

WSR 22-03-006

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed January 6, 2022, 10:24 a.m., effective January 6, 2022, 10:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1 because, per statute, these rules provide rates used for refunds and property valuations during 2022.

Purpose: The department is amending:

- WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2021, which is used when refunding property taxes paid in 2022, as required by RCW 84.69.100.
- WAC 458-30-262 to provide the interest rate and property tax component used when valuing classified farm and agricultural land during the 2022 assessment year, as required by RCW 84.34.065.
- WAC 458-30-590 to provide the rate of inflation published in 2021, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2022, as required by RCW 84.34.310.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The department is specifically and explicitly required by statute to annually update these rules to provide the information identified above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: January 6, 2022.

Atif Aziz
Rules Coordinator

OTS-3380.1

AMENDATORY SECTION (Amending WSR 21-01-210, filed 12/23/20, effective 1/1/21)

WAC 458-18-220 Refunds—Rate of interest. (1) **Introduction.** Interest applies to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. Interest also applies to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030.

(2) **Calculation of interest rate.** The interest rate is calculated from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid.

(3) **Interest rates.** The following rates are applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
2014	2013	0.085%

Year tax paid	Auction Year	Rate
2015	2014	0.060%
2016	2015	0.085%
2017	2016	0.340%
2018	2017	1.130%
2019	2018	2.085%
2020	2019	2.040%
2021	2020	0.165%
<u>2022</u>	<u>2021</u>	<u>0.050%</u>

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 21-01-210, § 458-18-220, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-18-220, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-18-220, filed 12/27/18, effective 1/1/19; WSR 18-01-147, § 458-18-220, filed 12/20/17, effective 1/1/18; WSR 17-01-162, § 458-18-220, filed 12/21/16, effective 1/1/17; WSR 16-01-035, § 458-18-220, filed 12/9/15, effective 1/1/16; WSR 15-01-166, § 458-18-220, filed 12/23/14, effective 1/1/15; WSR 14-01-059, § 458-18-220, filed 12/13/13, effective 1/1/14; WSR 13-02-053, § 458-18-220, filed 12/26/12, effective 1/1/13; WSR 12-01-040, § 458-18-220, filed 12/13/11, effective 1/1/12. Statutory Authority: RCW 84.69.100. WSR 11-02-017, § 458-18-220, filed 12/29/10, effective 1/1/11; WSR 10-07-038, § 458-18-220, filed 3/10/10, effective 4/10/10; WSR 08-24-094, § 458-18-220, filed 12/2/08, effective 1/2/09; WSR 07-24-037, § 458-18-220, filed 11/30/07, effective 12/31/07; WSR 06-21-059, § 458-18-220, filed 10/16/06, effective 11/16/06; WSR 05-22-096, § 458-18-220, filed 11/1/05, effective 12/2/05; WSR 04-24-101, § 458-18-220, filed 12/1/04, effective 1/1/05; WSR 03-24-014, § 458-18-220, filed 11/20/03, effective 12/21/03; WSR 02-23-081, § 458-18-220, filed 11/19/02, effective 12/20/02; WSR 02-03-039, § 458-18-220, filed 1/8/02, effective 2/8/02; WSR 00-24-106, § 458-18-220, filed 12/6/00, effective 12/31/00; WSR 99-24-033, § 458-18-220, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.69.100. WSR 99-01-066, § 458-18-220, filed 12/14/98, effective 1/1/99; WSR 98-01-177, § 458-18-220, filed 12/23/97, effective 1/1/98; WSR 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; WSR 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; WSR 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; WSR 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. WSR 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; WSR 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; WSR 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). WSR 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; WSR 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). WSR 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

OTS-3381.1

AMENDATORY SECTION (Amending WSR 21-01-210, filed 12/23/20, effective 1/1/21)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year (~~(2021)~~) 2022, the interest rate and the property tax component that are used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is (~~(5.70)~~) 5.62 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((1.24)) <u>1.25</u>	Lewis	((1.09)) <u>0.97</u>
Asotin	((1.07)) <u>1.15</u>	Lincoln	1.15
Benton	((1.15)) <u>1.09</u>	Mason	((1.15)) <u>1.04</u>
Chelan	0.99	Okanogan	((1.15)) <u>1.17</u>
Clallam	((1.01)) <u>1.03</u>	Pacific	((1.20)) <u>1.10</u>
Clark	1.08	Pend Oreille	((1.01)) <u>0.98</u>
Columbia	((1.19)) <u>1.16</u>	Pierce	((1.27)) <u>1.22</u>
Cowlitz	((1.05)) <u>1.07</u>	San Juan	((0.73)) <u>0.72</u>
Douglas	((1.09)) <u>1.11</u>	Skagit	((1.08)) <u>1.06</u>
Ferry	((1.02)) <u>1.06</u>	Skamania	((1.07)) <u>1.04</u>
Franklin	0.99	Snohomish	((1.03)) <u>0.97</u>
Garfield	((1.02)) <u>1.25</u>	Spokane	((1.21)) <u>1.17</u>
Grant	((1.15)) <u>1.10</u>	Stevens	((0.95)) <u>0.91</u>
Grays Harbor	((1.22)) <u>1.19</u>	Thurston	((1.26)) <u>1.24</u>
Island	0.90	Wahkiakum	((0.82)) <u>0.79</u>
Jefferson	((1.00)) <u>0.99</u>	Walla Walla	1.24
King	((0.99)) <u>1.01</u>	Whatcom	((1.05)) <u>1.01</u>
Kitsap	((1.03)) <u>1.02</u>	Whitman	((1.41)) <u>1.42</u>
Kittitas	((0.90)) <u>0.91</u>	Yakima	((1.20)) <u>1.14</u>
Klickitat	((1.01)) <u>0.97</u>		

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 21-01-210, § 458-30-262, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-30-262, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-30-262, filed 12/27/18, effective 1/1/19; WSR

18-01-147, § 458-30-262, filed 12/20/17, effective 1/1/18; WSR
 17-01-162, § 458-30-262, filed 12/21/16, effective 1/1/17; WSR
 16-01-035, § 458-30-262, filed 12/9/15, effective 1/1/16; WSR
 15-01-166, § 458-30-262, filed 12/23/14, effective 1/1/15; WSR
 14-01-059, § 458-30-262, filed 12/13/13, effective 1/1/14; WSR
 13-02-053, § 458-30-262, filed 12/26/12, effective 1/1/13; WSR
 12-01-040, § 458-30-262, filed 12/13/11, effective 1/1/12. Statutory
 Authority: RCW 84.34.065 and 84.34.141. WSR 11-02-015, § 458-30-262,
 filed 12/29/10, effective 1/1/11. Statutory Authority: RCW 84.34.055
 and 84.34.141. WSR 10-09-049, § 458-30-262, filed 4/15/10, effective
 5/16/10. Statutory Authority: RCW 84.34.065 and 84.34.141. WSR
 10-02-025, § 458-30-262, filed 12/29/09, effective 1/1/10; WSR
 08-24-093, § 458-30-262, filed 12/2/08, effective 1/2/09; WSR
 08-04-051, § 458-30-262, filed 1/31/08, effective 3/2/08; WSR
 07-01-011, § 458-30-262, filed 12/7/06, effective 1/1/07; WSR
 05-24-028, § 458-30-262, filed 11/30/05, effective 1/1/06; WSR
 05-01-051, § 458-30-262, filed 12/7/04, effective 1/1/05; WSR
 03-24-013, § 458-30-262, filed 11/20/03, effective 12/21/03; WSR
 02-23-080, § 458-30-262, filed 11/19/02, effective 12/20/02; WSR
 02-03-040, § 458-30-262, filed 1/8/02, effective 2/8/02. Statutory Au-
 thority: RCW 84.34.065, 84.34.360. WSR 00-24-105, § 458-30-262, filed
 12/6/00, effective 1/1/01; WSR 99-24-034, § 458-30-262, filed
 11/23/99, effective 1/1/00. Statutory Authority: RCW 84.34.065,
 84.34.360 and 84.08.010. WSR 99-01-067, § 458-30-262, filed 12/14/98,
 effective 1/1/99. Statutory Authority: RCW 84.34.065, 84.34.141 and
 84.08.010. WSR 98-01-178, § 458-30-262, filed 12/23/97, effective
 1/1/98. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and
 84.34.070. WSR 97-02-066, § 458-30-262, filed 12/31/96, effective
 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and
 84.34.070. WSR 96-01-095, § 458-30-262, filed 12/19/95, effective
 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and
 84.08.070. WSR 95-09-041, § 458-30-262, filed 4/14/95, effective
 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065.
 WSR 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statu-
 tory Authority: RCW 84.08.010 and 84.08.070. WSR 93-07-067, §
 458-30-262, filed 3/17/93, effective 4/17/93; WSR 92-03-068, §
 458-30-262, filed 1/14/92, effective 2/14/92; WSR 91-04-001, §
 458-30-262, filed 1/24/91, effective 2/24/91; WSR 90-24-087, §
 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW
 84.08.010(2) and 84.34.141. WSR 90-02-080 (Order PT 90-1), §
 458-30-262, filed 1/2/90, effective 2/2/90.]

OTS-3382.1

AMENDATORY SECTION (Amending WSR 21-01-210, filed 12/23/20, effective 1/1/21)

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—
 Calculation.** (1) **Introduction.** This rule provides the rates of infla-
 tion discussed in RCW 84.34.330 and WAC 458-30-550 Exemption—Removal
 or withdrawal. It also explains the department of revenue's

(department) obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department - Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based on the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from the farm and agricultural or timber land classifications that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 2010 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 2017, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 2010 through 2017. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89

YEAR	PERCENT	YEAR	PERCENT
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
2014	1.591	2015	0.251
2016	0.953	2017	1.553
2018	2.169	2019	1.396
2020	0.602	<u>2021</u>	<u>3.860</u>

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 21-01-210, § 458-30-590, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-30-590, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-30-590, filed 12/27/18, effective 1/1/19; WSR 18-01-147, § 458-30-590, filed 12/20/17, effective 1/1/18; WSR 17-01-162, § 458-30-590, filed 12/21/16, effective 1/1/17; WSR 16-01-035, § 458-30-590, filed 12/9/15, effective 1/1/16; WSR 15-01-166, § 458-30-590, filed 12/23/14, effective 1/1/15; WSR 14-01-059, § 458-30-590, filed 12/13/13, effective 1/1/14; WSR 13-02-053, § 458-30-590, filed 12/26/12, effective 1/1/13; WSR 12-01-040, § 458-30-590, filed 12/13/11, effective 1/1/12. Statutory Authority: RCW 84.34.360. WSR 11-02-016, § 458-30-590, filed 12/29/10, effective 1/1/11; WSR 10-02-027, § 458-30-590, filed 12/29/09, effective 1/1/10; WSR 08-24-115, § 458-30-590, filed 12/3/08, effective 1/3/09; WSR 08-04-050, § 458-30-590, filed 1/31/08, effective 3/2/08. Statutory Authority: RCW 84.34.360 and 84.34.310. WSR 07-01-012, § 458-30-590, filed 12/7/06, effective 1/1/07; WSR 05-24-119, § 458-30-590, filed 12/7/05, effective 1/1/06; WSR 05-01-052, § 458-30-590, filed 12/7/04, effective 1/1/05; WSR 03-24-076, § 458-30-590, filed 12/2/03, effective 1/2/04; WSR 02-24-058, § 458-30-590, filed 12/3/02, effective 1/3/03; WSR 02-03-041, § 458-30-590, filed 1/8/02, effective 2/8/02; WSR 00-24-107, § 458-30-590, filed 12/6/00, effective 1/1/01; WSR 99-24-035, § 458-30-590, filed 11/23/99, effective 12/24/99; WSR 99-01-068, § 458-30-590, filed 12/14/98, effective 1/1/99; WSR 98-01-179, § 458-30-590, filed 12/23/97, effective 1/1/98; WSR 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; WSR 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; WSR 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. WSR 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; WSR 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. WSR 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. WSR 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. WSR 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; WSR 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

WSR 22-03-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-03—Filed January 6, 2022, 3:25 p.m., effective January 14, 2022]

Effective Date of Rule: January 14, 2022.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000G; and amending WAC 220-330-160.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 6, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-16000G Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-330-160, it is unlawful to take, dig for or possess razor clams taken for personal use from any beaches in any razor clam area except as provided for in this section:

(1) Effective 12:01 p.m. January 14 through 11:59 p.m. January 20, 2022, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	January 14 through 20	From 12:01 p.m. to 11:59 p.m.
Area 2	Closed	Closed
Area 3	January 15 through 18	From 12:01 p.m. to 11:59 p.m.
Area 4	January 15, 17, and 19	From 12:01 p.m. to 11:59 p.m.
Area 5	January 16	From 12:01 p.m. to 11:59 p.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

(2) It is unlawful to dig for razor clams at any time in the Long Beach and Copalis Beach Clam sanctuaries defined in WAC 220-320-130.

[]

REPEALER

The following section of the Washington Administrative Code are repealed effective 12:01 a.m. January 21, 2022:

WAC 220-330-16000G Razor clams—Areas and seasons.

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

WSR 22-03-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-02—Filed January 7, 2022, 12:38 p.m., effective January 7, 2022, 12:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Close commercial crab harvest in Region 1 on January 9, 2022, at 5:40 p.m. when share attainment is projected. The purpose of this emergency rule is to:

WAC 220-340-42000A:

(1) Requires all crab harvested to be delivered to an original receiver or recorded on a shellfish transportation ticket within 36 hours of harvest. Requires separate transportation tickets to be completed for each day's harvest not delivered to an original receiver that is stored off the fishing vessel. Implements a 10-day restriction on the length of time that crab may be stored off-vessel before being delivered to an original receiver.

(2) Implements a labeling requirement for crab that are stored off-vessel.

(3) Implements a labeling requirement for crab that are stored off-vessel and not delivered to an original receiver within 36 hours.

WAC 220-340-45500G:

(1) Defines subareas east and west of Marine Fish-Shellfish Catch Reporting Area 23C to align with agreed-to boundaries within the Region 3 2021-2022 crab management plan.

(2) Opens Puget Sound commercial crab harvest in Crab Management Regions 3-3 effective immediately. Closes Puget Sound commercial crab harvest in Crab Management Region 1 effective January 9, 2022, at 5:40 p.m. Describes hard closure dates by crab management region. Maintains closure of Crab Management Regions 2 East, 2 West, 3-1, 3-2, and 3-4.

(3) Closes Port Angeles Harbor to commercial crab harvest due to public health decrees.

(4) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically limited.

WAC 220-340-47000E:

(1) Allows deployment of up to 35 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 1 effective immediately until January 9, 2022, at 5:40 p.m.

(2) Allows deployment of up to 60 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-3.

(3) Requires undeployed buoy tags to be retained for inspection.

WAC 220-352-34000Q:

(1) Clarifies the Puget Sound commercial dealer quick reporting requirements.

(2) Implements a Puget Sound "stored crab" harvest report requirement for crab not delivered to an original receiver with [within] 36 hours of harvest.

(3) Implements a Puget Sound sales report requirement for stored crab that have been reported but not landed.

(4) Implements a registration requirement for commercial license holders to notify the department of their fishing status and which crab management area a license [licensee] will be fishing in, if active.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000V, 220-340-45500E, 220-340-47000C and 220-352-34000N; and amending WAC 220-340-420, 220-340-455, 220-340-470, and 220-352-340.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There is sufficient allocation in Crab Management Region 1 to allow for commercial harvest until 5:40 p.m., January 9, 2022. There is sufficient allocation available in Crab Management Region 3-3 to accommodate continued commercial harvest.

These provisions are in conformity with agreed regional management plans with applicable tribes or in accordance with procedures proscribed in the shellfish implementation plan when no annual regional management plan agreement has been reached. These management plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustment of season structure may be made pending updated harvest data.

There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 4.

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

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

Date Adopted: January 7, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000A Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420:

(1) Crab Management Region 1 includes Marine Fish-Shellfish (MFSF) Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B. Crab Management Region 2E includes MFSF Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East. Crab Management Region 2 West includes MFSF Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-1 includes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 25A, 25E, and 23D. Crab Man-

agement Region 3-3 includes MFSF Catch Reporting Areas 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

(2) Effective immediately, until further notice, all crab removed from a vessel licensed and fishing in Puget Sound that are not delivered to an original receiver within 36 hours must be recorded on a commercial fish and shellfish transportation ticket. Separate commercial fish and shellfish transportation tickets must be filled out for each day's harvest retained in this manner. It is illegal to retain and store crab prior to delivery and completion of a fish receiving ticket for more than 10 days.

(3) Effective immediately, until further notice, all crab retained and removed from a vessel licensed and fishing in Puget Sound must be stored in containers based on date retained and labeled with the following:

(a) Date of harvest,

(b) An estimate of pounds of crab in each container, and

(c) Either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from.

(4) Effective immediately, until further notice, all crab retained and removed from a vessel licensed and fishing in Puget Sound that are not delivered to an original receiver within 36 hours must be stored in containers based on date retained and labeled with the following:

(a) Date of harvest,

(b) An estimate of pounds of crab in each container,

(c) Either the Marine Fish-Shellfish (MFSF) Catch Reporting Area or the Crab Management Region the catch originated from, and

(d) Commercial fish and shellfish transportation ticket number.

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NEW SECTION

WAC 220-340-45500G Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455:

(1) For the purposes of crab harvest allocation, fishing season, and catch reporting, the following Marine Fish-Shellfish Catch Reporting Areas are modified as follows:

(a) Catch Area 23C East (23C-E) includes those waters of Puget Sound westerly of a line due north from the Ediz Hook light to the international boundary; and easterly of a line projected due north from Low Point.

(b) Catch Area 23C West (23C-W) includes those waters of Puget Sound westerly of a line due north from Low Point to the international boundary; and easterly of a line projected due north from the mouth of the Sekiu River.

(2) It is currently permissible to harvest Dungeness crab for commercial purposes from the following areas, as listed:

(a) Crab Management Region 3-3; effective immediately until further notice.

(b) Crab Management Region 1; effective immediately until January 9, 2022 at 5:40 p.m.

(3) Effective immediately, until further notice, the following areas are closed to commercial crab fishing: Crab Management Regions 2E, 3-2 and 3-4.

(4) Effective January 9, 2022 at 5:40 p.m. the following areas are closed to commercial crab fishing: Crab Management Region 1.

(5) Public Health Closures: Effective immediately, until further notice, the following areas are closed to commercial crab fishing:

That portion of Marine Fish/Shellfish Catch Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(6) Limited Commercial Areas: It is permissible to harvest Dungeness crab for commercial purposes from the following areas as listed:

Region 1: Effective immediately until January 9, 2022 at 5:40 p.m.:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(7) Commercial exclusion areas: It is permissible to harvest crab for commercial purposes from the following areas as listed:

Region 1: Effective immediately until January 9, 2022 at 5:40 p.m.:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island, thence to Chuckanut Rock, thence to the most southerly tip of Clark's Point.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy,

thence west to shore and following the shoreline to the point of origin.

(i) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B, which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

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NEW SECTION

WAC 220-340-47000E Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas.

Notwithstanding the provisions of WAC 220-340-470:

(1) Effective immediately, until further notice, it is unlawful for any person to harvest crabs for commercial purposes with more than 60 pots per license per buoy tag number in Crab Management Region 3-3.

(2) Effective immediately, until January 9, 2022 at 5:40 p.m., it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per license per buoy tag number in Crab Management Region 1.

(3) All remaining, undeployed buoy tags per license per region must be onboard the designated vessel and available for immediate inspection.

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NEW SECTION

WAC 220-352-34000Q Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340,

(1) Effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab landed by WDFW licensed Puget Sound commercial crab harvesters to fail to report to the department the previous day's purchases by 10:00 a.m. the day following the purchase. Reports must be made online at the Puget Sound commercial crab reporting website, by fax to (360) 302-3031, or by e-mail at crab.report@dfw.wa.gov. Reports must include all of the following:

- (a) Dealer name,
- (b) Dealer license number,
- (c) Dealer phone number,
- (d) Date of delivery of crab to the original receiver, and
- (e) The total number of pounds of crab caught by WDFW licensed commercial fishers by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area.

(2) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must deliver all crab removed from their vessel to a licensed original receiver within 36 hours or submit a report of crab retained for delivery at a future date to the Department. Reports must be received within 36 hours following an offload. Reports must be made by online on the Puget Sound commercial crab reporting website or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) Harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) Date of harvest,
- (e) An estimate of pounds of harvest retained by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area, and
- (f) A commercial fish and shellfish transportation ticket number.

(3) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must report the delivery of all crab to an original receiver that were previously retained off-vessel by 10:00 a.m. the day following delivery to an original receiver. Reports must be made online at the Puget Sound commercial crab reporting website, or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

- (a) Harvester name,
- (b) WDFW issued vessel ID,
- (c) Puget Sound commercial license number,
- (d) Date of sale,
- (e) Dealer name,
- (f) Commercial shellfish transportation ticket number(s) delivered, and
- (g) Fish receiving ticket number(s) corresponding to landing date of delivery.

(4) Effective immediately, until further notice, Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region that gear will be deployed in for each license they hold prior to the opening date or if licenses are not being fished. Registrations must be updated when gear moves between areas or fishing activity stops. Registrations can be made by registering on the WDFW Puget Sound commercial crabbing web page or sending an email to crab.report@dfw.wa.gov, detailing the following information:

- (a) Vessel Operator Name
- (b) Vessel Name and Vessel Registration Number
- (c) License Number(s) to be fished
- (d) Crab Management Region to be fished or an indication that licenses will remain unfished
- (e) Gear Deployment Date

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-340-42000X Commercial crab fishery—Unlawful acts. (21-272)
- WAC 220-340-45500F Commercial crab fishery—Seasons and areas—Puget Sound. (21-272)
- WAC 220-340-47000D Commercial crab fishery—Gear requirements—Puget Sound. (21-272)
- WAC 220-352-34000P Puget Sound crab—Additional reporting requirements. (21-272)

WSR 22-03-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-04—Filed January 7, 2022, 4:18 p.m., effective January 7, 2022, 4:18 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open coastal commercial crab harvest seasons north of Destruction Island.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000G; and amending WAC 220-340-450.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. Provisions of state/tribal agreements have been met allowing opening north of Destruction Island.

Pot limits are in place to reduce crowding under WSR 22-02-024, filed December 28, 2021.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 7, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45000H Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area: The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay.

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(b) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following areas for the durations specified:

i. The waters between Klipsan Beach (46°28.00) and Oysterville (46°33.00) until 8:00 a.m. January 21, 2022; and

ii. The waters between Oysterville (46°33.00) and US/Canada Border until 8:00 a.m. February 15, 2022.

(2) Open area: The area from Klipsan Beach (46°28.00) to Destruction Island (47°40.50) and Grays Harbor.

(a) It is permissible to set crab gear beginning at 8:00 a.m., January 8, 2022.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., January 11, 2022.

(3) Open area: The area from Destruction Island (47°40.50) to US/Canada Border.

(a) It is permissible to set crab gear beginning at 8:00 a.m., January 12, 2022.

(b) It is permissible to pull crab gear beginning at 9:00 a.m., January 15, 2022.

(4) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(5) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(6) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner: (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(7) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-45000G Commercial crab fishery—Season and areas—Coastal. (21-281)

WSR 22-03-022
EMERGENCY RULES
HIGHLINE COLLEGE

[Filed January 10, 2022, 10:21 a.m., effective January 10, 2022, 10:21 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To update provisions to the supplemental discipline procedure for cases involving Title IX sexual harassment: "order of precedence" section, enabling the college to contract with administrative law judges or other persons to act as the presiding officer; to update the Title IX appeals provision; to update the "evidence" section to remove the provision regarding cross-examination.

Citation of Rules Affected by this Order: Amending WAC 132I-126-505, 132I-126-565, and 132I-126-585.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. United States Department of Education (DOE), Office of Civil Rights, Letter to Students, Educators, and Other Stakeholders, *Victim Rights Law Center et al. v. Cardona* <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Highline College is required by DOE to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

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

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

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

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

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

Date Adopted: January 10, 2022.

Ay Saechao
 Dean of Student Support and Funding Services

OTS-3561.1

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-505 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these

supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence. Highline College may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-505, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-565 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20

U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-565, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-585 Appeals. (~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132I-126-300.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

~~(3) President's office shall serve the final decision on the parties simultaneously.)~~ (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-585, filed 6/23/21, effective 7/24/21.]

WSR 22-03-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-262—Filed January 10, 2022, 12:55 p.m., effective January 10, 2022, 12:55 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to allow the limited use of electronic calls when hunting lesser snow geese and Ross' geese in Goose Management Area 1 during February 12 - 22, 2022 (11 out of 107 total season days) and in Goose Management Area 4 during February 12 - March 2, 2022 (19 out of 107 total season days), bringing state regulation in alignment with federal allowances (C.F.R. 20.21.g.1).

Citation of Rules Affected by this Order: Amending WAC 220-414-090.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Record high winter flocks in both Goose Management Area 1 and Goose Management Area 4 now pose concerns over general welfare of major agricultural regions that experience intense feeding flocks during winter and spring months as well as pose a public safety threat in zones of high regional and international aircraft traffic.

New data, presented to flyway management partners in late August 2021, indicated the third consecutive year of exceptionally high productivity of lesser snow geese from Wrangel Island, Russia, forecasting record-setting population size and anticipated winter flock concentrations. Subsequently, in mid-September 2021, briefings by the Canadian Wildlife Service to Vancouver International Airport and early arrival of fall migrant lesser snow goose flocks raised concerns over the impact of these geese to multiple sectors of the region. In mid-October 2021, requested renewal of agricultural depredation permits and a minimum of five new farm inquiries were made to the United States Fish and Wildlife Service and Washington department of fish and wildlife targeting lesser snow geese in region of Goose Management Area 1 (Skagit-Fraser). During November 2021, aerial photos documented tens of thousands of lesser snow geese on Moses Lake, the most ever documented in this portion of Goose Management Area 4 (Columbia Basin).

WAC 220-416-060 defines the term "white geese" as including lesser snow geese, Ross' geese and their blue phase (or plumage) variants, as the two species have identical plumage, and are nearly indistinguishable in flight. In Washington, lesser snow geese are the predominant white goose during the winter months, with [and] Ross' geese are considered an incidental or rare occurrence as Washington is on the edge of the species' range in North America.

The amendment of this rule allows for an extremely limited and targeted use of electronic calls during white goose-only season segments for lesser snow geese and Ross' geese. The amendment of this rule only impacts the lesser snow goose population that has experi-

enced rapid population growth in the past three years and is now significantly above both established flyway and winter-flock population objectives. It is consistent with the Pacific Flyway Management Plan for the Wrangel Island Population for [of] Lesser Snow Geese, that prescribes harvest rates in excess of 14 percent when total breeding population estimate is above 120,000 geese and Skagit-Fraser winter flock size estimate is above 70,000 adult geese. The current total breeding population index (three-year average) is 611,063 geese and the Skagit-Fraser winter flock index (three-year average) is 84,624 adult geese.

This rule amendment has little to no impact on the Ross' goose populations that remains above the established flyway population objective. It is consistent with the Pacific Flyway Plan for Ross' Geese that prescribes including Ross' geese without special restrictions in "white goose" regulations when the population is at or above 100,000 breeding birds (counted on breeding areas in the spring), or 150,000 wintering birds (in California). The current breeding population index (three-year average) is 348,400 breeding birds. In Washington, harvest of this species is incidental to harvest of lesser snow geese.

Guidance set under WAC 220-440-060 prioritizes the use of general season hunting to help minimize damage potential and concerns over killing wildlife causing private property damage under a migratory bird agricultural depredation permit. For migratory gamebirds, sport harvest allows consumptive use of harvested geese, whereas agricultural depredation permits do not allow for consumptive uses as this is defined as "take" outside of established seasons under the Migratory Bird Treaty Act (16 U.S.C. §704).

The department will propose this amendment for a permanent rule in the 2022 updates to migratory gamebird hunting season-setting rule making.

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

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

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

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

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

Date Adopted: January 10, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-414-09000A Use of decoys and calls. Notwithstanding the provisions of WAC 220-414-090, effective immediately, until further notice, the change shall read as follows:

(2) It is unlawful to hunt waterfowl, wild turkeys, or deer with the use or aid of electronic calls, except electronic calls may be used for lesser snow geese and Ross' geese during February 12 - 22, 2022 in Goose Management Area 1 and February 12 - March 2, 2022 in Goose Management Area 4. All other waterfowl are closed to harvest during these specified season dates described by WAC 220-416-060.

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WSR 22-03-045
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 12, 2022, 10:58 a.m., effective January 12, 2022, 10:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is adopting WAC 388-434-0015 Waiver of mid-certification reviews during the COVID-19 pandemic, to implement administrative flexibilities regarding mid-certification reviews as allowed under Families First Coronavirus Response Act (H.R. 6201), extended via the Continuing Appropriations Act (H.R. 8337).

Citation of Rules Affected by this Order: New WAC 388-434-0015.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, and 74.08A.120.

Other Authority: H.R. 6201 and 8337.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These changes are required to implement provisions of Section 2301 of the Families First Coronavirus Response Act (H.R. 6201) and flexibilities available through Food and Nutrition Service waiver approval.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: January 12, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4805.5

NEW SECTION

WAC 388-434-0015 Waiver of mid-certification reviews during the COVID-19 pandemic. (1) Mid-certification review requirements for cash and food assistance under WAC 388-418-0011 are waived from January 1, 2022, to March 31, 2022.

(2) You are still required to report changes under WAC 388-418-0005.

(3) The department will review and act upon any new information we receive from you during this time under WAC 388-418-0020.

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WSR 22-03-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-05—Filed January 13, 2022, 5:12 p.m., effective January 15, 2022]

Effective Date of Rule: January 15, 2022.

Purpose: The purpose of this emergency rule is to close salmon fishing in Catch Record Card Area 10 (except for Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier).

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000R; and amending WAC 220-313-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Estimates of landed catch to date indicate that we have reached 24 percent of the total encounters (8,475), 25 percent of sublegal encounters (7,319), and 46 percent of unmarked encounters (1,105) agreed to in this year's list of agreed fisheries for Catch Record Card Area 10. Feedback from Puget Sound recreational anglers indicates a priority for preserving fishing opportunity for February and March. Therefore, the Washington department of fish and wildlife will suspend the fishery to preserve opportunity for later in the winter season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: January 13, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000S Puget Sound salmon—Saltwater seasons and daily limits. Effective January 15, 2022, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons in Catch Record Card Area 10, shall be as described below. All other pro-

visions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 10 except Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier: Salmon: Closed.

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REPEALER

The following section of Washington Administrative Code is repealed, effective January 15, 2022:

WAC 220-313-06000R Puget Sound salmon—Saltwater seasons and daily limits. (21-274)

WSR 22-03-055

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed January 14, 2022, 8:26 a.m., effective January 14, 2022, 8:26 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555. The nursing care quality assurance commission (commission) is amending specific training requirements for nursing assistant certified (NAC) and nursing assistant registered (NAR) in response to the coronavirus disease 2019 (COVID-19) pandemic and the critical demand for health care professionals. The rules in chapter 246-841 WAC provide regulatory requirements for NACs and NARs. These emergency rules allow additional pathways to comply with current standards to complete necessary training to enter the workforce. This is the sixth emergency rule and it continues the emergency rules that were filed on September 17, 2021, under WSR 21-19-091, with one change, WAC 246-841-405 was removed because basic caregiver training is again being provided by the department of social and health services with an extended deadline for nursing assistants to complete the training. Prior filings were under WSR 20-14-066 beginning in June 2020, continuing under WSR 20-22-023, 21-04-004, and 21-12-011. The commission is engaged in permanent rule making to consider adopting a number of these emergency amendments as permanent rules. A notice of intent to begin rule making was filed on February 8, 2021, under WSR 21-05-021. Permanent rule language development is ongoing.

Citation of Rules Affected by this Order: Amending WAC 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510, and 246-841-555.

Statutory Authority for Adoption: RCW 18.88A.060.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate amendment of existing rules is necessary for the preservation of public health, safety, and general welfare. Continued demand for health care professionals, especially qualified nursing assistants, and barriers to nursing assistant training impacts the inflow of a needed health care workforce. COVID-19 has impacted nursing assistant training by delaying access to clinical training due to restrictions on in-person training opportunities. Amendments allow program directors to award clinical hours for NAR work, NAR volunteer experiences, and planned simulation. Awarding clinical practice hours for these pathways allows additional opportunities for NAC students to complete training and enter the workforce. Amendments to the current language allow the commission to survey online classroom settings, which is essential to ensure that appropriate training is being provided. These amendments assure that programs have adequate resources to implement these new allowances and that they document all related activities appropriately. All these actions will result in continuing the quantity of healthcare professionals able to respond to current demands. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: January 14, 2022.

Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality Assurance Commission

OTS-2953.5

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-420 Requirements for approval of nursing assistant-certified training programs. To qualify as a nursing assistant-certified training program, an institution or facility must:

(1) Submit a completed application packet provided by the department of health. The packet will include forms and instructions to submit the following:

(a) Program objectives.

(b) Curriculum content outline.

(c) Qualifications of program director and additional instructional staff.

(d) Contractual agreements related to providing this training.

For any program that uses another facility to provide clinical training, this includes an affiliation agreement between the training program and the facility. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of both parties, students and clients or residents.

(e) Sample lesson plan for one unit.

(f) Skills checklist.

(g) Description of classroom facilities.

(h) Declaration of compliance with administrative guidelines signed by the program director.

(i) Verification that the program director has completed a course on adult instruction as required by WAC 246-841-470(3) or has one year of experience in the past three years teaching adults. Acceptable experience does not include in-service education or patient teaching. A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(j) Verification that the nursing assistant-certified training program or school is approved to operate in the state of Washington by:

- (i) The state board for community and technical colleges;
- (ii) The superintendent of public instruction; or
- (iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program(~~(r)~~) or on-line survey of the approved online classes as requested by the commission. This on-site will be coordinated with other on-site review requirements when possible.

(3) Participate in the renewal process every two years. Failure to renew results in automatic withdrawal of approval of the program.

(4) Comply with any changes in training standards and guidelines in order to maintain approved status.

(5) Notify the commission and any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation.

(6) Notify the commission and any other approving agency of changes in program director or instructors.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-420, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-07-049 (Order 116B), recodified as § 246-841-420, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-230, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-470 Program directors and instructors in approved nursing assistant-certified training programs. (1) The program director must hold a current license in good standing as a registered nurse (RN) in the state of Washington.

(2) The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director's health care license or any license held by the director which allows him or her to work with vulnerable populations.

(3) The program director must complete a training course on adult instruction or have demonstrated that he or she has one year experience teaching adults.

(a) Acceptable experience does not include in-service education or patient teaching.

(b) The training course on adult instruction must provide instruction in:

- (i) Understanding the adult learner.
- (ii) Techniques for teaching adults.
- (iii) Classroom methods for teaching adults.
- (iv) Audio visual techniques for teaching adults.

(c) A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) The program director must meet the requirements for additional staff under subsection (7)(b) of this section if the program director will also be acting as an instructor.

(6) Program director responsibilities:

(a) Develop and implement a curriculum which meets as a minimum the requirements of WAC 246-841-490. The program director is responsible for all classroom and clinical training content and instruction provided by the training program. The clinical experience may occur in a health care facility or it may occur through planned simulation in the training program's skills lab in accordance with the requirements included in WAC 246-841-490.

(b) Assure compliance with and assume responsibility for meeting the requirements of WAC 246-841-490 through 246-841-510.

(c) Assure that all student clinical experience is directly supervised. Direct supervision means that an approved program director or instructor is observing students performing tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with the commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission. It is the program director's responsibility to verify that each student's employment or volunteer experience meets the qualifying standards included in WAC 246-841-490.

(d) Assure that the clinical instructor has no concurrent duties during the time he or she is instructing students.

(e) Create and maintain an environment conducive to teaching and learning.

(f) Select and supervise all other instructors involved in the course, including clinical instructors and guest lecturers.

(g) Assure that students are not asked to, nor allowed to, perform any clinical skill with patients or clients or in simulation activities until first demonstrating the skill satisfactorily to an instructor in a ((practice setting)) skills lab setting. As an alternative, a program director may provide students with instruction regarding the NAR employment or volunteer pathway and how to demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with WAC 246-841-470 (6)(c).

(h) Assure evaluation of knowledge and skills of students before verifying completion of the course.

(i) Assure that students receive a verification of completion when requirements of the course have been satisfactorily met.

(7) The program director may select instructional staff to assist in the teaching of the course.

(a) Instructional staff must teach in their area of expertise.

(b) Instructional staff must have a minimum of one year experience within the past three years in caring for the elderly or chronically ill of any age or both.

(c) All instructional staff must hold a current Washington state license to practice as a registered or licensed practical nurse. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against a health care license or any license held by the applicant which allows him or her to work with vulnerable populations.

(d) Instructional staff may assist the program director in development of curricula, teaching modalities, and evaluation. The instructor will be under the supervision of the program director at all times.

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-470, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-23-077 (Order 214B), § 246-841-470, filed 11/19/91, effective 12/20/91; WSR 91-07-049 (Order 116B), redefined as § 246-841-470, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-260, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 21-04-016, filed 1/22/21, effective 2/22/21)

WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs. (1) The curriculum must be competency based. It must be composed of learning objectives and activities that will lead to knowledge and skills required for the graduate to demonstrate mastery of the core competencies as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives. The time designated may vary with characteristics of the learners and teaching or learning variables. There must be a minimum of eighty-five hours total, with a minimum of thirty-five hours of classroom training and a minimum of fifty hours of clinical training.

(a) Of the fifty hours of clinical training, at least forty clinical hours must be in the (~~practice setting~~) a health care facility or completed through planned simulation in the training program's skills lab.

(b) Training to orient the student to the health care facility (~~and~~), facility policies and procedures, planned simulation, and simulation policies and procedures are not to be included in the minimum hours above.

(c) Planned simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner. The requirements for training programs to offer planned simulation include:

(i) Nursing assistant training programs may use planned simulation activities as a substitute for traditional clinical experiences in health care facilities after submitting a request on a form provided by the commission and receiving approval from the commission.

(ii) For the purposes of planned simulation activities, the skills lab of the training program represents a health care facility with students acting in a variety of roles in predeveloped scenarios that provide opportunities for students to demonstrate nursing assis-

tant competencies as they would in a traditional clinical experience in a health care facility. Examples of roles students may play include: The nursing assistant providing care; another member of the health care team; a client or resident; a client's or resident's loved one. Simulated health care facility scenarios include, at a minimum: Policies and procedures for students to follow; a cadre of diverse clients or residents and their care plans; and opportunities to participate in shift reports, respond to and communicate status changes to the nurse, and document appropriately.

(iii) A written plan exists for each planned simulation activity and includes specific nursing assistant competencies identified as objectives. The written plan also includes a summary of the care situation or scenario and the various roles students will play in the scenario; and the time allotted for the planned simulation activity, including time for debriefing.

(iv) Debriefing is a critical component of planned simulation activities that helps students to learn from their clinical experiences. Debriefing is facilitated by the program instructor or director in a way that encourages active discussion and reflective thinking by students and provides relevant instructor and peer feedback regarding simulation events and participants' performance.

(v) Planned simulation activities reflect an array of objectives and care scenarios to support adequate evaluation of each student's competency in the nursing assistant role as reflected in WAC 246-841-400.

(vi) Documentation exists as a record of the evaluation of each student's performance in planned simulation activities.

(vii) The nursing assistant training program shall have adequate human and material resources to implement planned simulation activities, including adequate space, equipment, and supplies.

(viii) An approved program instructor or the program director must supervise and evaluate planned simulation activities. A guest lecturer may not supervise or evaluate planned simulation activities.

(ix) The nursing assistant training program obtains anonymous written student evaluations of the planned simulation activities at the end of each class and demonstrates use of student feedback for on-going quality improvement efforts as needed.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities such as lecture, discussion, readings, film, or clinical practice designed to enable the student to achieve the stated objectives.

(d) To meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:

(i) Be performed under an active NAR credential during enrollment in the class;

(ii) Include a background check prior to contact with clients or residents;

(iii) Occur in a care facility where a licensed nurse is present to supervise throughout the clinical experience and verify competency for tasks assigned;

(iv) Include opportunities for the NAR to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841-400;

(v) Be supervised by a licensed nurse who is not a friend or relative;

(vi) Include care of clients or residents who are not friends or relatives; and

(vii) Be verifiable with the care facility.

(4) Clinical teaching in a competency area is closely correlated with classroom teaching to integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, ~~((and))~~ families, and in planned simulation activities.

(b) An identified instructor(s) will supervise clinical teaching or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting whether the clinical setting is a health care facility or represented through planned simulation in the training program's skills lab. As an alternative, the program director may award clinical hours' credit for NAR employment or volunteer experience as described in WAC 246-841-470 (6) (c).

(5) The curriculum must include evaluation processes to assess mastery of competencies. Students cannot perform any clinical skill on clients or residents or in planned simulation activities until first demonstrating the skill satisfactorily to an instructor in ~~((the practice setting))~~ a skills lab setting; as an alternative, students can demonstrate skills satisfactorily to a licensed nurse who is supervising a student employed or volunteering as an NAR and assuring competency for tasks assigned in accordance with WAC 246-841-470 (6) (c).

[Statutory Authority: RCW 18.79.110, 18.88A.060 and 2020 c 76. WSR 21-04-016, § 246-841-490, filed 1/22/21, effective 2/22/21. Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-490, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-23-077 (Order 214B), § 246-841-490, filed 11/19/91, effective 12/20/91; WSR 91-07-049 (Order 116B), recodified as § 246-841-490, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-270, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-500 Physical resources required for approved nursing assistant-certified training programs. (1) Classroom facilities must provide adequate space, lighting, comfort, and privacy for effective teaching and learning.

(2) Adequate classroom resources, such as white board or other writing device, audio visual materials, and written materials must be available.

(3) Appropriate equipment must be provided for teaching and practicing clinical skills and procedures before implementing the skills with clients or residents or in planned simulation in the training program's skills lab.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-500, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-07-049 (Order 116B), recodified as § 246-841-500, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-275, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-510 Administrative procedures for approved nursing assistant-certified training programs. (1) The program must establish and maintain a file for each student enrolled. The file must include:

(a) Dates attended.

(b) Test results.

(c) A skills evaluation checklist with dates of skills testing and signature of instructor. If the program grants clinical hours' credit for students employed or volunteering as nursing assistants-registered in accordance with WAC 246-841-470 (6)(c), the student file must also include a fully completed commission-approved student form to verify student clinical hours and competency "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(d) Documentation of successful completion of the course, or documentation of the course outcome.

(2) Each student file must be maintained by the program for a period of five years, and copies of documents made available to students who request them.

(3) Verification of successful completion of the course of training will be provided to the commission on forms provided by the commission.

(4) For those programs based in a health care facility: Verification of program completion and the application for state testing will not be withheld from a student who has successfully met the requirements of the program. Successful completion will be determined by the training program director separately from other employer issues.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-510, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-07-049 (Order 116B), recodified as § 246-841-510, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-280, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-555 Responsibilities of the program director in alternative programs. The program director of an alternative program is responsible for:

(1) Development and use of a curriculum which:

(a) Meets the requirements of WAC 246-841-545; or

(b) Meets the requirements of WAC 246-841-550.

(2) Ensuring compliance with the requirements of WAC 246-841-500 and 246-841-510.

(3) Verifying home care aides-certified have a valid certification before admission to the alternative program.

(4) Verifying medical assistants-certified have certification before admission to the alternative program.

(5) Direct supervision of all students during clinical experience in a health care facility or during planned simulation in the training program's skills lab. Direct supervision means an approved program director or instructor observes students performing tasks. As an alternative, the program director may also award clinical hours' credit for nursing assistant-registered (NAR) employment or volunteer experience completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission. In addition, to meet qualifying standards to count as clinical hours' credit, the NAR employment or volunteer experience must:

(a) Be performed under an active NAR credential during enrollment in the class;

(b) Include a background check prior to contact with clients or residents;

(c) Occur in a care facility where a licensed nurse is present to supervise throughout the clinical experience and verify competency for tasks assigned;

(d) Include opportunities for the NAR to successfully demonstrate the competencies of a nursing assistant as identified in WAC 246-841-400;

(e) Be supervised by a licensed nurse who is not a friend or relative;

(f) Include care of clients or residents who are not friends or relatives; and

(g) Be verifiable with the care facility.

(6) Ensuring the clinical instructor has no concurrent duties during the time he or she is instructing students.

(7) Maintaining an environment acceptable to teaching and learning.

(8) Supervising all instructors involved in the course. This includes clinical instructors and guest lecturers.

(9) Ensuring students are not asked to, or allowed to perform any clinical skill with patients or clients or in planned simulation activities until the students have demonstrated the skill satisfactorily to an instructor in a practice setting, or as an alternative, providing students with instruction regarding the NAR employment or volunteer pathway and how to demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with WAC 246-841-555(5).

(10) Evaluating knowledge and skills of students before verifying completion of the course.

(11) Providing students a verification of completion when requirements of the course have been satisfied.

(12) Providing adequate time for students to complete the objectives of the course. The time may vary with skills of the learners and teaching or learning variables.

(13) Establishing an evaluation process to assess mastery of competencies.

[Statutory Authority: RCW 18.88A.087 and 18.88A.060. WSR 11-16-042, § 246-841-555, filed 7/27/11, effective 8/27/11.]

WSR 22-03-056

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed January 14, 2022, 8:26 a.m., effective January 14, 2022, 8:26 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-010, 246-840-365, 246-840-367, 246-840-533, and 246-840-840, licensed practical nurse (LPN), registered nurse (RN), and advanced registered nurse practitioner (ARNP) specific credential and license requirements. The nursing care quality assurance commission (commission) is continuing amendments to training program options, delegation requirements, and removing additional continuing education hours for specific ARNP credentials while permanent rule making is underway. This is the seventh emergency rule, originally filed under WSR 20-10-014 beginning in 2020 and continuing under WSR 20-14-065, 20-22-024, 21-04-005, 21-12-012, and on September 17, 2021, under WSR 21-19-092. This current filing differs from the previous filing by removing WAC 246-840-930 because the department of social and health services is again providing basic caregiver training with an extended deadline for nursing assistants to complete training. Transition from emergency to permanent rules was approved by the commission and a notice of intent to begin rule making to allow LPNs practice opportunities as nurse technicians was filed on May 18, 2020, under WSR 20-11-044. The commission also filed a notice of intent to transition the remaining emergency rules to permanent on September 17, 2021, under WSR 21-19-104. Permanent rule making is ongoing.

Citation of Rules Affected by this Order: Amending WAC 246-840-010, 246-840-365, 246-840-367, 246-840-533, and 246-840-840.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.050, 18.79.110, and 18.79.340.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate amendment of these rules is necessary for the preservation of public health, safety, and general welfare. The commission is engaged in permanent rule making to convert certain emergency amendments to permanent rules. Essential functions including increasing and maintaining the availability of health care professionals must continue while taking necessary measures to help treat and prevent the spread of coronavirus disease 2019 (COVID-19) while undergoing permanent rule making. The amendments remove specific barriers that nurses face to providing care in response to COVID-19. Waiving the restriction that ARNPs with an inactive or expired license must complete clinical practice hours and the newly amended continuing education requirements removes barriers to rejoining the health care workforce. More health care professionals will be available to continue responding to current demands because of these changes. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 14, 2022.

Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality Assurance Commission

OTS-3406.1

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and national specialty certification through a commission approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and
- (d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful comple-

tion of course work taught in an associate degree nursing education program, as defined in subsection (28) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(7) "Client advocate" means a licensed nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and choices by providing the client with adequate information about their care and options.

(8) "Commission" means the Washington state nursing care quality assurance commission.

(9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(10) "Conditional approval" is the approval given a nursing education program that has not met the requirements of the law and the rules of the commission. Conditions are specified that must be met within a designated time to rectify the deficiency.

(11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules of the commission.

(15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own; receipt of the examination results after thirty days after the nurse technician's date of graduation; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program or

licensed practical nursing program approved by the commission and is successfully meeting all program requirements.

(17) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

(18) "Home state" is defined as where the nursing education program has legal domicile.

(19) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

(20) "Immediately available" as applied to nursing technicians, means that an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed which may include the use of two-way communication devices which allow conversation between the nursing technician and an RN who has agreed to act as supervisor.

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(21) "Initial approval" of nursing education program is the approval status conferred by the commission to a new nursing program based on its proposal prior to the graduation of its first class.

(22) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a commission approved refresher course. This authorization does not permit practice for employment.

(24) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

(25) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

(26) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching and learning component in clinical settings.

(27) "Nursing education program administrator" is an individual who has the authority and responsibility for the administration of the nursing education program.

(28) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

(29) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

(30) "Nursing technician" means a nursing student preparing for RN or LPN licensure who meets the qualifications for licensure under RCW 18.79.340 who is employed in a hospital licensed under chapter

70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic. The nursing student must be in a nursing educational program in the United States or its territories that is approved by the state or territorial nursing regulatory authority and recognized in the list of approved nursing education programs using the National Council Licensure Examination-RN or National Council Licensure Examination-PN. Approved nursing education programs do not include nontraditional schools as defined in subsection ((27)) (26) of this section.

(31) "Philosophy" means the beliefs and principles upon which a nursing education program curriculum is based.

(32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate or degree that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

(33) "Registered nurse" or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

(34) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(35) "Traditional nursing education program" means a program that has a curriculum which includes a faculty supervised teaching and learning component in clinical settings.

[Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-010, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.110 and 2012 c 153. WSR 13-15-064, § 246-840-010, filed 7/15/13, effective 8/15/13. Statutory Authority: RCW 18.79.010 and 18.79.110. WSR 10-24-047, § 246-840-010, filed 11/24/10, effective 1/1/11. Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-010, filed 5/12/08, effective 6/12/08. Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-010, filed 6/11/04, effective 6/11/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-010, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-010, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-365 Inactive and reactivating an ARNP license. To apply for an inactive ARNP license, an ARNP shall comply with WAC 246-12-090 or 246-12-540, if military related.

(1) An ARNP may apply for an inactive license if he or she holds an active Washington state ARNP license without sanctions or restrictions.

(2) To return to active status the ARNP:

(a) Shall meet the requirements identified in chapter 246-12 WAC, Part 4;

(b) Must hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;

(c) Shall submit the fee as identified under WAC 246-840-990; and

(d) Shall submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1) ((~~7~~

~~(e) Shall submit evidence of thirty contact hours of continuing education for each designation within the past two years; and~~

~~(f) Shall submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, shall complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5)).~~

~~((5))~~ (3) To regain prescriptive authority after inactive status, the applicant must meet the prescriptive authority requirements identified in WAC 246-840-410.

[Statutory Authority: RCW 18.79.110. WSR 19-08-031, § 246-840-365, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-365, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-365, filed 12/11/08, effective 1/11/09. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-365, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-365, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-367 Expired license. When an ARNP license is not renewed, it is placed in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

~~(2) ((Applicants who do not meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(3) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(4))~~ If the ARNP license has expired for two years or more, the applicant shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(3);

~~(c) ((Submit evidence of thirty contact hours of continuing education for each designation within the prior two years;~~

~~(d))~~ Submit evidence of two hundred fifty hours of advanced clinical practice completed within the prior two years; and

~~((e))~~ (d) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.

~~((5))~~ (3) If the applicant does not meet the required advanced clinical practice hours, the applicant shall obtain an ARNP interim permit consistent with the requirements for supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).

[Statutory Authority: RCW 18.79.110. WSR 19-08-031, § 246-840-367, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-367, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-367, filed 12/11/08, effective 1/11/09.]

AMENDATORY SECTION (Amending WSR 19-08-026, filed 3/27/19, effective 4/27/19)

WAC 246-840-533 Nursing preceptors, interdisciplinary preceptors, and proctors in clinical or practice settings for nursing students located in Washington state. (1) Nursing preceptors, interdisciplinary preceptors, and proctors may be used to enhance clinical or practice learning experiences after a student has received instruction and orientation from program faculty who confirm the student is adequately prepared for the clinical or practice experience. For the purpose of this section:

(a) A nursing preceptor means a practicing licensed nurse who provides personal instruction, training, and supervision to any nursing student, and meets all requirements of subsection (4) of this section.

(b) An interdisciplinary preceptor means a practicing health care provider who is not a licensed nurse, but provides personal instruction, training, and supervision to any nursing student, and meets all requirements of subsection (5) of this section.

(c) A proctor means an individual who holds an active credential in one of the professions identified in RCW 18.130.040 who monitors

students during an examination, skill, or practice delivery, and meets all requirements of subsection (6) of this section.

(2) Nursing education faculty are responsible for the overall supervision and evaluation of the student and must confer with each primary nursing and interdisciplinary preceptor, and student at least once during each phase of the student learning experience:

- (a) Beginning;
- (b) Midpoint; and
- (c) End.

(3) A nursing preceptor or an interdisciplinary preceptor shall not precept more than two students at any one time.

(4) A nursing preceptor may be used in nursing education programs when the nursing preceptor:

- (a) Has an active, unencumbered nursing license at or above the level for which the student is preparing;
- (b) Has at least one year of clinical or practice experience as a licensed nurse at or above the level for which the student is preparing;
- (c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;
- (d) Is oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and
- (e) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(5) An interdisciplinary preceptor may be used in nursing education programs when the interdisciplinary preceptor:

- (a) Has an active, unencumbered license in the area of practice appropriate to the nursing education faculty planned student learning objectives;
- (b) Has the educational preparation and at least one year of clinical or practice experience appropriate to the nursing education faculty planned student learning objectives;
- (c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;
- (d) Is oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and
- (e) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(6) A proctor who monitors, teaches, and supervises students during the performance of a task or skill must:

- (a) Have the educational and experiential preparation for the task or skill being proctored;
- (b) Have an active, unencumbered credential in one of the professions identified in RCW 18.130.040;
- (c) Only be used on rare, short-term occasions to proctor students when a faculty member has determined that it is safe for a student to receive direct supervision from the proctor for the performance of a particular task or skill that is within the scope of practice for the nursing student; and
- (d) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(7) A practice/academic partnerships model may be used to permit practice hours as a nursing technician, as defined in WAC 246-840-010(30), to be credited toward direct care nursing program clinical hours, and academic credit. Use of this model must include:

(a) Endorsement by the nurse administrator placed in the student's file that:

(i) Traditional clinical experiences in a required area of study are limited or not available to the program; or

(ii) Circumstances are present in which the student will gain greater educational benefit from the nursing student-employee role;

(b) A nursing preceptor or nursing supervisor who has experience and educational preparation appropriate to the faculty-planned student learning experience. The nursing preceptor or nursing supervisor must be responsible for ensuring the requirements of WAC 246-840-880 are met;

(c) Nursing program faculty that work with health care facility representatives to align clinical skills and competencies with the nursing student-employee work role/responsibilities;

(d) Nursing student-employees with faculty-planned clinical practice experiences that enable the student to attain new knowledge, develop clinical reasoning/judgment abilities, and demonstrate achievement of clinical objectives and final learning outcomes of the nursing program if the nursing student-employee is in the final nursing course;

(e) The nursing student-employee use of reflection on the development or achievement of clinical objectives and final learning outcomes as designed by nursing education faculty;

(f) Nursing education faculty responsible for the overall supervision and evaluation of the nursing student-employee on a weekly basis;

(g) Evaluation by nursing education faculty to include documentation of the nursing student-employee achievement of clinical objectives and final learning outcomes and competencies of the nursing program; and

(h) Nursing technicians be enrolled in a commission-approved nursing program and be in good standing to receive academic credit.

[Statutory Authority: RCW 18.79.110. WSR 19-08-026, § 246-840-533, filed 3/27/19, effective 4/27/19. Statutory Authority: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240. WSR 16-17-082, § 246-840-533, filed 8/17/16, effective 9/17/16.]

AMENDATORY SECTION (Amending WSR 13-15-064, filed 7/15/13, effective 8/15/13)

WAC 246-840-840 Nursing technician. The purpose of the nursing technician credential is to provide additional work related opportunities for students enrolled in an LPN, ADN or BSN program, within the limits of their education, to gain valuable judgment and knowledge through expanded work opportunities.

(1) The nursing technician is as defined in WAC 246-840-010(~~(+18)~~) (30).

(2) The nursing technician shall have knowledge and understanding of the laws and rules regulating the nursing technician and shall function within the legal scope of their authorization under chapter

18.79 RCW and shall be responsible and accountable for the specific nursing functions which they can safely perform as verified by their nursing program.

(3) The nursing technician shall work directly for the hospital, clinic or nursing home and may not be employed in these facilities through a temporary agency.

[Statutory Authority: RCW 18.79.110 and 2012 c 153. WSR 13-15-064, § 246-840-840, filed 7/15/13, effective 8/15/13. Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-840, filed 6/11/04, effective 6/11/04. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-840, filed 6/18/97, effective 7/19/97.]

WSR 22-03-071
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 14, 2022, 4:36 p.m., effective January 14, 2022, 4:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To align the office of superintendent of public instruction (OSPI) rules under chapter 392-162 WAC regarding the learning assistance program with the statutory provisions under chapter 28A.165 RCW as amended with passage of SHB 1208, and to provide regulatory guidelines to districts who choose to use learning assistance program funds to implement the K-2 literacy screening and intervention requirements under RCW 28A.320.260.

Citation of Rules Affected by this Order: New WAC 392-162-016, 392-162-017 and 392-162-120; repealing WAC 392-162-020, 392-162-023, 392-162-025, 392-162-032, 392-162-033, 392-162-036, 392-162-041 and 392-162-080; and amending WAC 392-162-005, 392-162-010, 392-162-015, 392-162-054, 392-162-100, 392-162-110, 392-162-112, and 392-162-115.

Statutory Authority for Adoption: RCW 28A.165.075.

Other Authority: RCW 28A.300.730.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: In accordance with section 17 of SHB 1208, the provisions of the legislative enactment are "necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions and takes effect immediately. OSPI began the regular rule-making process for these proposed changes by filing the CR-101 on August 13, 2021, WSR 21-17-099."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 8, Repealed 8.

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

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

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

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

Date Adopted: January 14, 2022.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3068.1

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules (~~and regulations~~) for the administration of the learning assistance program.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-005, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-005, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-005, filed 3/31/14, effective 5/1/14; WSR 08-21-053, § 392-162-005, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-005, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-005, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-005, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-010 Purpose. The learning assistance program requirements in this chapter are designed to:

(1) (~~Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;~~

~~(2)) Promote the use of data when developing programs to assist students who are not meeting academic standards ((and reduce disruptive behaviors in the classroom)); and~~

~~((3)) (2) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist students who are not meeting academic standards ((and reduce disruptive behaviors in the classroom); and~~

~~(4) Guide school districts in providing extended learning opportunities to assist K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements)).~~

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-010, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-010, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-010, filed 3/31/14, effective 5/1/14; WSR 09-24-075, § 392-162-010, filed 11/30/09, effective 12/31/09; WSR 08-21-053, § 392-162-010, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-010, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-010, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-010, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-015 Definitions (~~(—Basic skills)~~). As used in this chapter, the terms:

(1) "Basic skills" means English language arts or mathematics, as well as readiness associated with these skills.

(2) "District" means a school district, public charter school, or school authorized to operate as a state-tribal education compact school in accordance with chapter 28A.715 RCW.

(3) "Literacy interventions" means interventions under RCW 28A.320.260(3) to support students in kindergarten through second grade who show indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia.

(4) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of the superintendent of public instruction in accordance with RCW 28A.300.700.

(5) "Statewide student assessments" means one or more of the assessments administered by school districts as required under RCW 28A.655.070.

(6) "Students who are not meeting academic standards" means students with the greatest academic needs in basic skills as identified by statewide, school, or district assessments or other performance measurement tools.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-015, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-015, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-015, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-015, filed 6/28/84.]

NEW SECTION

WAC 392-162-016 Application. (1) Immediately and through the later of:

(a) The expiration or termination of Proclamation 20-05, and any subsequent orders extending or amending the proclamation, declaring a state of emergency on February 29, 2020, for all counties in Washington due to COVID-19; or

(b) September 1, 2025, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, to identify and address the academic and nonacademic needs of students who are not meeting academic standards resulting from and exacerbated by the COVID-19 pandemic.

(2) During the time period described in subsection (1) of this section, school districts are encouraged to budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

[]

NEW SECTION

WAC 392-162-017 Community partnerships. A district may use up to fifteen percent of the district's learning assistance program allocation to deliver academic, nonacademic, and social-emotional supports and services to students who are not meeting academic standards through partnerships with community-based or other out-of-school organizations in accordance with RCW 28A.300.139. Any agreement entered into by a school district and a community partner in accordance with RCW 28A.300.139 must:

- (1) Specify that learning assistance program funds may be used only to provide direct supports and services to students;
- (2) Clearly identify the academic, nonacademic, or social-emotional supports and services that will be made available to students by the community partner and how those supports and services align to the needs of the students as identified in the student-level needs assessment under RCW 28A.300.139; and
- (3) Identify the in-school supports that will be reinforced by the supports and services provided by the community partner to promote student progress towards meeting academic standards.

[]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-054 Allocation, supplement not supplant, and use of funds. (1) The funds for the learning assistance program shall be allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be ~~((distributed to))~~ expended by the district for the schools ((building)) that generated the funding and may not supplant the learning assistance program base allocation expenditures for those schools.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-054, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-054, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-054, filed 3/31/14, effective 5/1/14; WSR 09-24-075, § 392-162-054, filed 11/30/09, effective 12/31/09; WSR 08-21-053, § 392-162-054, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-054, filed 12/21/06, effective 1/21/07.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-100 Federal and state program coordination. (1)

School districts may coordinate federal, state, and local programs in order to serve the maximum number of students who are ~~((below grade level in basic skills))~~ not meeting academic standards.

~~(2) ((Subject to guidelines provided by the United States Department of Education, districts with schoolwide buildings may use Title I, Part A funds to meet the requirement to focus first on students in kindergarten through fourth grade who are deficient in reading or literacy skills. Districts opting to use Title I, Part A funds in combination with or in place of learning assistance program funds must meet the requirements of chapter 28A.165 RCW, including implementing best practice strategies according to RCW 28A.165.035 and completing all reporting requirements outlined in this chapter.~~

~~(3))~~ Students receiving assistance in another special needs program may also be served in the learning assistance program if they ~~((meet student eligibility and selection requirements as identified in WAC 392-162-032 and 392-162-080))~~ are identified as students who are not meeting academic standards as defined under this chapter.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-100, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-100, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-100, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-100, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-110 Program requirements—District reporting. (1)

Individual student records shall be recorded, beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction's CEDARS manual.

(2) Districts shall submit to the superintendent of public instruction by the established due date an annual report in the electronic format provided by the superintendent of public instruction. The report must include the following:

(a) The amount of academic growth gained by students participating in the learning assistance program;

(b) The number of students who gain at least one year of academic growth;

(c) The specific practices, activities, and programs used by each school building that received learning assistance program funds;

~~((and))~~

(d) The percentage of learning assistance funding used to engage community partners, the number of students receiving direct supports

and services from those community partners, and the types of supports and services; and

(e) The number of students served by the learning assistance program during the school year who were able to exit the program because student academic growth resulted in meeting the academic standard for grade level.

(3) The superintendent of public instruction (~~(will)~~) may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or state-tribal education compact school (~~(operated pursuant to a state-tribe education compact)~~) if the school district, charter school, or state-tribal education compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-110, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-110, filed 3/31/14, effective 5/1/14. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-110, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 95-19-031 (Order 95-08), § 392-162-110, filed 9/12/95, effective 10/13/95; WSR 87-22-001 (Order 87-14), § 392-162-110, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-110, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of the learning assistance program base allocation provided (~~(allocated)~~) under WAC 392-122-605 (~~(; however,)~~). Carry-over funds (~~(shall)~~) must be expended solely for (~~(the)~~) allowable learning assistance program costs.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carry-over funds must be expended solely for (~~(the)~~) allowable learning assistance program costs and for the specific schools (~~(generating)~~) that generated the (~~(allocation)~~) funding.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-112, filed 1/2/18, effective 2/2/18. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-112, filed 12/21/06, effective 1/21/07.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-115 Monitoring of districts. (~~(In order to insure)~~) To ensure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor learn-

ing assistance programs using, at minimum, data reported as required under WAC 392-162-110, no less than once every four years by using the state program review process. The primary purpose of the monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and to monitor school district fidelity in their implementation of best practices using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-115, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-115, filed 3/31/14, effective 5/1/14. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-115, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-115, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-115, filed 6/28/84.]

NEW SECTION

WAC 392-162-120 Implementation of K-2 literacy screening requirements—Use of funds. (1) A school district that chooses to expend learning assistance program funds to implement the screening and intervention requirements under RCW 28A.320.260 may use the district's learning assistance program base allocation under WAC 392-122-605 to fund:

(a) The purchase of a literacy screening tool as defined under this chapter; and

(b) Literacy interventions as defined under this chapter.

(2) A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100 and 28A.320.270.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-162-020	Definition—Learning assistance program (LAP).
WAC 392-162-023	Definition—District.
WAC 392-162-025	Definition—Statewide student assessments.
WAC 392-162-032	Definition—Participating student.
WAC 392-162-033	Definition—Students who are not meeting academic standards.

WAC 392-162-036 Definition—Extended learning opportunities.

WAC 392-162-041 Best practices.

WAC 392-162-080 Program requirement—Selection of students.

WSR 22-03-096

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed January 19, 2022, 7:55 a.m., effective January 19, 2022, 7:55 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In chapter 182-531A WAC, the agency is revising these rules to remove the age limits for applied behavioral analysis (ABA) and update language to remove child or children and replace with client. In WAC 182-501-0600, the agency is updating the "N" (No) to a "Y" (Yes) in the ABA covered services table for ABP 21+, CN 21+, and MN 21+. The agency is also updating the ambulance section in the covered services table for ABP 21+ to a "Y" (Yes) as it was inadvertently left blank.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0100, 182-531A-0200, 182-531A-0400, 182-531A-0500, 182-531A-0600, 182-531A-1100, and 182-501-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate revision of these rules is necessary to comply with an order of the *Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority*, no. 20-2-01813-34. The order prohibits the agency from applying prior versions of these rules to requests for ABA therapy from individuals over 20 years of age. The current emergency filing under WSR 21-19-147, filed on September 22, 2021, is set to expire on January 20, 2022. Since the last emergency filing, the agency has proceeded forward with drafting of the permanent rule and sent the draft to interested stakeholders for an external review.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: January 19, 2022.

Wendy Barcus
Rules Coordinator

OTS-2886.2

AMENDATORY SECTION (Amending WSR 19-14-020, filed 6/24/19, effective 7/25/19)

WAC 182-501-0060 Health care coverage—Program benefit packages—Scope of service categories. (1) This rule provides a table that lists:

(a) The following Washington apple health programs:
 (i) The alternative benefits plan (ABP) medicaid;
 (ii) Categorically needy (CN) medicaid;
 (iii) Medically needy (MN) medicaid; and
 (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005; and

(b) The benefit packages showing what service categories are included for each program.

(2) Within a service category included in a benefit package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit package:

(a) Are determined in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited prior authorization when allowed by the agency.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or the agency's designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Programs not addressed in the table:

(a) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(b) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings, there are two columns. One addresses clients twenty years of age and younger, and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limita-

tions and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "**N**" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	<u>Y</u>	Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	<u>((N))</u>	Y	<u>((N))</u>	Y	<u>((N))</u>	N
Behavioral health services	Y	Y	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y	Y	Y	Y
Diagnostic services (lab and X-ray)	Y	Y	Y	Y	Y	Y	Y
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
Enteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
Health homes	Y	Y	Y	Y	N	N	N
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	Y	Y	Y	Y	Y	Y
Home health services	Y	Y	Y	Y	Y	Y	Y
Home infusion therapy/parenteral nutrition program	Y	Y	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, supplies, and appliances	Y	Y	Y	Y	Y	Y	Y
Medical nutrition therapy	Y	N	Y	N	Y	N	Y
Nursing facility services	Y	Y	Y	Y	Y	Y	Y
Organ transplants	Y	Y	Y	Y	Y	Y	Y
Orthodontic services	Y	N	Y	N	Y	N	N
Out-of-state services	Y	Y	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	Y	Y	Y	Y	Y	N	Y
Personal care services	Y	Y	Y	Y	N	N	N
Prescription drugs	Y	Y	Y	Y	Y	Y	Y
Private duty nursing	Y	Y	Y	Y	Y	Y	N
Prosthetic/orthotic devices	Y	Y	Y	Y	Y	Y	Y
Reproductive health services	Y	Y	Y	Y	Y	Y	Y
Respiratory care (oxygen)	Y	Y	Y	Y	Y	Y	Y
School-based medical services	Y	N	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	Y	Y	Y	Y	Y	Y	Y
Vision hardware Frames and lenses	Y	N	Y	N	Y	N	N

¹ Clients enrolled in the Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of health care services.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2018 c 159. WSR 19-14-020, § 182-501-0060, filed 6/24/19, effective 7/25/19. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-07-083, § 182-501-0060, filed 3/17/15, effective 4/17/15. Statutory Authority: RCW 41.05.021, 2013 2nd sp.s. c 4, and Patient Protection and Affordable Care Act (P.L. 111-148). WSR 14-06-045, § 182-501-0060, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 41.05.021. WSR 13-15-044, §

182-501-0060, filed 7/11/13, effective 8/11/13. WSR 11-14-075, recodified as § 182-501-0060, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-501-0060, filed 11/30/06, effective 1/1/07.]

OTS-2887.2

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0100 Applied behavior analysis (ABA)—Purpose. Applied behavior analysis (ABA) assists (~~(children))~~ clients and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which there is evidence ABA is effective, per WAC 182-501-0165. ABA services support learning, skill development, and assistance in any of the following areas or domains: Social, behavior, adaptive, motor, vocational, or cognitive.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0100, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions. The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

Applied behavior analysis or **ABA** - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

Autism spectrum disorder (ASD) - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) criteria.

Autism spectrum disorder (ASD) diagnostic tool - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

Autism spectrum disorder (ASD) screening tool - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children (STAT).

Centers of excellence (COE) - A hospital, medical center, or other health care provider that establishes or confirms the diagnosis of an autism spectrum disorder and develops the multidisciplinary clinical treatment plan and that has been designated by the agency as a center of excellence.

Client (~~or child~~) - For the purposes of this chapter, client (~~or child~~) means a person (~~younger than twenty-one years of age and~~) enrolled in Washington apple health (WAH).

Family member - A (~~child's~~) client's parent, guardian, caregiver, or other support person.

Qualifying diagnosis - A diagnosis of an ASD, as defined by the DSM, or other developmental disability for which there is evidence ABA is effective.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0200, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility. To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) (~~Be under twenty-one years of age;~~
~~(2)~~) Be covered under Washington apple health (WAH);
- (~~(3)~~) (2) Provide documentation created by a clinician that:
 - (a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;
 - (b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:
 - (i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or
 - (ii) The (~~child's~~) client's behavior endangers the (~~child~~) client or another, or impedes access to home and community activities (~~available to other children of the same age~~); and

(c) An agency-recognized center of excellence (COE) has confirmed that:

(i) The ~~((child))~~ client meets all requirements in (a) and (b) of this subsection;

(ii) The ~~((child))~~ client has a qualifying diagnosis;

(iii) There is a reasonable calculation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and

(iv) Either:

(A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or

(B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing pro-social skills and behaviors, or maintaining desired behaviors.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0400, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one:

COE evaluation and order. (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) for an evaluation.

(2) The COE must complete a comprehensive diagnostic evaluation and create a multidisciplinary clinical treatment plan that includes:

(a) Documentation showing how the diagnosis was made or confirmed by a COE physician or psychologist that includes:

(i) Results of formal diagnostic procedures performed by a clinician, including name of measure, dates, and results, as available; or

(ii) Clinical findings and observations used to confirm the diagnosis;

(b) Documentation showing that the client's behaviors or skill deficits adversely affect on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(c) Documentation showing that, if applied behavior analysis (ABA) is included in the multidisciplinary clinical treatment plan:

(i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;

(d) Recommendations that address all of the ~~((child's))~~ client's health care needs;

(e) A statement that the evaluating and prescribing provider believes that there is a reasonable calculation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) An order for ABA services. If ordered, a copy of the COE's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the ((child's)) client's guardian under this chapter or provided to the ((child's)) client's guardian to forward to the selected ABA provider.

(3) The COE must also include the following items, if it possesses a copy:

(a) Results of routine developmental screening performed by the ((child's)) client's primary care provider at well ((child)) client visits;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE or another qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0500, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development. (1) If the center of excellence's (COE's) evaluating and prescribing provider has ordered applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior to implementing the ABA therapy treatment plan, the ABA provider must receive prior authorization from the agency. The prior authorization request, including the assessment and ABA therapy treatment plan, must be received by the agency within sixty days of the family scheduling the functional assessment.

(3) The ((child's)) client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical clinician, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each ((child)) client; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, office, or clinic. A community-based program:

(i) May be used after discharge from a day services program (see subsection (3)(a) of this section);

(ii) Provides a developmentally appropriate ABA therapy treatment plan for each ((child)) client;

(iii) Provides ABA services in the home (wherever the ((child)) client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, ((child)) client care, early ((childhood)) client education, or school and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family education, support, and training.

(4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the ((child's)) client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the COE's current diagnostic evaluation (see WAC 182-531A-0500(2));

(c) Address each behavior, skill deficit, and symptom that prevents the ((child)) client from adequately participating in home, school, community activities, or that presents a safety risk to the ((child)) client or others;

(d) Be individualized;

(e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;

(f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education or from early intervention programs and early intervention providers) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to

each of the targeted behaviors/symptoms, (e.g., discrete trial training, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, support services, and modeling and coaching (~~(family/child)~~) family/client interaction;

(n) Incorporate strategies for coordinating treatment with school-based special education programs and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-0600, filed 12/1/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

WAC 182-531A-1100 Applied behavior analysis (ABA)—Prior authorization and recertification of ABA services. (1) The medicaid agency requires prior authorization (PA) and recertification of the medical necessity of applied behavior analysis (ABA) services.

(2) Requirements for PA requests are described in WAC 182-531A-0700.

(3) The agency may reduce or deny services requested based on medical necessity (refer to subsection (5) of this section) when completing PA or recertification responsibilities.

(4) The following are requirements for recertification of ABA services:

(a) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(b) The lead behavior analysis therapist (LBAT) must request authorization for continuing services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA therapy treatment plan documenting the client's progress and showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA therapy treatment plan must be submitted with this request. Documentation must include:

(i) Projection of eventual outcome;

(ii) Assessment instruments;

(iii) Developmental markers of readiness; and

(iv) Evidence of coordination with providers.

(c) When completing recertification responsibilities, the agency may request another evaluation from the COE to obtain that provider's review and recommendation. This COE provider must review the ABA therapy treatment plan, conduct a face-to-face visit with the (~~(child)~~) client, facilitate a multidisciplinary record review of the client's

progress, hold a family conference, or request a second opinion before recommending continued ABA services. Services will continue pending recertification.

(d) When completing recertification responsibilities, the agency may retroactively authorize dates of service. Services will continue pending recertification.

(5) Basis for denial or reduction of services includes, but is not limited to, the following:

(a) Lack of medical necessity, for example:

(i) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable; or

(ii) Absence of meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of residence), if applicable. For changes to be meaningful they must be:

(A) Confirmed through data;

(B) Documented in charts and graphs;

(C) Durable over time beyond the end of the actual treatment session; and

(D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; or

(b) Noncompliance as demonstrated by a pattern of failure of the family to:

(i) Keep appointments;

(ii) Attend treatment sessions;

(iii) Attend scheduled family training sessions;

(iv) Complete homework assignments; and

(v) Apply training as directed by the therapy assistant or LBAT. Absences that are reasonably justified (e.g., illness) are not considered a pattern.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-24-083, § 182-531A-1100, filed 12/1/14, effective 1/1/15.]