county shall be attached.

(2) The official county canvass report shall include:

(a) The certification;

(b) The auditor's abstract of votes as described in WAC 434-262-030. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court. The vote totals therein shall constitute the official returns of that election; and

(c) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The certification shall be signed by all members of the county canvassing board or their designees.

(4) The official county canvass report (~~(of state primaries)~~) for every primary and (~~general~~) election(~~(s)~~) must be submitted to the secretary of state on the day the election was certified.

(5) The county auditor must prepare a reconciliation report for every primary and election as required by RCW 29A.60.235 and state rule, and submit the complete report as directed by the secretary of state. The secretary of state shall review the reconciliation for each county and work with the county auditor to resolve discrepancies. If a discrepancy is resolved, the county auditor shall submit a correct reconciliation report to the secretary of state seven days following the certification of the election. The corrected report then becomes the official reconciliation report for that election. The county auditor shall post the corrected report on the county auditor website.

[Statutory Authority: RCW 29A.04.611. WSR 20-14-035, § 434-262-070, filed 6/24/20, effective 7/25/20. Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-262-070, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-262-070, filed 2/26/14, effective 3/29/14; WSR 12-14-074, § 434-262-070, filed 7/2/12, effective 8/2/12. Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. WSR 11-24-064, § 434-262-070, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-262-070, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 29.04.080, 29.04.210, 29.36.150 and 29.79.200. WSR 97-21-045, recodified as § 434-262-070, filed 10/13/97, effective 11/13/97. Statutory Authority: RCW 29.04.080. WSR 80-15-008 (Order 80-3), § 434-62-070, filed 10/3/80.]

OTS-3163.3

AMENDATORY SECTION (Amending WSR 20-13-043, filed 6/10/20, effective 7/11/20)

WAC 434-324-026 Voter registration form.

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using black or blue pen. Mail this completed form to your county elections office (address on back).

Deadline

This registration will be in effect for the next election if received by the elections office no later than eight days before Election Day.

Voting

You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Future Voters

If you are at least 16 years old, use this form to sign up. You'll be automatically registered when you turn 18.

Public Information

Your name, address, gender, and date of birth will be public information if you are at least eighteen years of age.

Notice

Knowingly providing false information about yourself or your qualifications for voter registration is a class C felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

Public Benefits Offices

If you received this form from a public benefits office, where you received the form will remain confidential and will be used for voter registration purposes only.

Registering or declining to register will not affect the assistance provided to you by any public benefits office. If you decline to register, your decision will remain confidential.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information

If you would like help with this form, contact the Washington State Elections Division.

- web www.votewa.gov
call (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

For official use:

fold in half

4/2020

Washington State Voter Registration Form

Register online at www.votewa.gov.

1 Personal Information

last first middle suffix

date of birth (mm/dd/yyyy) gender

residential address in Washington apt #

city ZIP

mailing address, if different

city state and ZIP

phone number (optional) email address (optional)

2 Qualifications

If you answer no, do not complete this form.

- I am a citizen of the United States of America.
I am at least eighteen years old, or at least sixteen years old and will vote only after I turn eighteen.

3 Military / Overseas Status

- I am currently serving in the military. Includes National Guard and Reserves, and spouses or dependents away from home due to service.
I live outside the United States.

4 Identification - Washington Driver License, Permit, or ID

Grid for driver license or ID number

If you do not have a Washington driver license, permit, or ID, you may use the last four digits of your Social Security number to register.

5 Change of Name or Address

This information will be used to update your current registration, if applicable.

former last name first middle

former residential address city state and ZIP

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I am at least sixteen years old, I am not disqualified from voting due to a court order, and I am not under department of corrections supervision for a Washington felony conviction.

sign here date here

return address: PO Box 40229, Olympia, WA 98504-0229



first class postage required



Please write your county elections office address below:

[Empty box for county elections office address]

↑ fold in half	Adams County 210 W Broadway, Ste 200 Ritzville, WA 99169 (509) 659-3249	Douglas County PO Box 456 Waterville, WA 98858 (509) 888-6402	King County 919 SW Grady Way Renton, WA 98057 (206) 296-8683	Pacific County PO Box 97 South Bend, WA 98586-0097 (360) 875-9317	Stevens County 215 S Oak St, Rm 106 Colville, WA 99114-2836 (509) 684-7514	↑ fold in half
	Asotin County PO Box 129 Asotin, WA 99402 (509) 243-2084	Ferry County 350 E Delaware Ave, Ste 2 Republic, WA 99166 (509) 775-5200	Kitsap County 614 Division St, MS 31 Port Orchard, WA 98366 (360) 337-7128	Rend Oreille County PO Box 5015 Newport, WA 99156 (509) 447-6472	Thurston County 2000 Lakeridge Dr SW Olympia, WA 98502-6090 (360) 786-5408	
	Benton County PO Box 1440 Prosser, WA 99350 (509) 736-3085	Franklin County PO Box 1451 Pasco, WA 99301 (509) 545-3538	Kittitas County 205 W 5th Ave, Ste 105 Ellensburg, WA 98926-2891 (509) 962-7503	Pierce County 2501 S 35th St, Ste C Tacoma, WA 98409 (253) 798-VOTE	Wahkiakum County PO Box 543 Cathlamet, WA 98612 (360) 795-3219	
	Chelan County 350 Orondo Ave Ste. 306 Wenatchee, WA 98801-2885 (509) 667-6808	Garfield County PO Box 278 Pomeroy, WA 99347-0278 (509) 843-1411	Klickitat County 205 S Columbus, Rm 203 Goldendale, WA 98620 (509) 773-4001	San Juan County PO Box 638 Friday Harbor, WA 98250-0638 (360) 378-3357	Walla Walla County PO Box 2176 Walla Walla, WA 99362-0356 (509) 524-2530	
	Clallam County 223 E 4th St, Ste 1 Port Angeles, WA 98362 (360) 417-2221	Grant County PO Box 37 Ephrata, WA 98823 (509) 754-2011 ext. 2704	Lewis County PO Box 29 Chehalis, WA 98532-0029 (360) 740-1164	Skagit County PO Box 1306 Mount Vernon, WA 98273-1306 (360) 416-1702	Whatcom County PO Box 369 Bellingham, WA 98227-0369 (360) 778-5102	
	Clark County PO Box 8815 Vancouver, WA 98666-8815 (564) 397-2345	Grays Harbor County 100 W Broadway, Ste 2 Montesano, WA 98563 (360) 964-1556	Lincoln County PO Box 28 Davenport, WA 99122-0028 (509) 725-4971	Skamania County PO Box 790, Elections Dept Stevenson, WA 98648-0790 (509) 427-3730	Whitman County PO Box 181 Colfax, WA 99111 (509) 397-5284	
	Columbia County 341 E Main St, Ste 3 Dayton, WA 99328 (509) 382-4541	Island County PO Box 1410 Coupeville, WA 98239 (360) 679-7366	Mason County PO Box 400 Shelton, WA 98584 (360) 427-9670 ext 469	Snohomish County 3000 Rockefeller Ave, MS 505 Everett, WA 98201-4060 (425) 388-3444	Yakima County PO Box 12570 Yakima, WA 98909-2570 (509) 574-1340	
	Cowlitz County 207 4th Ave N, Rm 107 Kelso, WA 98626-4124 (360) 577-3005	Jefferson County PO Box 563 Port Townsend, WA 98368-0563 (360) 385-9119	Okanogan County PO Box 1010 Okanogan, WA 98840-1010 (509) 422-7240	Spokane County 1033 W Gardner Ave Spokane, WA 99260 (509) 477-2320	WA State Elections Division PO Box 40229 Olympia, WA 98504-0229 (800) 448-4881	

))

Fold and seal, or use an envelope

Instructions

Use this form to register to vote or update your current registration.

Print all information clearly using black or blue pen. Your signature will be used to verify your ballot. Mail this completed form to your county elections office (address on back).

Deadline

This registration will be in effect for the next election if received by the elections office no later than eight days before election day.

Voting

You will receive your ballot in the mail. Contact your county elections office for accessible voting options.

Future Voters

If you are at least 16 years old, use this form to sign up. You'll be automatically registered to vote when you qualify.

Public Information

Your registration name, address, gender, and date of birth will be public information when you become eligible to vote.

Notice

You must be a United States citizen in order to register to vote. You may register to vote if you are at least sixteen years old. You may vote if you will be at least eighteen years old by the next general election, or are at least eighteen years old for special elections.

Knowingly providing false information about yourself or your qualifications for voter registration is a class C felony punishable by imprisonment for up to five years, a fine of up to \$10,000, or both.

Public Benefits Offices

If you received this form from a public benefits office, where you received the form will remain confidential.

Registering or declining to register will not affect the assistance provided to you by that agency.

If you believe someone interfered with your right to register, or your right to privacy in deciding whether to register, you may file a complaint with the Washington State Elections Division.

Contact Information

If you would like help with this form, contact the Washington State Elections Division.

- web www.votewa.gov
call 1 (800) 448-4881
email elections@sos.wa.gov
mail PO Box 40229 Olympia, WA 98504-0229

For official use:

1/2022

Washington State Voter Registration Form

Register online at www.votewa.gov.

1 Personal Information

last first middle suffix

date of birth (mm/dd/yyyy) gender

residential address in Washington state apt #

city ZIP

mailing address, if different

city state and ZIP

phone number (optional) email address (optional)

2 Qualifications

If you answer no, do not complete this form.

yes no I am a citizen of the United States of America.

yes no I am at least sixteen years old and will not vote in a special or general election until I turn eighteen.

3 Military / Overseas Status

yes no I am currently serving in the military. Includes National Guard and Reserves, and spouses or dependents away from home due to service.

yes no I live outside the United States.

4 Identification - Washington Driver License, Permit, or ID

Grid of boxes for driver license, permit, or ID information.

If you do not have a Washington driver license, permit, or ID, you may use the last four digits of your Social Security number to register.

5 Change of Name or Address

This information will be used to update your registration, if applicable.

previous last name first middle

previous residential address city state and ZIP

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, and I am at least sixteen years old. I am not disqualified from voting due to a court order, and I am not currently serving a sentence of total confinement under the jurisdiction of the department of corrections for a Washington felony conviction, and I am not currently incarcerated for a federal or out-of-state felony conviction.

sign here

date here

[Statutory Authority: RCW 29A.04.611. WSR 20-13-043, § 434-324-026, filed 6/10/20, effective 7/11/20; WSR 19-12-115, § 434-324-026, filed 6/5/19, effective 7/6/19; WSR 17-12-090, § 434-324-026, filed 6/6/17, effective 7/7/17; WSR 14-06-040, § 434-324-026, filed 2/26/14, effective 3/29/14; WSR 12-14-074, § 434-324-026, filed 7/2/12, effective 8/2/12; WSR 10-03-072, § 434-324-026, filed 1/18/10, effective 2/18/10.]

OTS-3221.3

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-335-323 Preparing the logic and accuracy test. (1) Each county shall prepare a matrix of the test pattern used to mark the test deck of ballots for the official logic and accuracy test. The matrix shall consist of a spreadsheet listing the number of votes cast for each candidate and responses for and against each measure in each precinct or ballot style. The matrix shall include:

(a) For every precinct or ballot style, the first response position of every race or measure shall be marked so the total votes cast for the first candidate of a race or the first response to a measure equals the total number of precincts or ballot styles being tested for that contest or measure;

(b) Two votes for the second response position, three votes for the third response position, four votes for the fourth response position, ~~((etc.))~~ continuing the pattern for all of the response positions including the response position for write-ins when a write-in response position is present;

(c) One overvote in each race or measure;

(d) For each tabulator's test deck:

(i) ~~((One write-in vote;~~

~~(ii) One overvoted race;~~

~~(iii))~~ One blank ballot; and

~~((iv))~~ (ii) At least one of each type of ballot to be used during the election including ballots on demand, alternative language ballots, electronically marked ballots, and electronically duplicated ballots.

~~((d))~~ (e) Unique results for all responses within a race or measure, including write-ins ~~((, unique results))~~. Additional ballots must be added to the test deck in the following circumstances:

(i) Within a race or measure, more than one response has the same results;

(ii) A candidate appears in two different races on the same ballot; and

(iii) More than one measure appears on a ballot within the same jurisdiction ~~((and each has the same response position names. For example, if two measures with "yes" and "no" response names appear for the same jurisdiction, the test results shall be unique between the two measures))~~.

(2) A copy of the county's test matrix and a sample ballot shall be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test for a state primary or general election. The office of the secretary of state shall review the provided matrix to determine if it is prepared in accordance with this section.

(3) The county auditor shall produce a test deck of ballots based on the test matrix to be used in the official logic and accuracy test for every primary and election.

[Statutory Authority: RCW 29A.04.611 and 29A.04.620. WSR 16-13-063, § 434-335-323, filed 6/13/16, effective 7/14/16. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-335-323, filed 2/26/14, effective 3/29/14.]

OTS-3197.2

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

WAC 434-381-180 Editing statements and arguments. The secretary of state is not responsible for the content of arguments or statements and shall not edit the content of statements or arguments:

(1) The secretary may correct obvious errors in grammar, spelling or punctuation;

(2) The secretary shall promptly attempt to notify any candidate or committee, by any means the secretary deems reasonable under the circumstances, if a statement or argument exceeds the maximum number of words. If the candidate or committee does not provide the secretary with a revised statement or argument that meets the word limit within ~~((three business days after the deadline for submission of the statement or argument))~~ one business day after being notified by the secretary, then the secretary shall modify the statement to fit the limit by removing full sentences, starting at the end, until the maximum word limit is reached;

(3) The secretary shall notify any committee that submits a title or identification for their members that does not conform to WAC 434-381-160(2). If the committee does not provide the secretary with a revised title or identification that meets the requirements established in WAC 434-381-160(2) within ~~((three business days after the deadline for submission))~~ one business day after being notified by the secretary, the secretary shall publish the name without any title or identification;

(4) Prior to publishing the pamphlet the secretary shall make a reasonable effort to provide a proof copy to the candidate or committee as it will appear showing any changes to the statement or argument; and

(5) Candidates or committees may only correct obvious errors or inaccuracies made by the secretary that they discover in their own proof copy. Changes in content are not allowed. Changes must be received by the secretary within three business days after proofs are sent by the secretary.

[Statutory Authority: RCW 29A.04.611, 29A.04.255. WSR 11-05-008, § 434-381-180, filed 2/3/11, effective 3/6/11. Statutory Authority: RCW 29.81.320. WSR 02-02-067, § 434-381-180, filed 12/28/01, effective 1/28/02.]

WSR 21-18-079

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 27, 2021, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-15-141.

Title of Rule and Other Identifying Information: WAC 182-521-0100
Noncountable income and resources during the COVID-19 public health
emergency.

Hearing Location(s): On October 5, 2021, at 10:00 a.m. The health
care authority (HCA) remains closed in response to the coronavirus
disease (COVID-19) public health emergency. Until further notice, HCA
continues to hold public hearings virtually without a physical meeting
place. This promotes social distancing and the safety of the residents
of Washington state. To attend the virtual public hearing, you must
register in advance [https://zoom.us/webinar/register/
WN_jHE7VdlCRWi5chy6w6vYnA](https://zoom.us/webinar/register/WN_jHE7VdlCRWi5chy6w6vYnA). After registering, you will receive a con-
firmation email containing information about joining the public hear-
ing.

Date of Intended Adoption: Not sooner than October 6, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box
42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727,
by October 5, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed,
phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay serv-
ice 711, email amber.lougheed@hca.wa.gov, by September 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: In response to the current public
health emergency surrounding the outbreak of the coronavirus disease
(COVID-19), along with the governor of Washington's emergency procla-
mations related to COVID-19, HCA is creating these new rules to iden-
tify income and resources that HCA does not count when determining ap-
ple health eligibility.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Lan-
guage, Implementation, Enforcement, and Fiscal Matters: Not applica-
ble.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe,
P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation
and Enforcement: Mark Westenhaver, P.O. Box 45534, Olympia, WA
98504-5534, 360-725-1324.

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

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

The proposed rule does not impose more-than-minor costs on busi-
nesses. Following is a summary of the agency's analysis showing how
costs were calculated. The changes to the proposed rules apply to cli-
ents and do not impose any costs on businesses.

August 27, 2021

OTS-2326.7

**Chapter 182-521 WAC
PUBLIC HEALTH EMERGENCY RULES**NEW SECTION

WAC 182-521-0100 Noncountable income and resources during the COVID-19 public health emergency. (1) This section describes certain types of income and resources received as a result of the COVID-19 public health emergency that the health care authority (agency) does not count as income or resources when determining apple health eligibility. This includes certain unemployment income; any Federal Pandemic Unemployment Compensation (FPUC) or Recovery Rebates authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; and other needs-based and disaster-related benefits authorized as a result of the COVID-19 public health emergency. The noncountable income and resources in this section are in addition to other noncountable income and resources in this title, such as those described in WAC 182-509-0320, 182-512-0860, and 182-513-1340.

(2) For all apple health programs, including both modified adjusted gross income-based (MAGI) and nonmodified adjusted gross income-based (non-MAGI) programs, the agency does not count as income for medicaid determinations of eligibility or cost-sharing calculations any of the following:

(a) Federal pandemic unemployment compensation benefits of six hundred dollars per week issued for the period of March 18, 2020, through July 31, 2020;

(b) Federal pandemic unemployment compensation benefits of three hundred dollars per week issued for the period of December 26, 2020, through September 6, 2021;

(c) Lost wages assistance unemployment compensation benefits of three hundred dollars per week issued for the period of weeks ending August 1, 2020, through September 6, 2021, due to the federal Disaster Relief Fund authorized for states to offset lost wages due to the COVID-19 pandemic, known as Lost Wage Assistance (LWA);

(d) Payments from the pandemic relief payment program as authorized by Governor Jay Inslee on December 27, 2020;

(e) Pandemic Recovery Rebates (stimulus checks) except that for non-MAGI programs, any unspent portion of such rebates may be counted as a resource starting twelve months after receipt; and

(f) Needs-based and disaster-related benefits from other agencies, organizations, or tribal entities including, but not limited to:

(i) Federal Emergency Management Agency (FEMA) programs, such as FEMA COVID-19 Funeral Assistance;

(ii) State programs, such as disaster cash assistance and the Washington immigrant relief fund; and

(iii) Local/municipal programs, such as the city of Seattle hospitality workers relief fund and disaster relief fund for immigrants.

(3) For non-MAGI programs, the agency does not count any unemployment compensation received during the public health emergency, except for individuals eligible solely under "special income disregard" categories as described in WAC 182-512-0880. For these individuals, the agency counts unemployment compensation to determine continued eligibility for that coverage, except payments described in subsection (2) of this section. If the result is medically needy program coverage, then all unemployment income is not counted in calculating spend-down.

(4) The agency does not count for apple health premium calculations all income not counted for eligibility determinations for apple health programs. The agency waives monthly premiums until the first of the month following the calendar quarter in which the COVID-19 public health emergency ends.

(5) All income the agency does not count for eligibility determinations for non-MAGI programs, the agency also does not count in post-eligibility treatment of income (PETI) calculations for long-term services and supports. The agency does not count such income whether it is paid to the community spouse or to the spouse seeking or receiving long-term services and supports. The agency does not count such income when determining the spousal allowance or in any other part of the post-eligibility calculation process.

(6) The agency does not count as a resource the value of property essential for self-support (PESS) described in 20 C.F.R. 416.1222 that is subject to the requirement of producing net annual income of at least six percent of the PESS value for non-MAGI groups.

(7) The agency does not count as income any other payments for pandemic assistance not described in this section to the fullest extent provided for under state or federal law.

(8) Any income received as unemployment compensation not described within this section is otherwise countable and the agency counts it when determining MAGI-based apple health eligibility, unless otherwise specified under state or federal law.

(9) The agency does not terminate an enrollee's eligibility due to changes to an enrollee's income or resources.

(10) These rules are in effect until the later of:

(a) The date the client is receiving any benefits described in this rule; or

(b) The end of the month the Secretary of the U.S. Department of Health and Human Services declares the COVID-19 public health emergency to be over.

[]

WSR 21-18-084
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed August 30, 2021, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-118 on June 21, 2021.

Title of Rule and Other Identifying Information: WAC 220-415-080 2022 Spring black bear special permits.

Hearing Location(s): On October 22-23, 2021, at 8:00 a.m., webinar. This meeting of the fish and wildlife commission will take place by webinar. See <https://wdfw.wa.gov/about/commission> or contact the commission office at 360-902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of Intended Adoption: November 19, 2021.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email 2020SpringBear@PublicInput.com, fax 360-902-2162, <https://publicinput.com/2020SpringBear>, by October 21, 2021.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, by October 21, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-415-080 2021 Spring black bear special permits. The purpose of the proposed amendments is to carry forward a long-standing recreational hunting opportunity to address bear management by continuing to use recreational hunting under a spring bear special permit in 2022; the purpose and anticipated effect of the amendments is to continue geographically focused spring hunting of black bear in areas where the Washington department of fish and wildlife (WDFW) have observed ongoing human-bear conflicts, low fall harvest results, commercial timber damage, or concerns for ungulate species recruitment. This amendment will also make minor modifications to harvest and inspection procedures. These amendments will provide a limited hunting opportunity to approximately 664 hunters who receive permits and WDFW anticipates approximately 145 black bears would be harvested through this limited permit hunting opportunity.

Reasons Supporting Proposal: A central part of WDFW's legislative mandate is to provide sustainable recreational hunting opportunity. Spring bear special permit hunts are one of a very limited number spring hunting opportunities and there is very strong interest from hunters for the limited spring bear hunting permits. The title change identifies that spring black bear special permit hunts will be held in 2022. The reduction in permit numbers for hunt unit 684 (from 10 to six) will reduce crowding in accessible areas of mostly private land. The edits to the language related to animal inspection will clarify to hunters the components necessary for harvest check and inspection. The revised language clearly states that the pelt and head must be unfrozen and that evidence of sex and the head must be attached to the pelt. Further the proposed edits would assist WDFW staff's implementation of the rule by adding a requirement that a successful hunter schedule an inspection with WDFW staff within 72 hours of the harvest.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule is for recreational hunting opportunity and does not affect small businesses.

August 30, 2021
Annie Szvetecz
Rules Coordinator

OTS-3269.1

AMENDATORY SECTION (Amending WSR 21-02-015, filed 12/28/20, effective 1/28/21)

WAC 220-415-080 ((2021)) 2022 Spring black bear special permits.

It is unlawful to fail to comply with the provisions of this section. A violation of this section is punishable under RCW 77.15.410, 77.15.245, or 77.15.280, depending on the circumstances of the violation.

Who May Apply: Anyone with a valid Washington big game license, which includes black bear as a species option.

Hunt Areas, Permit Levels, and Season Dates for Each License Year:

Hunt Name	Hunt Area	Permits	Season Dates
Sherman	GMU 101 Note: Mandatory bear identification test required.	50	April 15 - June 15
Kelly Hill	GMU 105 Note: Mandatory bear identification test required.	50	April 15 - June 15
Douglas	GMU 108 Note: Mandatory bear identification test required.	40	April 15 - June 15
Aladdin	GMU 111 Note: Mandatory bear identification test required.	50	April 15 - June 15
49 Degrees North	GMU 117 Note: Mandatory bear identification test required.	100	April 15 - June 15
Huckleberry	GMU 121	100	April 15 - June 15
Blue Creek	GMU 154	18	April 15 - June 15
Dayton	GMU 162	18	April 15 - June 15

Hunt Name	Hunt Area	Permits	Season Dates
Tucannon	GMU 166	5	April 15 - June 15
Wenaha	GMU 169	60	April 15 - June 15
Mt. View	GMU 172	24	April 15 - June 15
Lick Creek	GMU 175	18	April 15 - June 15
Peola	GMU 178	5	April 15 - June 15
Couse	GMU 181	5	April 15 - June 15
Grande Ronde	GMU 186	5	April 15 - June 15
Kitsap	GMU 627	5	April 15 - June 15
Mason	GMU 633	5	April 15 - June 15
Bear River	GMU 681	20	April 15 - June 15
Long Beach	GMU 684	((40)) 6	April 15 - June 15
North Skagit	That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, and Grandy Lake Timber company. Note: Mandatory bear identification test required.	30	April 15 - June 15
Copalis	GMU 642, 648, and 638 (excluding U.S. Forest Service lands).	50	April 15 - June 15

Bag Limit: One black bear per black bear special permit season.

License Required: A valid big game hunting license, which includes black bear as a species option, is required to apply for a spring black bear special permit. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

Other Requirements: Hunters that are selected to hunt in GMUs located in grizzly bear recovery areas, as identified by the department, must successfully complete the annual WDFW online bear identification test with a passing score (80% or higher) or carry proof that they have passed an equivalent test from another state. The WDFW test may be taken repeatedly until a passing score is achieved. All hunters must carry proof of passing a bear identification test while hunting in the GMUs identified by the department.

Harvest Check (~~(, Submitting Biological Samples and Bear Teeth)~~) and Inspection: All successful bear hunters must validate (notch) their bear tag consistent with WAC 220-413-020(~~(7)~~). All successful bear hunters must notify the department within 72 hours of kill (excluding legal state holidays) (~~(, provide the hunter's name, date and location of kill, and sex of animal)~~) and schedule their inspection. The unfrozen raw pelt, with evidence of sex and skull attached(~~(, and the first premolar)~~) must be presented to an authorized department employee for inspection within 5 days of notification of kill. All permit hunters must comply with harvest reporting and (~~(submission of biological samples)~~) inspection as described above. Failure to comply (~~(with the submission of biological samples)~~) is a misdemeanor pursuant to RCW 77.15.280.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-02-015 (Order 20-270), § 220-415-080, filed

12/28/20, effective 1/28/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 19-22-061 (Order 19-275), § 220-415-080, filed 11/5/19, effective 12/6/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.040, 77.12.047, 77.12.150, 77.12.210, 77.12.240, 77.12.320, 77.12.570, 77.12.800, 77.15.245, 77.32.007, 77.32.050, 77.32.070, 77.32.090, 77.32.370, and 77.32.530. WSR 18-11-061 (Order 18-76), § 220-415-080, filed 5/11/18, effective 6/11/18. Statutory Authority: RCW 77.04.012, 77.12.240, 77.04.055, 77.12.047, 77.12.150, and 77.32.070. WSR 17-19-088 (Order 17-253), § 220-415-080, filed 9/19/17, effective 10/20/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-415-080, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090, and 77.32.155. WSR 16-12-087, § 232-28-286, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-066 (Order 15-99), § 232-28-286, filed 5/1/15, effective 6/1/15. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 13-11-078 (Order 13-94), § 232-28-286, filed 5/16/13, effective 6/16/13. Statutory Authority: RCW 77.12.047. WSR 12-12-006 (Order 12-90), § 232-28-286, filed 5/23/12, effective 6/23/12; WSR 11-16-015 (Order 11-167), § 232-28-286, filed 7/22/11, effective 8/22/11. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240, 77.32.070, and 77.32.530. WSR 10-10-061 and 11-02-044 (Orders 10-94 and 10-94A), § 232-28-286, filed 4/30/10 and 12/30/10, effective 5/31/10 and 1/30/11. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 09-09-082 (Order 09-52), § 232-28-286, filed 4/15/09, effective 6/16/09; WSR 08-01-052 (Order 07-292), § 232-28-286, filed 12/13/07, effective 1/13/08. Statutory Authority: RCW 77.12.047. WSR 07-01-049 (Order 06-300), § 232-28-286, filed 12/14/06, effective 1/14/07; WSR 06-11-030 (Order 06-90), § 232-28-286, filed 5/8/06, effective 6/16/06.]

WSR 21-18-092
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-09—Filed August 30, 2021, 5:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-063.

Title of Rule and Other Identifying Information: Administrative hearings - optimizing discovery and authorizing electronic service in all hearings.

Hearing Location(s): On October 19, 2021, at 10:00 a.m., virtual format - Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website here <https://www.insurance.wa.gov/administrative-hearings-r-2021-09>. Due to the COVID-19 public health emergency, this hearing will be held via Zoom. Comments can be emailed to RulesCoordinator@OIC.WA.GOV.

Date of Intended Adoption: November 5, 2021.

Submit Written Comments to: Michael Walker, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 18, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watteness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purposes of this proposal include improving administrative hearings, discovery, and service processes. WAC 284-02-070 incorporates by reference many of the civil discovery rules for administrative hearings. Currently this creates several problems, where parties propound discovery without justifying the same with the presiding officer. This results in OIC receiving overly broad discovery requests that do not provide any commensurate benefit to the administrative hearing process and can delay proceedings or obstruct agency action. The OIC is also currently required to reach electronic service agreements on a case-by-case basis with all opposing parties. The anticipated effects of this rule making include optimizing discovery, such as limiting depositions, interrogatories, requests for production, requests for admissions, and authorizing electronic service in all OIC hearings.

Reasons Supporting Proposal: Current regulations in WAC 284-02-070 incorporate by reference many of the civil discovery rules, for OIC administrative hearings. Incorporating by default the civil discovery rules causes several problems, where opposing parties engage in discovery, without requiring prior approval of the presiding officer. This results in the OIC processing excessively broad discovery requests, which do not assist the administrative hearing process and can hinder proceedings or delay agency action. The OIC is also required to reach electronic service agreements on a case-by-case basis with all opposing parties.

The reasons supporting this rule-making proposal are to optimize discovery, such as limiting depositions, interrogatories, requests for production, requests for admissions, and allow electronic service in all OIC hearings, in the interest of avoiding delays and achieving administrative efficiencies.

Statutory Authority for Adoption: RCW 34.05.220 (1)(a), 34.05.250, 34.05.446(2), and 48.02.060 (3)(a).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Walker, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7036; Implementation and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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

A cost-benefit analysis is not required under RCW 34.05.328. No additional costs are required to comply with the proposed regulations.

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

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

August 30, 2021

Mike Kreidler

Insurance Commissioner

OTS-3237.1

AMENDATORY SECTION (Amending WSR 12-11-022, filed 5/7/12, effective 6/7/12)

WAC 284-02-070 Hearings. (1) (a) Hearings of the OIC are conducted according to chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act. Two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings. Adjudicative proceedings include both contested case hearings and other types of adjudicative proceedings which are required by law. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) A hearing can also be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Demands for hearings must be in writing and delivered to the Tumwater office of the OIC by mail, hand delivery, facsimile, or email. Unless a person aggrieved by an order of the commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived. A hearing is considered demanded when the demand for hearing is received by the commissioner.

(c) Accommodation will be made for persons needing assistance due to difficulty with language or disability.

(2) Procedural and substantive requirements for adjudicative proceedings including contested cases.

(a) Provisions applicable to adjudicative proceedings are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10.08 WAC.

(b) Substantive provisions specifically relating to action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. The grounds for disciplinary action against insurance producers, title insurance agents and adjusters are contained in RCW 48.17.530 and 48.17.540(1); grounds for disciplinary action against surplus line brokers are contained in RCW 48.15.140; grounds for similar action against insurance companies are contained in RCW 48.05.130 and 48.05.140; grounds for actions against fraternal benefit societies are found in RCW 48.36A.310; grounds for actions against life settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; grounds for action against health maintenance organizations are contained in RCW 48.46.130; grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses; grounds for action against unauthorized individuals or entities are found generally throughout Title 48 RCW.

(c) The commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(d) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a chief presiding officer. The commissioner may appoint a chief presiding officer who will have primary responsibility for the conduct of hearings, the procedural matters preliminary thereto, and the preservation of hearing records. The position of chief presiding officer does not report to any of the major divisions of the OIC. The commissioner may also use the services of an administrative law judge in accordance with chapter 34.12 RCW and chapter 34.05 RCW, the Administrative Procedure Act. The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464) and entry of a final order.

(ii) The hearing will be recorded by any method chosen by the chief presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the chief presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court after confirmation of payment of all costs for the transcription by the appellant.

(iii) The commissioner or the chief presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry under oath.

(iv) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the chief presiding officer.

(e) Discovery is only available (~~in adjudicative proceedings pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).~~

~~(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.)~~ as herein set forth:

(i) Available methods of discovery include: Interrogatories pursuant to Civil Rule 33, requests for production pursuant to Civil Rule 34, and requests for admission pursuant to Civil Rule 36. Depositions are excluded as an acceptable method of discovery, except as provided in (e) (iv) of this subsection.

(ii) The chief presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the chief presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(iv) Discovery is limited in frequency to ten requests per discovery form, unless further discovery is permitted by the presiding officer or the administrative law judge in accordance with RCW 34.05.446(3). Discovery, in addition to that specifically authorized in these rules, should not be granted unless necessary to the resolution of the case and not available by the means specified in this rule. The burden for establishing such necessity and unavailability is on the party requesting additional discovery.

(f) **Limitations on discovery.** In addition to limitations on discovery set forth in any other applicable law, regulation, or rule, discovery does not include:

(i) Information or documents from the personnel file of any commissioner employee;

(ii) Information or documents relating to any investigation conducted by the commissioner against unrelated parties;

(iii) Information or documents relating to any action brought by the commissioner against unrelated parties;

(iv) Information or documents relating to any examination conducted by the commissioner of unrelated parties;

(v) Information or documents relating to any license applications or determinations made by the commissioner of unrelated parties; or

(vi) Depositions of the insurance commissioner or deputy insurance commissioner.

(g) Adjudicative proceedings are determined on the merits of the individual case and are not binding precedence for unrelated cases.

(h) Service by electronic transmission is authorized for all OIC hearings in accordance with RCW 34.05.010(19). All parties to a proceeding must provide a valid email address in that party's demand for

a hearing, and if not filing a demand for hearing, by the time of the prehearing conference. The party must monitor this email address throughout the hearing process for the purposes of accepting and providing service of process. Service of pleadings and other documents is deemed complete upon transmission to the email address provided by a party under this section.

(i) The burden of proof in OIC administrative hearings is by a preponderance of the evidence.

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in chapter 34.05 RCW, the Administrative Procedure Act and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, telefacsimile, or email but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site www.insurance.wa.gov.

[Statutory Authority: RCW 48.02.060 and 34.05.220. WSR 12-11-022 (Matter No. R 2012-01), § 284-02-070, filed 5/7/12, effective 6/7/12. Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). WSR 11-01-159 (Matter No. R 2010-09), § 284-02-070, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060 and 34.05.446(2). WSR 09-19-001 (Matter No. R 2008-24), § 284-02-070, filed 9/2/09, effective 10/3/09. Statutory Authority: RCW 48.02.060 and 34.05.220. WSR 08-14-170 (Matter No. R 2008-10), § 284-02-070, filed 7/2/08, effective 8/2/08; WSR 07-01-048 (Matter No. R 2003-09), § 284-02-070, filed 12/14/06, effective 1/14/07. Statutory Authority: RCW 48.02.060 and 34.05.220 (1)(b). WSR 96-09-038 (Matter No. R 96-3), § 284-02-070, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 48.02.060 (3)(a). WSR 91-17-013 (Order R 91-5), § 284-02-070, filed 8/13/91, effective 9/13/91; WSR 88-23-079 (Order R 88-10), § 284-02-070, filed 11/18/88; Order R-68-6, § 284-02-070, filed 8/23/68, effective 9/23/68.]

WSR 21-18-093
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-04—Filed August 30, 2021, 5:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-134.

Title of Rule and Other Identifying Information: Prohibiting the depreciation of labor on property claims.

Hearing Location(s): On Wednesday, October 13, 2021, at 9:00 a.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of insurance commissioner (OIC) website here <https://www.insurance.wa.gov/prohibiting-depreciation-labor-property-claims-r-2021-04>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: October 14, 2021.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by October 12, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: When a homeowner has property damage covered under their homeowner's insurance policy, the insurance company investigates the loss, values the damage, and then issues an actual cash value (ACV) payment. The ACV payment is replacement cost less depreciation. After the repairs are fully completed, the insurance company releases the withheld depreciation to the insured to fulfill their obligation to cover the replacement cost as defined in the policy. Besides applying depreciation to the loss of value due [to] wear and tear, deterioration, and obsolescence [obsolescence] to physical and material items, some insurance companies are applying depreciation to the labor costs associated with the repair process. The commissioner is considering rule making to prohibit the depreciation of labor in these situations.

Reasons Supporting Proposal: The practice of depreciating labor costs on insurance payments for property damage claims floats a significant part of the labor repair costs to the consumer and their repair contractor, unfairly shifting a burden to the consumer during the repair process and likely against the principle of indemnity. The commissioner has seen a steady rise of policy forms that are writing this practice into their definition of ACV. The commissioner will consider rule making to prohibit the depreciation of labor on property claims.

Statutory Authority for Adoption: RCW 48.02.060, 48.27.020, 48.18.120.

Statute Being Implemented: RCW 48.18.120.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, fax 360-586-3109, email davidf@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: RCW 19.85.025(4) states that a small business economic impact statement does not have to be completed if the agency is able to demonstrate that the proposed rule does not affect small businesses. Under RCW 19.85.020(3), a small business is defined as "... any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

Direct property and casualty insurers employ on average 6,393 individuals annually, and there are on average 87 firms. Therefore, there are estimated to be 74 employees per firm (6,393 total individuals employed/87 firms). There are four known insurance companies that would be directly impacted by this rule: State Farm, Allstate, Farmers, and Safeco. After examining the profiles of each of these companies, OIC has been able to determine the number of employees per company:

State Farm: 57,500 employees.

Allstate: 45,780 employees.

Farmers: 12,740 employees.

Safeco: 7,200 employees.

This estimate is above the small business threshold as defined by RCW 19.85.020(3). The figures used for this calculation are drawn from the 2020 Washington State Employment Security Department's Quarterly Census of Employment and Wages.

August 30, 2021

Mike Kreidler

Insurance Commissioner

OTS-3223.1

AMENDATORY SECTION (Amending Order R 77-2, filed 4/28/77)

WAC 284-20-010 Standard fire policies. (1) This regulation is promulgated pursuant to RCW 48.18.120(1) to define and effect reasonable uniformity in all basic contracts of fire insurance.

(2) All policies which include coverage against loss or damage by fire are hereby defined to be basic contracts of fire insurance unless they come within the scope of insurance code provisions, or regulations adopted by the commissioner, providing that they may be regarded as marine, inland marine, vehicle, or casualty policies.

(3) Except for the provisions of the next succeeding three paragraphs, no company shall issue any basic contract of fire insurance covering property or interest therein in this state other than on the

form known as the 1943 New York Standard Fire Insurance Policy, herein referred to as the "standard fire policy": Provided, however, that such form shall be modified to conform to RCW 48.18.290 with respect to the number of days' notice of cancellation required. In addition, such form shall be modified as necessary to conform to WAC 284-20-020 with respect to inception and expiration times. Such modifications may be by endorsement.

(a) Insurers issuing a standard fire policy pursuant to this regulation are hereby authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy: Provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination provided such assumption clause has been filed with and approved by the commissioner in accordance with RCW 48.18.100.

(b) The pages of the standard fire policy issued pursuant to this regulation may be renumbered and the format rearranged for convenience in the preparation of individual contracts, and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsement attached to or printed thereon, and such other data as may be conveniently included for duplication on daily reports for office records.

(c) As an alternative form, a form written in clear, understandable language, which provides terms, conditions and coverages not less favorable to the insured than the "standard fire policy," may be used. Such alternative form may be incorporated in or integrated within a form providing other or additional coverages, as, for example, a home-owners policy or a special multiperil policy. The intent of this subsection is to permit understandable plain language policies and package policies without diminishing any rights an insured would have under the 1943 New York Standard Fire Insurance Policy.

(d) By use of such alternative form, an insurer certifies that it is not less favorable to the insured than the "standard fire policy." If, in the adjustment of claims, any provision of the "standard fire policy" applicable to such claims is found to be more favorable to the insured than the alternative form used, then provisions of the "standard fire policy" shall govern.

(4) Except for the intrinsic labor costs that are included in the cost of manufactured materials or goods, the expense of labor necessary to repair, rebuild, or replace covered property is not a component of physical depreciation and may not be subject to depreciation or betterment.

[Order R 77-2, § 284-20-010, filed 4/28/77; Rule 128, filed 3/14/61.]

WSR 21-18-103
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed August 31, 2021, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-029.

Title of Rule and Other Identifying Information: Definitions, WAC 132Q-02-340.

Hearing Location(s): On October 19, 2021, at 9:00 a.m., at Spokane Falls Community College, Pullman Campus, 185 Veterans Way, Pullman, WA 99164; or virtual meeting option, join Zoom meeting <https://ccs-spokane.zoom.us/j/87312545798?pwd=b2xCWEhSM0gyMWpzb2FjbkpzallyQT09&from=addon>, Meeting ID 873 1254 5798, Passcode 684622, Mobile US: +1-253-215-8782 or +1-346-248-7799 or +1-669-900-6833 or +1-312-626-6799 or +1-646-558-8656 or +1-301-715-8592. In-person attendees will be required to follow Community Colleges of Spokane (CCS) campus guidelines pertaining to COVID-19.

Date of Intended Adoption: October 19, 2021.

Submit Written Comments to: John O'Rourke, 501 North Riverpoint Boulevard, Mailstop 1006, Spokane, WA 99217-6000, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by October 14, 2021.

Assistance for Persons with Disabilities: Contact John O'Rourke, phone 509-434-5185, 508-220-4200, fax 509-434-5279, TTY 509-434-5275, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by October 14, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To conform to the Washington state board for community and technical college's definition of student, "Directory information."

Reasons Supporting Proposal: Consistent statewide definition of student, "Directory information."

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: FERPA 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

Rule is necessary because of federal law, FERPA 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

Name of Proponent: CCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Keith Sayles or Glen Cosby, Spokane, Washington, 509-533-3603 or 509-533-7015.

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

A cost-benefit analysis is not required under RCW 34.05.328. CCS is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

August 30, 2021
John O'Rourke
WAC Coordinator

OTS-3306.1

AMENDATORY SECTION (Amending WSR 12-05-104, filed 2/21/12, effective 3/23/12)

WAC 1320-02-340 Definitions. The following definitions shall apply in interpreting these regulations:

(1) Directory information: Information contained in an educational record of a student that would not be generally considered harmful or an invasion of the privacy if disclosed. It includes, but is not limited to: The student's name, major field of study, dates of attendance, (~~grade level,~~) enrollment status (e.g., full-time or part-time), participation in (~~officially~~) recognized sports, (~~weight and height of members of athletic teams, degrees,~~) degree or certificate earned, term degree or certificate awarded, and honors (~~and awards~~) received.

(2) Educational record: Those records, except as provided otherwise in (b) of this subsection, directly related to a student and maintained by the college or a party acting for the college.

(a) Education records include, but are not limited to:

(i) Official transcripts of course taken and grade received; records relating to prior educational experience; and admission records;

(ii) Tuition and payment records;

(iii) Student disciplinary records;

(iv) Course records (e.g., examinations, term papers, essays, etc.);

(v) Employment records based on student status (e.g., work study).

(b) Educational records do not include:

(i) Records of instruction, supervisory, and administrative personnel and educational personnel which are in the sole possession of the originator and which are not accessible or revealed to any other person except a substitute or designee;

(ii) Records created and maintained by campus security for law enforcement purposes;

(iii) In the case of persons who are employed by an educational agency or institution, but who are not in attendance at such agency or institution, records made and maintained in the normal course of business, which relate exclusively to such person's employment, are not available for use for any other purpose;

(iv) Records containing medical or psychological information are not available to anyone other than the individual(s) providing treatment; however, such records may be personally reviewed by a physician or other appropriate professional upon the student's written consent.

(3) Legitimate educational interest: If the information requested by the school official is necessary for the official to perform a task specified in his/her position description or contract agreement including: The performance of a task related to a student's education; the performance of a task related to the discipline of a student; the provision of a service or benefit related to the student or student's family, such as health education, counseling, advising, student employment, financial aid, or other student service related assistance; the maintenance of the safety and security of the campus; and/or the provision of legal assistance regarding a student matter.

(4) Parent: Defined as a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(5) Personal identifiable information: This includes, but is not limited to: Student's name, the name of the student's parent or other family member; the address of the student or the student's family; a personal identifier such as the student's Social Security number or student identification number; a list of personal characteristics that would make the student's identity easily traceable; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

(6) Record: Any information recorded in any way, including, but not limited to: Handwriting, print, computer media, video or audio media, microfilm and microfiche.

(7) School official: All of the following who act in the student's educational interests within the limitations of their need to know:

(a) A person employed by Community Colleges of Spokane in an administrative, supervisory, academic, research, support staff, law enforcement or health care service position;

(b) A person serving on the CCS board of trustees;

(c) A student serving on an official CCS committee or assisting another school official in fulfilling their professional responsibilities (examples include, but are not limited to, service on a disciplinary committee and work study students); and

(d) A contractor, consultant, volunteer or other party with whom CCS has contracted to provide a service and/or to assist another school official in conducting official business (examples include, but are not limited to: An attorney, an auditor, a collection agency, or the National Student Clearinghouse, an agency which acts as a clearinghouse for student loan deferment reporting).

(8) Student: Any person, regardless of age, who is or has been officially registered in attendance at CCS at any location at which CCS offers programs/courses with respect to whom CCS maintains educational records.

[Statutory Authority: RCW 28B.50.140. WSR 12-05-104, § 132Q-02-340, filed 2/21/12, effective 3/23/12; WSR 11-20-022, § 132Q-02-340, filed 9/23/11, effective 10/24/11. Statutory Authority: Chapter 28B.50 RCW. WSR 07-10-042, § 132Q-02-340, filed 4/25/07, effective 6/25/07. Statutory Authority: RCW 28B.50.140. WSR 03-18-021, § 132Q-02-340, filed 8/25/03, effective 9/25/03.]

WSR 21-18-104
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed August 31, 2021, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-084.

Title of Rule and Other Identifying Information: The department is considering amending WAC 388-97-0001 Definitions, 388-97-1090 Direct care hours; and other related rules as may be required to implement EHB 1564 (chapter 301, Laws of 2019).

Hearing Location(s): On October 5, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than October 6, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 5, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by September 21, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is considering amending WAC 388-97-0001 and 388-97-1090 to implement EHB 1564 (chapter 301, Laws of 2019). This bill revised the definition of "direct care staff" to establish the methodology for calculating the hours per day minimum staffing standard. The department will consider amending the staffing language in WAC 388-97-0001 and 388-97-1090 to include when the director of nursing services hours must be included or excluded in calculating the minimum staffing standard.

Reasons Supporting Proposal: This rule making is necessary to implement EHB 1564 (chapter 301, Laws of 2019) and to be consistent with the underlying statute.

Statutory Authority for Adoption: RCW 18.51.070.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sondra Silverman, P.O. Box 45600, Olympia, WA 98504-5600, 360-688-0715.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328 (5)(b)(v) as the content of the proposed rules is explicitly and specifically dictated by statute. RCW 74.42.010.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.328 (5)(b)(v) and 74.42.010.

August 31, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4882.2

AMENDATORY SECTION (Amending WSR 16-23-094, filed 11/16/16, effective 12/17/16)

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

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

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

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

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

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

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

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

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed

of the nature of the services to be offered and that the receipt of services is voluntary.

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

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

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

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

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

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

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

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

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

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

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

"Direct care staff" (~~(are those individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. Direct care staff does not include individuals whose primary duty is to maintain the long-term care facility's physical environment, such as housekeeping)~~) means the staffing domain identified and defined in the Centers for Medicare and Medicaid Service's five-star quality rating system and as reported through the Centers for Medicare and Medicaid Service's payroll-based journal.

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

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

"Drug" means a substance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Medically authorized, as required; and

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

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

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

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

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

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

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

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

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

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

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Reasonable accommodations are not required if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Termination**" means an action taken by:

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

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

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

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

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

"**Vulnerable adult**" includes a person:

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

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

[Statutory Authority: Chapters 18.51, 74.42, 74.34, 74.46 RCW, 2015 2nd sp.s. c 2, 2015 c 268, and 2016 c 131. WSR 16-23-094, § 388-97-0001, filed 11/16/16, effective 12/17/16. Statutory Authority: RCW 74.39A.056 and chapters 74.42, 18.51 RCW. WSR 14-14-027, § 388-97-0001, filed 6/24/14, effective 7/25/14. Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 14-12-040, § 388-97-0001, filed 5/29/14, effective 6/29/14; WSR 13-04-093, § 388-97-0001, filed 2/6/13, effective 3/9/13; WSR 11-22-077, § 388-97-0001, filed 11/1/11, effective 12/2/11; WSR 10-02-021, § 388-97-0001, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0001, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 16-23-094, filed 11/16/16, effective 12/17/16)

WAC 388-97-1090 Direct care hours. (1) Each nursing home must provide a minimum of 3.4 hours of direct care per resident day (HRD). Direct care means the staffing domain identified and defined in the Centers for Medicare and Medicaid Services' five star quality rating system and as reported through the Centers for Medicare and Medicaid Services' payroll-based journal. Compliance with the minimum staffing standard must be measured using the Centers for Medicare and Medicaid Services' payroll based journal and nursing home census and payroll data.

(a) For purposes of calculating hours per resident day minimum staffing standards for facilities with sixty-one or more licensed beds, the director of nursing services classification (job title code five), as identified in the Centers for Medicaid and Medicaid Service's payroll-based journal, shall not be used.

(b) For facilities with sixty or fewer beds, the director of nursing services classification (job title code five) shall be included in calculating hours per resident day minimum staffing standards.

(2) On a quarterly basis the department will use the Centers for Medicare and Medicaid Services' payroll based journal to determine compliance with the minimum staffing standard.

(3) Payroll based journal data must be submitted after the end of each calendar quarter and filed electronically.

(4) The department will presume that all hours worked by direct care employees at the nursing home have been spent providing direct care.

(5) The department may use census and payroll data from facilities to perform enforcement audits.

(6) The department must periodically review the nursing home's census information, reported staff hours, and payroll data to determine whether HRD figures are relatively constant throughout a quarter or are being increased at the end of the quarter through unusual spending on direct care.

(7) A nursing home may use the hours of geriatric behavioral health workers as defined under RCW 74.42.010 to meet this section's direct care minimum staffing requirements.

(8) A nursing home that fails to meet the minimum staffing requirement of 3.4 hours and of direct care per resident day for any quarter is subject to a fine. The department will determine the amount of the fine as follows:

(a) The fine must be based on the total cost the nursing home would have incurred had it complied with the 3.4 HRD requirement;

(b) The department will use a formula that calculates a fine based on the cost of certified nurse aid wages and benefits for the missing staff hours;

(c) If the nursing home believes that the department's application of the standard in subsection (8)(b) of this section is inequitable, it may explain its position to the department and request consideration of an alternative method of calculating the fine; and

(d) The fine will be one and a half times the additional amount it would have cost the nursing home to provide direct care at the 3.4 HRD standard for a nursing home's first violation and two times the additional amount for each subsequent violation by the nursing home. After a nursing home has not violated the 3.4 HRD requirement for

three years the department will reset the nursing home's status and treat any subsequent violation as an initial violation.

(9) If a noncompliant nursing home believes that it made a good-faith effort to meet the minimum staffing requirement and asks that the penalty not be imposed, the department may in its sole discretion waive the penalty.

(10) If the department waives a nursing home's fine under subsection (9) of this section, its noncompliance with the 3.4 HRD requirement must not count as a violation for determining whether a future violation is a first violation or a subsequent violation under subsection (8)(d) of this section and must not count as a violation for the purposes of resetting a nursing home's status under section (8)(d).

(11) The amount of money the nursing home would have been required to spend to reach 3.4 HRD must be treated as a direct care cost for the year in which the staffing was deficient for settlement purposes. The portion of the fine representing the additional one-half or one times that amount is a penalty, and will not be added to the actual costs of the nursing home in the settlement process.

(12) The department will monitor compliance with the 3.4 HRD minimum staffing requirement for the quarter beginning July 1, 2016, but will not impose any penalties on nursing homes that do not comply during that quarter. The department instead will notify noncomplying nursing homes what their penalty would otherwise have been, and will require those nursing homes to submit a written plan for correcting the deficiency. The department will begin imposing fines for the quarter beginning October 1, 2016. Noncompliance with the 3.4 HRD requirement during the quarter beginning July 1, 2016 must not count as a first violation for fine calculation purposes under subsection (8)(d) of this section.

(13) The nursing home must pay penalties under WAC 388-97-1090(8) by check. The department will deposit penalty checks into the nursing home quality enhancement account in the custody of the state treasurer. The department's secretary, or the secretary's designee, may authorize expenditures from the nursing home quality enhancement account. Such expenditures may only be for: Technical assistance to nursing homes, specialized training for nursing homes, or an increase to the quality enhancement component of the daily medicaid rate provided by RCW 74.46.581.

(14) The department may grant a limited exception to the 3.4 HRD staffing requirements for nursing homes demonstrating a good faith effort to hire and retain staff.

(15) To determine initial eligibility for exception consideration, the department must send surveys to facilities anticipated to be below, at, or slightly above the 3.4 HRD requirement.

(16) These surveys report the staffing of a nursing home from October through December 2015, January through March 2016, and April through June 2016. These surveys must measure the HRD in a manner as similar as possible to the Centers for Medicare and Medicaid Services' payroll-based journal.

(17) In the event the Centers for Medicare and Medicaid Services' payroll-based journal is not available, the department may use any data source that is reasonably consistent with data metrics used by the payroll-based journal to measure direct care being provided by a nursing home. To gather data similar to the data gathered by the payroll-based journal, the department may provide a written survey to nursing homes. The metrics will be used to determine whether the nursing home has complied with the 3.4 HRD requirement.

[Statutory Authority: Chapters 18.51, 74.42, 74.34, 74.46 RCW, 2015
2nd sp.s. c 2, 2015 c 268, and 2016 c 131. WSR 16-23-094, §
388-97-1090, filed 11/16/16, effective 12/17/16.]

WSR 21-18-107
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed August 31, 2021, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-096.

Title of Rule and Other Identifying Information: WAC 110-04-0020

What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0040 Who must have background checks?, 110-04-0080 What does the background check cover?, 110-04-0090 Who pays for the background check?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?, 110-04-0160 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check?, 110-04-0170 Is the background check information released to my employer or prospective employer?, 110-06-0010 Purpose and scope, 110-06-0020 Definitions, 110-06-0040 Background clearance requirements, 110-06-0042 Departmental investigation and redetermination, 110-06-0043 Failure to report nonconviction and conviction information, 110-06-0044 Background check fees, 110-06-0045 Background checks for minor individuals under sixteen years of age, 110-06-0046 Requirements for license-exempt in-home/relative providers, 110-06-0050 Department action following completion of background inquiry, 110-06-0070 Disqualification. Background information that will disqualify a subject individual, 110-06-0080 Notification of disqualification, 110-06-0100 Request for administrative hearing, 110-06-0110 Limitations on challenges to disqualifications, 110-06-0115 Reconsideration of disqualification, and 110-06-0120 Secretary's list.

Hearing Location(s): On October 5, 2021, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voice mail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including October 5, 2021, will be considered.

Date of Intended Adoption: October 8, 2021.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.dcyfrulescoordinator@dcyf.wa.gov, submit comments online at <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by October 5, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.dcyfrulescoordinator@dcyf.wa.gov, by October 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to chapters 110-04 and 110-06 WAC explain when certificates of restoration of opportunity (CROP) and certificates of parental improvement (CPI) will be included in criminal history record reports, qualifying letters, or other assessments during a background check and when they will not.

Proposed amendments to chapter 110-06 WAC also:

- Better clarify that the background check process includes requesting information from other states in which an applicant has lived during the five years before their background check;
- Allow DCYF to disqualify a previously authorized provider who:
 - (1) Used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services, or
 - (2) Attempted, committed, permitted, or assisted in an illegal act on child care premises; and
- More clearly explain which criminal convictions must disqualify an individual from being licensed, contracted, certified, or authorized to have unsupervised access to children and which trigger further review to determine whether the background check results demonstrate that an applicant possesses the character, suitability, and competence to have unsupervised access to children.

Reasons Supporting Proposal: RCW 9.97.020(4) directs the department to adopt rules that implement CROP consideration during the background check process, and it is necessary to align chapters 110-04 and 110-06 WAC with chapter 270, Laws of 2020, that authorized licensing of providers regulated by the department who have been issued CPIs.

The additional proposed amendments to chapter 110-06 WAC better explain for potential applicants when the background check will include history from other states in which they have lived, and, for providers authorized to have unsupervised access to children, the proposed rules clearly explain under what circumstances the department will redetermine authorization.

Finally, proposed revisions to the mandatory and potential disqualifying crimes lists in WAC 110-06-0120 align with the federal child care development fund disqualifying crimes lists and are necessary to preserve federal appropriations that fund Washington state's child care subsidy programs.

Statutory Authority for Adoption: RCW 43.43.832(2), 43.216.065, and 43.216.271.

Statute Being Implemented: RCW 9.97.020, 43.216.170, 43.216.270, 43.43.837.

Rule is necessary because of federal law, 42 U.S.C. § 9858.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Parvin, Olympia, Washington, 360-890-0464; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: For sections contained in chapter 110-06 WAC: 42 U.S.C. § 9858. Failure to comply jeopardizes receipt of federal funds that are used for child care subsidies.

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

August 31, 2021
Brenda Villarreal
Rules Coordinator

OTS-2202.5

Chapter 110-04 WAC

BACKGROUND CHECK REQUIREMENTS ((FOR CHILDREN'S ADMINISTRATION)) CHILD WELFARE

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0020 What definitions apply to ((WAC 110-04-0030 through 110-04-0180 of)) this chapter? The following definitions apply to ((WAC 110-04-0030 through 110-04-0180 of)) this chapter:

"**Authorized**" or "**authorization**" means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"**Certification**" means department or child placing agency (CPA) approval of a person, foster home, or facility that is exempt from licensing but meets the licensing requirements.

"**Certificate of parental improvement (CPI)**" means a certificate issued under chapter 74.13 RCW.

"**Certificate of restoration of opportunity (CROP)**" means a certificate issued under chapter 9.97 RCW.

"**Child, "children," or "youth"** means a person who is one of the following:

(a) Under eighteen years old;

(b) Up to twenty-one years of age and enrolled in services through the department of social and health services (DSHS) develop-

mental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC) or vocational program;

(c) ~~((Up to twenty-one years of age and))~~ Participating in the extended foster care program; ((~~or~~))

(d) Up to twenty-one years of age with intellectual and developmental disabilities; or

(e) Up to twenty-five years of age and under the custody of DCYF in juvenile rehabilitation.

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

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

"I" and **"you"** refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"Licensing division" or **"LD"** means the licensing division within DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensor" means either:

(a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies that provide or certify foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

(b) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Negative action" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial, or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

"Secretary's list" means a list of crimes or negative actions that are federally disqualifying or may relate directly to child safety, permanence, or well-being and require DCYF to assess a subject in-

dividual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. The secretary's list is available at <https://www.dcyf.wa.gov/sites/default/files/pdf/secretaryslist.pdf>.

"Unsupervised" means will not or may not be in the presence of:

(a) The licensee, another employee, or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

(b) Another individual who has been previously approved by DCYF.

"We" refers to the department, including licensors and caseworkers.

"WSP" refers to the Washington state patrol.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0020, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0020, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes ~~((7))~~ or facilities that provide care, except for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. ~~((However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.))~~

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ~~((ensure))~~ verify the safety of children in out-of-home care. ~~((The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.))~~

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home, including the parents.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0040, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.030 and 43.43.832. WSR 18-12-101, § 388-06A-0110, filed 6/5/18, effective 7/6/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0110, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

- (a) A review of child protective services case files information or other applicable information system.
- (b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

- (a) Child abuse ((and)) or neglect registries in each state in which a person has lived ((in)) in the five years prior to conducting the background check.
- (b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington state.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0080, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0150, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0090 Who pays for the background check? (1) (~~Children's administration (CA)~~) DCYF pays the DSHS general administrative costs (~~for background checks for~~) and WSP and FBI fingerprint processing fees for foster home applicants, (~~CA~~) DCYF relative and other suitable caregivers, (~~and CA~~) DCYF adoptive home applicants, and other adults associated with the home requiring clearances under chapter 13.34 RCW.

(2) (~~Children's administration~~) DCYF does not pay WSP and FBI fingerprint processing fees for foster home applicants, ~~CA~~ relative and other suitable caregivers, ~~CA~~ adoptive home applicants, and other adults associated with the home requiring background clearances under chapter 13.34 RCW.

(3) (~~Children's administration~~) DCYF does not pay WSP and FBI fingerprint processing fees or expenses for:

(a) Employees, contractors, or volunteers associated with facilities other than foster homes (~~(7)~~);

(b) Adoptive homes proposed by (~~the children's administration,~~) DCYF; or

(c) Relative or other suitable caregiver homes.

[WSR 18-14-078, recodified as § 110-04-0090, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0160, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0120 If I have a pending criminal charge, conviction, or negative action may I ever be authorized to be (~~employed at a group care facility or~~) licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) (~~In two situations, DCYF may find~~) DCYF must disqualify a person with convictions (~~able to be authorized to be employed at a group care facility or have unsupervised access to children~~) on the DCYF secretary's list that are:

(a) (~~If the conviction for any crime listed in WAC 110-04-0110 occurred more than five years ago~~) Permanently disqualifying; or

(b) (~~If the conviction was for a crime other than those listed in WAC 110-04-0100 or 110-04-0110~~) Five-year disqualifying if less than five years have passed since the date of conviction.

(2) (~~In both of these situations~~) DCYF may authorize a person with convictions or negative actions on the DCYF secretary's list that are not listed in subsection (1) of this section. In this situation, DCYF must review your background (~~to determine~~) information and assess your character, suitability, and competence to have unsupervised access to children. In this (~~review~~) assessment, DCYF (~~must~~) will consider the following factors, among others, related to your background information:

(a) The amount of time that has passed since (~~you were convicted~~) the conviction information or negative action;

(b) The seriousness of the crime or incident that led to the conviction or negative action;

(c) The number ((and)), types, and age of other convictions or negative actions in your background;

(d) Your age at the time of conviction or negative action;

(e) ~~((Documentation indicating you have successfully completed all court-ordered programs and restitution))~~ Completion of services or other evidence of rehabilitation since conviction or negative action; and

(f) ~~Your ((behavior since the conviction; and~~

~~(g) The vulnerability of those that would be under your care))~~ role or purpose of the background check.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0120, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0190, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, ((or)) I have been pardoned for a crime, I have a CPI, or CROP? (1) If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

(2) When the background information contains a CPI or CROP, DCYF must:

(a) Disqualify if background information contains a pending charge or conviction of a crime or pending negative action on the secretary's list; or

(b) Assess character, suitability, or competence under WAC 110-04-0120.

(3) A CROP does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a CROP.

(4) A CROP must be included as part of the criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838.

(5) If you have a CPI, DCYF may still consider the facts that led to any founded findings for child abuse or neglect in determining whether you have the character, suitability, or competence to have unsupervised access to children.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-04-0140, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-04-0140, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0210, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0160 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization to have unsupervised access based on the results of the background check? (1) If you are seeking a license ~~((,))~~ or employment with a home or facility licensed by ~~((the children's administration))~~ DCYF, you may ~~((request))~~ appeal the department's decision by requesting an administrative hearing to dispute a denial of authorization for unsupervised access to children ~~((chapter 34.05 RCW))~~. You cannot contest the conviction or negative action in the administrative hearing.

(2) Prospective volunteers or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children.

(3) The employer or prospective employer cannot ~~((contest))~~ appeal the department's decision on your behalf.

(4) The administrative hearings ~~((will take place before an))~~ are conducted by administrative law judges employed by the office of administrative hearings ~~((chapter 34.05 RCW))~~, pursuant to chapters 34.05 RCW and 110-03 WAC.

[WSR 18-14-078, recodified as § 110-04-0160, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0230, filed 1/15/15, effective 2/15/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0170 Is the background check information released to my employer or prospective employer? (1) ~~((Children's administration))~~ DCYF will share with employers or approved care providers only that:

(a) You are disqualified; or

(b) You have not been disqualified by the background check.

(2) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter ~~((42.17))~~ 42.56 RCW) when releasing any information.

[WSR 18-14-078, recodified as § 110-04-0170, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.43.832. WSR 15-03-071, § 388-06A-0240, filed 1/15/15, effective 2/15/15.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?
- WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?
- WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?

OTS-3106.7

Chapter 110-06 WAC
((DEL)) BACKGROUND CHECKS—EARLY LEARNING PROGRAMS

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of children, youth, and families (DCYF).

(2) The department conducts background checks on subject individuals who ~~((are authorized to))~~:

(a) Currently have a background clearance and are seeking to renew the authorization; and

(b) Are seeking a background check authorization for the first time.

(3) A background clearance authorizes a subject individual to:

(a) Work at a child care agency;

(b) Care for ~~((or))~~ children receiving early learning services;

(c) Have unsupervised access to children receiving early learning services;

(d) Reside on the premises of a child care agency or certified facility; or

~~((b))~~ (e) Care for children in the child's or provider's home. These providers, also known as family, friends, and neighbors (FFN) or in-home/relative care providers are exempt from licensing and receive ~~((working connections child care (-)))~~ WCCC ~~((+))~~ subsidies.

~~((3))~~ (4) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

~~((4) The department's rules and))~~ (5) State law requires the evaluation of background information to determine the character, suitability, ~~((or))~~ and competence of persons who will work at an agency, or care for or have unsupervised access to children receiving early learning services or other agency authorized services.

~~((5))~~ (6) Subject to federal law, if any provision of this chapter conflicts with any substantive provision in any ~~(chapter containing a substantive)~~ rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children receiving early learning services, the provisions in this chapter ~~(shall)~~ will govern.

~~((6) These rules))~~ (7) This chapter implements chapters 43.216 and 43.43 RCW~~((7))~~ including, but not limited to, DCYF responsibilities in RCW 43.216.260, 43.216.270 through 43.216.273, and 43.43.830 through 43.43.832.

~~((7) These rules are amended))~~ (8) This chapter is intended to allow for the increased and continued portability of background check clearances for subject individuals who are authorized to care for or may have unsupervised access to children receiving early learning services.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0010, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0010, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0010, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0010, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0010, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0020 Definitions. The following definitions apply to this chapter:

~~(("Agency" has the same meaning as "agency" in RCW 43.216.010.~~

~~"Appellant" means only those with the right of appeal under this chapter.~~

~~"Applicant" means an individual who is seeking DCYF background check authorization as part of:~~

~~(a) An application for a child care agency license or DCYF certification or who seeks DCYF authorization to care for or have unsupervised access to children receiving early learning services; or~~

~~(b) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider.)~~

"Authorized" or "authorization" means approval by DCYF to work at a child care agency, care for ~~((or have unsupervised access to))~~ children receiving early learning services from an agency, have unsupervised access to children receiving early learning services, or to

~~((work in or))~~ reside on the premises of a child care agency or certified facility.

"Certificate of parental improvement (CPI)" has the same meaning as "certificate of parental improvement" in RCW 43.216.010.

"Certificate of restoration of opportunity (CROP)" means a certificate issued by a court under chapter 9.97 RCW that may restore an individual's eligibility for a license, certification, or background check authorization issued under chapter 43.216 RCW.

"Certification" or **"certified by DCYF"** means an agency that is legally exempt from licensing that has been certified by DCYF as meeting minimum licensing requirements.

"Child care agency" or **"agency"** has the same meaning as "agency" in RCW 43.216.010.

"Conviction or other disposition adverse to the subject" has the same meaning as "conviction or other disposition adverse to the subject" in RCW 10.97.030.

"Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

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

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

"Disqualified" or **"disqualify"** means a DCYF ~~((has determined that a person's))~~ determination or finding was issued to a subject individual that because of their background information ((prevents that person from being authorized by DCYF to care for or have)) history, they are prohibited from:

(a) Caring for or having unsupervised access to children receiving early learning services;

(b) Working at a child care agency; or

(c) Residing at the premises of a child care agency or certified facility.

"Early learning ((service(s))) services" ~~((for purposes of this chapter))~~ means programs and services for child care including, but not limited to, the early childhood education and assistance program (ECEAP), head start, licensed child care, and license-exempt child care services.

"In-home/relative provider" or **"family, friends, and neighbors provider"** or **"FFN provider"** means an individual who is exempt from child care licensing standards, meets the requirements of chapter 110-16 WAC, and is approved for working connections child care (WCCC) payments under WAC 110-15-0125.

"Licensee" means the individual, person, organization, or legal entity named on the child care license issued by DCYF and responsible for operating the child care facility or agency.

"Negative action" ~~((means))~~ has the same meaning as "negative action" in RCW 43.216.010. A negative action includes a court order((,)) or court judgment ((or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children receiving early learning services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

~~(b) A final determination, decision or finding made by an agency following an investigation.~~

~~(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.~~

~~(d) A revocation, denial or restriction placed on any professional license.~~

~~(e) A final decision of a disciplinary board) that finds the subject individual's child dependent and the basis for such finding is RCW 13.34.030(6) or other equivalent state or federal statute.~~

~~"Nonconviction information" ((means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual)) has the same meaning as "nonconviction information" in RCW 43.216.010.~~

~~"Nonexpiring license" or "nonexpiring full license" means a license authorized under RCW 43.216.305 that is issued to a licensee following the initial licensing period(~~(, as provided in chapter 110-300 WAC, as appropriate)~~).~~

~~"Premises" has the same meaning as "premises" in WAC 110-300-0005.~~

~~"Secretary's list" means ((a list of crimes, the commission of which disqualifies a subject individual from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services,)) the conduct and crimes described in WAC 110-06-0120 and the federal disqualifying crimes and conduct described in 42 U.S.C. Sec. 9858f and C.F.R. Sec. 98.43.~~

~~"Subject individual" means:~~

~~(a) ((Means)) An individual who is sixteen years of age or older and is seeking:~~

~~(i) ((Is seeking)) A background check authorization ((or upon whom the department may conduct a background check authorization;~~

~~(ii) Is sixteen years of age or older;~~

~~(iii) Is an in-home/relative provider or is employed, contracted with, or volunteers to provide early learning services; and~~

~~(iv) Will care for or)) to have unsupervised access to children receiving early learning services; ((and~~

~~(b) Includes, but is not limited to, the following:~~

~~(i) Personnel, including employees and staff;~~

~~(ii) Contractors, including contracted providers;~~

~~(iii) Temporary workers;~~

~~(iv) Assistants;~~

~~(v) Volunteers;~~

~~(vi) Interns;~~

~~(vii) Each person who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;~~

~~(viii) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children receiving early learning services;~~

~~(ix) All owners, operators, lessees, or directors of the agency or facility, or their designees;~~

~~(x) Applicants;~~

~~(xi) Licensees; or~~

~~(xii) In-home/relative providers and their household members who are sixteen years of age or older.))~~

(ii) A background check authorization to care for children receiving early learning services;

(iii) A background check authorization to work at a child care agency;

(iv) A background check authorization to reside at the premises of a child care agency or certified facility;

(v) A reauthorization of a background check authorization previously issued by DCYF; or

(vi) A new background check authorization, having been previously issued a background check authorization.

(b) A person who is thirteen through fifteen years of age who is seeking or has obtained a background check authorization under WAC 110-06-0045.

(c) Examples of "subject individual" include, but are not limited to:

(i) A person who is seeking an application for a child care agency license or a DCYF certification;

(ii) An individual who is currently a licensed or certified child care provider who is seeking:

(A) A continuation of a nonexpiring license or renewal of a certificate; or

(B) A renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services;

(iii) A person who is a relative provider, in-home provider, or is employed by an early learning provider, including assistants and other persons who are temporarily employed by an early learning provider;

(iv) A person who is a volunteer or intern that provides early learning services;

(v) A person who contracts with an early learning provider;

(vi) A person who is sixteen years of age or older who:

(A) Resides at, or will be moving onto, the premises where early learning services will or are provided; or

(B) Will care for or have unsupervised access to children receiving early learning services;

(vii) All owners, operators, lessees, or directors of the agency or facility, or their designees; and

(viii) Licensees.

"Unsupervised access" means (~~(~~

~~(a) A subject individual will or may have the opportunity to be alone with a child receiving early learning services at any time and for any length of time; and~~

~~(b)) not in the presence of a subject individual who is an employee of a child care agency and is authorized by DCYF to be alone with children receiving early learning services from the same agency. For purposes of this definition, unsupervised access includes, but is not limited to, access to ((a-child)) children receiving early learning services ((that is)) who are not within constant visual or auditory range of the individual authorized by DCYF to be alone with children receiving early learning services.~~

"WCCC" means the working connections child care program.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0020, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, §

170-06-0020, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0020, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0020, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals (~~either than~~), except for in-home/relative providers.

(1) Subject individuals (~~associated with early learning services applying for a first-time background check~~) must complete the DCYF background check application process (~~including~~) on or before the dates described in WAC 110-06-0041, 110-06-0045, and at least once every three years thereafter. The background check process includes, but is not limited to:

(a) (~~Submitting~~) Filing a completed background check application with the DCYF background check unit;

(b) Completing the required fingerprint process; (~~and~~)

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application; and

(d) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals (~~qualified by the department to have unsupervised access to children in care~~) who are (~~renewing their applications~~) seeking renewals of their DCYF authorizations must:

(a) Submit (~~the~~) a new background check application (~~through~~) to DCYF;

(b) Submit payment of all required fees (~~as provided~~) described in WAC 110-06-0044; (~~and~~)

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section; and

(d) Complete the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

(3) Each subject individual (~~completing the DCYF~~) who submits a background check (~~process~~) application and is seeking a background check authorization, or reauthorization, must disclose whether they have:

(a) Been convicted of any crime;

(b) Any pending criminal charges; and

(c) Been or are the subject to any negative action(~~, as defined by WAC 110-06-0020~~).

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) (~~A~~) Subject individuals who (~~has~~) have been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

[Statutory Authority: RCW 43.216.055, 43.216.065, 42 U.S.C. 9858, et seq. and 45 C.F.R. 98.43. WSR 19-21-064, § 110-06-0040, filed 10/11/19, effective 11/11/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0040, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0040, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0040, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0040, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0042 Departmental investigation and redetermination.

(1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information that causes the department to conclude a background check clearance redetermination is necessary to verify that the subject individual has the appropriate character, suitability, and competence to have unsupervised access to children who receive early learning services. The complaint or information may be received from an individual((s)), a law enforcement agency, or other federal, state, or local government agency.

(2) In addition to the requirements described in subsection (1) of this section, the department will determine whether to disqualify a subject individual whose initial background check revealed a negative action or conviction information but who was granted authorization, and the subject individual subsequently:

(a) Used illegal drugs or misused or abused prescription drugs or alcohol that either affected the subject individual's ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services; or

(b) Attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if they knew or reasonably should have known that the illegal act occurred or would occur.

(3) Subject to the requirements in RCW 43.216.270, and based on a determination that an individual lacks the appropriate character, suitability, or competence to be approved for a background check authorization, the department may ((immediately)):

(a) Invalidate a background check authorization; or

(b) Suspend ((or)), modify ((the subject individual's background clearance)), or revoke any child care license issued by DCYF.

~~((3) Subject to the requirements in RCW 43.216.300 and 43.216.305, and based on a determination that a subject individual lacks the appropriate character, suitability, or competence to provide~~

~~early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children.))~~

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0042, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0042, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0042, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0042, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0043 Failure to report nonconviction and conviction information. (1) The early learning services provider must report to the department within twenty-four hours if ~~((he or she))~~ the provider has knowledge ~~((of the following with respect to))~~ that a subject individual ~~((associated with their services,))~~ who has a background check ~~((clearance))~~ authorization ~~((with the department))~~ has a background that includes any of the following:

(a) Any nonconviction and conviction information ~~((for a))~~ that is related to a crime ~~((listed in WAC 110-06-0120)),~~ negative action, or conduct that is included on the secretary's list; or

(b) Any other conduct, or nonconviction ~~((and))~~ or conviction information ~~((for a crime))~~, that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care ~~((or~~

~~((c) Any negative action as defined in WAC 110-06-0020)).~~

(2) A subject individual who has been issued a background check ~~((clearance))~~ authorization ~~((pursuant to WAC 110-06-0040))~~ under this chapter must report to the department the following information about themselves within twenty-four hours after becoming aware of such information:

(a) Any nonconviction ~~((and))~~ or conviction information ~~((to the department involving a disqualifying))~~ that is related to a crime ~~((under WAC 110-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information))~~ negative action, or conduct that is included on the secretary's list; and

(b) Any other conduct, or nonconviction or conviction, information that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children in care.

(3) ~~((A subject individual who))~~ An individual's background check authorization may be disqualified if the individual intentionally or knowingly fails to report to the department as ~~((provided in))~~ required under subsection (1) or (2) of this section ~~((may have his or her background check clearance suspended)).~~ This ~~((penalty))~~ disqualification will be in addition to any other ~~((penalty))~~ agency action that may be imposed as a result of a violation of this chapter ~~((or of the))~~, applicable provisions ~~((of any chapter of))~~ within Title 110 WAC ~~((that implement the authority and requirements of)),~~ or chapter 43.216 RCW.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0043, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0043, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0043, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0043, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0044 Background check fees. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals (~~(associated with early learning services)~~) must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee of:

- (i) Twelve dollars for an electronic submission; or
- (ii) Twenty-four dollars for a paper submission.

(2) DCYF administrative fee payments may be paid by:

(a) ~~((By))~~ Debit or credit card;

(b) ~~((In the form of))~~ Mailing a personal check, cashier's check, or money order (~~(, which shall be sent by mail))~~ to:

Department of Children, Youth, and Families (DCYF)

Attn: PBC

P.O. Box 40971

Olympia, WA 98504-0971; or

(c) ~~((By))~~ Electronic funds transfer that does not involve a debit or credit card. ~~((As used in))~~ For purposes of this section, "electronic funds transfer" means ((any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account)) an on-line system that allows for the secure transfer of money from one bank account to an account designated by DCYF.

(3) The department will not issue a background check (~~(clearance)~~) authorization to a subject individual (~~(+)~~

~~(a-))~~ who fails to pay the required fees in subsection (1) of this section (~~(+ or~~

~~(b) Whose payment is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.~~

An additional)).

(4) A processing fee of twenty-five dollars will be charged by ((the department)) DCYF for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, §

110-06-0044, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0044, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0044, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0045 Background checks for minor individuals under sixteen years of age. (1) ~~((When applicable within chapter 110-300 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DCYF minor individual background check application process for subject individuals))~~ All agencies, licensees, and certified facilities must be in possession of a copy of a background check authorization for minor subject individuals who work or reside at the licensed or certified agency. The requirements described in this subsection apply to minor subject individuals who are:

(a) ~~Fourteen ((to sixteen))~~ through fifteen years of age, ~~((prior to))~~ before the date ~~((of hire by))~~ the subject individual begins working for a licensed or certified child care ~~((-)); or~~

(b) ~~Thirteen ((to sixteen))~~ through fifteen years of age ~~((residing))~~ on or before the date the subject individual begins or continues to reside in a licensed or certified family home child care. ~~((e))~~ For a subject individual who is thirteen ((to sixteen)) through fifteen years of age ~~((r))~~ and who begins to reside in a licensed or certified facility after the individual's thirteenth birthday, the subject individual must complete the required DCYF minor individual background check application process within seven days after moving into the licensed family home child care.

(2) A subject individual identified in subsection (1)(a) ~~((r))~~ or (b) ~~((or e))~~ of this section must not have unsupervised access to children ~~((in child care))~~ receiving early learning services.

(3) ~~((When conducting))~~ The background check application for a minor subject individual ((background check, the department:

~~(a) Requires the minor's))~~ must be signed by the minor and their parent or guardian ((to sign the noncriminal background check application;

~~(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 110-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and~~

~~(c) Does not immediately disqualify an individual for a conviction under WAC 110-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult)).~~

(4) The minor subject individual's character, suitability, and competence determination will be made pursuant to the requirements described in this chapter.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0045, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0045, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0045, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) This section applies to license-exempt in-home/relative providers. The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a ((WCCC)) consumer's child who is eligible to receive WCCC benefits; ((and))

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider ~~((when))~~ if the provider cares for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not reside).

~~((2))~~ Additional background checks must be completed for individuals listed in subsection (1)(a) and (b) of this section when an individual sixteen years of age or older is newly residing) resides; and

(c) Any individual sixteen years of age or older who begins to reside with a license-exempt in-home/relative provider ((when the provider)) after the date the provider begins to care((s)) for the child eligible to receive WCCC benefits in the provider's ((own)) home, and the home is not where the child ((does not)) resides.

~~((3))~~ The background check process for license-exempt in-home/relative providers requires:)) (2) A subject individual who is seeking a background check authorization must complete the background check application process by:

(a) Submitting a completed background check application; ~~((and))~~

(b) Completing the required fingerprint process; and

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

~~((4))~~ (3) Each subject individual completing the DCYF background check process must disclose whether they have:

(a) ~~((Whether he or she has))~~ Been convicted of any crime;

(b) ~~((Whether he or she has))~~ Any pending criminal charges; and

(c) ~~((Whether he or she has))~~ Been or are the subject ((to)) of any negative actions((, as defined by WAC 110-06-0020)).

~~((5))~~ (4) A subject individual must not have unsupervised access to children in care ((unless he or she has obtained)) before obtaining a DCYF background check ((clearance)) authorization under this chapter.

~~((6))~~ (5) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (6) DCYF ((pays for)) will pay the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0046, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0050 Department action following completion of background inquiry. (1) As part of the background check process the department will conduct ~~((a character, suitability or competence assessment as follows:~~

~~(1) Compare the background information with the DCYF secretary's list, WAC 110-06-0120, to determine whether the subject individual must be disqualified under WAC 110-06-0070 (1) and (2). In doing this comparison, the department will use the following rules) the background check investigation and evaluation described in this section to determine whether the subject individual should be disqualified or not.~~

(2) A subject individual must be disqualified when their background information includes conviction information described in WAC 110-06-0070(2) or conduct described in WAC 110-06-0070 (7) or (8).

(3) Subject to the requirements of WAC 110-06-0070(5) and after comparing the subject individual's background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070 (3) or (4), DCYF may conduct a character, suitability, and competence assessment of the subject individual.

(4) Subject to the requirements of this chapter and after comparing the subject individual's background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070(6), the department must conduct a character, suitability, and competence assessment of the subject individual.

(5) For purposes of DCYF's investigation, evaluation, and determination, the following standards apply:

(a) A pending charge for a crime ~~((or))~~ that has been filed in the appropriate court, a deferred prosecution ~~((is))~~, or a deferred sentence must be given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction.

(c) Convictions whose titles ~~((are preceded with))~~ include the word "attempted," "conspiracy," or "solicitation" are given the same weight as those titles without the word "attempted," "conspiracy," or "solicitation."

(d) The term "conviction" ~~((has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and))~~ may include convictions or dispositions for crimes committed as either an adult or juvenile. ~~((It may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.))~~

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the ~~((defendant's))~~ subject individual's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) ~~((The))~~ A crime will not be considered a conviction ~~((for the purposes of the department when))~~ if the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, vacated, or other equivalent procedure based on a finding of

the rehabilitation of the person convicted, or the conviction has been vacated, the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

~~((2) Evaluate any negative action information to determine whether the subject individual has any negative actions requiring disqualification under WAC 110-06-0070(3)).~~

~~(3) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 110-06-0070 (5), (6), or (7)).~~ (g) If the subject individual's background information contains a CPI or CROP, DCYF must not disqualify the subject individual solely based on the information that pertains to the CPI, or solely based on the information that pertains to the CROP. For a subject individual who has obtained a CPI or CROP, the department should:

(i) Assess the subject individual's character, suitability, and competence to determine whether the subject individual should be disqualified if his or her background information contains a pending charge or conviction, unrelated to the CROP, that is listed in WAC 110-06-0120(2); or

(ii) If the subject individual's background does not include a pending charge or conviction listed in WAC 110-06-0120(2), assess the subject individual's character, suitability, and competence to determine whether to disqualify the subject individual under WAC 110-06-0070.

(h) A CROP does not apply to founded findings of child abuse or neglect. A child abuse or neglect finding must be considered by the department.

(i) A CROP and CPI must be included as part of the criminal history record reports, qualifying letters, assessments, or other reports.

(j) A subject individual's background check authorization may be suspended if the subject individual is the subject of a child protective services investigation. The length of the suspension may not exceed the following time period:

(i) As defined in RCW 26.44.020, the department makes an unfounded determination; or

(ii) The date a negative action determination is issued or the date a negative action becomes final, whichever is longer.

(k) If the department suspends a subject individual's background check authorization for the time period described in (j)(ii) of this subsection, the department may disqualify the subject individual pursuant to the requirements described in this chapter.

(l) A subject individual who makes a request for a hearing or appeals a department decision to disqualify will not be authorized to care for or have unsupervised access to children receiving early learning services during the time period the hearing request or appeal is pending.

~~((4))~~ (6) If DCYF has reason to believe that additional information ~~((is))~~ or reports are needed to determine whether the subject individual has the character, suitability ~~((or))~~, and competence ~~((of the subject individual))~~ to care for or have unsupervised access to children receiving early learning services, DCYF may request that the subject individual provide such reports or additional information ~~((will be requested. The)).~~ A subject individual ~~((must))~~ who does not provide ~~((to the department any additional reports or))~~ the requested information ~~((that it requests))~~ may be disqualified.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0050, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0050, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0050, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0050, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0050, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0070 (~~(Disqualification.)~~) Background check decision. Background information that ((will)) may or must disqualify a subject individual.

(1) ~~A subject individual ((who has a background containing any of the permanent convictions on the secretary's list, WAC 110-06-0120(1)), will be permanently disqualified from caring for children or having unsupervised access to children receiving early learning services.~~

~~(2) A) must be permanently disqualified if the subject individual has a background that includes conviction information of a crime listed in WAC 110-06-0120(2).~~

(2) Subject to the requirements described in subsection (3) of this section, if a subject individual who is thirteen years of age or older has a background that includes conviction information of a crime listed in WAC 110-06-0120(2), the subject individual may be permanently disqualified from having unsupervised access to children receiving early learning services at a child care facility.

(3) For the purposes of subsections (1) and (2) of this section, if there is not an unusually high risk of an erroneous disqualification without an individualized assessment, the determination that an individual is permanently disqualified may be solely based on a permanently disqualifying crime listed in WAC 110-06-0120(2). To determine whether there is an unusually high risk of an erroneous disqualification, the department must consider the factors described in subsection (7) of this section.

(4) If a subject individual has a background that includes a negative action, or conviction information, that involves any of the conduct described in the secretary's list under WAC 110-06-0120 (3) or (4), DCYF may disqualify the subject individual if it makes a determination the subject individual does not have the appropriate character, suitability, or competence to be authorized or reauthorized.

(5) A subject individual who knowingly makes a materially false statement in connection with the criminal background check application must be disqualified.

(6) A subject individual who is registered, or is required to be registered, on a state sex offender registry or repository, or the national sex offender registry, must be disqualified.

(7) DCYF must consider the following factors related to a subject individual's background when assessing character, suitability, and competence:

~~(a) Whether the subject individual ((who)) has a background containing any of the ((nonpermanent)) permanent convictions on the secretary's list ((7)) that are described in WAC 110-06-0120(2) ((, will be disqualified from providing licensed child care, caring for children or having unsupervised access to children receiving early learning services for five years after the conviction date.~~

~~(3) A subject individual will be disqualified when his or her background contains a negative action, as defined in WAC 110-06-0020 that relates to:~~

~~(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 110-30 WAC.~~

~~(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.~~

~~(4) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.~~

~~(5) Background information that may disqualify a subject individual. A subject individual may be disqualified for other negative action(s), as defined in WAC 110-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children receiving early learning services.~~

~~(6) A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.~~

~~(7) The department may also disqualify a subject individual if that person has other nonconviction background information that renders him or her unsuitable to care for or have unsupervised access to children receiving early learning services. Among the factors the department may consider are:~~

~~(a) The subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.~~

~~(b) The subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present or presented a risk of harm to any child receiving early learning services.~~

~~(c) The subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.~~

~~(d) Subject to federal and state law, the subject individual lacks sufficient physical or mental health to meet the needs of children receiving early learning services.~~

~~(e) The subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.) ;~~

(b) Whether the subject individual has a background containing any of the convictions on the secretary's list that are described in WAC 110-06-0120(3) or negative actions described in WAC 110-06-0120(4) ;

(c) Whether the subject individual has obtained a CROP or CPI for any of the subject individual's background that is described in WAC 110-06-0120 (3) or (4);

(d) The amount of time that has passed since the conviction information or negative action;

(e) The seriousness of the crime or subject individual's actions that led to the conviction or negative action;

(f) The number, types, and age of other convictions or negative actions in the subject individual's background;

(g) The subject individual's age at the time of conviction or the issuance of the negative action determination;

(h) The length and consistency of employment history before and after the conviction or negative action;

(i) The employment or character references and any other information regarding the subject individual's fitness to be authorized;

(j) The completion of services or other evidence of rehabilitation since the conviction or negative action;

(k) The subject individual's role or purpose in delivering early learning services; and

(l) How the subject individual's conduct that is the basis for the subject individual's conviction or negative action, is conduct that shows the subject individual does not have the appropriate character, suitability, and competence to receive a background check authorization.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0070, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0070, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0070, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0070, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0070, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0080 Notification of disqualification. (1) (~~The department~~) DCYF will (~~notify the~~) send written notice to a subject individual (~~in writing if he or she~~) who is disqualified by the background check.

(2) If (~~the department~~) DCYF sends a notice of disqualification, the subject individual will not be authorized to care for or have unsupervised access to children receiving early learning services, or to be present on the early learning service's premises during the hours for which child care is provided.

(3) Any decision by (~~the department~~) DCYF to disqualify a subject individual under this chapter is effective immediately upon receipt of written notice from the department to the subject individual.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, §

110-06-0080, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0080, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0080, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0080, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0080, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0100 Request for administrative hearing. (1) ((Any)) A subject individual has a right to contest ((the department's)) a disqualification decision under WAC 110-06-0070 ((and)). The subject individual must request a hearing within twenty-eight days of receipt of the written disqualification decision ~~((, regardless of whether the subject individual requests a department reconsideration of the disqualification under WAC 110-06-0115))~~.

(2) A request for a hearing must meet the requirements of chapter 110-03 WAC.

(3) Any decision by the department to disqualify a subject individual under this chapter will remain in effect pending the outcome of the administrative hearing or review under chapter 110-03 WAC, notwithstanding any provision of chapter 110-03 WAC to the contrary.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0100, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0100, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0100, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0100, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0110 Limitations on challenges to disqualifications.

(1) If the disqualification is based on a criminal conviction, the subject individual cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect as defined in chapter 26.44 RCW, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the subject individual cannot contest the finding if:

(a) The subject individual ~~((was notified of))~~ failed to request a hearing to contest the finding after receiving notice of the finding

((by the department of social and health services ()) from DSHS () and failed to request a hearing to contest the finding); or

(b) The subject individual was notified of the finding ((by DSHS)) and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the subject individual's child to be dependent as defined in chapter 13.34 RCW, the subject individual cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based on a negative action ((as defined in ~~WAC 110-06-0020~~)), the subject individual cannot contest the underlying negative action in the administrative hearing if the subject individual was previously given the right of review or hearing right and a final decision or finding has been issued.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0110, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0110, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0110, filed 4/30/08, effective 5/31/08.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0115 ((Reconsideration of)) Department decision to vacate disqualification decision. (1) Subject to the requirements contained in this chapter ((110-06-WAC)), the department may not reconsider whether an earlier decision to disqualify a subject individual will be vacated unless the department determines a change has occurred in the circumstances of the subject individual between the date of disqualification and the date the request to vacate the disqualification is made. Subject to the requirements contained in this chapter, to receive a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence to determine whether the change in circumstances demonstrates the subject individual should receive an authorization.

(2) ((For a disqualification based on ~~WAC 110-06-0070 (5) or (7)(a), (c), or (e)~~, a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children receiving early learning services. For purposes of subsection (2) of this section a disqualification based on a "negative action," ~~WAC 110-06-0070 (5) or (7)(c) or (e)~~ does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:

~~(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or~~

~~(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.)~~ To determine whether there has been a change in circumstances, the department must consider the factors described in subsection (3) of this section. A change in circumstances includes, but is not limited to, the following:

(a) Two years have passed since the issuance of a disqualification.

(b) The issuance of a valid CROP that pertains to a crime that was the sole basis of the subject individual's disqualification.

(c) If the sole basis for the disqualification was for a conviction that has been dismissed, vacated, the subject of a pardon, annulment, or other equivalent procedure.

(d) The issuance of a valid CPI that pertains to a negative action that was the sole basis of the subject individual's disqualification. The CPI must pertain to conduct by the subject individual that resulted in a founded finding of negligent treatment or maltreatment, physical abuse, or a dependency finding that was the result of a finding that the subject individual abused or neglected the child under RCW 13.34.030 (6) (b).

(e) If the sole basis for the disqualification was a negative action that has been dismissed, vacated, annulled, or other equivalent procedure.

(3) ((For a disqualification based on any of the circumstances described in WAC 110-06-0070 (3) and (7) (b) or (d), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.)) Before a subject individual is issued a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence. In this assessment, the department considers the following factors related to the subject individual's background:

(a) Whether the subject individual has a background containing any of the permanent convictions on the secretary's list described in WAC 110-06-0120(2);

(b) Whether the subject individual has a background containing any of the information described in the secretary's list in WAC 110-06-0120 (3) or (4);

(c) The amount of time that has passed since the negative action or conviction information that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(d) The seriousness of the crime or subject individual's actions that led to the conviction or negative action that was the sole basis, or partial basis, of the subject individual's prior disqualification;

(e) The number, types, and age of other conviction information or negative actions in the subject individual's background;

(f) The subject individual's age at the time of the negative action determination or conviction that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(g) The completion of services or other evidence of rehabilitation since the conviction or negative action that is the sole basis, or partial basis of the subject individual's prior disqualification;

(h) The subject individual's role or purpose in delivering early learning services;

(i) The length and consistency of employment history between the date the disqualification was issued and the date the subject individual asks the department to vacate the disqualification decision;

(j) The employment or character references and any other information regarding the subject individual's fitness to be authorized.

(4) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(1).)) If a CROP or CPI has been issued for a crime or negative action that was the sole basis for a disqualification, the department must vacate the disqualification. If a disqualification is vacated for any reason under this section, the department must conduct a new background check investigation and evaluation as described in this chapter.

(5) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(2) for a period of five years from the date of the disqualifying conviction.)) As part of the background check process under this section, the department will conduct the background check investigation, evaluation, and assessment as described in this chapter.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0115, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0115, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0115, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0115, filed 5/30/12, effective 7/1/12.]

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0120 Secretary's list. ~~((1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services.~~

~~(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.~~

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Malicious placement of an explosive ¹	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism))	

(1) The crimes and conduct described in this section constitute the secretary's list.

(2) Subject to the requirements described in this chapter, the department must permanently disqualify a subject individual who has a conviction for any of the crimes listed in this subsection.

<u>Citation</u>	<u>Description</u>
RCW 9A.42.060	Abandonment of a dependent person in the first degree (if the victim is a child)

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is a child)</u>
<u>RCW 10.95.020</u>	<u>Aggravated murder</u>
<u>RCW 9A.48.020</u>	<u>Arson in the first degree</u>
<u>RCW 9A.48.030</u>	<u>Arson in the second degree</u>
<u>RCW 9A.36.011</u>	<u>Assault in the first degree</u>
<u>RCW 9A.36.021</u>	<u>Assault in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if causes bodily harm)</u>
<u>RCW 9A.36.120</u>	<u>Assault of a child in the first degree</u>
<u>RCW 9A.36.130</u>	<u>Assault of a child in the second degree</u>
<u>RCW 9A.36.140</u>	<u>Assault of a child in the third degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if child or spouse is assaulted)</u>
<u>RCW 9A.44.083</u>	<u>Child molestation in the first degree</u>
<u>RCW 9A.44.086</u>	<u>Child molestation in the second degree</u>
<u>RCW 9A.44.089</u>	<u>Child molestation in the third degree</u>
<u>RCW 9A.64.030</u>	<u>Child buying or selling</u>
<u>RCW 9.68A.100</u>	<u>Commercial sexual abuse of a minor</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a felony)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is a child)</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if causes bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is a child; and the conviction is the subject individual's second or subsequent conviction of custodial interference in the second degree)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.050</u>	<u>Dealing in depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is a child)</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if a felony and the victim is a child)</u>
<u>RCW 9A.44.100</u>	<u>Indecent liberties</u>
<u>RCW 9A.40.020</u>	<u>Kidnapping in the first degree</u>
<u>RCW 9A.40.030</u>	<u>Kidnapping in the second degree</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is a child)</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is a child)</u>
<u>RCW 9A.32.030</u>	<u>Murder in the first degree</u>
<u>RCW 9A.32.050</u>	<u>Murder in the second degree</u>
<u>RCW 9.68A.070</u>	<u>Possession of depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.101</u>	<u>Promoting commercial sexual abuse of a minor</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.102</u>	<u>Promoting travel for commercial sexual abuse of a minor</u>
<u>RCW 9A.44.040</u>	<u>Rape in the first degree</u>
<u>RCW 9A.44.050</u>	<u>Rape in the second degree</u>
<u>RCW 9A.44.060</u>	<u>Rape in the third degree</u>
<u>RCW 9A.44.073</u>	<u>Rape of a child in the first degree</u>
<u>RCW 9A.44.076</u>	<u>Rape of a child in the second degree</u>
<u>RCW 9A.44.079</u>	<u>Rape of a child in the third degree</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is a child)</u>
<u>RCW 9.68A.060</u>	<u>Sending, bringing into state depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.040</u>	<u>Sexual exploitation of a minor</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.44.093</u>	<u>Sexual misconduct with a minor in the first degree</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is a child)</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is a child)</u>

(3) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a conviction for a crime listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.080</u>	<u>Abandonment of a dependent person in the third degree</u>
<u>RCW 16.52.205</u>	<u>Animal cruelty in the first degree</u>
<u>RCW 16.52.207</u>	<u>Animal cruelty in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if no bodily harm)</u>
<u>RCW 9A.36.041</u>	<u>Assault in the fourth degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if a child or spouse is not assaulted)</u>
<u>RCW 9A.52.030</u>	<u>Burglary in the second degree</u>
<u>RCW 9A.36.070</u>	<u>Coercion</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a gross misdemeanor)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is not a child)</u>
<u>RCW 9A.46.120</u>	<u>Criminal gang intimidation</u>
<u>RCW 9A.60.040</u>	<u>Criminal impersonation in the first degree</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.035</u>	<u>Criminal mistreatment in the third degree</u>
<u>RCW 9A.42.037</u>	<u>Criminal mistreatment in the fourth degree</u>
<u>RCW 9.05.060</u>	<u>Criminal sabotage</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if no bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is not a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is not a child)</u>
<u>RCW 9A.44.170</u>	<u>Custodial sexual misconduct in the second degree</u>
<u>RCW 9.61.260</u>	<u>Cyberstalking</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is not a child)</u>
<u>RCW 46.61.502</u>	<u>Driving under the influence of intoxicating liquor, marijuana, or any drug (if the conviction was for a felony or the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.52.020</u>	<u>Duty in case of personal injury or death or damage to attended vehicle or other property – Penalties (if a felony)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is not a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.132</u>	<u>Failure to register as sex offender or kidnapping offender</u>
<u>RCW 66.44.270</u>	<u>Furnishing liquor to minors (only if the subject individual sells, gives, or otherwise supplies liquor to a person under the age of twenty-one years; or permits any person under that age to consume liquor on the subject individual's property or on any property under the subject individual's control)</u>
<u>RCW 9A.46.020</u>	<u>Harassment</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is not a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is not a child)</u>
<u>RCW 79A.60.050</u>	<u>Homicide by watercraft</u>
<u>RCW 9.40.120</u>	<u>Incendiary devices</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is not a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if felony and victim is not a child, or if a misdemeanor)</u>
<u>RCW 9A.82.060</u>	<u>Leading organized crime</u>
<u>RCW 46.61.685</u>	<u>Leaving children unattended in standing vehicle with motor running</u>
<u>RCW 9.91.060</u>	<u>Leaving children unattended in parked automobile</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is not a child)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 70.74.270</u>	<u>Malicious placement of an explosive in the first, second, or third degree</u>
<u>RCW 70.74.272</u>	<u>Malicious placement of an imitation device in the first degree or second degree</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is not a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is not a child)</u>
<u>RCW 46.61.5249</u>	<u>Negligent driving in the first degree (if the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.61.504</u>	<u>Physical control of vehicle under the influence (if felony)</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is not a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is not a child)</u>
<u>RCW 9A.88.080</u>	<u>Promoting prostitution in the second degree</u>
<u>RCW 9A.36.060</u>	<u>Promoting a suicide attempt</u>
<u>RCW 9A.36.050</u>	<u>Reckless endangerment</u>
<u>RCW 9A.76.070</u>	<u>Rendering criminal assistance in the first degree</u>
<u>RCW 9A.52.025</u>	<u>Residential burglary</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.096</u>	<u>Sexual misconduct with a minor in the second degree</u>
<u>RCW 9A.44.105</u>	<u>Sexually violating human remains</u>
<u>RCW 9A.46.110</u>	<u>Stalking</u>
<u>RCW 9.61.230</u>	<u>Telephone harassment (if felony)</u>
<u>RCW 9A.40.100</u>	<u>Trafficking in the first degree or second degree</u>
<u>RCW 13.32A.080</u>	<u>Unlawful harboring of a minor</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is not a child)</u>
<u>RCW 69.53.010</u>	<u>Unlawful use of a building for drug abuse purposes</u>
<u>RCW 9.41.225</u>	<u>Use of machine gun or bump-fire stock in felony</u>
<u>RCW 46.61.522</u>	<u>Vehicular assault</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is not a child)</u>
<u>RCW 9.68A.075</u>	<u>Viewing depictions of minor engaged in sexually explicit conduct in the first or second degree</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 26.50.110</u>	<u>Violation of sexual assault protection order under chapter 7.90 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of stalking no-contact order or stalking protection order under chapter 7.92 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of human trafficking no-contact order under chapter 9A.40 if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order restricting contact under RCW 9A.46.080.</u>
<u>RCW 26.50.110</u>	<u>Violation of promoting prostitution no-contact order under chapter 9A.88 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of domestic violence no-contact order under chapter 10.99 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of dissolution proceeding restraining order under chapter 26.09 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of paternity proceeding restraining order under chapter 26.26A or 26.26B RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of a domestic violence order for protection under chapter 26.50 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order for protection of a vulnerable adult under chapter 74.34 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 10.14.170</u>	<u>Violation of civil antiharassment protection order</u>
<u>RCW 69.52.030</u>	<u>Violation of the Uniform Controlled Substances Act (manufacture, distribute, or possess with intent to distribute)</u>
<u>Chapter 69.50 RCW (Article IV Offenses and penalties)</u>	<u>Except for controlled substance homicide if the child is a victim (RCW 69.50.415), any violation of the Uniform Controlled Substances Act</u>
<u>RCW 69.41.020</u>	<u>The unlawful obtaining or attempting to obtain a legend drug, or procure or attempt to procure the administration of a legend drug</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 69.43.070</u>	<u>Sale, transfer, or furnishing of any substance listed in RCW 69.43.010 with knowledge or intent the recipient will use the substance to unlawfully manufacture a controlled substance; or the receipt of any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance.</u>
<u>RCW 9A.44.115</u>	<u>Voyeurism</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

(4) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a background that includes any negative action that is based on the conduct described in this subsection includes any negative action that is based on the conduct described in this subsection.

(a) The abuse, neglect, exploitation, or abandonment of a vulnerable adult, child, or juvenile.

(b) The suspension, termination, revocation, denial, or restriction of a license, professional license, or certification.

(c) The suspension, termination, or revocation of a state or federal contract.

(d) The relinquishment of a license, certification, or contract in lieu of an agency negative action.

(5) Under 42 U.S.C. § 9858f (c)(1)(B) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual knowingly makes a materially false statement in connection with their criminal background check.

(6) Under 42 U.S.C. § 9858f (c)(1)(C) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.).

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-06-0120, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-06-0120, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 43.215 RCW. WSR 15-24-040, § 170-06-0120, filed 11/20/15, effective 1/1/16. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 14-13-002, § 170-06-0120, filed 6/4/14, effective 7/5/14. Statutory Authority: RCW 43.215.200, 43.215.205, 43.215.215 through 43.215.218, 43.43.830, 43.43.832, chapter 43.215 and 43.43 RCW, and 2011 c 295. WSR 12-12-040, § 170-06-0120, filed 5/30/12, effective 7/1/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.43.832, 2006 c 265 and 2007 c 387. WSR 08-10-041, § 170-06-0120, filed 4/30/08, effective 5/31/08.]

WSR 21-18-109
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed August 31, 2021, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-013.

Title of Rule and Other Identifying Information: WAC

110-300E-0001 Authority, 110-300E-0005 Definitions, 110-300E-0015 Outdoor nature-based licensing agreement—Uniform rules, 110-300E-0020 Enforcement actions—Right of review—Process of seeking review, and 110-300E-0400 Outdoor nature-based licenses—Application.

Hearing Location(s): On October 5, 2021, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including October 5, 2021, will be considered.

Date of Intended Adoption: October 6, 2021.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, Olympia, WA 98504-0975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by October 1, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **For Licensing-Outdoor Nature-Based Programs:** Proposed new chapter 110-300E WAC applies the early achievers quality standards to outdoor nature-based programs and explains the application process, licensing terms and conditions, and enforcement procedures for these programs.

Reasons Supporting Proposal: The proposed new rules are necessary to implement section 28, chapter 304, Laws of 2021, which authorizes the department to license outdoor nature-based programs. Application of the early achievers quality standards is necessary for these programs to receive child care subsidy payments. Rules governing the application process, licensing terms and conditions, and enforcement procedures are necessary to establish consistent and transparent licensing procedures.

Statutory Authority for Adoption: Section 28, chapter 304, Laws of 2021.

Statute Being Implemented: Section 28, chapter 304, Laws of 2021.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

August 31, 2021
Brenda Villarreal
Rules Coordinator

OTS-3212.6

**Chapter 110-300E WAC
OUTDOOR NATURE-BASED PROGRAMS**

NEW SECTION

WAC 110-300E-0001 Authority. (1) Chapter 43.216 RCW establishes the responsibility and authority for the department of children, youth, and families to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Pursuant to section 28, chapter 304, Laws of 2021:

(a) The department must establish a licensed outdoor nature-based child care program.

(b) The department must adopt rules to implement the outdoor nature-based child care program and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor classrooms in Washington state.

(c) The department must apply the early achievers program to the outdoor nature-based child care program to assess quality in outdoor learning environments and may waive or adapt early achievers requirements when necessary to allow for the operation of outdoor classrooms.

(d) A child care or early learning program operated by a federally recognized tribe may participate in the outdoor nature-based child care program through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(3) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department regulates only health, safety, and quality standards that do not relate to the physical facility for programs operating in facilities used by public or private schools.

[]

NEW SECTION

WAC 110-300E-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Agency" has the same meaning as described in RCW 43.216.010.

"Department" means the Washington state department of children, youth, and families (DCYF).

"Early learning" has the same meaning as described in RCW 43.216.010.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties (fines) pursuant to RCW 43.216.325(3).

"Outdoor nature-based program" has the same meaning as "outdoor nature-based child care" in RCW 43.216.010 (1)(e), which is an agency or an agency-offered program that:

(a) Enrolls preschool or school-age children;

(b) Provides early learning services to the enrolled children in an outdoor natural space approved by the department for not less than four hours per day or fifty percent of the daily program hours, whichever is less; and

(c) Teaches a nature-based curriculum to enrolled children.

"Provider" as used in this chapter means an early learning program that offers outdoor nature-based early learning services, and is licensed under and subject to the provisions of this chapter (also "licensee").

[]

NEW SECTION

WAC 110-300E-0015 Outdoor nature-based licensing agreement—Uniform rules. (1) Licensees under this chapter must agree, enter into, and comply with the terms and conditions of an outdoor, nature-based licensing agreement prepared by the department. The outdoor nature-based licensing agreement will require compliance with the following minimum terms and conditions:

(a) The terms and conditions detailed in the outdoor nature-based licensing agreement;

(b) The requirements of this chapter;

(c) The background check requirements contained in chapter 110-06 WAC, early learning background checks; and

(d) The requirements of the federal Child Care Development Fund (45 C.F.R. Part 98).

(2) To establish a uniform set of requirements for outdoor nature-based programs, the department may periodically update the outdoor nature-based licensing agreement, amend existing rules in this chapter, or draft new rules to be published under this chapter.

[]

NEW SECTION

WAC 110-300E-0020 Enforcement actions—Right of review—Process of seeking review. (1) The department is authorized by RCW 43.216.020, 43.216.065, 43.216.250, and 43.216.325 to take enforcement actions when a provider fails to comply with this chapter, chapter 110-06 WAC, early learning background checks, or chapter 43.216 RCW. Enforcement actions include civil monetary penalties and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An applicant or provider has the right to appeal an enforcement action by requesting an adjudicative proceeding or "hearing" pursuant to the hearing rules codified in chapter 110-03 WAC, Administrative hearings.

(3) The department must issue a notice of violation to a provider when taking enforcement actions. A notice of violation must be sent certified mail or personal service 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 must not exceed two hundred fifty dollars per day per violation.

(5) 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 a provider comes into compliance during the notification period.

(6) A 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, Administrative hearings and RCW 43.216.335(3).

(7) The department may suspend or revoke a license if a 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, the department may elect not to continue the license for failure to pay a fine.

[]

NEW SECTION**WAC 110-300E-0400 Outdoor nature-based licenses—Application.**

(1) After submitting to the department a signed outdoor nature-based licensing agreement pursuant to WAC 100-300D-0015, an applicant must submit a complete application to the department to receive an initial

license, or be granted a continuation of a full license, to operate an outdoor nature-based program.

(2) Pursuant to RCW 43.216.305, the department must grant or deny a license or continuation of a full license within ninety days of receiving a complete application.

(3) After completing a department orientation an applicant must submit to the department a complete license application packet, pursuant to chapter 43.216 RCW. This requirement also applies to a change of ownership. A complete license application packet includes:

(a) Professional and background information about the applicant:

(i) A completed department application form;

(ii) A copy of the applicant's orientation certificate (orientation must be taken no more than twelve months prior to applying for a license);

(iii) A Washington state business license or a tribal, county, or city business or occupation license, if applicable;

(iv) Liability insurance, if applicable;

(v) A certificate of incorporation, partnership agreement, or similar business organization document, if applicable;

(vi) The license fee;

(vii) A copy of current government issued photo identification;

(viii) A copy of Social Security card or sworn declaration stating that the applicant does not have one;

(ix) Employer identification number (EIN) if applicant plans to hire staff; and

(x) Employment and education verification. For example, diploma, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.

(b) Information about the program to be licensed:

(i) A site plan, including use of proposed licensed and unlicensed space, with identified emergency exits or emergency exit pathways;

(ii) Certificate of occupancy, if applicable;

(iii) Documentation, no more than three years old, from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in working order, if applicable;

(iv) E. coli bacteria and nitrate testing results for well water that is no more than twelve months old, if applicable;

(v) A lead or arsenic evaluation agreement for program sites located in the Tacoma smelter plume (counties of King, Pierce, and Thurston) or the Everett smelter plume (county of Snohomish); and

(vi) Lead and copper test results for drinking water, if applicable.

(c) Program days and hours of operation, including closure dates and holiday observances; and

(d) The following information about program staff:

(i) A list of staff members, and if applicable and known, staff persons and volunteers required to complete the background check process as outlined in chapter 110-06 WAC, early learning background checks; and

(ii) A resume for the applicant and each staff person, if applicable.

(e) The following policy documents, which will be reviewed by the department and returned to the applicant:

(i) Parent and program policies;

(ii) Staff policies;

(iii) An emergency preparedness plan; and

(iv) Health policies.

(4) An applicant must submit the completed application packet at least ninety calendar days prior to the planned opening of the outdoor, nature-based program. The department will inspect the program space and all submitted application materials prior to issuing a license.

(a) The ninety calendar days begins when the department receives a complete application packet.

(b) Incomplete application packets will be returned to the applicant for completion.

(c) An applicant who is unable to successfully complete the application and licensing process within ninety days may withdraw the application and reapply when the applicant is able to meet the licensing requirements. If the applicant has completed the steps of the application process within ninety days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.

(d) An applicant who is unable to meet the application requirements and has not withdrawn his or her application will be denied a license, pursuant to RCW 43.216.325.

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WSR 21-18-123

PROPOSED RULES

GAMBLING COMMISSION

[Filed September 1, 2021, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-07-117.

Title of Rule and Other Identifying Information: Amending WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations, 230-03-200 Defining "gambling equipment", 230-03-235 Applying for charitable or nonprofit gambling manager license, 230-05-112 Defining "gross gambling receipts", 230-05-160 Charitable or nonprofit organization fees, 230-06-045 Conduct gambling activities on licensed business premises only, 230-06-050 Review of electronic or mechanical gambling equipment, 230-07-090 Keeping and depositing all gambling funds separate from other funds, 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations, 230-07-145 Reporting annual progress, 230-07-150 Financial statements required for Groups III, IV, V, and electronic raffle licensees and 230-11-002 The definition of raffle as used in this chapter; and new WAC 230-03-138 Defining "qualified sports team", 230-03-153 Applying to operate electronic raffles, 230-03-154 Additional information required with electronic raffle application, 230-11-300 Definitions, 230-11-305 Electronic raffle system standards, 230-11-310 Electronic raffle system requirements, 230-11-315 Access to home game authorized locations for electronic raffles, 230-11-320 Electronic raffle operating requirements, 230-11-325 Internal controls for electronic raffles, 230-11-330 Supervision of electronic raffles, 230-11-335 Wearing nametags, 230-11-340 Provide rules to electronic raffle participants, 230-11-345 Electronic raffle prize payout requirements, 230-11-350 Raffle drawing postponement, 230-11-355 Joint raffles prohibited, 230-11-360 Raffle ticket requirements, 230-11-365 Raffle ticket receipt requirements, 230-11-370 Authorized ticket sellers, 230-11-375 Restrictions on ticket sellers, 230-11-380 Selling tickets at a discount, 230-11-385 Recordkeeping requirements for electronic raffles, 230-11-390 Electronic raffle—Monthly records, 230-11-395 Keeping and making records available, and 230-16-153 Remote access of electronic raffle systems.

Hearing Location(s): On October 14, 2021, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location is tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting, select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: October 14, 2021.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by October 1, 2021.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by October 1, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules would allow bona fide charitable or nonprofit organizations affiliated with qualified professional sports teams in Washington state to obtain a license to conduct raffles at home game sporting events in Washington state using electronic systems. The proposed rules define electronic raffles and

other necessary terms; outline requirements for licensees operating electronic raffles, electronic raffle systems operations, electronic raffle systems security requirements, and recordkeeping requirements; and establish licensing and fee structures for this new activity.

Reasons Supporting Proposal: The gambling commission received and accepted a rule-making petition submitted by NHL Seattle, Seattle Mariners, Seattle Seahawks, and Seattle Sounders to amend existing rules and adopt new rules to allow for the sale of raffle tickets at professional sports games and matches using electronic systems in compliance with current state statutes.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: NHL Seattle (Kraken), Seattle Mariners, Seattle Seahawks, Seattle Sounders, public.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule changes were requested by NHL Seattle, Seattle Mariners, Seattle Seahawks, and Seattle Sounders to allow for the sale of raffle tickets at professional sports games and matches using electronic systems in compliance with current state statutes. Under the proposed rule changes, bona fide charitable or nonprofit organizations affiliated with qualified professional sports teams in Washington state may, but are not required to, obtain a license to sell electronic raffle tickets at home game sporting events in order to provide an easier way for fans to contribute to charities and to maximize charitable contributions. Affiliated bona fide charitable or nonprofit organizations who implement this option may incur the following costs: Acquiring, maintaining, and securing the electronic raffle system, costs associated with printing tickets and receipts, and recordkeeping. The proposed rules would allow for licensees to deduct actual, documented expenses up to \$2,000 per electronic raffle which would help offset the costs incurred of conducting an electronic raffle if they choose to do so.

August 30, 2021
Ashlie Laydon
Rules Coordinator

OTS-3283.1

NEW SECTION

WAC 230-03-138 Defining "qualified sports team." "Qualified sports team" as used in WAC 230-03-153 means a team organized in Washington state from Major League Baseball, National Hockey League, National Football League, National Basketball Association, Women's National Basketball Association, Major League Soccer, or National Women's Soccer League.

[]

NEW SECTION

WAC 230-03-153 Applying to operate electronic raffles. You must apply for a license to operate electronic raffles if you are a charitable or nonprofit organization who:

- (1) Is affiliated with a qualified sports team for the purpose of raising funds for charity; and
- (2) Plans to conduct electronic raffles in accordance with RCW 9.46.0277 and as authorized in chapter 230-11 WAC.

[]

NEW SECTION

WAC 230-03-154 Additional information required with electronic raffle application. When you apply for an electronic raffle license, you must submit at least the following as part of your application:

- (1) The organization's goals for conducting electronic raffles; and
- (2) A brief overview of the applicant's mission and vision; including the type of programs supported by the applicant and the clients served; and
- (3) Raffle plan, including:
 - (a) When your organization plans to conduct electronic raffles; and
 - (b) Cost of raffle tickets including discount levels; and
 - (c) Plans for selling raffle tickets; and
 - (d) Description of how the applicant will protect the integrity of the raffle; and
 - (e) Identify authorized equipment to be used to facilitate the raffles; and
 - (f) Details for supervision of these raffles; and
 - (g) Description of the physical draw process and security of the drawing; and
 - (h) An explanation of how the proceeds from the raffle will be used; and
 - (i) Any additional information that we request or that the applicant wishes to submit; and

(4) Before you begin electronic raffle operations, we must perform a preoperational review and evaluation (PORE). You must receive our written approval before operating; and

(5) The PORE will determine whether you have:

(a) An organizational structure that supports your proposed accounting and administrative controls; and

(b) Controls in place so that you closely monitor the gambling activity and accurately record financial information.

[]

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations. (1) An organization must submit a proposed plan of operations, including a market study, with their application to conduct bingo if the organization:

(a) Requests licensing to conduct gambling activities with combined annual gross receipts in excess of three million dollars; or

(b) Plans to pay premises rent exceeding two thousand dollars per month, including all terms.

(2) The plan must show enough detail to allow us to assess the potential for compliance with cash flow requirements. It must also include at least the following information:

(a) Research procedures and planning assumptions used; and

(b) Planned number of customers or attendance; and

(c) Days and hours of operations; and

(d) Estimated gross gambling receipts from each activity; and

(e) Estimated expenses and net income; and

(f) Details of income generating activities planned in conjunction with the gambling activity, such as snack bar operations or other retail sales and the anticipated net income from those activities; and

(g) Any other information related to your gambling license application that we request.

(3) (~~If planned activities include bingo,~~) The organization must provide:

(a) Anticipated market area and map of competing organizations that operate similar gambling activities, along with their days of operation; and

(b) Number of bingo sessions, bingo card prices, and estimated sales per player; and

(c) Bingo prize payouts and game schedules.

[Statutory Authority: RCW 9.46.070. WSR 06-07-157 (Order 457), § 230-03-155, filed 3/22/06, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

WAC 230-03-200 Defining "gambling equipment." "Gambling equipment" means any device, gambling-related software, expendable supply,

or any other paraphernalia used as a part of gambling or to make gambling possible. "Gambling equipment" includes, but is not limited to:

- (1) Amusement games;
- (2) Punch boards and pull-tabs;
- (3) Devices for dispensing pull-tabs;
- (4) Electronic devices for conducting, facilitating, or accounting for the results of gambling activities((7)) including, but not limited to:
 - (a) Components of a tribal lottery system;
 - (b) Electronic devices for reading and displaying outcomes of gambling activities; and
 - (c) Accounting systems that are a part of, or directly connected to, a gambling system including, but not limited to:
 - (i) Bet totalizers; or
 - (ii) Progressive jackpot meters; or
 - (iii) Keno systems;
 - (5) Bingo equipment;
 - (6) Electronic raffle systems;
 - (7) Devices and supplies used to conduct card games, fund-raising events, recreational gaming activities, or Class III gaming activities, as defined in the Indian Gaming Regulatory Act at U.S.C. 25 chapter 29 § 2703 and in tribal-state compacts including, but not limited to:
 - (a) Gambling chips;
 - (b) Cards;
 - (c) Dice;
 - (d) Card shuffling devices;
 - (e) Graphical game layouts for table games;
 - (f) Ace finders or no-peek devices;
 - (g) Roulette wheels;
 - (h) Keno equipment; and
 - (i) Tables manufactured exclusively for gambling purposes.

[Statutory Authority: RCW 9.46.070. WSR 06-07-157 (Order 457), § 230-03-200, filed 3/22/06, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-03-235 Applying for charitable or nonprofit gambling manager license. You must apply for a charitable or nonprofit gambling manager license if you are an employee or member of a charitable or nonprofit organization who:

- (1) Will have control to a material degree over a bingo or punch board and pull-tab licensee with gross gambling receipts over one hundred fifty thousand dollars in their previous licensing year; or
- (2) Will be responsible for overseeing the operation of electronic raffles to include, but not limited to, being on-site during the operation of an electronic raffle, documenting the functionality of the electronic raffle system, and observing the manual draw; or
- (3) Will be the supervisor of gambling managers who manage: Electronic raffles or a bingo or punch board and pull-tab licensee with gross gambling receipts over one hundred fifty thousand dollars in their previous license year; or

~~((3))~~ (4) Will be assigned the highest level of authority by the officers or governing board of directors to manage the day-to-day affairs of the organization and is responsible for safeguarding assets purchased with gambling funds and/or managing the disbursement of gambling funds when the organization:

(a) Is licensed to receive more than three hundred thousand dollars in gross gambling receipts; or

(b) Has established a trust and/or endowment fund to which gambling receipts in excess of one hundred thousand dollars have been contributed; or

~~((4))~~ (5) Will be the supervisor of the operation of progressive jackpot pull-tab games.

[Statutory Authority: RCW 9.46.070. WSR 18-05-026, § 230-03-235, filed 2/9/18, effective 5/1/18; WSR 06-07-157 (Order 457), § 230-03-235, filed 3/22/06, effective 1/1/08.]

OTS-3302.1

AMENDATORY SECTION (Amending WSR 21-16-072, filed 7/30/21, effective 8/30/21)

WAC 230-05-112 Defining "gross gambling receipts." (1) "Gross gambling receipts" means the amount due to any operator of an authorized activity as described in subsection (5) of this section.

(2) The amounts must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses, such as over/short.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

(5) Gross gambling receipts for authorized activities:

Activity:	Gross gambling receipts include amounts due to any operator for:
(a) Punch board and pull-tab	Purchasing chances to play.
(b) Raffles and enhanced raffles	Purchasing chances to enter.
(c) <u>Electronic raffles</u>	<u>Purchasing chances to enter.</u>
(d) Bingo	Fees or purchase of cards to participate.
((4)) (e) Amusement games	Amounts paid to play amusement games.
((e)) (f) Card games	<ul style="list-style-type: none"> • "Net win" from house-banked card games; • Tournament entry fees; • Administrative fees from player-supported jackpots; • Fees to participate in nonhouse-banked card games.

Activity:	Gross gambling receipts include amounts due to any operator for:
<p>((f)) (g) Manufacturers and distributors</p>	<p>(i) Fees from sales, rentals, leases, royalties, and service fees collected for the following gambling equipment in Washington to include, but not limited to:</p> <ul style="list-style-type: none"> • Bingo paper or bingo cards; • Punch boards and pull-tabs; • Devices for dispensing pull-tabs; • <u>Electronic raffle systems</u>; • Electronic devices for conducting, facilitating or accounting for the results of gambling activities; • Cards; • Dice; • Gambling chips; • Cash exchange terminals; • Progressive meters; • Gambling software; • License agreements; • Card shuffling devices; • Graphical game layouts for table games; • Ace finders or no-peek devices; • Roulette wheels; • Keno equipment; • Tables manufactured exclusively for gambling purposes; • Bet totalizers; • Electronic devices for reading or displaying outcomes of gambling activities; • Tribal lottery systems and components thereof. <p>(ii) Fees from the service, repair and modification of gambling equipment in Washington to include, but not limited to:</p> <ul style="list-style-type: none"> • Charges for labor and parts for repairing gambling equipment; • Service fees related to gambling operations; • Training or set-up fees; • Maintenance contract fees related to gambling equipment and operations.

Activity:	Gross gambling receipts include amounts due to any operator for:
((g)) (h) Gambling service suppliers	Fees from gambling-related services provided in or to be used in Washington to include, but not limited to: <ul style="list-style-type: none"> • Consulting, advisory or management services related to gambling; • Interest from financing the purchase or lease of gambling equipment, infrastructure or facilities or equipment that supports gambling operations; • Acting as a lending agent, loan services or placement agent; • Assembly of components for gambling equipment to be used under a contract with a licensed manufacturer; • Ongoing financial arrangements for gambling related software with a licensed manufacturer; • Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; • Training individuals to conduct authorized gambling activities; • Performing testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compacts; • Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators; • Ownership of proprietary games or equipment.
((h)) (i) Punch board/pull-tab service businesses	Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators.
((i)) (j) Fund-raising event distributors	Fees from contracts to organize and conduct recreational gaming activities.
((j)) (k) Fund-raising events and agricultural fairs	Fees received from the operation of bingo, amusement games, raffles, lotteries, contests of chance, and/or net win from table games operated at a fund-raising event.
((k)) (l) Major sports wagering vendor	Fees or revenues received from providing sports wagering goods and services, including management, consulting, sales, rentals, leases, and royalties, for any sports wagering activities in Washington.

Activity:	Gross gambling receipts include amounts due to any operator for:
((H)) <u>(m)</u> Mid-level sports wagering vendor	Fees or revenues received from providing sports wagering goods and services, including sales, rentals, leases, and royalties, for any sports wagering activities in Washington.
((m)) <u>(n)</u> Ancillary sports wagering vendor	Fees or revenues from providing sports wagering goods and services, including sales, rentals, leases, and royalties, for any sports wagering activities in Washington.

[Statutory Authority: RCW 9.46.070, 9.46.075, 9.46.140, 9.46.153, 9.46.210. WSR 21-16-072, § 230-05-112, filed 7/30/21, effective 8/30/21. Statutory Authority: RCW 9.46.070. WSR 20-08-095, § 230-05-112, filed 3/30/20, effective 4/30/20; WSR 18-05-026, § 230-05-112, filed 2/9/18, effective 5/1/18.]

OTS-3284.1

AMENDATORY SECTION (Amending WSR 20-04-011, filed 1/24/20, effective 2/24/20)

WAC 230-05-160 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees:

(1) Annual licenses:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Amusement games	\$65 plus \$65 per approved location	0.730%	\$1,000
Bingo	\$65	0.460%	\$11,000
Card games - House-banked	\$10,000	1.462%	\$40,000
Card games - Nonhouse-banked	\$65	0.430%	\$1,000
Combination	\$125	-	-
Fund-raising equipment distributor	\$270	1.430%	\$700
Punch board/pull-tabs	\$650	1.430%	\$10,000
Raffles	\$65	3.380%	\$2,000
Raffle - Credit Union	\$65	3.380%	\$2,000
Enhanced raffles	\$5,000	0.430%	\$32,000
<u>Electronic raffles</u>	<u>\$5,000</u>	<u>0.430%</u>	<u>\$32,000</u>

(2) Event licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Fund-raising event	\$180	3.130%	\$1,000
Recreational gaming activity	\$65	-	-
Special property bingo/ change of bingo premises	\$30	-	-

(3) Change fees:

Change of:	Fee
Name	\$100
Location	\$100
Fund-raising event location, date, or time	\$50

(4) Other fees:

Transaction	Fee
Add a new amusement game location	\$65
Duplicate license	\$50
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, or schemes	Deposit and cost reimbursement

[Statutory Authority: RCW 9.46.070. WSR 20-04-011, § 230-05-160, filed 1/24/20, effective 2/24/20; WSR 18-05-026, § 230-05-160, filed 2/9/18, effective 5/1/18.]

OTS-3285.1

AMENDATORY SECTION (Amending WSR 14-21-079, filed 10/13/14, effective 1/1/15)

WAC 230-06-045 Conduct gambling activities on licensed business premises only. (1) Except for raffle and enhanced raffle licensees, all other licensees, including electronic raffle licensees, must conduct all gambling activities (~~(, except for raffles,)~~) on the licensed business premises.

(2) Charitable or nonprofit organizations licensed to conduct bingo and punch board and pull-tab games may sell punch boards and pull-tabs to customers of a licensed card room if the charitable or nonprofit organization:

(a) Shares a common wall with the card room; and

(b) Controls all doors, counters, or windows allowing customer access through the common wall between the two premises and the charitable or nonprofit organization can securely close and lock the doors, counters, or windows; and

(c) Keeps and sells the punch board and pull-tab games and redeems prizes only on their licensed business premises. Punch board and

pull-tab players may take already purchased punch boards and pull-tabs into the card room area; and

(d) Allows only its employees to sell the punch board and pull-tabs; and

(e) Posts signs at the door, window, or counter common to the two business premises that clearly notify customers of the organization's identity.

[Statutory Authority: RCW 9.46.070, 9.46.0277. WSR 14-21-079 (Order 707), § 230-06-045, filed 10/13/14, effective 1/1/15. Statutory Authority: RCW 9.46.070. WSR 06-17-132 (Order 601), § 230-06-045, filed 8/22/06, effective 1/1/08.]

OTS-3303.1

AMENDATORY SECTION (Amending WSR 21-16-072, filed 7/30/21, effective 8/30/21)

WAC 230-06-050 Review of electronic or mechanical gambling equipment. (1) When you are required to submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC, you must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review. All costs must be paid in full prior to the completion of the review.

(2) The gambling equipment submitted for review must be identical or substantially similar to what will be marketed, distributed, and (~~deployed~~) operated in Washington. If the equipment is not sufficient for testing and review, we may require additional equipment or information.

(3) If your application is incomplete or we request additional information, you must provide us with the required items within thirty days of notification or we may administratively close your application.

(4) You can begin accepting orders for gambling equipment when you are licensed.

(5) Only gambling equipment approved by the director or director's designee is allowed in Washington except as provided under WAC 230-11-305 and 230-16-005.

(6) We may include security or surveillance requirements as part of gambling equipment approval.

(7) Gambling equipment must operate as approved by the director or director's designee.

(8) We may keep equipment submitted for review to allow for continued testing and training as long as the equipment remains in play in Washington. We are not liable for any damage to equipment while in our possession.

(9) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

[Statutory Authority: RCW 9.46.070, 9.46.075, 9.46.140, 9.46.153, 9.46.210. WSR 21-16-072, § 230-06-050, filed 7/30/21, effective

8/30/21. Statutory Authority: RCW 9.46.070. WSR 19-11-047, § 230-06-050, filed 5/10/19, effective 6/10/19; WSR 14-09-037 (Order 696), § 230-06-050, filed 4/11/14, effective 7/1/14; WSR 07-21-116 (Order 617), § 230-06-050, filed 10/22/07, effective 1/1/08; WSR 06-17-132 (Order 601), § 230-06-050, filed 8/22/06, effective 1/1/08.]

OTS-3286.1

AMENDATORY SECTION (Amending WSR 20-08-095, filed 3/30/20, effective 4/30/20)

WAC 230-07-090 Keeping and depositing all gambling funds separate from other funds. Charitable or nonprofit licensees must protect all funds generated from gambling activities and keep these funds separate from their general funds.

(1) Licensees must:

(a) Keep a separate gambling receipts account(s) in a recognized Washington state bank, mutual savings bank, or credit union; and

(b) Deposit only gambling receipts into that account. Licensees may deposit receipts from nongambling activities operated in conjunction with bingo games into the gambling receipts account if the licensee keeps detailed receipting records of the nongambling receipts; and

(c) Deposit all gambling receipts first into the account before spending or transferring them into other accounts, except for prize pay outs; and

(d) Deposit funds received from commercial amusement game operators operating amusement games on their premises in the licensee's gambling receipts account no later than the second banking day after they receive the receipts; and

(e) Make all deposits of net gambling receipts from each activity separately from all other deposits, and keep the validated deposit receipt as a part of their records. Deposit receipts are a part of the applicable daily or monthly records and licensees must make them available for our inspection; and

(f) Deposit all net gambling receipts which they are holding, pending pay out:

(i) From bingo, no later than the second banking day after they receive them. Licensees may withhold bingo receipts from deposits for "jar," "pig," or other special game prizes if the total of all such prize funds does not exceed two hundred dollars, enter the amount withheld each session in the bingo daily record, and record the reconciliation of the special game fund on the bingo daily record. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records; and

(ii) From raffles, excluding electronic raffles, at least once a week. This includes those raffles:

(A) With gross gambling receipts over fifty thousand dollars in their initial year;

(B) With gross gambling receipts over fifty thousand dollars in their previous license year; and

(C) Offering prizes that require approval per WAC 230-11-067; and

(iii) From electronic raffles within two banking days of the drawing date; and

(iv) From amusement games with gross gambling receipts over fifty thousand dollars in their previous license year, at least each week; and

~~((iv))~~ (v) From punch board and pull-tabs, including cost recovery for merchandise prizes awarded, no later than two banking days after they remove the board or series from play; and

(g) Record the Washington state identification number assigned to the punch board or pull-tab series and the amount of net gambling receipts on the deposit slip/receipt. Licensees may record the number and the receipts on a separate record if they record the bank validation number and maintain the record with the deposit slip/receipt; and

(2) These requirements do not apply to organizations who:

(a) Conduct only one or more of the following activities:

(i) Raffles under the provisions of RCW 9.46.0315;

(ii) Bingo, raffles, or amusement games under the provisions of RCW 9.46.0321;

(iii) Bingo, raffle, and amusement game licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year, excluding electronic raffles; and

(b) Do not have any other license(s) from us.

[Statutory Authority: RCW 9.46.070. WSR 20-08-095, § 230-07-090, filed 3/30/20, effective 4/30/20; WSR 18-05-029, § 230-07-090, filed 2/9/18, effective 7/1/18; WSR 07-10-032 (Order 609), § 230-07-090, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations. (1) Organizations operating without a license under RCW 9.46.0315 or 9.46.0321 and lower volume charitable or nonprofit licensees must keep a set of permanent monthly records of the gambling activities. Lower volume licensees include:

(a) Fund-raising events;

(b) Bingo with gross gambling receipts of one hundred fifty thousand dollars or less in their previous license year;

(c) Raffles, excluding electronic raffles, with gross gambling receipts of fifty thousand dollars or less in their previous license year;

(d) Amusement games with gross gambling receipts of fifty thousand dollars or less in their previous license year; and

(e) Nonhouse-banked card games.

(2) The monthly records must include, at least:

(a) The gross gambling receipts from each activity;

(b) The gross gambling receipts from group 12 amusement games;

(c) The total amount of cash prizes actually paid out;

(d) The total of the cost to the licensee of all merchandise prizes actually paid out for each activity;

(e) A summary of all expenses related to each of the activities;

and

(f) The net income received from the activity, the purpose(s) for which the net income was raised, and the amount paid to each recipient.

(3) Licensees must keep these records for three years from the end of the license year for which the record was created.

(4) Organizations operating under RCW 9.46.0315 or 9.46.0321 must maintain their records for one year.

[Statutory Authority: RCW 9.46.070. WSR 18-05-029, § 230-07-125, filed 2/9/18, effective 7/1/18. Statutory Authority: RCW 9.46.070, 9.46.0201. WSR 16-22-049, § 230-07-125, filed 10/28/16, effective 11/28/16. Statutory Authority: RCW 9.46.070. WSR 07-10-032 (Order 609), § 230-07-125, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 10-09-021, filed 4/13/10, effective 7/1/10)

WAC 230-07-145 Reporting annual progress. Charitable or non-profit licensees in Groups III, IV, ~~((and))~~ V, and electronic raffle licensees must report annually their progress toward meeting their stated purpose in the format we prescribe.

(1) The report must explain the type and scope of activities which licensees conducted during their last annual fiscal accounting period; and

(2) The report must include, at least:

(a) A brief history of the licensed organization, including its stated charitable or nonprofit purpose(s); and

(b) A written statement setting out their goals for meeting their stated charitable or nonprofit purpose(s) in the future; and

(c) The number of full and regular members; and

(d) A list of contributions, scholarships, grants, or sponsorships made during the period. This list must include:

(i) The name of each organization or individual receiving a contribution from the licensee. The licensee may use the phrase "individual contribution" in place of the recipient. If the recipient is not named in the report, the licensee must maintain records to verify and identify the recipient of each individual contribution; and

(ii) Whether funds awarded were from gambling income or other funds;

(e) Gross income from all nongambling activities and the source of the income; and

(f) The revenue and expenses for any nongambling sales activities, presented separately, when conducted primarily in conjunction with gambling activities; and

(g) Total expenses for both charitable or nonprofit services; and

(h) The percentage or extent to which the licensee used net gambling income for charitable as distinguished from nonprofit purposes; and

(i) The details of any loans, contracts, or other business transactions with related parties that accumulatively exceed one thousand dollars during the period. "Related parties" means officers, board members, key employees, or members of the licensed organization, including direct relatives of each; and

(3) The report must be submitted no later than one hundred twenty days following the end of the organization's fiscal year.

(4) We may grant an organization additional time to submit the report if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

[Statutory Authority: RCW 9.46.070. WSR 10-09-021 (Order 666), § 230-07-145, filed 4/13/10, effective 7/1/10; WSR 07-10-032 (Order 609), § 230-07-145, filed 4/24/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 08-11-037, filed 5/14/08, effective 7/1/08)

WAC 230-07-150 Financial statements required for Groups III, IV, ((and)) V, and electronic raffle licensees. (1) In addition to information required in WAC 230-07-145, charitable or nonprofit licensees in Groups III, IV, ((and)) V, and electronic raffle licensees must also submit complete financial statements prepared in accordance with generally accepted accounting principles (GAAP).

(2) Licensees in Groups IV and V must have the financial statements prepared by an independent certified public accountant.

(3) The statements and all required disclosures or footnotes no later than one hundred twenty days following the end of the licensee's fiscal year.

(4) The financial statements must include:

(a) A statement of financial position;

(b) A statement of activities. This statement may be presented in a consolidated form if licensees provide the details of each component as supplemental information. Licensees must present revenue and expenses for each activity separately as follows:

(i) Each gambling activity; and

(ii) Retail sales conducted in conjunction with gambling activities;

(c) A statement of cash flows;

(d) A statement of functional expenses;

(e) In addition to all disclosures required by GAAP, the financial statements must disclose the following:

(i) Loans to or from officers, board members, and employees: We will not consider employee salary advances of five hundred dollars or less as loans. Details of all terms, including interest rates and payment schedules, must be disclosed;

(ii) All civil penalties, fines, bribes, or embezzlements incurred or discovered during the period; and

(iii) An explanation of any adjustments made to prior period capital accounts or net asset balances;

(f) An explanation of material differences between amounts reported on gambling activity reports and the financial statements.

(5) We may require additional information to ensure completeness of the information reported.

(6) We may grant an organization additional time to submit the information required if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

[Statutory Authority: RCW 9.46.070 and 34.05.353. WSR 08-11-037 (Order 626), § 230-07-150, filed 5/14/08, effective 7/1/08. Statutory Authority: RCW 9.46.070. WSR 07-10-032 (Order 609), § 230-07-150, filed 4/24/07, effective 1/1/08.]

OTS-3287.2

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-11-002 The definition of raffle as used in this chapter. "Raffle" as used in this chapter means raffle as defined in RCW 9.46.0277 and enhanced raffle as defined in ((section 1, chapter 310, Laws of 2013)) RCW 9.46.0323.

[Statutory Authority: RCW 9.46.070 and 9.46.0209. WSR 13-19-056 (Order 692), § 230-11-002, filed 9/16/13, effective 10/17/13.]

ELECTRONIC RAFFLE SYSTEMS

NEW SECTION

WAC 230-11-300 Definitions. The following definitions apply to electronic raffles:

(1) "Electronic raffle" means a licensed raffle, as defined in RCW 9.46.0277, that uses an electronic raffle system for sales, accountability, and printing of tickets. Electronic raffles must only be conducted during a home game of a qualified sports team. The total prize amount must be one half (i.e., 50 percent) of the gross gambling receipts collected from the sale of raffle tickets. If deducting expenses prior to prize calculation, only actual, documented expenses up to \$2,000.00 may be deducted per raffle. Only electronic raffle licenses are authorized to conduct electronic raffles.

(2) "Home game" means a live sports event held in Washington state that is designated as a home game in an official schedule distributed by the league of a qualified sports team at a home game authorized location.

(3) "Home game authorized location" means a sports facility where spectators gather within an arena or stadium where the home game is being conducted and where a home game ticket is required for admission. This does not include ancillary areas, buildings, or facilities, such as parking areas or areas where a ticket is not required for entry.

(4) "Electronic raffle system" means the system that connects to and consists of servers located in the home game authorized location, associated network equipment, software, raffle sales units, raffle ticket printers, and related equipment used by an electronic raffle licensee to generate and account for the sale of raffle tickets.

(5) "Raffle sales unit" means a portable, remote hard-wired connected device, or an attendant operated station that is used as a point of sale for raffle ticket sales. Raffle sales units can only use a closed network with no access to the internet to conduct raffle ticket sales within the home game authorized location except for credit card transactions as authorized in WAC 230-11-310.

(6) "Manual draw" or "drawing" means the method used for the selection of a raffle ticket to determine the raffle winner. A manual draw requires the winning raffle ticket be hand-picked from the receptacle that contains every raffle ticket sold and provides an equal chance for every ticket to be selected.

(7) "Raffle ticket" means a ticket generated by the electronic raffle system that is placed in a receptacle for the manual draw to determine the winner of the raffle prize.

(8) "Raffle ticket number" means the unique number recorded on every raffle ticket and raffle ticket receipt.

(9) "Raffle ticket receipt" means a printed receipt and record of entry into an electronic raffle provided to the participant which contains the raffle ticket number and a unique validation number and/or barcode information.

(10) "Unique validation number" or "barcode information" means a number or barcode generated by the electronic raffle system as a secondary means of verifying the raffle ticket is legitimate.

[]

NEW SECTION

WAC 230-11-305 Electronic raffle system standards. (1) Electronic raffle systems must meet or exceed Gaming Laboratories International's GLI-31: Standards for Electronic Raffle Systems, comply with all laws and rules relating to electronic raffles as evidenced by a certification letter from an independent testing laboratory indicating compliance with our rules and laws and GLI-31, and submit an application and deposit for our review as outlined in WAC 230-06-050 prior to being authorized for operation in this state.

(2) Under WAC 230-06-050, the manufacturer must provide a letter, as part of the application process, indicating the electronic raffle system has been tested by an independent testing laboratory licensed by us and was found to be compliant with GLI-31 and all laws and rules relating to electronic raffles prior to the electronic raffle system being brought into this state.

(3) The electronic raffle system will be tested for approval under WAC 230-06-050 at the home game authorized location. This will also apply to any changes made to the electronic raffle system after initial approval.

(4) An application and deposit under WAC 230-06-050, along with an updated letter from an independent testing laboratory certifying compliance, must be submitted to us prior to installing any changes to

the electronic raffle system. Changes will be tested by us within five days of installation.

[]

NEW SECTION

WAC 230-11-310 Electronic raffle system requirements. The electronic raffle system must be approved by us prior to operation and must:

- (1) Operate on a secure network independent from the home game authorized location network. This network must be a closed network with no connection to outside components or systems. The only exceptions to the closed network include remote access as outlined in WAC 230-16-153, credit card transactions as authorized in WAC 230-06-035, and prize display communication to a screen(s) in the home game authorized location which will only occur during the live electronic raffle; and
- (2) Ensure security for all communications and data to prevent unauthorized access and raffle information manipulation. These security measures should include, but are not limited to, current encryption standards for critical information, isolation from public networks, and use of firewalls; and
- (3) Have a way to independently identify the software version and signature to verify the firmware or software operating on the electronic raffle system; and
- (4) Not allow for raffle sales to be conducted via the internet; and
- (5) Be located, stored, and secured at the home game authorized location to prevent unauthorized access at all times; and
- (6) Be accessed only by the electronic raffle licensee and licensed manufacturer; and
- (7) Be overseen and supervised by a qualified member or volunteer who can address technical problems before, during, and after the manual drawing and who can provide technical support for the networks and electronic raffle system; and
- (8) Require each user to sign in using a unique identification or username and password that is not shared with other users and limit user access permissions to only those which are essential to perform their duties; and
- (9) Log all user activity and communicate and log all significant events; and
- (10) Save critical data should the following occur: System failure, power failure, or power interruption; and
- (11) Have a method for verifying valid winning ticket; and
- (12) Print all raffle tickets sold for a manual drawing. Automatic drawings, such as the use of a random number generator, are not authorized; and
- (13) Print unique raffle ticket numbers. Numbers may not be duplicated; and
- (14) Print one raffle number per ticket; and
- (15) Print tickets of equal size and shape to give each ticket an equal opportunity to be drawn.

[]

NEW SECTION

WAC 230-11-315 Access to home game authorized locations for electronic raffles. We must be allowed access to:

- (1) Home game authorized location before, during, and after an electronic raffle; and
- (2) Records; and
- (3) Restricted areas controlled by the electronic raffle licensee.

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CONDUCTING AN ELECTRONIC RAFFLENEW SECTION

WAC 230-11-320 Electronic raffle operating requirements. Electronic raffle licensees must:

- (1) Ensure the electronic raffle system and all other equipment used to conduct the raffle is functioning properly and fully operational by testing it using the form, prescribed by us, prior to each electronic raffle. If issues are identified, electronic raffle licensees must notify the licensed gambling manager immediately. If the issues cannot be resolved, the licensee must not conduct the electronic raffle; and
- (2) Ensure that if any of the components of the electronic raffle system, such as the raffle sales unit, printers, or associated network, fail to function properly prior to or during the sale of any raffle ticket, they must notify us within 24 hours; and
- (3) Hold only one raffle per home game; and
- (4) Ensure that prior to the sale of raffle tickets, all members or volunteers assisting in operating the electronic raffle and equipment are trained to operate any equipment necessary to carry out their assigned duties and are fully informed of all pertinent laws and rules associated with electronic raffles; and
- (5) Ensure a sufficient number of trained personnel are present to fulfill at least the following duties such as raffle ticket sales, count and reconciliation, manual draw, and electronic raffle system management; and
- (6) Ensure the time during which the raffle tickets will be sold for each electronic raffle are established and posted; and
- (7) Provide members and volunteers sufficient time to ensure that all sales reconciliation and eligible raffle ticket verification can be completed prior to the manual draw; and
- (8) Not sell raffle tickets earlier than when spectators are allowed entry; and
- (9) Not print raffle tickets before they are sold; and
- (10) Ensure all ticket sales are final; and
- (11) Not change ticket prices after the first ticket is sold; and

- (12) Sell raffle tickets using a raffle sales unit operated by authorized ticket sellers; and
- (13) Reconcile cash to raffle ticket transactions in a secure location within the home game authorized location; and
- (14) Determine gross gambling receipts and the prize amount and announce to the public the prize amount prior to the drawing; and
- (15) Have at least one qualified member or volunteer overseeing the raffle ticket printers at all times who can address any technical problems; and
- (16) Ensure the manual drawing is completed before the end of the home game; and
- (17) Have a member or volunteer of the electronic raffle licensee draw the winning raffle ticket with the licensed gambling manager present; and
- (18) Video record the entire manual draw process and retain the recording with the required records.

[]

NEW SECTION

WAC 230-11-325 Internal controls for electronic raffles. Electronic raffle licensees must:

- (1) Submit internal controls to us in the format we require for review and approval; and
- (2) Follow internal controls at all times; and
- (3) Make internal controls available to all members and volunteers for their individual functions; and
- (4) Ensure that all members and volunteers follow internal controls.

[]

NEW SECTION

WAC 230-11-330 Supervision of electronic raffles. (1) Electronic raffle licensees must designate one or more licensed gambling managers to oversee each electronic raffle.

- (2) At least one licensed gambling manager must be on-site during the operation of the electronic raffle and observe the manual drawing.
- (3) Only members or volunteers who are supervised by a licensed gambling manager can restart a raffle sales unit or otherwise adjust any associated network equipment for any reason.

[]

NEW SECTION

WAC 230-11-335 Wearing nametags. Anyone participating in the management or operation of an electronic raffle must wear a nametag. The nametag must:

- (1) Be provided by the electronic raffle licensee; and
- (2) Display at least the person's first name; and
- (3) Display the electronic raffle licensee's name; and
- (4) Be clear and visible.

[]

NEW SECTION

WAC 230-11-340 Provide rules to electronic raffle participants.

Electronic raffle licensees must post rules at stationary point of sales locations and on their website. In addition, rules must be made available from ticket sellers. Raffle rules must include at least the following:

- (1) The cost of each ticket including discount levels; and
- (2) Prize calculation including whether expenses are deducted from the prize calculation; and
- (3) Time the ticket sales will begin and end; and
- (4) Time of the drawing; and
- (5) Disclosure stating the participant is not required to be present to win the prize; and
- (6) Details of where the winning ticket number will be displayed on the licensee's website; and
- (7) Information about how to claim the electronic raffle prize and any restrictions including the time limit to claim the prize; and
- (8) Name of the electronic raffle licensee conducting the raffle; and
- (9) The statement, "If you or someone you know has a gambling problem, call the Washington State Problem Gambling Helpline at 1-800-547-6133 for confidential help 24 hours a day."; and
- (10) Any additional information we request.

[]

NEW SECTION

WAC 230-11-345 Electronic raffle prize payout requirements.

Electronic raffle licensees must comply with the following prize payout requirements:

- (1) Post and announce the winning raffle ticket at the home game authorized location; and
- (2) Ensure only actual expenses up to a maximum of \$2,000.00 are deducted from prize payouts. Actual expenses:
 - (a) Include equipment costs and supplies; and
 - (b) Must be documented in the format we require; and
- (3) Require the winner to present the raffle ticket receipt for verification; and
- (4) Ensure the winning raffle ticket number matches the raffle ticket receipt; and
- (5) Verify the winning raffle ticket was not voided; and
- (6) Post the winning raffle ticket number on the electronic raffle licensee's website within 48 hours of the drawing and for the du-

ration of the redemption period or until the prize is paid, whichever occurs first; and

(7) Verify and record the winner's identity and record the prize amount in the format we prescribe; and

(8) Pay prizes within 24 hours after notification and verification of the winning raffle ticket; and

(9) If the winner does not claim the prize at the home game, the licensee must allow a minimum of 30 days from the date of the drawing for winners to claim prizes. Prizes not claimed within the disclosed time period will become the licensee's proceeds.

[]

NEW SECTION

WAC 230-11-350 Raffle drawing postponement. If for any unforeseen reason (e.g., weather delay, power outage, or other reasonably unforeseen event) the electronic raffle is not completed on the day of the home game at which the raffle tickets are sold, the manual drawing of the winning raffle ticket must be completed the first business day when normal business operations resume. No additional raffle tickets may be sold after the unforeseen event occurs, only the manual draw may take place. Notice of the winning raffle ticket number must be posted on the electronic raffle licensee's website.

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NEW SECTION

WAC 230-11-355 Joint raffles prohibited. Electronic raffle licensees are not permitted to conduct joint raffles as outlined in WAC 230-11-012.

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ELECTRONIC RAFFLE TICKET REQUIREMENTS

NEW SECTION

WAC 230-11-360 Raffle ticket requirements. Raffle tickets must include the following information:

- (1) Name of the electronic raffle licensee; and
- (2) Raffle ticket number; and
- (3) Unique validation number or barcode information; and

(4) Purchase date and time (in 24 hour format showing hours and minutes).

[]

NEW SECTION

WAC 230-11-365 Raffle ticket receipt requirements. Raffle ticket receipts must include the following information:

- (1) Name and contact information of the electronic raffle licensee; and
- (2) Raffle ticket number(s); and
- (3) Unique validation number or barcode information; and
- (4) Raffle sales unit identifier; and
- (5) Date and time issued; and
- (6) Total cost and quantity; and
- (7) Website where the electronic raffle rules are available and winning raffle ticket number will be posted; and
- (8) The statement, "Ticket holders need not be present to win."; and
- (9) Date the prize must be claimed by.

[]

SELLING ELECTRONIC RAFFLE TICKETS

NEW SECTION

WAC 230-11-370 Authorized ticket sellers. (1) Only members of the electronic raffle licensee and volunteers under the supervision of a member, who are least 18 years old, may sell raffle tickets.

(2) Electronic raffle licensees must not pay members or volunteers for selling tickets or managing or operating the electronic raffle unless the person is a full-time or part-time employee of the electronic raffle licensee with duties other than selling electronic raffle tickets or managing or operating electronic raffles.

(3) Electronic raffle licensees may provide members or volunteers with noncash incentives for selling tickets if the licensee:

- (a) Bases the incentives on the number of raffle tickets sold; and
- (b) Gives incentives that do not exceed five percent of the gross gambling receipts of the raffle; and
- (c) Maintains a record of the name, address, and telephone number of each person and a description of each incentive they receive. This record should be made available upon our request.

[]

NEW SECTION

WAC 230-11-375 Restrictions on ticket sales. (1) Electronic raffle licensees must sell tickets for the electronic raffle for the same price unless offering an authorized discount plan; and

(2) Electronic raffle licensees must not:

(a) Sell tickets via the internet; and

(b) Sell tickets outside of the home game authorized location;

and

(c) Require anyone to purchase more than one raffle ticket; and

(d) Give away raffle tickets; and

(e) Allow members or volunteers to purchase raffle tickets for the event they work.

[]

NEW SECTION

WAC 230-11-380 Selling tickets at a discount. Electronic raffle licensees may sell raffle tickets at a discount if they:

(1) Use discount levels identified in internal controls; and

(2) Do not change the discount levels during the electronic raffle; and

(3) Offer only discount levels based on the number of tickets sold. Promotional discounts based on other criteria are not allowed; and

(4) Use up to no more than four discount levels for each electronic raffle; and

(5) Account for and document the number of raffle tickets sold at each price point and discount level.

[]

RECORDKEEPING REQUIREMENTS FOR ELECTRONIC RAFFLES

NEW SECTION

WAC 230-11-385 Recordkeeping requirements for electronic raffles. (1) Electronic raffle licensees must complete records, in the format we prescribe, for each raffle within 72 hours after each drawing; and

(2) Licensees must record all data in ink, on storage media, or in other permanent form; and

(3) Print, or back up in a permanent form, all the original sales data supporting the raffle drawing; and

- (4) Separately maintain the drawing's printed raffle tickets for a minimum of 30 days or until the prize is awarded, whichever is greater; and
- (5) Keep all winning tickets; and
- (6) Keep the video recording of each drawing; and
- (7) Keep the test form we prescribe for each electronic raffle; and
- (8) Keep any and all electronic raffle system reports listed in GLI-31; and
- (9) Retain all invoices or receipts for raffles prizes and expenses.

[]

NEW SECTION

WAC 230-11-390 Electronic raffle—Monthly records. Electronic raffle licensees must maintain accounting records as required in WAC 230-07-130. In addition, electronic raffle licensees must keep a set of permanent monthly records of electronic raffle activity to include at least:

- (1) The drawing date; and
- (2) Gross receipts; and
- (3) Prizes paid; and
- (4) Net income; and
- (5) Documentation of expenses; and
- (6) Documentation of how the proceeds were used; and
- (7) Cash over/short.

[]

NEW SECTION

WAC 230-11-395 Keeping and making records available. Electronic raffle licensees must:

- (1) Keep required, completed records from electronic raffles for at least three years from the end of the license year for which the records were completed; and
- (2) Retain records at the main administrative or business office of the electronic raffle licensee located in Washington state and have the records available for our review or audit.

[]

OTS-3288.1

NEW SECTION**WAC 230-16-153 Remote access of electronic raffle systems.**

Electronic raffle systems may be accessed remotely, at any time, only by a licensed representative of the manufacturer of the equipment for repair, troubleshooting, or technical support under the following provisions:

- (1) In order to be approved to remotely access the electronic raffle system, the manufacturer must:
 - (a) Submit an application and documentation as required in WAC 230-06-050; and
 - (b) Have the remote access solution tested. This may be done by:
 - (i) Submitting and transporting a working model of the remote access solution and related documentation, in the format we require, to us for testing and approval; or
 - (ii) Have the remote access solution tested on-site by us; and
- (2) For the purpose of continued monitoring, we may retain a working model or components after approval for as long as the remote access solution is in use in the state; and
- (3) The manufacturer must notify and receive approval from the electronic raffle licensee before remotely accessing the electronic raffle system for the reasons outlined above; and
- (4) The manufacturer must notify us within 24 hours after the remote access has occurred; and
- (5) The remote access must occur using a dedicated and secure communication protocol or application utilizing encryption such as a virtual private network (VPN); and
- (6) The remote access must only be conducted through a laptop or computer owned and issued by the manufacturer and must meet the following requirements:
 - (a) Employ full disk encryption; and
 - (b) Have a mechanism to detect and prevent installation of spyware, key loggers, hacking tools, or other malicious software; and
 - (c) Have current updated antivirus software; and
 - (d) Employ active firewall software; and
 - (e) Be conducted in a secure location where only the manufacturer or licensed representatives can be present while accessing the electronic raffle system remotely; and
- (7) All remote access to the electronic raffle system must use multifactor authentication; and
- (8) The communication must pass through at least one application-level firewall and not have the ability to allow for an alternate network path; and
- (9) Remote access shall only be enabled for the duration of repair, troubleshooting, or technical support and the connection terminated immediately after; and
- (10) Security standards for the remote access must be at least equivalent to commonly accepted national and international best practices for IT security such as National Institute of Science and Technology (NIST) standards as they currently exist or may be amended in the future; and
- (11) An electronic log shall be maintained by the electronic raffle system for documentation and audit purposes and must include the following information about all remote access to the electronic raffle system:
 - (a) Name and license number of manufacturer representative that accessed the system; and

- (b) Time and date the connection was made; and
- (c) Duration of the connection; and
- (d) Reason for the remote access; and
- (e) Any action taken, or further action required; and

(12) The manufacturer must disable access for an employee that is no longer with the company within 24 hours of termination.

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WSR 21-18-126

PROPOSED RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed September 1, 2021, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [21-14-099].

Title of Rule and Other Identifying Information: Portions of chapters 479-01, 479-05, 479-10, and 479-14 WAC.

Hearing Location(s): On November 19, 2021, at 9:00 a.m., at Everett, Washington. Taking place during the November transportation improvement board (TIB) meeting.

Date of Intended Adoption: November 19, 2021.

Submit Written Comments to: Kelsey Davis, P.O. Box 40901, Olympia, WA 98504-0901, email kelseyd@tib.wa.gov, fax 360-586-1165, by November 8, 2021.

Assistance for Persons with Disabilities: Contact Kelsey Davis, phone 360-586-1146, fax 360-586-1165, email kelseyd@tib.wa.gov, by November 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The small city and urban sidewalk program WAC criteria has not been updated in nearly a decade. The objective of this rule making is to transition the small city and urban sidewalk program to active transportation.

Statutory Authority for Adoption: Chapter 47.26 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: TIB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mr. Ashley Probart, P.O. Box 40901, Olympia, WA 98504-0901, 360-586-1139.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes are more inclusive for nonmotorized users of the transportation system. Program funding will continue to be distributed according to RCW and board direction.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

August 31, 2021
Ashley Probart
Executive Director

OTS-3279.1

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-01-040 Definitions and acronyms. The following definitions and acronyms apply:

- (1) TIB - The transportation improvement board.
- (2) Board - The transportation improvement board refers to the group of board members defined in RCW 47.26.121 and does not include the executive director or staff.
- (3) Director - The executive director of the transportation improvement board.
- (4) Staff - Refers to the employees of the transportation improvement board excluding the executive director.
- (5) Agency - All cities, towns, counties, and transportation benefit districts eligible to receive board funding.
- (6) Local agency official - Refers to a local agency elected official or staff who is authorized to sign contracts on the city, town, county, or transportation benefit district's behalf.
- (7) Urban area - Refers to the portion of a county within the federal urban area boundary as designated by the Federal Highway Administration and/or Washington state's Growth Management Act.
- (8) Six-year transportation plan - Refers to the city or county six-year transportation plan for coordinated transportation program expenditures per RCW 35.77.010 and 36.81.121.
- (9) Small city - Refers to an incorporated city or town with a population of less than five thousand.
- (10) (~~(Sidewalk)~~) Active transportation program - Refers to both the urban and small city (~~(sidewalk)~~) active transportation programs.
- (11) Population - Is defined as office of financial management official published population at the time of application.
- (12) Highway urban area population - As published by the office of financial management.
- (13) Scope change - Refers to a change in the physical characteristics and/or dimensions of a project.
- (14) CHAP - City Hardship Assistance Program.
- (15) TIA - Transportation improvement account.
- (16) Matching funds - All funds contributed to a project other than TIB funds.
- (17) Construction ready - Is defined as a project that has design, plans specifications and estimates, right of way, permits, and all sources of match funding to enable advertisement for bids.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-01-040, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-01-040, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-01-040, filed 11/23/99, effective 12/24/99. Statutory Authority: Chapter 47.26 RCW. WSR 95-04-072, § 479-01-040, filed 1/30/95, effective 3/2/95; WSR 90-11-035, § 479-01-040, filed 5/10/90, effective 6/10/90.]

OTS-3280.1

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-05-035 Qualifications for small city projects administered by another agency. A local agency that has a small city arterial program ((~~or~~)) project, small city preservation project, or active transportation project, may elect to have, or the executive director may require, the project to be administered by another city, a county, state department of transportation, or state transportation improvement board when:

(1) The local agency does not have certification acceptance from the state department of transportation per the Washington state department of transportation local agency guidelines manual, chapter 13; or

(2) The executive director determines that the local agency has insufficient capacity to directly administer transportation projects.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-05-035, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-05-035, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-051 Project phases. Projects authorized by the board are divided into the following phases:

(1) Design phase - Documents that must be received prior to phase approval include:

(a) Signed funding status form confirming that the funding partners are fully committed;

(b) Page from the adopted six-year transportation plan which lists the project;

(c) Signed fuel tax agreement;

(d) Consultant agreement (small city arterial and small city ((~~sidewalk~~)) active transportation programs only).

(2) Bid advertisement phase - Documents that must be received prior to phase approval include:

(a) Signed bid authorization form that contains:

(i) Plans and specification package;

(ii) Written confirmation of funding partners; and

(iii) Confirmation that full funding is available for the project;

(b) Signed confirmation that right of way is acquired or possession and use agreement is in place;

(c) Engineer's estimate is in final format;

(d) Consultant agreement (small city arterial and small city ((~~sidewalk~~)) active transportation programs only);

(e) Certification that a cultural resource assessment was completed;

(f) Traffic signal warrants.

(3) Construction phase - Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Bid tabulations; and

(c) Description of cost changes.

(4) Project closeout phase - Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Final summary of quantities; and

(c) Accounting history signed by a local agency official or the financial manager.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-051, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-051, filed 8/30/07, effective 9/30/07.]

OTS-3281.1

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-120 Projects that are eligible for small city preservation program funds. Eligible roadway and sidewalk projects, including active transportation projects, are those that maintain, repair, and/or resurface the existing infrastructure that is municipally owned and appropriate under Article II Section 40, 18th Amendment of the Washington state Constitution.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-120, filed 10/2/08, effective 11/2/08.]

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-160 City matching funds or services for small city preservation program. The board will consider a city's ability to provide matching funds or in-kind services when allocating funds under this program. Cash or in-kind match may be provided by the local agency in the form of:

(1) Cash match based on ability to contribute:

(a) If the city assessed valuation is greater than five hundred million, a match of ten percent will be contributed.

(b) If the city assessed valuation is from one hundred million to five hundred million, a five percent match will be contributed.

(2) If the city assessed valuation is under one hundred million, no cash match is necessary.

(3) Match is not expected or accepted if the construction services will be provided to the city by WSDOT or a county.

(4) All in-kind contributions must relate directly to the project and are limited to time, material, or real property donated to the agency to fulfill project requirements. In-kind match may include:

(a) Community involvement including volunteer participation.

(b) City force labor, materials, and/or equipment (excluding costs incurred for qualification in WAC 479-10-122 or application for funds).

(c) Other street beautification.

(d) In-kind match must be documented with labor reports, equipment reports, receipts, and/or citizen volunteer time with hourly rate (not to exceed fifteen dollars per hour).

(e) Contributions of overhead, per diem, travel expenses, time spent at advisory groups or meetings, or time from individuals receiving compensation through the grant will not be accepted as in-kind match.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-160, filed 10/2/08, effective 11/2/08.]

OTS-3282.2

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-14-011 Programs funded from the transportation improvement account. The transportation improvement account funds the following programs:

- (1) The urban program;
- (2) The small city arterial program:
 - (a) Grants; and
 - (b) Federal match funding.
- (3) The ((sidewalk)) active transportation programs:
 - (a) Urban ((sidewalk)) active transportation program; and
 - (b) Small city ((sidewalk)) active transportation program.
- (4) The arterial preservation program.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-14-011, filed 9/30/13, effective 10/31/13; WSR 12-08-060, § 479-14-011, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-011, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-131 Award criteria for the urban program. The board establishes the following criteria for use in evaluating urban program grant applications:

- (1) Mobility improvements - Includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.
- (2) Physical condition - Includes pavement, structural, and geometric design features of the arterial.
- (3) Growth and development improvements - Provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.

(4) Safety improvements - Addresses (~~accident~~) crash reduction, elimination of roadway hazards, corrects roadway deficiencies, and eliminates railroad at-grade crossing.

(5) Sustainability - Improves mode accessibility, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.

(6) Constructability - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-131, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-131, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-402 ((Sidewalk)) Active transportation program sub-programs. In order to provide equity for project grant funding, the ((sidewalk)) active transportation program is divided into the urban ((sidewalk)) active transportation program and the small city ((side-walk)) active transportation program.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-402, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-411 Who is eligible to receive ((sidewalk)) active transportation program funding. Each of the subprograms has separate criteria for agency eligibility as follows:

(1) Urban ((sidewalk)) active transportation program agency eligibility:

(a) Incorporated cities with a population of five thousand and over.

(b) Incorporated cities with a population less than five thousand which are located within a federally designated urban area.

(c) Counties with a federally designated urban area.

(2) Small city ((sidewalk)) active transportation program agency eligibility: Incorporated cities with a population under five thousand.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-411, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 13-24-092, filed 12/3/13, effective 1/3/14)

WAC 479-14-421 What projects are eligible for ((sidewalk)) active transportation program funding. Minimum project requirements for each subprogram are as follows:

(1) Urban ((sidewalk)) active transportation program project eligibility:

(a) Must be on or related to a functionally classified route; and

(b) Primary purpose of the project is transportation and not recreation.

(2) Small city ((sidewalk)) active transportation program project eligibility:

(a) The project must be located on or related to a street within the TIB designated arterial system; and

(b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-24-092, § 479-14-421, filed 12/3/13, effective 1/3/14; WSR 12-08-060, § 479-14-421, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-431 Award criteria for the ((sidewalk)) active transportation program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city ((sidewalk)) active transportation projects:

(1) Safety improvement - Projects that address hazard mitigation and ((accident)) crash reduction.

(2) ((Pedestrian)) Mobility access - Projects that improve or provide access to facilities including, but not limited to:

(a) Schools;

(b) Public buildings;

(c) Central business districts;

(d) Medical facilities;

(e) Activity centers;

(f) High density housing (including senior housing);

(g) Transit facilities;

(3) Completes or extends existing ((sidewalks)) active transportation facilities.

(4) Completes or extends sidewalks to facilities listed in subsection (2) of this section that are identified in local agency latecomer agreements. The local agency must agree to collect the latecomer fee at the time of development and place the fee in its transportation improvement program.

(5) Local support - Addresses local needs and is supported by the local community.

(6) Constructability - Demonstrates a strong likelihood to reach construction within the timelines established in WAC 479-05-211.

(7) Sustainability - Right sizing sidewalk or shared use path width and material type, provides hardscaping and native plantings, addresses low impact development or natural drainage practices.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-431, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-431, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-441 Regions of the ((sidewalk)) active transportation program. The board allocates ((sidewalk)) active transportation program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-441, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-14-451 Distribution formula for the ((sidewalk)) active transportation program. For the purpose of allocating funds, the ((sidewalk)) active transportation program is divided into two subprograms, the urban ((sidewalk)) active transportation program and the small city ((sidewalk)) active transportation program. The distribution formulas are as follows:

(1) Urban ((sidewalk)) active transportation program - The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

(2) Small city ((sidewalk)) active transportation program - Region small city population divided by statewide small city population. For either program, the board may adjust regional allocations by plus or minus five percent of the total annual allocation to fully fund the approved list of regional projects. When requested by the

board, staff will update the regional allocations to ensure equitable distribution of funds.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-14-451, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-14-451, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-461 Matching requirement for the ((sidewalk)) active transportation program. The ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(1) The urban ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(a) For cities:

(i) If the city valuation is under one billion dollars, the matching rate is ten percent of total project costs.

(ii) If the city valuation is one billion dollars to two and one-half billion dollars, the rate is fifteen percent of total project costs.

(iii) If the city valuation is over two and one-half billion dollars, the rate is twenty percent of total project costs.

(b) For counties:

(i) If the road levy valuation is under three billion dollars, the rate is ten percent of total project costs.

(ii) If the road levy valuation is between three billion dollars to ten billion dollars, the rate is fifteen percent of total project costs.

(iii) If the road levy valuation is over ten billion dollars, the rate is twenty percent of total project costs.

(c) For transportation benefit districts, the match is based on the valuation of the city or county in which the project is located. If the project lies within more than one city or county, the match is determined by the city or county that has the greatest valuation.

(2) The small city ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(a) If the city assessed valuation is under one hundred million dollars, no cash match is necessary.

(b) If the city assessed valuation is from one hundred million dollars to five hundred million dollars, a five percent match will be contributed.

(c) If the city assessed valuation is greater than five hundred million dollars, a match of ten percent will be contributed.

The board uses the current published valuation from the department of revenue.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-461, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-461, filed 4/3/12, effective 5/4/12.]