

WSR 22-12-002
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed May 19, 2022, 9:05 a.m., effective June 19, 2022]

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

Purpose: Student conduct: Will clarify the appeal process, including that parties have the right to appeal the dismissal of a formal complaint, as well as language clarifying a president's authority to appoint an administrative law judge or third party to serve as hearing officer. In addition, on August 4, 2020, the Washington Court of Appeals Division III filed an opinion regarding academic misconduct in the *Daniel Nelson v. Spokane Community College* case (No. 36556-5-III). Community Colleges of Spokane will provide clarification regarding its treatment of academic misconduct to ensure compliance with the decision of the court of appeals.

Citation of Rules Affected by this Order: New WAC 132Q-10-221 Faculty member authority to respond to academic dishonesty and other ethical violations; and amending WAC 132Q-10-210 Academic dishonesty and other ethical violations, 132Q-10-600 Order of precedence, and 132Q-10-608 Appeals.

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

Adopted under notice filed as WSR 22-08-090 on April 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: March 17, 2022.

John O'Rourke
Rules Coordinator

OTS-3575.2

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 132Q-10-210 Academic dishonesty and other ethical violations. (1) Acts of academic dishonesty (~~((will be reported to the student conduct officer and))~~) include the following:

(a) Cheating which includes:

(i) Use of unauthorized assistance in taking quizzes, tests, or examinations.

(ii) Acquisition, without permission, of tests or other academic material belonging to a member of the college faculty or staff.

(iii) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes:

- Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;
- Counterfeiting a record of internship or practicum experiences;
- Submitting a false excuse for absence or tardiness;
- Unauthorized multiple submission of the same work; sabotage of others' work.

(iv) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(v) Plagiarism which includes the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(vi) Facilitation of dishonesty, including not challenging academic dishonesty.

(b) Knowingly furnishing false information to any college official, faculty member, or office including submission of fraudulent transcripts from other institutions.

(c) Forgery, alteration or misuse of any college document, record or instrument of identification.

(d) Tampering with an election conducted by or for CCS college students.

(2) (~~(Acts of)~~) Other ethical violations (~~(will be reported to the student conduct officer and)~~) include the following: The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-210, filed 7/21/15, effective 8/21/15.]

NEW SECTION

WAC 132Q-10-221 Faculty member authority to respond to academic dishonesty and other ethical violations. (1) A faculty member need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the faculty member may impose reprimands, educational opportunities, and/or adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such faculty response shall not limit or preclude disciplinary sanction(s) from the student conduct office for the same act of dishonesty.

(2) A student who has received a grade adjustment by the faculty member on the basis of academic dishonesty under this code may grieve that adjustment under the student complaint procedure; however, any sanction that is imposed by the student conduct officer or student conduct board or panel must be reviewed under the student disciplinary procedure. See WAC 132Q-10-335.

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AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-600 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 Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-600, filed 4/23/21, effective 5/24/21.]

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-608 Appeals. (1) ~~((The))~~ All parties, including the student conduct officer in their capacity as a representative of the college shall have the right to appeal from the ((initial order's)) determination of responsibility and/or from a 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 132Q-10-335.)), in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the appropriate vice 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) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College 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). For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College 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)) process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.

(3) Upon receiving a timely appeal, the appropriately identified vice 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 appropriate vice 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 appropriate vice president shall serve copies of the responses to the other parties.

(4) 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 appropriate vice president's office.

(5) The appropriate vice president or their delegate, based on their review of parties' submission 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 if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and if amended set for the new disciplinary sanctions and conditions.

(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.

(7) 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.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-608, filed 4/23/21, effective 5/24/21.]

WSR 22-12-004

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 19, 2022, 9:45 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The agency is filing this rule to avoid a gap in coverage between the time the public health emergency (PHE) ends and the time similar coverage is reinstated under medicaid verification procedures that existed before the PHE.

Citation of Rules Affected by this Order: New WAC 182-521-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-01-046 on December 7, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 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: May 19, 2022.

Wendy Barcus
Rules Coordinator

OTS-3311.2

NEW SECTION

WAC 182-521-0200 Coverage after the public health emergency (PHE) ends. (1) In response to the coronavirus (COVID-19) public health emergency (PHE) declared by the Secretary of the U.S. Department of Health and Human Services (HHS) and in response to Section 6008 of the Families First Coronavirus Response Act (Public Law 116-127), the medicaid agency:

(a) Continues your Washington apple health coverage until the end of the PHE unless your eligibility determination was made incorrectly, or you:

(i) Are deceased;

(ii) Move out-of-state;

(iii) Request termination of your coverage; or

(iv) No longer meet citizenship or immigration requirements as described in WAC 182-503-0535.

(b) Waives and suspends the collection of premiums through the last day of the calendar quarter in which the PHE ends for:

(i) Apple health for kids with premiums (CHIP), as described in WAC 182-505-0215; and

(ii) Health care for workers with disabilities (HWD) program, as described in WAC 182-511-1250.

(c) Excludes, for the duration of the PHE and a period of 12 months after the PHE ends, resources accumulated from participation that did not increase in response to Section 6008(b) of the Families First Coronavirus Response Act (FFCRA), as described in WAC 182-512-0550(24).

(2) If you receive continued apple health due to the suspension of certain eligibility rules during the PHE, the agency, after the PHE ends:

(a) Redetermines your eligibility for ongoing coverage using the process and timelines described in WAC 182-504-0035 and notifies you as required under chapter 182-518 WAC. You may update any information needed to complete a redetermination of eligibility, as described in WAC 182-504-0035.

(i) If you are no longer eligible for apple health, or you do not respond to our renewal request notice, you will receive 10 calendar days' advance notice before your coverage is terminated, as described in WAC 182-518-0025.

(ii) If your modified adjusted gross income (MAGI)-based coverage ends because you did not renew it, you have 90 calendar days from the termination date to complete your renewal. If you are still eligible for apple health, your benefits will be restored without a gap in coverage.

(iii) If your coverage is terminated, you have a right to an administrative hearing, as described in chapter 182-526 WAC.

(b) Begins collecting premiums for CHIP and HWD clients prospectively, beginning with the month following the quarter in which the PHE ends, based upon reported circumstances, and without collecting arrears.

(c) Resumes eligibility verification based on the factors described in WAC 182-503-0050.

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WSR 22-12-017
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 20, 2022, 3:46 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The department is adopting chapter 388-394 WAC, Transitional cash assistance: WAC 388-394-0010 What is the transitional cash assistance (TCA) program?; and amending WAC 388-408-0035 Who is in my assistance unit for basic food?, 388-489-0005 Who is eligible for transitional food assistance?, 388-489-0010 How is my transitional food assistance benefit calculated?, and 388-489-0015 How long will my household receive transitional food assistance? to support implementation of SHB 1151 (chapter 9, Laws of 2021), effective July 1, 2022. Section 2 of this legislation creates the transitional cash assistance (TCA) program, a state-funded cash assistance benefit available to households with children, not simultaneously receiving TANF, who terminate basic food benefits due to exceeding the gross income limit or voluntary closure. Families receiving TCA are eligible for transitional food assistance for a period of five months.

Citation of Rules Affected by this Order: New WAC 388-394-0010; and amending WAC 388-408-0035, 388-489-0005, 388-489-0010, and 388-489-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.680, and 74.08.090.

Adopted under notice filed as WSR 22-07-076 on March 18, 2022.

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 1, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: May 20, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4913.3

Chapter 388-394 WAC
TRANSITIONAL CASH ASSISTANCE

NEW SECTION

WAC 388-394-0010 What is the transitional cash assistance (TCA) program? (1) The transitional cash assistance program is a state-funded benefit administered by the department of social and health services and provides an additional cash benefit to low income families who meet specific criteria.

(2) The following definitions apply to this program:

(a) "Family" means an assistance unit with a qualifying child;

(b) "Qualifying child" means a child meeting the following conditions:

(i) Under age 18; or

(ii) Under age 19 and participating full-time in a secondary school program as described in WAC 388-404-0005.

(3) Who is eligible for the transitional cash assistance program?

You may be eligible for transitional cash assistance for the last month you receive basic food benefits if you meet all of the following:

(a) Your basic food assistance is ending because:

(i) Your assistance unit exceeds the maximum gross monthly income limit for your household size under WAC 388-478-0060; or

(ii) You asked us to stop your benefits.

(b) No one in your basic food assistance unit receives temporary assistance for needy families, including tribal TANF, or state family assistance;

(c) Your food assistance unit includes a family with a qualifying child; and

(d) You reside in Washington state as required under WAC 388-468-0005.

(4) What benefits will I receive if I am eligible for the transitional cash assistance program?

(a) Your assistance unit will receive a separate \$10 cash assistance benefit.

(b) We deposit the cash assistance benefit to your EBT card.

(5) How do I apply for the transitional cash assistance program?

(a) You do not have to apply for the transitional cash assistance program.

(b) We will determine if your assistance unit is eligible and automatically provide the benefit to you.

(6) There is no limit to the number of times your family can receive transitional cash assistance.

(7) Continuance of the program is contingent on state funds specifically for the transitional cash assistance program. The department may discontinue the program when funding is no longer available.

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AMENDATORY SECTION (Amending WSR 13-16-102, filed 8/7/13, effective 9/7/13)

WAC 388-408-0035 Who is in my assistance unit for basic food?

(1) (~~For basic food, a~~) A person must be in your assistance unit (~~(AU)~~) if they live in the same home as you and (~~(~~

~~a) Regularly~~) regularly buy food or prepare meals with you. (~~+~~

or

~~(b) You provide meals for them and they pay less than a reasonable amount for meals.)~~

(2) If the following people live with you, they must be in your ((AU)) assistance unit even if you do not usually buy or prepare food together:

(a) Your spouse;

(b) Your parents if you are under age ~~((twenty-two (even if you are married)))~~ 22;

(c) Your children under age ~~((twenty-two))~~ 22;

(d) The parent of a child who must be in your ((AU)) assistance unit;

(e) A child ~~((other than a foster child))~~ under age ~~((eighteen))~~ 18 who ~~((doesn't))~~ does not live with their parent unless the child:

(i) Is a foster child;

~~((i))~~ (ii) Is emancipated; or

~~((ii))~~ (iii) Is not financially dependent on an adult in the ((AU)) assistance unit.

(3) If any of the people in subsections (1) or (2) of this section already receive transitional food assistance under chapter 388-489 WAC, ((you)) they can only receive benefits if they choose to reapply for basic food as described in WAC 388-489-0022.

(4) If you live in an institution where you may be eligible for basic food under WAC 388-408-0040, we decide who is in your ((AU)) assistance unit as follows:

(a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your ((AU)) assistance unit under subsection (2) of this rule; or

(b) If you apply for benefits on your own, we include you, anyone who must be in your ((AU)) assistance unit under subsection (2) of this ~~((rule))~~ section, and other residents you choose to apply with.

(5) Anyone who must be in your ((AU)) assistance unit under subsection (1) or (2) of this section is an ineligible ((AU)) assistance unit member if they:

(a) Are disqualified for an intentional program violation ~~((IPV))~~ under WAC 388-446-0015;

(b) Do not meet ~~((ABAWD))~~ work requirements under WAC 388-444-0030 ~~((-~~

~~((c) Do not meet work requirements under))~~ or WAC 388-444-0055;

~~((d))~~ (c) Do not provide a ((Social Security)) social security number under WAC 388-476-0005;

~~((e))~~ (d) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

~~((f))~~ (e) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

(6) If your ((AU)) assistance unit has an ineligible member:

(a) We count the ineligible member's income as part of your ((AU)) assistance unit's income under WAC 388-450-0140;

(b) We count all the ineligible members resources to your ((AU)) assistance unit; and

(c) We do not use the ineligible member to determine your ((AU)) assistance unit's size for the maximum income amount or allotment under WAC 388-478-0060.

(7) If the following people live in the same home as you, you can choose if we include them in your ((AU)) assistance unit:

(a) A permanently disabled person who is age ~~((sixty))~~ 60 or over and cannot make their own meals if the total income of everyone else

in the home, ~~((+))~~ not counting the elderly and disabled person's spouse ~~((+))~~ is not more than the ~~((one hundred sixty five percent))~~ 165% standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your ~~((AU))~~ as-
sistance unit, the boarder cannot get basic food benefits in a separate ~~((AU))~~ assistance unit;

(c) A person placed in your home for foster care. If you do not include this person in your ~~((AU))~~ assistance unit, they cannot get basic food benefits in a separate ~~((AU))~~ assistance unit;

(d) Roomers; or

(e) Live-in attendants even if they buy or prepare food with you.

(8) If someone in your ~~((AU))~~ assistance unit moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your ~~((AU))~~ assistance unit, unless you receive transitional food assistance.

(9) ~~((For))~~ Your transitional food assistance ~~((, your TFA AU))~~ unit includes the people who were in your basic food ~~((AU))~~ assistance unit the month you received transitional cash assistance or for the last month you received:

(a) Temporary assistance for needy families;

(b) State family assistance; or

(c) Tribal TANF benefits.

(10) If someone in your assistance unit received basic food ~~((or food stamps))~~ or transitional food assistance in another ~~((AU))~~ as-
sistance unit or another state, they cannot receive benefits in your ~~((AU))~~ assistance unit for the same period of time unless they ~~((with one exception. If you already received basic food, food stamp, or transitional food assistance benefits:~~

~~(a) In another state, you are not eligible for basic food for the period of time covered by the benefits you received from the other state; or~~

~~(b) In another AU, you are not eligible for basic food in a different AU for the same period of time;~~

~~(c) In another AU, but you)) left the ((AU)) assistance unit to live in a shelter for battered women and children under WAC 388-408-0045((, you may be eligible to receive benefits in a separate AU)).~~

(11) ~~((The following people who live in your home are not members of your AU. If they are eligible for basic food, they may be a separate AU:~~

~~(a) Someone who usually buys and prepares food separately from your AU if they are not required to be in your AU; or~~

~~(b) Someone who lives in a separate residence.~~

~~(12))~~ A student who is ineligible for basic food under WAC 388-482-0005 is not a member of your ~~((AU))~~ assistance unit.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.1. WSR 13-16-102, § 388-408-0035, filed 8/7/13, effective 9/7/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, and 74.08A.903. WSR 10-13-047, § 388-408-0035, filed 6/9/10, effective 8/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-19-061, § 388-408-0035, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-14-040, § 388-408-0035, filed 6/29/04, effective 7/30/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR

04-06-025, § 388-408-0035, filed 2/23/04, effective 4/1/04; WSR 03-19-118, § 388-408-0035, filed 9/16/03, effective 11/1/03. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-060, § 388-408-0035, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-408-0035, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-489-0005 Who is eligible for transitional food assistance? You are eligible for transitional food assistance for up to five months if you meet the following eligibility criteria:

~~(1) ((If your))~~ Your family stops receiving cash assistance to include temporary assistance for needy families ((cash benefits)), ((including benefits from a)) tribal ((program)) TANF, ((you will be eligible for transitional food assistance for up to five months if you meet all the following eligibility requirements:)) or state family assistance, or:

~~(2) Your family receives transitional cash assistance,~~
~~((1))~~ (3) Your family was receiving basic food at the time we determined you were no longer eligible for ((temporary assistance for needy families)) cash assistance described in subsection (1) of this section, or when you received transitional cash assistance;

~~((2))~~ (4) After your family stops receiving ((temporary assistance for needy families)) cash assistance described in subsection (1) of this section, or receives transitional cash assistance, no other member of your basic food assistance unit ((continues to receive)) receives temporary assistance for needy families, tribal TANF, or state family assistance;

~~((3))~~ (5) Your family did not move out of the state of Washington as described in ((+)WAC 388-468-0005((+));

~~((4))~~ (6) At the time your family's cash assistance ended, ((Your)) your family was not in sanction status((at the time your temporary assistance for needy families grant ended)). Sanction status means:

(a) We reduced or stopped your family's temporary assistance for needy families grant payment because a family member is not:

(i) Meeting WorkFirst program requirements (WAC 388-310-1600); or
(ii) Cooperating with the division of child support (WAC 388-422-0100); or

(b) We decided that a member of your family was not eligible for temporary assistance for needy families because the member:

(i) Failed to meet teen parent living arrangement (WAC 388-486-0005) or teen parent school attendance requirements (WAC 388-410-0010); or

(ii) Was convicted of unlawful practices (WAC 388-446-0005) or for receiving temporary assistance for needy families in two or more states at the same time (WAC 388-446-0010); or

(c) If you are receiving temporary assistance for needy families benefits from a tribal program, your family's grant is reduced or stopped for a reason that is the same as one of the reasons listed in ~~((4)(a))~~ (6)(a) or ~~((4)(b))~~ (6)(b) of this section.

~~((5))~~ (7) At the time your family's temporary assistance for needy families grant ended, your basic food assistance unit did not become ineligible because:

(a) You were applying for recertification of your basic food benefits and refused to cooperate with the application process; or

(b) All members of your assistance unit are ineligible for basic food for the reasons stated in WAC 388-489-0025(3).

~~((6))~~ (8) There is no limit to the number of times your family (~~may leave temporary assistance for needy families and~~) can receive transitional food assistance.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-489-0005, filed 9/16/05, effective 11/1/05.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 10-23-119, filed 11/17/10, effective 12/18/10)

WAC 388-489-0010 How is my transitional food assistance benefit calculated? (1) We base your transitional food assistance benefit amount on the regular monthly benefit allotment issued to your basic food assistance unit for the last month your household received temporary assistance for needy families or the month you qualified for transitional cash assistance. We will not count your last temporary assistance for needy families grant payment when we calculate your transitional food assistance benefit amount. For example:

(a) If your basic food assistance unit's only income was temporary assistance for needy families, the transitional food assistance benefit will be the amount your household would have received if you had no income.

(b) If your basic food benefit was calculated using temporary assistance for needy families plus income from another source, we will count only the income from the other source when calculating the transitional food assistance amount.

(2) We will adjust your transitional food assistance benefits if:

(a) Someone who gets transitional food assistance with you leaves your assistance unit and is found eligible to receive basic food in another assistance unit. We will adjust your benefits by:

(i) Reducing your assistance unit size by the number of persons who left your assistance unit; and

(ii) Removing the income and expenses clearly belonging to the persons who left your assistance unit.

(b) A change to the maximum allotment for basic food under WAC 388-478-0060 results in an increase in benefits for basic food assistance units.

(c) You got an overpayment of basic food benefits and we need to adjust the amount we deduct from your monthly benefits to repay the overpayment as required in WAC 388-410-0033. This includes:

(i) Starting a new monthly deduction;

(ii) Changing the amount of the monthly deduction; and

(iii) Ending the monthly deduction when the amount you owe has been paid off.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, and 74.08A.903. WSR 10-23-119, § 388-489-0010, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-489-0010, filed 9/16/05, effective 11/1/05.]

AMENDATORY SECTION (Amending WSR 10-13-047, filed 6/9/10, effective 8/1/10)

WAC 388-489-0015 How long will my household receive transitional food assistance? (1) If your basic food assistance unit is eligible for transitional food assistance according to WAC 388-489-0005, you will receive transitional food assistance for up to five months (~~after your household leaves temporary assistance for needy families.~~) beginning:

(a) The month after your household (~~((1) If you~~) stopped getting temporary assistance for needy families, or

(b) The month after you receive (~~(from the department, you are eligible for)~~) transitional cash assistance (~~(benefits beginning the month after your household received their last grant)~~).

(2) If you stopped receiving tribal TANF benefits, you are eligible for transitional benefits:

(a) With the next monthly issuance after we update your case to show you no longer have tribal TANF income, if the tribal TANF end date is the end of the current month or the end of a prior month; or

(b) On the first of the month following the tribal TANF end date, if the tribal TANF end date is the end of a future month.

(3) If necessary, we will extend or shorten your basic food assistance unit's current certification period to match the five-month transition period.

(4) You may choose to end your five-month transition period early by submitting an application for regular basic food under WAC 388-489-0022 or by asking us to terminate your benefits.

(5) We send you a notice before the end of your five-month transition period so you can reapply for regular basic food benefits and continue to receive benefits without interruption as described in WAC 388-434-0010.

(6) We may terminate your transitional food assistance early for the reasons stated in WAC 388-489-0025.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, and 74.08A.903. WSR 10-13-047, § 388-489-0015, filed 6/9/10, effective 8/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-489-0015, filed 9/16/05, effective 11/1/05.]

WSR 22-12-018

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed May 23, 2022, 9:40 a.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: Chapter 246-803 WAC, Acupuncture and Eastern medicine practitioner. The department of health (department) has amended chapter 246-803 WAC to implement the following legislation:

SB 5018 (chapter 87, Laws of 2021): 1. Amending the definition of "acupuncture and Eastern medicine" to include modern acupuncture and Eastern medicine therapeutic treatments, including treatment of substance use and points and protocols for ear acupuncture;

2. Expanding the definition of point injection therapy to include injection of local anesthetics, such as lidocaine and procaine for reduction of pain during point injection therapy;

3. Allowing the use of oxygen and epinephrine for potential emergency purposes; and

4. Establishing the training and education requirements for the use of local anesthetics, oxygen, and epinephrine.

SHB 2378 (chapter 80, Laws of 2020): Changed the statutory authority for osteopathic physician assistants effective July 1, 2022, which necessitated housekeeping changes in these rules to reflect the new statutory reference.

Citation of Rules Affected by this Order: Amending WAC 246-803-010, 246-803-020, 246-803-030, 246-803-040, 246-803-240, and 246-803-300.

Statutory Authority for Adoption: RCW 18.06.160 and 18.06.230.

Other Authority: Chapter 18.06 RCW, SB 5018 (chapter 87, Laws of 2021), and SHB 2378 (chapter 80, Laws of 2020).

Adopted under notice filed as WSR 22-07-091 on March 22, 2022.

A final cost-benefit analysis is available by contacting Vicki Brown, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4865, fax 360-236-2901, TTY 711, email vicki.brown@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 6, 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 2, Amended 6, Repealed 0.

Date Adopted: May 22, 2022.

Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3387.3

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Accredited school, college or program" means:
 - (a) Accredited or has candidacy status as a United States postsecondary school, college or program; or
 - (b) Accredited by or has candidacy status with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).
- (2) "Acupuncture needles" means solid filiform instruments intended to pierce the skin in the practice of acupuncture. Acupuncture needles used on a patient must be sterile and disposable, and may only be used once.
- (3) "Acupuncturist or acupuncture and Eastern medicine practitioner" is a person licensed under chapter 18.06 RCW.
- (4) "Acupuncturist or acupuncture and Eastern medicine program" means training in acupuncture or Eastern medicine offered by an academic institution that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230. A program is an established area of study offered on a continuing basis. An acupuncture or acupuncture and Eastern medicine program may be referred to as a program in acupuncture, acupuncture and Eastern medicine, or Eastern medicine.
- (5) "Acupuncture or acupuncture and Eastern medicine school" means an accredited academic institution which has the sole purpose of offering training in acupuncture or acupuncture and Eastern medicine that satisfies the education requirements set out in WAC 246-803-210, 246-803-220, and 246-803-230.
- (6) "Approved school" means a school, college or program approved by the secretary of the department of health that meets the requirements of WAC 246-803-500.
- (7) "Credit" means (~~(ten)~~) 10 classroom contact hours on the quarter system or (~~(fifteen)~~) 15 classroom contact hours on the semester or trimester system.
- (8) "Department" means the department of health.
- (9) "Hypodermic needle" means a device intended to inject fluids into, or withdraw fluids from, parts of the body below the surface of the skin.
- (10) "Primary health care provider" means an individual licensed under:
 - (a) Chapter 18.36A RCW, Naturopathy;
 - (b) Chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery;
 - (c) (~~Chapter 18.57A RCW, Osteopathic physicians' assistants;~~
 - ~~(d)~~) Chapter 18.71 RCW, Physicians;
 - (~~(e)~~) (d) Chapter 18.71A RCW, Physician assistants; or
 - (~~(f)~~) (e) RCW 18.79.050, "Advanced registered nursing practice" defined—Exceptions.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-010, filed 4/8/21,

effective 5/9/21. Statutory Authority: RCW 18.06.160. WSR 20-03-112, § 246-803-010, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-010, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-020 Advertising. (1) A person licensed under this chapter may use the title acupuncturist (Ac), licensed acupuncturist (L.Ac.), acupuncture and Eastern medicine practitioner (AEMP), EAMP, or any derivative thereof in all forms of advertising, professional literature and billing.

(2) An acupuncturist or acupuncture and Eastern medicine practitioner may not use the title "doctor," "Dr.," or "Ph.D." on any advertising or other printed material unless the nature of the degree is clearly stated.

(3) An acupuncturist or acupuncture and Eastern medicine practitioner may not represent that ~~((he or she))~~ they hold~~((s))~~ a degree from an acupuncture or acupuncture and Eastern medicine school other than that degree which ~~((appears on his or her application for licensure))~~ has been awarded to them.

(4) An acupuncturist or acupuncture and Eastern medicine practitioner shall not engage in false, deceptive, or misleading advertising including, but not limited to, the following:

(a) Advertising that misrepresents the potential of acupuncture or Eastern medicine; and

(b) Advertising of any service, technique, or procedure that is outside the scope of practice for an acupuncturist or acupuncture and Eastern medicine practitioner.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-020, filed 4/8/21, effective 5/9/21. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-020, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-030 Acupuncture ~~((or))~~ and Eastern medicine. Acupuncture ~~((or))~~ and Eastern medicine is a health care service using acupuncture or Eastern medicine diagnosis and treatment to promote health and treat organic or functional disorders, which includes a variety of traditional and modern acupuncture and Eastern medicine therapeutic treatments, such as the practice of acupuncture techniques and herbal medicine to maintain and promote wellness, prevent, manage, and reduce pain, and treat substance use disorder. Acupuncture and Eastern medicine includes the following:

(1) ~~((Acupuncture, includes))~~ The use of presterilized, disposable needles, such as filiform needles, and other acupuncture needles, syringes, or lancets to directly and indirectly stimulate meridians and acupuncture points ((and meridians)) including ashi points, motor

points, trigger points, and other nonspecific points throughout the body;

(2) The use of electrical, mechanical, or magnetic devices to stimulate meridians and acupuncture points ((and meridians)) including ashi points, trigger points, and other nonspecific points throughout the body;

(3) Intramuscular needling and dry needling of trigger points and other nonspecific points throughout the body in accordance with acupuncture and Eastern medicine training;

(4) All points and protocols for ear acupuncture including auricular acupuncture, national acupuncture detoxification association protocol, battlefield acupuncture, and the Nogier system;

(5) The use of contact needling and noninsertion tools such as teishin, enshin, or zanshin;

~~((3))~~ (6) Moxibustion;

~~((4))~~ (7) Acupressure;

~~((5))~~ (8) Cupping;

~~((6))~~ (9) Dermal friction technique;

~~((7))~~ (10) Infrared;

~~((8))~~ (11) Sonopuncture;

~~((9))~~ (12) Laserpuncture;

~~((10))~~ (13) Point injection therapy:

(a) ~~((Is defined as meaning))~~ Means the subcutaneous, intramuscular and intradermal injection of substances consistent with the practice of acupuncture or Eastern medicine to stimulate meridians, acupuncture points, ashi points, motor points, trigger points, and ((meridians)) other nonspecific points throughout the body. Substances are limited to:

(i) Saline;

(ii) Sterile water;

(iii) Herbs specifically manufactured for injection by means of hypodermic needles;

(iv) Minerals specifically manufactured for injection by means of hypodermic needles;

(v) Vitamins in liquid form specifically manufactured for injection by means of hypodermic needles; and

(vi) Homeopathic and nutritional substances specifically manufactured for injection by means of hypodermic needles.

(b) Also includes injection of local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection therapy, consistent with the practice of acupuncture and Eastern medicine and training requirements as defined in WAC 246-803-040.

(c) Used by an acupuncturist or acupuncture and Eastern medicine practitioner who has met the training and education requirements in RCW 18.06.230, may administer oxygen and epinephrine for potential emergency purposes, such as an allergic or adverse reaction, for patient care and safety.

(d) For the purposes of this ((section)) subsection, includes trigger points as a subset of acupuncture points and ashi points as recognized in the current practice of acupuncture or Eastern medicine.

~~((e))~~ (e) Does not include injection of controlled substances contained in Schedules I through V of the Uniform Controlled Substances Act, chapter 69.50 RCW or steroids as defined in RCW 69.41.300.

~~((11))~~ (14) Dietary advice and health education based on acupuncture or Eastern medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements.

(a) Health education is educational information directed to the patient that attempts to improve, maintain, promote and safeguard the health care of the patient. Health education consists of educating the patient on how the mind, body and spirit connect in context of imbalances, emotional patterns and tendencies as defined by and treated in acupuncture or Eastern medicine.

(b) Health education does not include mental health counseling;
 ((12)) (15) Breathing, relaxation, and Eastern exercise techniques;

((13)) (16) Qi gong;

((14)) (17) Eastern massage (~~(. Eastern massage means)~~), manual techniques having originated in East Asia involving the manipulation of the soft tissues of the body for therapeutic purposes.

(a) Eastern massage consists of:

(i) Applying fixed or movable pressure;

(ii) Passive, resistive, and assisted stretching of fascial and connective tissue;

(iii) Holding or causing movement of the body; or

(iv) Tapping, compressions or friction.

(b) Eastern massage may be performed with the use of tools common to the practice and aids of superficial heat, cold, water, lubricants, salts, minerals, liniments, poultices, and herbs.

(c) Eastern massage does not include attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.

((15)) (18) Tui na (~~(. Tui na is)~~), a method of Eastern bodywork, characterized by the kneading, pressing, rolling, shaking, and stretching of the body and does not include spinal manipulation;

(and)

((16)) (19) Superficial heat and cold therapies.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-030, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.160. WSR 20-03-112, § 246-803-030, filed 1/15/20, effective 2/15/20. Statutory Authority: RCW 18.06.230, 18.06.160, and 18.06.010. WSR 17-15-006, § 246-803-030, filed 7/5/17, effective 7/5/17. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-030, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-040 Education and training for point injection therapy. Acupuncturist or acupuncture and Eastern medicine practitioners employing point injection therapy shall use only those substances and techniques for which they have received training.

(1) The education and training for point injection therapy must:

(a) Consist of a minimum total of (~~(twenty-four)~~) 24 contact hours of training in the topics required in this section;

(b) Include at least eight hours of clinical practical experience; and

(c) Be administered by an instructor that meets the requirements of subsection (4) of this section.

(2) A curriculum for a point injection therapy training program must include:

(a) Review of physical examination, contraindications and universal precautions, and differential diagnosis;

(b) Compounding and administration of the substances authorized for point injection therapy under WAC 246-803-030, including aseptic technique, recordkeeping and storage of substances authorized for use in point injection therapy;

(c) Use of local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection therapy, consistent with the practice of acupuncture and Eastern medicine;

(d) Emergency procedures to include the use of oxygen and epinephrine for potential emergency purposes, such as an allergic or adverse reaction, for patient care and safety;

~~((d))~~ (e) Point injection therapy techniques and contraindication within the acupuncture or Eastern medicine scope of practice relative to the authorized substances listed in WAC 246-803-030 ~~((10))~~ (13) (a) (i) through (vi).

(3) ~~((Except for the training in the use of intramuscular epinephrine, the))~~ All training must be delivered in person and not through webinar or other online or distance learning method.

(4) An instructor for point injection therapy must have:

(a) A health care credential in good standing with a scope of practice that includes point injection therapy; and

(b) At least five years of experience in a health care practice that includes point injection therapy.

(5) In addition to point injection therapy meeting the requirements of subsections (1) and (2) of this section, acupuncturists or acupuncture and Eastern medicine practitioners using point injection therapy must complete a minimum of two hours of training specifically in the use of intramuscular epinephrine, local anesthetics and oxygen.

(a) ~~((Training in the use of intramuscular epinephrine must be according to RCW 70.54.440(4)).~~

~~((b) This))~~ The training may be taken separately from the training in point injection therapy.

~~((e) Up to))~~ (b) The minimum of two hours of training ~~((in the use of intramuscular epinephrine))~~ count ~~((in))~~ towards meeting the requirement for ~~((twenty-four))~~ 24 hours of contact training as required in subsection (1) (a) of this section.

~~((d))~~ (c) An acupuncturist or acupuncture and Eastern medicine practitioner who holds an active credential with a scope of practice that includes the authority to prescribe, dispense or administer epinephrine, local anesthetics, or oxygen does not need to meet the requirements of (a) of this subsection.

(6) To qualify under this section, the training program shall provide each successful student with a:

(a) Certificate of successful completion of the program; and

(b) Course syllabus outlining the schedule and curriculum of the program.

(7) The requirements of subsections (1) through (6) of this section do not apply to an acupuncturist or acupuncture and Eastern medicine practitioner who has provided point injection therapy prior to ~~((July 1, 2017))~~ June 9, 2016. Acupuncturists or acupuncture and Eastern medicine practitioners using point injection therapy prior to ~~((July 1, 2017))~~ June 9, 2016, must have completed training and education in point injection therapy.

(8) Prior to administering local anesthetic, epinephrine, or oxygen in providing point injection therapy services, an acupuncturist or acupuncture and Eastern medicine practitioner must satisfy the education and training requirements set out in this section.

(9) Any acupuncturist or acupuncture and Eastern medicine practitioner performing point injection therapy must be able to demonstrate, upon request of the department of health, successful completion of education and training in point injection therapy.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-040, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.230, 18.06.160, and 18.06.010. WSR 17-15-006, § 246-803-040, filed 7/5/17, effective 7/5/17.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-240 Examinations. (1) The examinations administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) are the official examinations for licensure as an acupuncturist or acupuncture and Eastern medicine practitioner.

(2) An applicant for licensure as an acupuncturist or acupuncture and Eastern medicine practitioner must pass the following examinations:

- (a) Foundations of Oriental medicine examination;
- (b) Acupuncture with point location examination;
- (c) Biomedicine examination; and
- (d) Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) clean needle technique course.

(3) If the applicant takes the examinations listed in subsection (2) of this section in a language other than English, they must also take and pass the internet-based test of English as a foreign language ((TOEFL) internet-based (IBT)) (ibTOEFL) examination with an overall score of not less than 89. This is done by obtaining scores on the ((TOEFL-IBT)) ibTOEFL of at least:

- (a) ((24)) Twenty-four on the writing section;
- (b) ((26)) Twenty-six on the speaking section;
- (c) ((21)) Twenty-one on the reading section; and
- (d) ((18)) Eighteen on the listening comprehension section.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-240, filed 4/8/21, effective 5/9/21. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-240, filed 8/22/11, effective 9/22/11.]

AMENDATORY SECTION (Amending WSR 21-09-008, filed 4/8/21, effective 5/9/21)

WAC 246-803-300 Patient notification of qualifications and scope of practice. Acupuncturists or acupuncture and Eastern medicine practitioners in the state of Washington shall provide to each patient

prior to or at the time of the initial patient visit the qualifications and scope of practice form. The form must include:

(1) The acupuncturist's or acupuncture and Eastern medicine practitioner's education. The degree obtained and the dates and locations of the didactic and clinical training.

(2) License information, including state license number and date of licensure.

(3) A statement that the practice of acupuncture or acupuncture and Eastern medicine in the state of Washington includes the following:

(a) Acupuncture (~~(, including the)~~) and Eastern medicine means a health care service utilizing acupuncture and Eastern medicine therapeutic treatments, such as the practice of acupuncture techniques and herbal medicine to maintain and promote wellness, prevent, manage, and reduce pain, and treat substance use disorder;

(b) Use of presterilized, disposable needles, such as filiform needles, and other acupuncture needles, syringes, or lancets to directly and indirectly stimulate meridians and acupuncture points (~~and meridians~~) including ashi points, motor points, trigger points, and other nonspecific points throughout the body;

~~((b))~~ (c) Use of electrical, mechanical, or magnetic devices to stimulate meridians and acupuncture points (~~and meridians~~) including ashi points, motor points, trigger points, and other nonspecific points throughout the body;

(d) Intramuscular needling and dry needling of trigger points and other nonspecific points throughout the body in accordance with acupuncture and Eastern medicine training;

(e) All points and protocols for ear acupuncture including auricular acupuncture, national acupuncture detoxification association protocol, battlefield acupuncture, and the Nogier system;

(f) Use of contact needling and noninsertion tools such as teishin, enshin, or zanshin;

~~((e))~~ (g) Moxibustion;

~~((d))~~ (h) Acupressure;

~~((e))~~ (i) Cupping;

~~((f))~~ (j) Dermal friction technique;

~~((g))~~ (k) Infrared;

~~((h))~~ (l) Sonopuncture;

~~((i))~~ (m) Laserpuncture;

~~((j))~~ (n) For the purposes of this section, point injection therapy is defined as meaning the subcutaneous, intramuscular and intradermal injection of substances consistent with the practice of acupuncture or Eastern medicine to stimulate meridians, acupuncture points, ashi points, motor points, trigger points, and (~~meridians~~) other nonspecific points throughout the body.

~~((For the purposes of this section,))~~ (i) Point injection therapy includes trigger points as a subset of acupuncture points and (~~ashi~~) ashi points as recognized in the current practice of acupuncture and Eastern medicine.

(ii) Point injection therapy does not include injection of controlled substances contained in Scheduled I through V of the Uniform Controlled Substance Act, chapter 69.50 RCW or steroids as defined in RCW 69.41.300.

(iii) Substances that may be injected are limited to:

(A) Saline;

(B) Sterile water;

(C) Herbs specifically manufactured for injection by means of hypodermic needles;

(D) Minerals specifically manufactured for injection by means of hypodermic needles;

(E) Vitamins in liquid form specifically manufactured for injection by means of hypodermic needles; (~~and~~)

(F) Homeopathic and nutritional substances specifically manufactured for injection by means of hypodermic needles;

(G) Local anesthetics, such as lidocaine and procaine, for reduction of pain during point injection therapy, consistent with the practice of acupuncture and Eastern medicine; and

(H) Oxygen and epinephrine for potential emergency purposes, such as an allergic or adverse reaction, for patient care and safety, and may only be administered by an acupuncturist or acupuncture and Eastern medicine practitioner using point injection therapy who has met the training and education requirements established pursuant to RCW 18.06.230.

~~((k))~~ (o) Dietary advice and health education based on acupuncture or Eastern medical theory, including the recommendation and sale of herbs, vitamins, minerals, and dietary and nutritional supplements;

~~((l))~~ (p) Breathing, relaxation, and Eastern exercise techniques;

~~((m))~~ (q) Qi gong;

~~((n))~~ (r) Eastern massage and Tui na (which is a method of Eastern bodywork); and

~~((o))~~ (s) Superficial heat and cold therapies.

(4) A statement that side effects of the treatments listed ~~((above))~~ in subsection (3) of this section may include, but are not limited to, the following:

(a) Pain following treatment;

(b) Minor bruising;

(c) Infection;

(d) Needle sickness; and

(e) Broken needle.

(5) A statement that patients must inform the acupuncturist or acupuncture and Eastern medicine practitioner if they have a severe bleeding disorder or pacemaker prior to any treatment.

[Statutory Authority: RCW 18.06.160, chapter 18.06 RCW, 2019 c 308, 2020 c 229 and 2020 c 76. WSR 21-09-008, § 246-803-300, filed 4/8/21, effective 5/9/21. Statutory Authority: RCW 18.06.160. WSR 20-03-112, § 246-803-300, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapter 18.06 RCW and 2010 c 286. WSR 11-17-105, § 246-803-300, filed 8/22/11, effective 9/22/11.]

**WSR 22-12-023
PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 23, 2022, 4:30 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The department is amending WAC 388-478-0015 Need standards for cash assistance. SHB 1151 (chapter 9, Laws of 2021) requires the department to update standards of need using an existing, broadly-used national standard. Amendments reflect this required update using the University of Washington Center for Women's Welfare Self-Sufficiency Standard.

Citation of Rules Affected by this Order: Amending WAC 388-478-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Adopted under notice filed as WSR 22-08-091 on April 5, 2022.

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

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

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

Date Adopted: May 23, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4919.1

AMENDATORY SECTION (Amending WSR 21-23-102, filed 11/17/21, effective 1/1/22)

WAC 388-478-0015 Need standards for cash assistance. The monthly need and payment standards for cash assistance are based on a determination of the assistance unit size. The need standards for cash assistance units are:

Assistance unit size	Need standard
1	\$ ((1,631)) <u>2,998</u>
2	((2,064)) <u>4,883</u>
3	((2,548)) <u>5,893</u>
4	((3,007)) <u>7,786</u>
5	((3,465)) <u>9,144</u>

Assistance unit size	Need standard
6	((3,924)) <u>10,706</u>
7	((4,535)) <u>12,137</u>
8	((5,020)) <u>13,553</u>
9	((5,504)) <u>15,220</u>
10 or more	((5,988)) <u>17,793</u>

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 21-23-102, § 388-478-0015, filed 11/17/21, effective 1/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0015, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 19-24-032, § 388-478-0015, filed 11/25/19, effective 1/1/20; WSR 18-22-021, § 388-478-0015, filed 10/26/18, effective 1/1/19; WSR 18-01-040, § 388-478-0015, filed 12/12/17, effective 1/12/18; WSR 16-23-146, § 388-478-0015, filed 11/22/16, effective 1/1/17; WSR 16-03-013, § 388-478-0015, filed 1/8/16, effective 2/8/16; WSR 14-24-072, § 388-478-0015, filed 11/26/14, effective 1/1/15; WSR 13-24-041, § 388-478-0015, filed 11/26/13, effective 1/1/14; WSR 12-24-034, § 388-478-0015, filed 11/29/12, effective 1/1/13; WSR 11-24-021, § 388-478-0015, filed 11/30/11, effective 1/1/12; WSR 11-01-121, § 388-478-0015, filed 12/20/10, effective 1/1/11; WSR 10-04-111, § 388-478-0015, filed 2/3/10, effective 3/6/10; WSR 08-24-070, § 388-478-0015, filed 12/1/08, effective 1/1/09; WSR 07-24-033, § 388-478-0015, filed 11/30/07, effective 12/31/07; WSR 07-06-066, § 388-478-0015, filed 3/5/07, effective 4/5/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 06-05-102, § 388-478-0015, filed 2/14/06, effective 3/17/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 05-22-077 and 05-23-012, § 388-478-0015, filed 10/31/05 and 11/4/05, effective 1/1/06; WSR 05-01-074, § 388-478-0015, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 74.04.770, 74.04.050, 74.04.055, 74.04.057. WSR 03-24-059, § 388-478-0015, filed 12/1/03, effective 1/1/04; WSR 03-23-116, § 388-478-0015, filed 11/18/03, effective 12/19/03. Statutory Authority: RCW 74.08.090, 74.04.510, and 74.04.770. WSR 02-23-029, § 388-478-0015, filed 11/12/02, effective 12/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.200. WSR 01-11-108, § 388-478-0015, filed 5/21/01, effective 7/1/01. Statutory Authority: RCW 74.04.200. WSR 99-04-056, § 388-478-0015, filed 1/29/99, effective 3/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0015, filed 7/31/98, effective 9/1/98.]

WSR 22-12-025

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed May 23, 2022, 5:23 p.m., effective June 23, 2022]

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

Purpose: In response to the COVID-19 pandemic, the legislature authorized the state board of education (SBE) to adopt rules (chapter 180-111 WAC) for an emergency waiver program. The program permits districts to waive certain graduation requirements so that students whose education has been disrupted by the pandemic may earn a diploma. The waiver may be granted after the district has made a good faith effort to support students in meeting all graduation requirements, and after the student has demonstrated preparation for their next step after high school.

These rules extend the emergency waiver of graduation requirements to students graduating in the 2022-23 and the 2023-24 school years.

Citation of Rules Affected by this Order: Amending WAC 180-111-050.

Statutory Authority for Adoption: RCW 28A.230.320, 28A.230.090, 28A.150.220(7), 28A.195.040.

Adopted under notice filed as WSR 22-07-112 on March 23, 2022.

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

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

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

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

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

Date Adopted: May 12, 2022.

Randy Spaulding
Executive Director

OTS-3690.1

AMENDATORY SECTION (Amending WSR 21-16-059, filed 7/28/21, effective 8/28/21)

WAC 180-111-050 Emergency waiver of certain graduation requirements in response to novel coronavirus. This section is for the novel coronavirus emergency, in response to the gubernatorial declaration of emergency on February 29, 2020. It applies to the classes of 2020 through ((2022)) 2024 beginning in the 2020-21 school year. ((The state board of education will consider what, if any, flexibility should be provided to subsequent classes of students no later than its May 2022 board meeting.)) Beginning from the date of approval of a

school district's emergency waiver application, in accordance with WAC 180-111-040:

(1) Waived credit graduation requirements are limited to the student's classes impacted by the novel coronavirus disruption. The school district shall prioritize student completion of core coursework and coursework related to the student's high school and beyond plan under RCW 28A.230.090. School districts may waive credits for eligible students in the classes of 2020 to ~~((2022))~~ 2024. In addition to existing waiver authorities as described in WAC 180-111-040 (2) (a):

(a) For the classes of 2020 to 2023, school districts may waive up to two additional credits under this emergency waiver, provided that students graduate with no fewer than a total of ~~((twenty))~~ 20 credits. ~~((The terms "core" and "flexible" credits used in this subsection are defined in WAC 180-51-210.))~~

(b) For the class of 2024, school districts may waive up to one additional credit under this emergency waiver, provided that students graduate with no fewer than a total of 21 credits.

(2) For the class of 2020, 2021, ~~((and))~~ 2022, and 2023: The emergency waiver may be applied to core credits or flexible credits, provided that no more than one credit in each core subject area is waived. The terms "core" and "flexible credits" used in this section are defined in WAC 180-51-210.

(3) For the class of 2024: The emergency waiver may be applied to core or flexible credits.

(4) A student's graduation pathway requirement may be waived for eligible students in the classes of 2020 to ~~((2022))~~ 2023 after a school district has made a good faith effort to help the student meet their pathway requirement, as defined in WAC 180-111-020.

~~((4))~~ (5) The graduation pathway requirement may also be waived for a student so that the student may earn a diploma before their planned graduation year, provided that:

(a) The student may not be granted an emergency waiver of credit requirements; and

(b) The student must meet all other state graduation requirements including credit requirements under WAC 180-51-210.

~~((5))~~ (6) This emergency waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

~~((6))~~ (7) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

[Statutory Authority: RCW 28A.195.010, 28A.230.090, 28A.150.220 (7). WSR 21-16-059, § 180-111-050, filed 7/28/21, effective 8/28/21. Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220 (7). WSR 21-01-077, § 180-111-050, filed 12/10/20, effective 1/10/21.]

WSR 22-12-026

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed May 23, 2022, 11:02 p.m., effective September 9, 2022]

Effective Date of Rule: September 9, 2022.

Purpose: WAC 246-840-533 and 246-840-930. The nursing care quality assurance commission (commission) is adopting amendments to WAC 246-840-533 that incorporates the practice/academic partnership model for nursing preceptors, interdisciplinary preceptors, and proctors in clinical or practice settings for nursing students located in Washington state. In response to the coronavirus disease 2019 (COVID-19), the commission approved the practice/academic partnership model in order to assist with the strain on clinical placement of nursing students during the pandemic. This model is a strategy that allows nursing students who are employed by a nursing facility to work in the role of a student nurse for compensation and, in conjunction with the student's nursing education program, receive academic credit toward meeting clinical requirements. These amendments are currently in effect under emergency rules filed as WSR 22-11-047.

Amendments to WAC 246-840-930 include nonsubstantive housekeeping changes; changing numeric words to numbers in several subsections and changing the word "occurs" to "occur."

Citation of Rules Affected by this Order: Amending WAC 246-840-533 and 246-840-930.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.260.

Adopted under notice filed as WSR 22-04-081 on January 31, 2022.

Changes Other than Editing from Proposed to Adopted Version: During the public comment period for WAC 246-840-365, 246-840-367, 246-840-533, and 246-840-930, the commission received several comments regarding these rules. One specific comment has raised additional questions regarding WAC 246-840-365 "Inactive and reactivating an ARNP license," and WAC 246-840-367 "Expired license" which may extend beyond the scope of the current changes. Staff took a deeper look at these subsections and have expressed that there are inconsistencies between them and other related sections that need to be explored further.

Considering the comments and public testimony submitted to the commission during the rules hearing, the commission moved to withdraw WAC 246-840-365 and 246-840-367 from this rule package for further exploration, and to adopt only changes to WAC 246-840-533 and 246-840-930, as amended, including the nonsubstantive changes. The commission intends to engage in rule making on WAC 246-840-365 and 246-840-367 in the near future.

Amendments to WAC 246-840-930 include nonsubstantive rule changes proposed during the rules hearing by the department of social and health services (DSHS) in order to align their current practices regarding proof of training completion. DSHS currently accepts transcripts in addition to certificates of completion of required nurse delegation training for nursing assistants or home care aides. They have recommended revised language to allow transcripts and other evidence of successful completion of training. It was also necessary to clarify the specific diabetes training in subsection [(7)](d) of WAC 246-840-930 to avoid confusion with other trainings.

A final cost-benefit analysis is available by contacting Shad Bell, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-4711, fax 360-236-4738, TTY 711, email NCQAC.rules@doh.wa.gov.

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

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

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

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

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

Date Adopted: May 23, 2022.

Paula R. Meyer, RN, MSN, FRE
Executive Director

OTS-3544.2

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 partnership 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 13-15-063, filed 7/15/13, effective 8/15/13)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3) (e) (i) or an in-home care setting as defined by RCW 18.79.260 (3) (e) (ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered

nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) Has completed both the basic caregiver training and core delegation training before performing any delegated task;

(c) Has ~~((a certificate of completion issued))~~ evidence as required by the department of social and health services ~~((indicating))~~ of successful completion of ~~((the required core))~~ nurse delegation core training;

(d) Has ~~((a certificate of completion issued))~~ evidence as required by the department of social and health services ~~((indicating))~~ of successful completion of nurse delegation special focus on diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written consent. The patient, or authorized representative, must give written, consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within ~~((thirty))~~ 30 days; electronic consent is an acceptable format. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse, nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document teaching done and a return demonstration, or other method for verification of competency; and

(m) Supervision shall occur at least every ~~((ninety))~~ 90 days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide, including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient,

the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occur(~~(s)~~) at least every (~~(ninety)~~) 90 days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every (~~(ninety)~~) 90 days.

[Statutory Authority: RCW 18.79.110, 18.79.260, 2012 c 164, and 2012 c 10. WSR 13-15-063, § 246-840-930, filed 7/15/13, effective 8/15/13. Statutory Authority: RCW 18.79.110, 18.79.260, 18.88A060 [18.88A.060], and 18.88A.210. WSR 09-06-006, § 246-840-930, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 18.79.110, 18.79.260 (3)(f), 18.88A.210, 2003 c 140. WSR 04-14-065, § 246-840-930, filed 7/2/04, effective 7/2/04. Statutory Authority: Chapters 18.79 and 18.88A RCW. WSR 02-02-047, § 246-840-930, filed 12/27/01, effective 1/27/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-930, filed 6/18/97, effective 7/19/97; WSR 96-05-060, § 246-840-930, filed 2/19/96, effective 3/21/96.]

WSR 22-12-033

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 24, 2022, 3:44 p.m., effective June 24, 2022]

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

Purpose: The agency is amending these rules to align with SSB 5068 and the American Rescue Plan Act of 2021, which extends postpartum coverage through Washington apple health from 60 days to 12 months, beginning with the month after a pregnancy ends. The amended rules allow people to apply for after-pregnancy coverage within 12 months of their last pregnancy date and also allow people to apply who were not on an apple health program during the time they were pregnant.

Citation of Rules Affected by this Order: Amending WAC 182-504-0015, 182-505-0115, 182-505-0117, 182-509-0305, and 182-514-0263.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-07-101 on March 22, 2022.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-505-0115(1)		
Proposed	WAC 182-505-0115 Washington apple health—Eligibility for ((pregnant women)) pregnancy and after-pregnancy-related coverage. (1) A pregnant ((woman)) person is eligible for the Washington apple health ((WAH) for pregnant women program)) pregnancy-related coverage if ((she)) the person:	Removed the word "related" to be consistent with how the program name is used throughout this and other rules.
Adopted	WAC 182-505-0115 Washington apple health—Eligibility for ((pregnant women)) pregnancy and after-pregnancy coverage. (1) A pregnant ((woman)) person is eligible for ((the)) Washington apple health ((WAH) for pregnant women program)) pregnancy coverage if ((she)) the person:	
WAC 182-505-0115(2)		
Proposed	(2) A noncitizen pregnant ((woman)) person who does not ((need to)) meet the requirements in subsection (1)(a) or (b) of this section ((to be)) is eligible for ((WAH and receives either)) apple health if they meet countable income standards for CN or MN coverage ((based upon her)) and have countable income as described in subsection (1)(d) of this section.	Revised to eliminate redundant language.
Adopted	(2) A noncitizen pregnant ((woman)) person who does not ((need to)) meet the requirements in subsection (1)(a) or (b) of this section ((to be)) is eligible for ((WAH and receives either)) apple health pregnancy coverage if they meet countable income standards for CN or MN coverage ((based upon her countable income)) as described in subsection (1)(d) of this section.	
WAC 182-505-0115(4)		

Proposed/ Adopted	WAC Subsection	Reason
Proposed	<p>(4) A ((woman)) person who was eligible for and ((received coverage)) covered under any ((WAH)) <u>minimum essential coverage apple health program as described in WAC 182-500-0070 on the last day of pregnancy ((is)) remains continuously eligible for ((extended medical)) after-pregnancy coverage ((for postpartum care)) for ((a minimum of sixty days from the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends. This includes ((women)) people who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. ((This extension continues through the end of the month in which the sixtieth day falls)) After-pregnancy coverage has the same scope of coverage as pregnancy-related coverage.</u></p>	<p>Revised (and renumbered) to:</p> <ul style="list-style-type: none"> • Clarify that after-pregnancy coverage is available to all eligible pregnant people. • Clarify the scope of coverage. • Convey that a post-pregnancy applicant needs to meet the requirements of subsection (1) or (2) other than pregnancy.
Adopted	<p>(4) A ((woman)) person who was eligible for and ((received coverage)) covered under any ((WAH)) <u>CN or MN scope of coverage apple health program on the last day of pregnancy ((is)) remains continuously eligible for ((extended medical)) after-pregnancy coverage ((for postpartum care)) for ((a minimum of sixty days from the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends. This includes ((women)) people who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. ((This extension continues through the end of the month in which the sixtieth day falls.))</u></p> <p>(5) ((All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months after the pregnancy ends.)) <u>Pregnancy coverage has CN scope of care for all people except those enrolled through the MN program who have MN scope of care. A person's after-pregnancy coverage has the same scope of coverage as their pregnancy coverage.</u></p> <p>(6) A person who does not meet the requirements in subsection (4) of this section may qualify for after-pregnancy coverage if they:</p> <p><u>(a) Apply for and meet all requirements of the apple health pregnancy coverage program other than pregnancy; and</u></p> <p><u>(b) Apply any time during their 12-month postpartum period to receive ongoing medical coverage until the end of the 12th month after their pregnancy ends.</u></p>	
WAC 182-505-0117(7)		

Proposed/ Adopted	WAC Subsection	Reason
Proposed	(7) A pregnant minor covered by the ((WAH)) <u>apple health</u> for kids program ((will have)) <u>has</u> a one-year certification period ((unless she has her nineteenth)). <u>If a minor has their 19th birthday during ((her)) their pregnancy, ((at which time she will be)) they are</u> automatically enrolled in ((the WAH)) <u>apple health</u> for ((pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be)) <u>pregnancy coverage through the end of their pregnancy. They are eligible for ((extended medical)) after-pregnancy coverage for ((postpartum care through the end of the month of the sixtieth day after the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends.</u>	Revised to clarify that there is no gap in coverage between the time that a person's pregnancy ends and coverage "beginning the month after their pregnancy ends."
Adopted	(7) A pregnant minor covered by the ((WAH)) <u>apple health</u> for kids program ((will have)) <u>has</u> a one-year certification period ((unless she has her nineteenth)). <u>If a minor has their 19th birthday during ((her)) their pregnancy, ((at which time she will be)) they are</u> automatically enrolled in ((the WAH)) <u>apple health</u> for ((pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be)) <u>pregnancy coverage through the end of the month their pregnancy ends. They are eligible for ((extended medical)) after-pregnancy coverage for ((postpartum care through the end of the month of the sixtieth day after the end of her pregnancy)) 12 months, beginning the first day of the month after their pregnancy ends.</u>	
WAC 182-509-0305 (1)(d)		
Proposed	(((4))) <u>(d) Pregnant ((women or women within a two-month post-partum period)) people whose net countable income, based on a household size that includes any unborn children, is below ((one hundred ninety-three)) 193 percent FPL at the time of application, as described in WAC 182-505-0115.</u>	Subsection (d) was not revised, but the agency added a new subsection (e) to include people in the postpartum period and extend that period to 12 months.
Adopted	<u>(d) Pregnant ((women or women within a two-month post-partum period)) people whose net countable income, based on a household size that includes any unborn children, is below ((one hundred ninety-three)) 193 percent FPL at the time of application, as described in WAC 182-505-0115.</u> <u>(((5)))<u>(e) People within the 12-month postpartum period beginning the month after the pregnancy ends whose net countable income is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.</u></u>	

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 5, Repealed 0.

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

Date Adopted: May 24, 2022.

Wendy Barcus
Rules Coordinator

OTS-3524.2

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs. (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) For a newborn eligible for apple health, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are (~~a person~~) eligible for apple health based on pregnancy, the certification period (~~ends~~) continues through the last day of the (~~month that includes the sixtieth day from the day the pregnancy ends.~~

~~(4)) month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.~~

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and

(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the eighth month following your date of entry to the United States.

~~((5))~~ (6) For all other CN coverage, the certification period is ~~((twelve))~~ 12 months.

~~((6))~~ (7) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

(a) Turn age (~~nineteen~~) 19;

(b) Move out-of-state; or

(c) Die.

~~((7))~~ (8) When you turn (~~nineteen~~) 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the ~~((twelve))~~ 12-month period is not over, unless:

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn (~~nineteen~~) 19;

(b) The inpatient stay continues into the following month or months; and

(c) You remain eligible except for turning age (~~nineteen~~) 19.

~~((8))~~ (9) A retroactive certification period is described in WAC 182-504-0005.

~~((9))~~ (10) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

OTS-3525.4

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

WAC 182-505-0115 Washington apple health—Eligibility for (~~pregnant women~~) pregnancy and after-pregnancy coverage. (1) A pregnant (~~woman~~) person is eligible for (~~the~~) Washington apple health (~~(WAH) for pregnant women program~~) pregnancy coverage if (~~she~~) the person:

(a) Meets citizenship or immigration status under WAC 182-503-0535;

(b) Meets Social Security number requirements under WAC 182-503-0115;

(c) Meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income at or below the limit described in:

(i) WAC 182-505-0100 to be eligible for categorically needy (CN) coverage; or

(ii) WAC 182-505-0100 to be eligible for medically needy (MN) coverage. MN coverage begins when the pregnant (~~woman~~) person meets any required spenddown liability as described in WAC 182-519-0110.

(2) A noncitizen pregnant (~~(woman)~~) person who does not (~~(need to)~~) meet the requirements in subsection (1)(a) or (b) of this section (~~(to be)~~) is eligible for ((WAH and receives either)) apple health pregnancy coverage if they meet countable income standards for CN or MN coverage ((based upon her countable income)) as described in subsection (1)(d) of this section.

(3) The assignment of medical support rights as described in WAC 182-503-0540 (~~(do)~~) does not apply to pregnant ((women)) people.

(4) A (~~(woman)~~) person who was eligible for and (~~(received coverage)) covered under any ((WAH)) CN or MN scope of coverage apple health program on the last day of pregnancy ((is)) remains continuously eligible for ((extended medical)) after-pregnancy coverage ((for postpartum care)) for ((a minimum of sixty days from the end of her pregnancy)) 12 months, beginning the month after their pregnancy ends. This includes (~~(women)) people~~ who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. (~~(This extension continues through the end of the month in which the sixtieth day falls.))~~)~~

(5) (~~(All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months after the pregnancy ends.))~~ Pregnancy coverage has CN scope of care for all people except those enrolled through the MN program who have MN scope of care. A person's after-pregnancy coverage has the same scope of coverage as their pregnancy coverage.

(6) A person who does not meet the requirements in subsection (4) of this section may qualify for after-pregnancy coverage if they:

(a) Apply for and meet all requirements of the apple health pregnancy coverage program other than pregnancy; and

(b) Apply any time during their 12-month postpartum period to receive ongoing medical coverage until the end of the 12th month after their pregnancy ends.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0115, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0115, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-032, § 388-462-0015, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-462-0015, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-462-0015, filed 7/31/98, effective 9/1/98. Formerly WAC 388-508-0820, 388-508-0830, 388-522-2230 and 388-508-0835.]

AMENDATORY SECTION (Amending WSR 14-21-040, filed 10/7/14, effective 11/7/14)

WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors. (1) For the purposes of this rule, "minor" means a person under the age of (~~(nineteen))~~ 19.

(2) A pregnant minor who meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525 is eligible for the Washington apple health (~~((WAH))~~) for kids program.

(3) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(4) There are no income standards and no resource tests for a pregnant minor to be eligible for ((WAH)) apple health for kids.

(5) To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for ((WAH)) apple health for kids must provide ((her)) their Social Security number, unless ((she is)) they are exempt under WAC 182-503-0515, and must provide ((her)) their citizenship or immigration status. The immigration status of a pregnant minor who is an undocumented alien (see WAC 182-503-0530) will not be disclosed to any third party.

(6) The assignment of rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(7) A pregnant minor covered by the ((WAH)) apple health for kids program ((will have)) has a one-year certification period ((unless she has her nineteenth)). If a minor has their 19th birthday during ((her)) their pregnancy, ((at which time she will be)) they are automatically enrolled in ((the WAH)) apple health for ((pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be)) pregnancy coverage through the end of the month their pregnancy ends. They are eligible for ((extended medical)) after-pregnancy coverage for ((post-partum care through the end of the month of the sixtieth day after the end of her pregnancy)) 12 months, beginning the first day of the month after their pregnancy ends.

[Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-21-040, § 182-505-0117, filed 10/7/14, effective 11/7/14.]

OTS-3526.4

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. (1) Eligibility for Washington apple health ((WAH)) for the following ((persons)) people is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300((-)):

((1)) (a) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below ((fifty-four)) 54 percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

((2)) (b) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in (a) of this subsection ((1) of this section) but is at or below ((one hundred thirty-three)) 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

((3)) (c) Adults with no eligible dependent child with net countable income at or below ((one hundred thirty-three)) 133 percent FPL as described in WAC 182-505-0250 and 182-507-0110.

~~((4))~~ (d) Pregnant ~~((women or women within a two-month postpartum period))~~ people whose net countable income, based on a household size that includes any unborn children, is below ~~((one hundred ninety-three))~~ 193 percent FPL at the time of application, as described in WAC 182-505-0115.

~~((5))~~ (e) People within the 12-month postpartum period beginning the month after the pregnancy ends whose net countable income is below 193 percent FPL at the time of application, as described in WAC 182-505-0115.

(f) Children age ~~((eighteen))~~ 18 or younger in households with net countable income which is below ~~((two hundred ten))~~ 210 percent FPL, as described in WAC 182-505-0210 (3) (a).

~~((6))~~ (g) Children age ~~((eighteen))~~ 18 or younger in households with net countable income ~~((which))~~ that is between ~~((two hundred ten))~~ 210 percent and ~~((three hundred twelve))~~ 312 percent FPL, as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

~~((7))~~ (2) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0305, filed 12/9/13, effective 1/9/14.]

OTS-3527.1

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant ~~((women))~~ people and people age ~~((twenty))~~ 20 and younger. (1) Medically needy (MN) coverage under this section is only available for people age ~~((twenty))~~ 20 and younger or pregnant ~~((women))~~ people. The medicaid agency determines a client who meets SSI-related criteria under WAC 182-512-0050 eligible for institutional MN coverage under WAC 182-513-1395. If a client meets requirements in both this section and WAC 182-513-1395, the client may choose which program to enroll in for coverage.

(2) A client whose income exceeds the categorically needy (CN) standards under WAC 182-514-0250 and 182-514-0260 is:

(a) Eligible for MN coverage with no spenddown if the client's countable income (CI) is equal to or less than the department-contracted daily rate times the number of days in the institution;

(b) Eligible for MN coverage after a spenddown under WAC 182-519-0110 is met if the client's CI is above the department-contracted daily rate times the number of days in the institution but less than the institution's private rate;

(c) Not eligible for payment of long-term care services provided by the institution if the person's CI exceeds the institution's private rate;

(d) Responsible for paying up to the monthly state rate for the facility as participation in the cost of care; and

(e) Allowed to keep a monthly personal needs allowance (PNA) under WAC 182-513-1105. Current PNA and long-term care standards can be found at (~~www.heca.wa.gov/medicaid/eligibility/pages/standards.aspx~~) the agency's program standard for income and resources web page.

(3) If a client's CI exceeds the institution's private rate, the agency determines eligibility for medical coverage under chapter 182-519 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 c 270. WSR 17-23-039, § 182-514-0263, filed 11/8/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-04-087, § 182-514-0263, filed 1/29/16, effective 2/29/16.]

WSR 22-12-035
PERMANENT RULES
SECRETARY OF STATE

[Filed May 25, 2022, 8:39 a.m., effective June 25, 2022]

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

Purpose: Permanent adoption of WAC changes related to risk limiting audit processes and procedures.

Citation of Rules Affected by this Order: Amending WAC 434-261-114, 434-261-115, 434-261-116, 434-261-117, 434-261-118, and 434-261-119.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 22-09-039 on April 13, 2022.

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 6, Repealed 0.

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

Date Adopted: May 25, 2022.

Randy Bolerjack
Deputy Secretary of State

OTS-3105.6

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

WAC 434-261-114 Definitions. As used in this rule, unless stated otherwise:

(1) "Audit board" means a team of two people assigned to review voter choices on ballots selected for audit.

(2) "Ballot comparison audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest (or contests) on randomly selected ballots, then compares them to the corresponding cast vote records until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

(3) "Ballot manifest" means a ((report that describes in detail)) document that indicates how the ballots are organized and stored, including identification of each batch of ballots by the voting system batch number, as well as the number of ballots in each batch.

((+2)) (4) "Ballot polling audit" means a type of risk-limiting audit in which the audit board examines and reports ((to the secretary of state)) voter markings for a ((particular race)) designated contest on ballots selected randomly until the audit results reflect with a

strong amount of certainty that the reported tabulation outcome is correct.

~~((3))~~ (5) "Cast vote record" or "CVR" means a record of all (votes) voter markings produced by a single voter on a ballot card, presented in electronic form, and is defined as a ballot in accordance with RCW 29A.04.008.

~~((4) "Comparison audit" means a type of risk-limiting audit in which the audit board examines and reports to the secretary of state voter markings on randomly selected ballots, then compares them to the voting system's tabulation as reflected in the corresponding cast vote records.~~

~~(5) "Hash" is a number generated from a string of text. The hash must be generated by a formula in such a way that it is extremely unlikely that some other text will produce the same hash value.)~~

(6) "Reported tabulation outcome" means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results.

(7) "Unofficial results" means the tabulation results produced by the voting system at a specific point in time that will be used for comparison during the audit process.

(8) "Risk limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected ~~((and corrected))~~ in a risk-limiting audit.

~~((8))~~ (9) "Risk-limiting audit" or "RLA" means a post-election audit of votes on paper ballots and voter-verifiable paper audit trail (VVPAT) records that makes use of statistical principles and methods, is designed to limit the risk of certifying an incorrect election outcome, and is conducted in accordance with RCW 29A.60.185. ~~((Ballot polling audits and comparison audits are two types of risk-limiting audits.~~

~~(9) "RLA tabulation" means the tabulation of all randomly selected ballots cast by voters registered in the county, and any accepted provisional ballots that the county opts to include.)~~

(10) "Risk-limiting audit tool" or "RLA tool" means the software and user interfaces provided by the secretary of state in order to ((compare the randomly selected ballots to the cast vote record for the RLAs)) conduct the risk-limiting audit.

(11) "Target contest" means a contest selected by the secretary of state or county auditor for a risk-limiting audit that will determine whether the risk limit has been met.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-114, filed 12/18/18, effective 1/18/19.]

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

WAC 434-261-115 Post-election audits. If the county auditor chooses to conduct a post-election risk-limiting audit under RCW 29A.60.185, the auditor must ((conduct)) use one of the types of audits listed in RCW 29A.60.185. ((The county auditor may choose a risk-limiting audit, one of the options available under RCW 29A.60.185 and this rule.

- ~~(1) If choosing a risk-limiting audit, counties that use a voting system capable of exporting CVRs must conduct a comparison audit.~~
- ~~(2) If choosing a risk-limiting audit, counties that use a voting system incapable of exporting CVRs must conduct a ballot polling audit.)~~

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-115, filed 12/18/18, effective 1/18/19.]

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

WAC 434-261-116 Preparing for a risk-limiting audit. (1) At least ~~((ninety))~~ 45 days before a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in the audit.

(2) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than ~~((thirty))~~ 30 days before the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in ~~((RLAs))~~ risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of statewide and county contests. In ballot comparison audits, the risk limit will not exceed five percent for statewide contests, and ~~((ten))~~ 10 percent for county contests.

~~(3) ((No later than eighteen days before the primary or election, the county auditor must appoint an audit board to conduct the risk-limiting audit. Observers nominated by the major political party county chairpersons in accordance with RCW 29A.60.170 may be present during the audit. Members of the canvassing board may serve as members of the audit board. The county auditor or members of their staff may assist the audit board in conducting the audit. All))~~ Observers are allowed in ((accordance with)) the same manner as RCW 29A.60.170 and WAC 434-261-020.

(4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

~~((a) In the case of centrally counted paper ballots, the ballot manifest must uniquely identify for each tabulated ballot the scanner on which the ballot is scanned, the ballot batch of which the ballot is a part, the number of ballots in the batch, and the storage container in which the ballot batch is stored after tabulation.))~~

(5) The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

~~((b) In the case of electronic ballots cast on direct recording electronic voting devices (DREs), the ballot manifest must uniquely identify the device on which the ballot was cast or tabulated, the number of ballots cast or tabulated on the device, and the storage container or location in which each paper ballot or VVPAT is stored. The county must maintain and document uninterrupted chain-of-custody~~

for each DRE and VVPAT. Ballots cast on each DRE and VVPAT must constitute a single batch.

~~(5-))~~ (6) No later than the sixth day after election day, the county must pause or finish tabulating all ballots cast by voters registered in the county received ~~((through that day))~~ and ready for counting. The results produced at this time constitute the unofficial results to be used in the risk-limiting audit. The county may, but is not required to, include in the ~~((RLA tabulation))~~ unofficial results any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after ~~((completing))~~ producing the ~~((RLA tabulation))~~ unofficial results, and to the extent permitted by its voting system, the county must also generate and preserve:

(a) ~~((A summary))~~ An unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit; or

(b) ~~((A results file export suitable for uploading to the secretary of state's election night reporting system; and~~

~~(e-))~~ A ~~((CVR))~~ cast vote record export, if conducting a ballot comparison audit.

~~((6-))~~ (7) Counties conducting a ballot comparison audit must verify that ~~((:~~

~~(a-))~~ the number of individual ((CVRs)) cast vote records in its ((CVR)) cast vote record export equals the aggregate number of ballot((s)) cards reflected in the county's ballot manifest ((as of the sixth day after election day; and

~~(b) The vote totals for all choices in all ballot contests in the CVR export equals the vote totals in the summary results report for the RLA tabulation.~~

~~After verifying the accuracy of the CVR export, the county must apply a hash value to the CVR export file using the hash value utility provided by the secretary of state.~~

~~(7) Comparison audit uploads-))~~ at the time the unofficial results are produced.

(8) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

(9) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot comparison audit must ((upload)) submit as directed by the secretary of state:

(a) Its verified ~~((and hashed))~~ ballot manifest ((, and the ballot manifest's hash value, to the secretary of state's office)); and

(b) Its verified ~~((and hashed CVR))~~ cast vote record export ((, and the CVR export's hash value, to the secretary of state's office; and

~~(c) Its RLA tabulation results export to the secretary of state's election night reporting system.~~

~~(8) Ballot polling audit uploads)).~~

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

(10) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit ((or upload:

~~(a-))~~ as directed by the secretary of state:

(a) Its verified ~~((and hashed))~~ ballot manifest ((, and the ballot manifest's hash value, to the secretary of state's office;

~~(b) Its cumulative tabulation report, to the secretary of state's office; and~~

~~(c) Its RIA tabulation results export to the secretary of state's election night reporting system); and~~

(b) Its unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes.

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

~~((9))~~ (11) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the ((secretary of state's RIA)) risk-limiting audit tool's ((random)) pseudorandom number generator.

~~((10))~~ The seed is a number consisting of at least ((twenty)) 20 digits, and each digit will be selected in order by sequential rolls of a ((ten-sided)) 10-sided die. The secretary of state will designate ((one or more staff members)) individuals to take turns rolling the die. The secretary of state will publish online the random seed after it is established.

~~((11))~~ (12) No later than 5:00 p.m. on the Friday after election day, the secretary of state will create a list of potential statewide contests using the criteria in (a) through (e) of this subsection, and then select by lot a statewide contest from that list. The secretary of state will also create for each county a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection, and select a contest by lot for each county ((at least one ballot contest other than the selected statewide contest. The county auditor shall randomly select a ballot contest for audit if in any particular election there is no statewide contest. These will be considered the target contests for the RIA. The secretary of state will publish online a complete list of all target contests.

~~(12) The target contest with the closest diluted margin for each county determines the number of ballots that must be examined during the RIA.~~

~~(13) The secretary of state will determine the number of ballots to audit to satisfy the risk limit for the target contests based on the ballot manifests submitted by the counties. The number of ballots to audit will be determined according to the formulas maintained on file in the secretary of state's office.) from that list. These will be considered the target contests for the risk-limiting audit. The secretary of state will publish online a complete list of all target contests.~~

The secretary of state will consider at least the following factors in selecting the potential target contests:

(a) Contests that contain two or more positions/candidates;

(b) The geographical scope of the contests;

(c) The number of ballots counted in the contests;

(d) The closeness of the reported tabulation outcome of the contests; and

(e) The ability of the county staff to complete the audit before the canvass deadline.

(13) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a congressional or legislative district if all counties represented by the district agree to participate.

~~(14) The ((secretary of state)) risk-limiting audit tool will randomly select the individual ballots to audit. The ((secretary of state)) risk-limiting audit tool will use a ((random)) pseudorandom~~

number generator with the seed established under ~~((subsection (10) of))~~ this section to identify individual ballots as reflected in the county ballot manifests. No later than the seventh day after election day, the secretary of state will notify each county of the randomly selected ballots that each county must audit ~~((no later than the seventh day after election day))~~.

[Statutory Authority: RCW 29A.04.611, WSR 19-19-033, § 434-261-116, filed 9/11/19, effective 10/12/19. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-116, filed 12/18/18, effective 1/18/19.]

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

WAC 434-261-117 Conducting a risk-limiting audit. ~~((The audit board))~~ County elections staff must locate and retrieve ~~((, or observe as county election staff locate and retrieve,))~~ each randomly selected ballot ~~((or VVPAT record))~~ from the appropriate storage container. ~~((The audit board))~~ This process may be observed according to WAC 434-261-020. County elections staff must verify that the seals on the appropriate storage containers are those recorded on the applicable chain-of-custody logs.

(1) ~~((In counties conducting comparison audits,))~~ The county auditor will determine the number of audit boards needed to perform the audit and assign two people to each audit board. The audit board(s) will review each randomly selected paper ballot ((must be examined)) and report voter markings or choices in ((all)) the designated contests ((must be reported)) using the ((RLA)) risk-limiting audit tool or other means specified by the secretary of state. ~~((The audit board may refer to the digital image of the audited ballot captured by the voting system in order to confirm it retrieved the correct ballot randomly selected for audit.))~~ The audit board(s) must complete the audit of all ballots randomly selected for audit within ((four)) two business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).

(2) ~~((In counties conducting ballot polling audits, the audit board must examine and report the voter markings or choices in only the target contest on each randomly selected ballot in a form approved by the secretary of state. The audit board may refer to the digital image of the audited ballot captured by the voting system in order to confirm it retrieved the correct ballot. The audit board must complete its reports of all ballots randomly within four business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).))~~

~~((3))~~ The audit board(s) must interpret voter markings on ballots selected for audit in accordance with WAC 434-261-086. If the audit board members cannot unanimously agree on the voter's intent, they must indicate the inability to agree in the appropriate contest in the ((RLA)) risk-limiting audit tool's audit board user interface, or ((the ballot polling audit form approved)) other means specified by the secretary of state.

~~((To the extent applicable, the secretary of state will compare the audit board's reports of the audited ballots to the corresponding~~

CVRs)) (3) In order to maintain voter privacy, the secretary of state will review the results of the audit as presented by the risk-limiting audit tool, and post the summary results of the ((comparison)) audit online.

(4) If there is a discrepancy in a target contest that exceeds the risk limit, the ((RLA)) risk-limiting audit will continue until the risk limit for the target contest((s)) is met or until a full hand count results. ((If the county audit reports reflect that the risk limit has not been satisfied in a target contest, the secretary of state will randomly select additional ballots for audit using the same procedures described in WAC 434-261-116.

The formula used to determine if the risk limit has been satisfied will be maintained on file in the secretary of state's office.

The audit board)) The secretary of state may order a full hand recount of a target contest at the secretary's discretion if that decision would be more efficient than multiple iterations of risk-limiting audit processes.

(5) Each audit board participating in a risk-limiting audit must sign, date, and submit to the secretary of state a report of the results of the risk-limiting audit on the approved form within ((four)) two business days. The report must include any discrepancies found.

((The secretary of state will review the audit board's report and may direct the county auditor to conduct additional audit rounds, a random audit, a full hand count, or other action. The secretary of state may instruct the county to delay canvass until it completes any additional audit or other action.))

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-117, filed 12/18/18, effective 1/18/19.]

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

WAC 434-261-118 Risk-limiting audit reports. ((The designated election official)) At the conclusion of a risk-limiting audit, the county auditor must segregate and seal the materials used during the post-election audit, including copies of all tabulation reports, the audited ballots, and a copy of the audit board report. These materials must be returned to secure storage with the ballots from that election and are subject to the same retention period as the materials for that election.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-118, filed 12/18/18, effective 1/18/19.]

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

WAC 434-261-119 Removal of risk-limiting audit board members. ((Removal and replacement of audit board members.)) The county auditor may remove from the audit board any persons who indicate to the county

auditor that they cannot or do not wish to serve as audit board members, and/or who, in the judgment of the county auditor, lack the ability to properly serve as audit board members. (~~If the county auditor removes an audit board member, the auditor must notify the secretary of state and appoint a replacement in the same manner as described in WAC 434-261-116.~~)

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-119, filed 12/18/18, effective 1/18/19.]

WSR 22-12-036

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed May 25, 2022, 10:42 a.m., effective June 25, 2022]

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

Purpose: This rule-making order amends chapter 16-414 WAC, Washington standards for cherries, by repealing WAC 16-414-086.

In 2006, the department repealed the shipping container requirements specified in WAC 16-414-085 to allow growers/packers and shippers to pack and market various types of containers that may be requested or required by buyers and the consuming public. WAC 16-414-086 still specifies how to obtain an exemption to the shipping container requirements specified in WAC 16-414-085. Since the shipping container requirements in WAC 16-414-085 were repealed, there is no longer a need to obtain container size exemptions. Therefore, the department is repealing WAC 16-414-086 since this language is now obsolete.

Citation of Rules Affected by this Order: Repealing WAC 16-414-086.

Statutory Authority for Adoption: RCW 15.17.030 and 15.17.050.

Adopted under notice filed as WSR 22-06-070 on February 28, 2022.

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 1.

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

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

Date Adopted: May 24, 2022.

Derek I. Sandison
Director

OTS-3654.1REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-414-086	Can the director grant exemptions to the container requirements listed in WAC 16-414-085?
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WSR 22-12-038
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 25, 2022, 1:16 p.m., effective June 25, 2022]

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

Purpose: The department is amending WAC 388-424-0001 Citizenship and alien status—Definitions, 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits?, and 388-466-0005 Immigration status requirements for refugee cash assistance, to align state rules for public benefits eligibility of special immigrants from Iraq and Afghanistan paroled in the United States under Section 602 (B)(1) of Afghan Allies Protection Act of 2009 or Sec. 1059(a) of National Defense Authorization Act.

Citation of Rules Affected by this Order: Amending WAC 388-424-0001, 388-424-0020, and 388-466-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Adopted under notice filed as WSR 22-08-092 on April 5, 2022.

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 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 3, Repealed 0.

Date Adopted: May 25, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4902.3

AMENDATORY SECTION (Amending WSR 22-02-014, filed 12/27/21, effective 2/1/22)

WAC 388-424-0001 Citizenship and immigration status—Definitions. For the purposes of determining an individual's citizenship and immigration status for public assistance, the following definitions apply:

(1) "**Lawfully present**" are immigrants or noncitizens who have been inspected and admitted into the United States and have not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigration Services (CIS) to stay or live in the U.S.

- (2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:
- (a) Individuals lawfully admitted for permanent residence (LPRs).
 - (b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:
 - (i) Hmong or Highland Lao are members of a Hmong or Highland Lao-tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964, to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.
 - (ii) Victims of trafficking according to federal law are:
 - (A) Individuals who have been certified as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office on Trafficking in Person (OTIP), or have been granted a T visa.
 - (B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or unmarried minor sibling if the victim is under 21 years old.
 - (iii) Afghan nationals and their spouses and children, paroled into the U.S. between July 31, 2021, and September 30, 2022, after evacuation from Afghanistan to the U.S., or to a location overseas.
 - ~~((iii))~~ (iv) Special immigrants from Iraq and Afghanistan are individuals granted:
 - (A) ~~((special))~~ Special immigrant status under INA §101 (a) (27)
 - ~~((-))~~ (B) Special immigrant conditional permanent resident; or
 - (C) Paroled under section 602(B)(1)AAPA/Sec 1059(a)NDAA 2006.
 - (c) Individuals who have been granted asylum under INA §208.
 - (d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.
 - (e) Abused spouses or children, parents of abused children, or children of abused spouses:
 - (i) When the alien no longer resides with the person who committed the abuse, and has one of the following:
 - (A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age 21 of a lawful permanent resident (LPR);
 - (B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or
 - (C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.
 - (ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned 21 years old. Children of abused persons who meet the conditions above retain their "qualified alien" status even after they turn 21 years old.
 - (f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d) (5), including "public interest" parolees.
 - (g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b) (3).
 - (h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a) (7) prior to April 1, 1980.
 - (i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

- (a) Citizens of Marshall Islands, Micronesia, or Palau;
- (b) Immigrants paroled into the U.S. for less than one year;
- (c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also nonqualified. Examples include:

- (i) Business visitors;
- (ii) Students; and
- (iii) Tourists.

(4) **"Survivors of certain crimes"** are noncitizens, and any of their qualifying family members, as defined in subsection (5) of this section, who have:

- (a) Filed or are preparing to file an application for a T visa (trafficking victim);
- (b) Filed or are preparing to file an application for a U visa (crime victim); or
- (c) Been harmed by one of the specific crimes described below;

and

- (i) Was granted continued presence by U.S. Homeland Security; or
- (ii) Has filed or is preparing to file an application for asylum status.

Specific crimes include:

(A) Those related to human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, coercion of involuntary servitude, and others under chapter 9A.40 RCW;

(B) Sexual exploitation of children and others under chapter 9.68A RCW; or

(C) Substantially similar crimes under federal law or the laws of another state.

(5) **"Qualifying family members"** are the spouse and child(ren) of survivors of certain crimes, and the parents or unmarried minor siblings if the survivor is under 21 years old. Qualifying family members do not include a person charged with or convicted of attempt, conspiracy, solicitation, or commission of a crime, listed under subsection (4)(c) of this section, against the survivor of certain crimes.

(6) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

- (a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

- (7) **"U.S. citizens"** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are ((fifty)) 50 percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

- (c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn 18 years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age (~~eighteen~~) 18 per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals, who turned 18 before February 27, 2001, would have automatically become a citizen if, while still under 18, they became a lawful permanent resident and both of their parents were naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(8) **"U.S. nationals"** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0001, filed 12/27/21, effective 2/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 20-09-044, § 388-424-0001, filed 4/8/20, effective 5/9/20. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0001, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0001, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0001, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0001, filed 7/7/04, effective 8/7/04.]

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

WAC 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a) or (b) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of lawful immigrants as defined in WAC 388-424-0001:

(i) Amerasian;

(ii) Asylee;

(iii) Cuban or Haitian entrant;

(iv) Deportation or removal withheld;

(v) Refugee;

(vi) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022;

(vii) Special immigrant from Iraq or Afghanistan;

~~((vii))~~ (viii) Victim of trafficking;

~~((viii))~~ (ix) Noncitizen American Indian; or

~~((ix))~~ (x) Hmong or Highland Lao tribal member.

(b) (i) You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

(A) Conditional entrant;

(B) Lawful permanent resident (LPR);

(C) Paroled for one year or more; or

(D) Abused spouse or child or parent or child of an abused spouse or child.

(ii) And, one of the following also applies to you:

(A) You have worked or can get credit for forty Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007;

(C) You receive cash or medical benefits based on supplemental security income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age eighteen; or

(F) You were lawfully residing in the U.S. on August 22, 1996 and were born on or before August 22, 1931.

(3) If you are a legal immigrant not eligible for federal benefits under Basic Food only because of your alien status, you may be eligible for state-funded food assistance program (FAP) benefits under WAC 388-400-0050.

[Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-424-0020, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120. WSR 11-02-035, § 388-424-0020, filed 12/29/10, effective 2/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S.

DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0020, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-424-0020, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0020, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0020, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 03-05-029, § 388-424-0020, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-046, § 388-424-0020, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.510, S. 1150, the Agricultural Research, Extension, and Education Reform Act of 1998. WSR 99-01-058, § 388-424-0020, filed 12/11/98, effective 1/11/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

AMENDATORY SECTION (Amending WSR 12-19-037, filed 9/12/12, effective 10/13/12)

WAC 388-466-0005 Immigration status requirements for refugee cash assistance. (1) You may be eligible for refugee cash assistance (RCA) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
- (b) Paroled into the U.S. as a refugee or asylee under section 212 (d) (5) of the INA;
- (c) Granted conditional entry under section 203 (a) (7) of the INA;
- (d) Granted asylum under section 208 of the INA;
- (e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;
- (f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;
- (g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);
- (h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;
- (i) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022;

(j) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a) (27) of the INA, or special immigrant conditional permanent resident, or paroled under section 602 (B) (1) AIPA/Sec 1059(a) NDAA 2006.

(2) A permanent resident alien meets the immigration status requirements for RCA if the individual was previously in one of the statuses described in subsections (1)(a) through (g) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2011 1st sp.s. c 15. WSR 12-19-037, § 388-466-0005, filed 9/12/12, effective 10/13/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0005, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-466-0005, filed 7/31/98, effective 9/1/98.]

WSR 22-12-041

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2022, 3:27 p.m., effective June 25, 2022]

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

Purpose: Adds provisions allowing for the tasting and transportation of alcohol when necessary for an academic course. All uses during an academic course must be consistent with the requirements for a Class 15 permit through the Washington state liquor and cannabis board.

Citation of Rules Affected by this Order: Amending WAC 172-64-035, 172-64-040, 172-64-050, 172-64-070, and 172-64-090.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 22-07-034 on March 11, 2022.

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 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 20, 2022.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-3644.1NEW SECTION

WAC 172-64-035 Alcohol use in academic courses. This section establishes rules for academic courses that include possessing, tasting, serving, brewing, or otherwise using alcoholic beverages as part of the course curriculum. All such courses must:

(1) Comply with all rules under RCW 66.20.010(12) and any additional provisions required by the Washington state liquor and cannabis board;

(2) Maintain a current class 15 permit for the course;

(3) All instructors must be at least 21 years old and have a current class 12 or 13 alcohol server permit;

(4) Publish course fee descriptions which clearly indicate when part of the course fee will be used to purchase alcoholic beverages and/or ingredients for producing alcoholic beverages for use in the course;

(5) Purchase, store, and dispose of alcoholic beverages and/or ingredients for producing alcoholic beverages per university procedures set forth by risk management and purchasing; and

(6) Allow only course instructors with a current class 15 permit to transport alcoholic beverages in support of an academic course.

[]

AMENDATORY SECTION (Amending WSR 21-07-005, filed 3/4/21, effective 4/4/21)

WAC 172-64-040 Alcohol use at on-campus events and events off-campus that are sponsored by the university. (1) **On university property.** This section establishes rules for possessing, consuming, selling, and/or serving alcoholic beverages on university-owned or operated property, regardless of whether an event is sponsored by the university and regardless of whether event sponsors are affiliated with the university. This section does not apply to academic courses that are authorized by and subject to WAC 172-64-035.

(a) Sponsor requirements. Sponsors of an event where alcohol is to be possessed, sold, served and/or consumed, must comply with the following requirements:

(i) Obtain written permission from the appropriate official(s) in advance of the event:

(A) Student clubs and organizations must obtain permission from the student activities office;

(B) For all other requests, sponsors must obtain permission from the vice president for business and finance or designee;

(ii) Contact event planning to request a banquet permit or a special occasion license per WAC 172-64-070;

(iii) Comply with all Washington state laws, chapter 172-64 WAC, all other university rules and policies; and any additional instructions provided to the event/activity sponsor as a condition of approval;

(iv) Ensure Washington state alcohol serving requirements are enforced:

(A) Event sponsors must ensure that all persons designated to serve alcohol are at least (~~twenty-one~~) 21 years old and have received alcohol server training;

(B) Event sponsors must ensure that servers check ID and do not serve alcohol to any person who is under (~~twenty-one~~) 21 years old or who appears intoxicated;

(v) Prohibit serving alcohol during normal, university business hours unless an exception has been granted as part of the request under (a) (i) of this subsection;

(vi) Prohibit persons from bringing alcoholic beverages into the event unless specifically authorized by the banquet permit or special occasion license;

(vii) Prohibit persons from taking alcoholic beverages outside of the approved alcohol use area, except for beer/wine in the original unopened container that is sold or auctioned for off-premises consumption as specifically authorized by a special occasion license;

(viii) Provide food or snacks and nonalcoholic beverages at the same place as alcoholic beverages and feature nonalcoholic beverages at least as prominently as alcoholic beverages;

(ix) Inform university police of the event and consult with the university police about appropriate security measures.

The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the event's sponsor and appropriate university personnel to assist in compliance with state laws and university rules; and

(x) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.

(2) **Publicity and advertising of events on campus and off campus.** The following rules apply to any events on university-owned or operated property as well as university-sponsored events off campus.

(a) Events conducted under a banquet permit are by invitation only and may not be advertised to the public.

(b) All announcements and advertisements concerning an event including, but not limited to, flyers, notices, posters, banners, tee-shirts and newspaper and radio announcements, must:

(i) Note the availability of nonalcoholic beverages at least as prominently as the availability of alcoholic beverages;

(ii) State that proper identification is required in order to be served or sold alcoholic beverages; and

(iii) Not make reference to the amount of alcoholic beverages available at the event.

(c) All announcements and advertisements, as well as any promotions of specific alcoholic beverage brands at the event:

(i) Must not make reference to any form of drinking contest.

Drinking contests and similar activities which encourage the rapid and/or excessive consumption of alcoholic beverages are prohibited;

(ii) Must not portray drinking as a solution to personal or academic problems or as necessary to social, sexual, or academic success; and

(iii) Must not encourage any form of alcohol abuse or place emphasis on quantity or frequency of consumption.

(3) **University-sponsored events off campus.**

(a) All university-sponsored events involving the consumption of alcohol must take place outside of normal university business hours unless permission is obtained in advance from the vice president for business and finance or designee.

(b) If a university sponsored event is hosted off campus at the site of a private vendor, individuals may purchase alcohol from the private vendor. The private vendor is responsible for complying with all relevant state and local laws.

(c) If a university sponsored event is hosted off campus at an employee's private residence, university employees are prohibited from serving or providing alcohol to any university students.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-07-005, § 172-64-040, filed 3/4/21, effective 4/4/21; WSR 15-14-077, § 172-64-040, filed 6/29/15, effective 7/30/15; WSR 14-24-037, § 172-64-040, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-040, filed 8/29/03, effective 9/29/03.]

AMENDATORY SECTION (Amending WSR 15-14-077, filed 6/29/15, effective 7/30/15)

WAC 172-64-050 Alcohol use during group trips. (1) This section applies to the possession and consumption of alcoholic beverages by university employees and/or students when participating in a university sponsored or supported group trip including, but not limited to, group attendance at conferences, conventions, seminars, training, field trips, etc., except that this section does not apply to academic courses that are authorized by and subject to WAC 172-64-035.

(2) Unless an exception has been granted per subsection (3) of this section, during supervised periods of a group trip (e.g., when work, instruction, or official business is being conducted) employees and students shall not possess or consume alcohol.

(3) Exceptions may be granted if the trip involves attending a function where the consumption of alcohol is a cultural or social expectation. Examples of such functions include, but are not limited to, receptions, cultural exchanges, and professional gatherings. Requests for exceptions must be made to the appropriate vice president. For approved requests, participants must:

(a) Comply with all applicable local laws; and

(b) Comply with all additional requirements and/or instructions provided as a condition of the approval.

(4) Notwithstanding any other rules or exceptions under this policy, university employees and students shall not:

(a) Consume alcohol during any period of time when they are responsible for the care and/or transportation of other group members;

(b) Transport alcoholic beverages in any vehicle, including personal and rental vehicles, used in support of a group trip.

[Statutory Authority: RCW 28B.35.120(12). WSR 15-14-077, § 172-64-050, filed 6/29/15, effective 7/30/15; WSR 14-24-037, § 172-64-050, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-050, filed 8/29/03, effective 9/29/03.]

AMENDATORY SECTION (Amending WSR 21-07-005, filed 3/4/21, effective 4/4/21)

WAC 172-64-070 Banquet permits and special occasion licenses. A banquet permit or a special occasion license must be obtained in order to permit alcoholic beverages to be possessed, sold, served, and/or consumed on university owned or operated property and/or at university-sponsored events and activities. This section does not apply to academic courses that are authorized by and subject to WAC 172-64-035.

Banquet permits and special occasion licenses have specific rules concerning alcohol serving, sales (including raffles and gifts), event advertising, and related issues as contained in chapters 314-05 and 314-18 WAC.

Event organizers must contact EWU event planning to initiate the process for obtaining a banquet permit or special occasion license. Banquet permits and special occasion licenses are issued by the Washington state liquor and cannabis board.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-07-005, § 172-64-070, filed 3/4/21, effective 4/4/21; WSR 14-24-037, § 172-64-070, filed

11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-070, filed 8/29/03, effective 9/29/03.]

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-090 Alcohol sales and delivery on university owned or operated property. Vendors may not sell and/or deliver alcohol on property owned or operated by the university except as is necessary to support a function that has obtained a banquet permit or a special occasion license, or for sales or deliveries to an on-campus entity or business holding a valid liquor license, or to an academic department holding a valid class 15 permit.

[Statutory Authority: RCW 28B.35.120(12). WSR 14-24-037, § 172-64-090, filed 11/24/14, effective 12/25/14; WSR 03-18-070, § 172-64-090, filed 8/29/03, effective 9/29/03.]

WSR 22-12-042

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2022, 3:37 p.m., effective June 25, 2022]

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

Purpose: Clarifies the process for academic integrity cases at Eastern Washington University. Clarifies how members of the academic integrity board (AIB) are appointed, how deadlines are calculated, the process for faculty to report violations, and the process for referring cases over to the student conduct code process when there is a possibility of suspension or expulsion.

Citation of Rules Affected by this Order: Amending WAC 172-90-010, 172-90-020, 172-90-100, 172-90-120, 172-90-140, 172-90-160, and 172-90-170.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 22-07-035 on March 11, 2022.

Changes Other than Editing from Proposed to Adopted Version: Added the possibility of a designee making a decision on behalf of the associate vice president. Based on feedback received during the process, eliminated any reference to AIB hearings, as WAC 172-90-170 is being repealed, and specified the time of academic integrity board hearings. Due to concerns about the calculation of deadlines and various academic terms, clarified that terms are based on a particular program and an extension must be requested rather than automatically granted. Also added, to align with other proposed changes, the ability to grant a continuance to the deadline for requests for 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 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 20, 2022.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-3645.2

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

WAC 172-90-010 General. These rules establish standards for student academic integrity at Eastern Washington University (EWU). EWU expects the highest standards of academic integrity of its students.

Academic integrity is the responsibility of both students and instructors. The university supports the instructor in setting and maintaining standards of academic integrity. Academic integrity is the foundation of a fair and supportive learning environment for all students. Personal responsibility for academic performance is essential for equitable assessment of student accomplishments. Charges of violations of academic integrity are reviewed through a process that allows for student learning and impartial review.

These rules apply to all EWU instructors, staff, and students admitted to the university, including conditional or probationary admittance, and to all departments and programs, in all locations, including online. These rules provide procedures for resolving alleged violations by students. All academic integrity proceedings are brief adjudicative proceedings and shall be conducted in an informal manner. If the potential sanction for a violation of this policy is a suspension or expulsion, the academic integrity board will refer the matter for a full adjudicative proceeding under the Student conduct code, chapter 172-121 WAC, as detailed below in WAC 172-90-100(~~(r)~~) and 172-90-160(~~(, and 172-90-170)~~).

[Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-010, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-010, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-010, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-020 Responsibilities. (1) Associate vice president for academic policy (AVP): The AVP is primarily responsible for the university academic integrity program. The AVP or designee shall:

- (a) Oversee the academic integrity program;
- (b) (~~(Appoint the chair and members of the academic integrity board (AIB));~~
- (~~(e)~~)) Maintain a system for academic integrity reporting and recordkeeping;
- (~~(d)~~)) (c) Serve as the final authority in administering the academic integrity program;
- (~~(e)~~)) (d) Maintain all academic integrity records per Washington state records retention standards;
- (~~(f)~~)) (e) Coordinate academic integrity training for instructors and students, as needed or requested; and
- (~~(g)~~)) (f) Develop and/or facilitate development of academic integrity program support resources, including guides, procedures, web presence, training materials, presentations, and similar resources.

Throughout this chapter and unless otherwise stated, the term "AVP," shall mean the AVP who is handling the academic integrity case or their designee.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

- (a) The AIB shall:
 - (i) Promote academic integrity at EWU;

(ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;

(iii) Conduct academic integrity board hearings;

(iv) Assist the AVP in development of academic integrity program support resources;

(v) Respond, as appropriate, to campus needs related to the academic integrity program;

(vi) Coordinate AIB activities with the AVP; and

(vii) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the ((AVP,)) faculty senate based on recommendations from represented groups (e.g., colleges, library, ASE-WU). The AIB will select among its members a chair and vice chair. Board composition or membership may be modified to support university needs with the consent of the AVP and approval of the provost. At a minimum, AIB membership will include:

(i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice chair.

(ii) One member representing EWU libraries and one alternate.

(iii) One student member representing ASEWU.

(iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings (~~every two weeks at fixed times and reviews cases at these meetings. The AIB also conducts AIB hearings, as needed, for academic integrity cases involving possible sanctions of suspension or expulsion~~) to review cases the first and third Thursdays of every month, or as set forth by the faculty organization. AIB reviews ((and hearings)) are held in abeyance during holidays, academic breaks, and other times when no classes are scheduled. AIB reviews ((and hearings)) may be canceled in other circumstances with the consent of the AIB chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair or vice chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB and the AVP.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-020, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-020, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-020, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-020, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) **Classes of violations:**

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated end-notes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Absent extenuating circumstances, assigned sanctions are imposed without delay and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

(a) Verbal or written reprimand;

- (b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;
- (c) Grade penalty for the assignment/test;
- (d) Course grade penalty;
- (e) Course failure;
- (f) Removal from the academic program;
- (g) Suspension for a definite period of time; and
- (h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior. Sanctions of suspension or expulsion may be noted on a student's transcript.

(4) Sanctioning authorities:

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board (AIB) has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from an academic program, with the concurrence of the instructor and the department chair. ~~((The AIB may also refer the case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.))~~

~~(c) ((An AIB hearing panel's recommendation to suspend or expel a student will be forwarded to the director of student rights and responsibilities.))~~ If, after determining that a student has engaged in an academic integrity code violation and imposing the academic sanctions identified in (a) and/or (b) of this subsection, the AIB believes that a suspension or expulsion may be appropriate, the AIB may, in addition to imposing such sanctions, refer the case to the director of student rights and responsibilities for a full hearing under the student conduct code, chapter 172-121 WAC. If the AIB recommends a case for a possible suspension or expulsion, the director of student rights and responsibilities will ensure the student is provided with a full hearing under the student conduct code, chapter 172-121 WAC. In such cases, a member of the AIB hearing panel will ((serve as the "complainant" for purposes of the student conduct code process. The AIB hearing panel member will explain the hearing panel's findings and recommendations to the conduct review officer. The conduct review officer)) provide a written statement for the student conduct hearing as to why the case has been forwarded to student rights and responsibilities. The student disciplinary council will make its own factual determinations and may impose a sanction of suspension or expulsion, or a lesser sanction as set forth in the student conduct code, in accordance with the student conduct code. The student disciplinary council cannot impose an academic sanction as those are determined by the AIB. The student disciplinary council's sanctions are in addition to any sanctions imposed by the AIB.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-100, filed 3/14/19, effective 4/14/19; WSR 18-06-020, § 172-90-100, filed 2/27/18, effective 3/30/18. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-100, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-100, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-100, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-120 Initiation. (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official. Students are strongly encouraged to report suspected violations to the course instructor, the AVP, or other university official.

Throughout this chapter, the term "instructor" shall refer to the instructor or other university official who reports a suspected violation under this chapter.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student or contact the student via email or other form of electronic communication prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) Dismiss the matter: If the instructor concludes that there is no violation of these rules, the matter is over.

(b) Resolve internally (internal resolution): If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;

(ii) Allow the student to modify or redo the assignment; and/or

(iii) Provide the student with an educational opportunity to re-iterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process by reporting the violation as described in subsection (5) of this section.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the violation to the AVP per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the AVP, including:

- (a) A description of the alleged violation;
 - (b) A summary of any conversations the instructor has had with the student regarding the violation;
 - (c) The sanction(s) imposed and/or recommended by the instructor;
- and
- (d) The method of resolution desired by the instructor (i.e., summary process(~~(r)~~) or AIB review(~~(r or AIB hearing)~~)).

When reporting the violation, the instructor (~~may~~) will also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. (~~Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, AVP, or the AIB.~~)

Instructors should initiate this process within seven calendar days after becoming aware of the suspected violation. If the instructor attempted to contact the student via email or another form of electronic communication and the student is not responsive, the instructor should initiate the process up to seven calendar days after the first electronic communication. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) **AVP review.** After a violation has been reported, the AVP will determine whether the summary process(~~(r)~~) or AIB review process(~~(r or AIB hearing process)~~) will be used.

In cases where the student has any prior violation, the AVP must process the case for AIB review under WAC 172-90-160(~~(r or AIB hearing under WAC 172-90-170)~~).

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-120, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-120, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-120, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-120, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 19-07-045, filed 3/14/19, effective 4/14/19)

WAC 172-90-140 Summary process. (1) **Initiation:** The summary process may be initiated when:

- (a) The instructor and student both agree to the summary process;
 - (b) The AVP agrees that the summary process is appropriate to the circumstances;
 - (c) The student has no prior violations of academic integrity;
- and
- (d) The alleged behavior would most likely not warrant a sanction of suspension or expulsion.

(2) **Student notification:** The AVP will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university email ad-

dress. If the student is no longer enrolled in the university, the AVP shall send the notification to the student's last known address. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) Documents related to the alleged violation;

(c) A description of the university's academic integrity rules and processes, including a list of possible sanctions;

(d) A description of the student's options; and

(e) Contact information for the AVP's office where the student can request further information and assistance.

(3) Student response options:

(a) Concur: The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) Conference: If a conference had not already occurred, the student may request to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). If the instructor declines the request, the matter will be referred to the AIB for further review and action. The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via email). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor or student may refer the matter to the AIB for review and action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the AVP of the outcome. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement within seven (~~instruction~~) calendar days, the instructor will inform the AVP and the matter will then be referred for AIB review and action.

(c) AIB review: The student may request that the matter be referred to the AIB for review and further action.

(d) Failure to respond: If the student does not respond to the notification within (~~three instruction~~) seven calendar days, the AVP will send another notification to the student. Failure of the student to respond to the second notification within (~~three instruction~~) seven calendar days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The AVP will coordinate with the instructor to impose the appropriate sanction(s).

(4) Extensions. If any of the notifications in this process are sent to a student or faculty member outside of the relevant program's academic term, the AVP may grant the student or faculty member a continuance to the deadline for responding upon request.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-07-045, § 172-90-140, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-140, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-140, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-140, filed 9/29/14, effective 10/30/14.]

AMENDATORY SECTION (Amending WSR 20-21-026, filed 10/9/20, effective 11/9/20)

WAC 172-90-160 Academic integrity board review process. (1) **Initiation:** The AIB review process will be initiated when:

- (a) The instructor or student requests AIB review;
- (b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or
- (c) The AVP determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within (~~(five instruction)~~) seven calendar days of determining that an AIB review is in order, the AVP shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The AVP will notify the student, instructor, and AIB chair. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the AVP's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the AVP to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must prepare a written statement and submit the statement to the AVP's office within (~~(three instruction)~~) seven calendar days after receiving the AIB review notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the AVP's office.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within ~~((three instructional))~~ seven calendar days, the AVP will send another notification to the student. Failure of the student to respond to the second notification within ~~((three instruction))~~ seven calendar days will be treated as an admission of responsibility and acceptance of ~~((the proposed))~~ AIB approved sanctions. The AVP will coordinate sanctioning with the instructor and/or the AIB as needed. If ~~((a recommended sanction requires higher level authority to impose, the AIB will proceed with a hearing.~~

~~((6))~~ , after determining that a student has engaged in an academic integrity code violation and imposing the academic sanctions, the AIB believes that a suspension or expulsion may be appropriate, the AIB may, in addition to imposing such sanctions, refer the case to the director of student rights and responsibilities for a full hearing under the student conduct code, chapter 172-121 WAC, for the student disciplinary council to make a determination as to whether or not suspension or expulsion should also be imposed. The hearing before the student disciplinary council will be de novo and separate from any findings and sanctions imposed by the AIB.

(6) **Extensions.** If any of the notifications in this process are sent to a student or faculty member outside of the relevant program's academic term, the AVP may grant the student or faculty member a continuance to the deadline for responding upon request.

(7) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

~~((7))~~ (8) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. If the ~~((board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.~~

~~((8))~~ AIB believes a suspension or expulsion may be appropriate, the AIB will make its own findings of responsibility and may impose an academic sanction that is within its authority. The AIB may then refer the case for a full hearing under the student conduct code, chapter 172-121 WAC, for the student disciplinary council to make a determination as to whether or not suspension or expulsion should also be imposed. The hearing before the student disciplinary council will be de novo and separate from any findings and sanctions imposed by the AIB.

(9) **Conclusion:** The board should conclude its review and issue a decision within ~~((thirty))~~ 30 calendar days after the ~~((violation was initially reported))~~ initial AIB review meeting. The AVP shall notify the student and instructor of the board's decisions, along with the right to request reconsideration.

~~((9))~~ (10) **Requests for review:** Either the student or the instructor may request reconsideration by the provost or designee by submitting a request in writing to the provost or designee within

~~((twenty-one))~~ 21 calendar days after the board issues its written decision. The AVP may grant the student or instructor a continuance to the deadline for requesting a review based on extenuating circumstances. The provost or designee shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within ~~((five instructional))~~ seven calendar days of the request for review. If the student has a case pending under the student conduct code based on the same alleged misconduct, the timelines for requesting review and the timelines for responding will be stayed until the student disciplinary council issues its decision under the student conduct code. If the AIB recommended a suspension or expulsion and the case was forwarded for a full hearing under the student conduct code, the imposition of a sanction of suspension or expulsion may be appealed in accordance with the appeals process set forth in WAC 172-121-130. If the AIB imposed a sanction, such as an XF grade or removal from an academic program, such sanction may be appealed to the provost in accordance with this section.

After reviewing the responses and materials considered by the board, the provost or designee shall issue a decision in writing within ~~((twenty))~~ 21 calendar days of receipt of the request for review. The decision must include a brief statement of the reasons for the provost or designee decision and notice that judicial review may be available. All decisions of the provost or designee are final and no appeals within the university are permitted. Judicial review may be available under chapter 34.05 RCW.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 20-21-026, § 172-90-160, filed 10/9/20, effective 11/9/20; WSR 19-07-045, § 172-90-160, filed 3/14/19, effective 4/14/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-11-052, § 172-90-160, filed 5/15/17, effective 6/15/17; WSR 15-14-079, § 172-90-160, filed 6/29/15, effective 7/30/15; WSR 14-20-082, § 172-90-160, filed 9/29/14, effective 10/30/14.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-90-170 Academic integrity board hearing.

WSR 22-12-043

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 25, 2022, 3:47 p.m., effective June 25, 2022]

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

Purpose: Clarifies that the limitations on commercial activities on campus apply to both property and facilities.

Citation of Rules Affected by this Order: Amending WAC 172-139-010.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 22-07-080 on March 21, 2022.

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

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

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

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

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

Date Adopted: May 20, 2022.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-3646.1

AMENDATORY SECTION (Amending WSR 18-21-032, filed 10/5/18, effective 11/5/18)

WAC 172-139-010 Commercial activities. Eastern Washington University property and facilities shall not be used by any person or entity other than the university for commercial solicitation, advertising, or promotional activities except:

(1) By special permission granted by the vice president for business and finance or designee if a contract, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity;

(2) Regular advertising, promotions, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at intercollegiate events;

(3) In designated areas of the Pence Union Building as set forth in WAC 172-139-020; or

(4) When the activities clearly serve educational objectives. Examples of acceptable activities include the display of books of interest to the academic community, the display or demonstration of technical or research equipment, or other commercial activities that relate to educational objectives. In all cases, such commercial activities

must be conducted under the sponsorship or at the request of a university department or of a vice president or authorized designee. Approved commercial activities shall not interfere with or operate to the detriment of the conduct of university affairs or the free flow of pedestrian or vehicular traffic.

[Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-21-032, § 172-139-010, filed 10/5/18, effective 11/5/18. Statutory Authority: RCW 28B.35.120(12). WSR 10-04-072, § 172-139-010, filed 2/1/10, effective 3/4/10. Statutory Authority: RCW 28B.35.120. WSR 92-21-043, § 172-139-010, filed 10/16/92, effective 11/16/92.]

WSR 22-12-052

PERMANENT RULES

REDISTRICTING COMMISSION

[Filed May 26, 2022, 10:00 a.m., effective June 26, 2022]

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

Purpose: The proposed changes address the terms of the consent decree accepted by the Thurston County Superior Court in the case of *Washington Coalition for Open Government v. the Washington State Redistricting Commission*. It will require all future commissioners and staff to complete open government training within 30 days of hiring or appointment; and it establishes amended procedures for consideration and adoption of the final redistricting plan that will protect against future violations of chapter 42.30 RCW, the Open Public Meetings Act.

Citation of Rules Affected by this Order: [New WAC 417-01-137]; and amending [WAC 417-01-155].

Statutory Authority for Adoption: RCW 44.05.080.

Adopted under notice filed as WSR 22-07-028 on March 10, 2022.

A final cost-benefit analysis is available by contacting Lisa McLean, P.O. Box 40948, Olympia, WA 98504-0948, phone 360-522-0373, email Lisa.McLean@redistricting.wa.gov, website redistricting.wa.gov.

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

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

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

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

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

Date Adopted: May 26, 2022.

Lisa McLean
Executive Director

OTS-3659.2NEW SECTION

WAC 417-01-137 Required training. All commission staff and members shall complete open government training sufficient to comply with the training requirements of RCW 42.30.205 within 30 days of hiring or appointment.

[]

AMENDATORY SECTION (Amending WSR 21-13-142, filed 6/22/21, effective 7/23/21)

WAC 417-01-155 Conduct of commission business. (1) Three voting members of the commission shall constitute a quorum for the conduct of business.

(2) The votes of any three of the commissioners shall be required for any official action of the commission: Provided, That the executive director shall have the authority on behalf of the commission to execute contracts and leases, and approve expenditures and reimbursements, related to the business of the commission. The executive director may, without the prior approval of the commission, authorize expenditures not to exceed \$30,000. Expenditures made pursuant to this section shall be reported as a separate item on the agenda at the next commission meeting.

(3) The chair shall not have a vote at any meeting of the commission.

(4) Commission meetings shall be conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW).

(5) The commission shall not adopt any redistricting plan, or partial redistricting plan, except at a public meeting, notice of which has been given in accordance with these rules.

(6) The commission shall not take any action by secret ballot.

(7) Motions shall not require a second in order to be placed before the commission for a vote.

(8) All public meetings of the commission shall be electronically recorded. The minutes and tapes thereof shall be available to the public in accordance with the rules regarding access to public records held by the commission. At all meetings of the commission where public testimony regarding redistricting boundaries is a scheduled agenda item, the commission shall provide for the presence of a court reporter to record such testimony. A typewritten transcript of such testimony shall be prepared as soon as possible after such hearings and shall be made available to the public in accordance with the rules regarding access to public records held by the commission. The transcript of a court reporter prepared pursuant to this section shall become part of the official records of the commission.

(9) Except as provided in this section, the chair shall preside at all meetings. In the event of the chair's absence the commission shall select from among the voting members a temporary chair to preside in the chair's absence. The position of temporary chair shall alternate between a member of the two parties represented on the commission.

(10) The commission may not convene a public meeting and then recess to enable members to deliberate among themselves, except for those matters permitted under RCW 42.30.110 for executive session.

(11) The commission may not vote on the adoption of a final redistricting plan in private. The commission may not negotiate an agreed-upon framework for a final redistricting plan in private.

(12) Before the commission considers any motion to approve a final redistricting plan, the commission shall make publicly available the plan that is the subject of the motion, including of the congressional and legislative district maps that depict the boundaries contemplated by the motion.

(13) Any final redistricting plan approved in conformance with Article II, section 43(6) of the state Constitution shall include, at the time of any vote to approve the plan, completed final maps showing

the division of the state into congressional or legislative districts and complete descriptions of each district using official census units such as tracts and blocks.

(14) The commission shall open for comment by members any motion to approve a final redistricting plan prior to voting on the motion.

[Statutory Authority: RCW 44.05.080. WSR 21-13-142, § 417-01-155, filed 6/22/21, effective 7/23/21. Statutory Authority: RCW 44.05.080(2). WSR 11-15-010, § 417-01-155, filed 7/7/11, effective 8/7/11. Statutory Authority: RCW 44.05.080(1). WSR 01-13-123, § 417-01-155, filed 6/20/01, effective 7/9/01; WSR 91-20-006, § 417-01-155, filed 9/19/91, effective 10/20/91.]

WSR 22-12-054
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed May 26, 2022, 11:09 a.m., effective June 26, 2022]

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

Purpose: This rule makes temporary allowances necessary to address the health and safety of waiver recipients and help control the spread of COVID-19. The allowances in this rule were approved by the Centers for Medicare and Medicaid Services (CMS) in an Appendix K waiver, the purpose of which is to address the effects of the COVID-19 public health emergency. These temporary allowances will end according to direction from CMS. This permanent rule supersedes the emergency filed under WSR 22-12-024 on May 23, 2022.

Citation of Rules Affected by this Order: New WAC 388-845-2019.

Statutory Authority for Adoption: RCW 71A.12.030.

Adopted under notice filed as WSR 22-07-040 on March 14, 2022.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

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

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

Date Adopted: May 26, 2022.

Lisa N. H. Yanagida
Interim Chief of Staff

SHS-4794.8

NEW SECTION

WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak? (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes, except the provision of remote waiver services, require prior approval by the DDA director of the division of field services or designee and will be assessed on a case-by-case basis. An allowance in this section is valid

as long as it is approved by the Centers for Medicare and Medicaid Services through the medicaid waiver process.

(2) The following changes to waiver services are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) All waiver services except goods may be offered remotely by providers when travel to the waiver participant is not possible due to COVID-19 infection or exposure.

(b) Limits to the number of respite hours a client may receive that are generated in the CARE assessment are temporarily suspended. The amount of respite hours a client may receive are determined by DDA.

(c) The basic plus, CIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(d) Respite provided out-of-state may be provided in excess of 30 days.

(e) Community guide and community engagement may be provided to more than one client at a time.

(f) Staff and family consultation may be provided to more than one client at a time.

(g) Assistive technology is available on all five waiver programs when a waiver participant requires a technology in order to receive waiver-funded remote supports, to increase, maintain, or improve independence with daily living, to increase safety, or to facilitate social communication. Assistive technology is only available to the participant when access to technologies through other resources is not possible. Assistive technology includes:

(i) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(iii) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for the participant and if appropriate, the participant's family;

(vi) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities; and

(vii) Distance-based observation and reporting provided by an assistive technology distance-based observation and reporting specialist.

(h) Assistive technology on the basic plus waiver is included as part of the list of aggregate services.

(i) If transportation is necessary to prevent illness or meet a client's immediate health and safety needs, waiver transportation services may be used to travel to a place where the client will not be receiving waiver services (e.g., transportation to a family member's home).

(3) If a client is displaced from their home because of quarantine or hospitalization, or if a provider is unavailable due to illness or business closure, the following waiver services may be provided in a hotel, shelter, church, other facility-based setting, or the home of a direct-care worker when those supports are not available through the medicaid state plan or another legally liable funding source:

- (a) Residential habilitation;
- (b) Respite care;
- (c) Positive behavior support;
- (d) Staff and family consultation;
- (e) Behavioral health stabilization - positive behavior support;
- (f) Behavioral health stabilization - crisis diversion beds;
- (g) Nurse delegation; and
- (h) Skilled nursing.

(4) Positive behavior support and staff and family consultation may be provided in an acute care setting such as a hospital or short-term institutional setting if:

(a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;

(b) The waiver service provider is not otherwise funded by another resource; and

(c) The waiver services do not duplicate services already available in that setting.

(5) The following changes to waiver service provider qualifications are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) Staff and family consultation may include emergency preparedness consultation support from a provider trained in emergency management or a similar field with a current DDA contract.

(b) Respite care may be provided by currently contracted positive behavior support providers.

(6) Specialized medical equipment and supply, specialized equipment and supply, and assistive technology provider types may include the use of a purchase card and community choice guides when supply or cost impacts occur due to COVID-19.

(7) The following changes to level-of-care evaluations and re-evaluations for waiver participants are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) A client's services may continue and the level-of-care reassessment may be postponed up to one year if due to illness or quarantine:

(i) The client, their representative, or a DDA employee are unable to participate in the reassessment; or

(ii) There is insufficient time for the case manager to complete the annual reassessment paperwork.

(b) On a case-by-case basis, the time limit for approving a client's expired person-centered service plan may be extended if:

(i) The plan currently meets the client's needs; and

(ii) Monthly remote or telephonic monitoring is provided to ensure the plan continues to meet the client's needs.

(c) Telephonic assessments may occur in place of face-to-face assessments on a case-by-case basis. An initial assessment may be conducted telephonically when needed to prevent potential exposure related to COVID-19.

(d) For initial CARE assessments, employees may complete the assessment and person-centered service plan via the telephone or other electronic means and then do a brief in-person visit before moving the assessment to current.

(e) If the previsit questionnaire response indicates it is not safe to do an in-person visit, services can be authorized prior to an in-person visit occurring.

(f) A person-centered service plan, or revisions to a person-centered service plan, may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. Telephonic (or other information technology medium) assessments may occur when the assessment cannot occur due to impacts of COVID-19.

(8) CIIBS waiver quarterly face-to-face meeting requirement may be provided telephonically when a face-to-face meeting cannot occur due to client or client representative health concerns or staffing availability.

[]

WSR 22-12-055
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed May 26, 2022, 11:11 a.m., effective June 26, 2022]

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

Purpose: Developmental Disabilities Administration (DDA) amended this section to expand the list of professionals from whom DDA accepts a statement that a person's autism prevents the person from completing a full-scale intellectual quotient test. This final rule supersedes the CR-103E filed under WSR 22-07-039.

Citation of Rules Affected by this Order: Amending WAC 388-823-0510.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.10.020 and 71A.16.020.

Adopted under notice filed as WSR 22-08-088 on May [April] 5, 2022.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

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

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

Date Adopted: May 26, 2022.

Lisa N. H. Yanagida
 Interim Chief of Staff

SHS-4905.3

AMENDATORY SECTION (Amending WSR 21-13-164, filed 6/23/21, effective 8/1/21)

WAC 388-823-0510 What constitutes substantial limitation due to autism? (1) To establish substantial limitation due to autistic disorder diagnosed under the DSM-IV-TR, you must have an adaptive skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) To establish substantial limitation due to autism spectrum disorder diagnosed under the DSM-5 you must:

(a) Have an adaptive-skills test score more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to WAC 388-823-0740 and WAC 388-823-0750; and

(b) Have either:

(i) A full-scale intellectual quotient (FSIQ) score more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to WAC 388-823-0720 and WAC 388-823-0730; or

(ii) A written statement from a (~~professional~~) qualified (~~to administer intellectual tests stating~~) professional that your autism prevents you from completing (~~the~~) FSIQ testing. "Qualified professional" means:

(A) Board-certified neurologist;

(B) Board-certified psychiatrist;

(C) Licensed psychologist;

(D) Licensed physician associated with an autism center, developmental center, or center of excellence;

(E) Board-certified developmental and behavioral pediatrician; or

(F) Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

[Statutory Authority: RCW 71A.12.030, 71A.12.020 and 71A.16.020. WSR 21-13-164, § 388-823-0510, filed 6/23/21, effective 8/1/21. Statutory Authority: RCW 71A.12.030, 71A.12.120 and 74.08.090. WSR 14-12-046, § 388-823-0510, filed 5/29/14, effective 7/1/14. Statutory Authority: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, 71A.16.050, and chapters 71A.10, 71A.12, and 71A.16 RCW. WSR 05-12-130, § 388-823-0510, filed 6/1/05, effective 7/2/05.]

WSR 22-12-056

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed May 26, 2022, 12:53 p.m., effective June 26, 2022]

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

Purpose: The agency is making housekeeping changes only. WAC 182-512-0150 contains incorrect rule cross-references in subsections (1)(e) and (6). In subsection (1)(e) the agency is editing the rule to replace an incorrect reference to WAC 182-513-1305 with the correct reference to WAC 182-513-1205. In subsection (6) the agency is replacing an incorrect reference to WAC 182-513-1305 with the correct reference to WAC 182-513-1395.

Citation of Rules Affected by this Order: Amending WAC 182-512-0150.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-07-097 on March 22, 2022.

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

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

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

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

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

Date Adopted: May 26, 2022.

Wendy Barcus
Rules Coordinator

OTS-3643.2

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0150 SSI-related medical—Medically needy (MN) medical eligibility. (1) Washington apple health (WAH) medically needy (MN) health care coverage is available for any of the following:

(a) A person who is SSI-related and not eligible for WAH categorically needy (CN) medical coverage because the person has countable income that is above the WAH CN income level (CNIL) (or for long-term care (LTC) recipients, above the special income limit (SIL)):

(i) The person's countable income is at or below WAH MN standards, leaving no spenddown requirement; or

(ii) The person's countable income is above WAH MN standards requiring the person to spenddown their excess income (see subsection (4) of this section). See WAC 182-512-0500 through 182-512-0800 for rules on determining countable income, and WAC 182-519-0050 for program standards or chapter 182-513 WAC for institutional standards.

- (b) An SSI-related ineligible spouse of an SSI recipient;
 - (c) A person who meets SSI program criteria but is not eligible for the SSI cash grant due to immigration status or sponsor deeming. See WAC 182-503-0535 for limits on eligibility for aliens;
 - (d) A person who meets the WAH MN LTC services requirements of chapter 182-513 WAC;
 - (e) A person who lives in an alternate living facility and meets the requirements of WAC ((~~182-513-1305~~) 182-513-1205); or
 - (f) A person who meets resource requirements as described in chapter 182-512 WAC, elects and is certified for hospice services per chapter 182-551 WAC.
- (2) A person whose countable resources are above the SSI resource standards is not eligible for WAH MN noninstitutional health care coverage. See WAC 182-512-0200 through 182-512-0550 to determine countable resources.
- (3) A person who qualifies for services under WAH long-term care programs has different criteria and may spend down excess resources to become eligible for WAH LTC institutional or waiver health care coverage. Refer to WAC 182-513-1315 and 182-513-1395.
- (4) A person with income over the effective WAH MN income limit (MNIL) described in WAC 182-519-0050 may become eligible for WAH MN coverage when the person has incurred medical expenses that are equal to the excess income. This is the process of meeting spenddown. Refer to chapter 182-519 WAC for spenddown information.
- (5) A person may be eligible for health care coverage for any or all of the three months immediately prior to the month of application, if the person has:
- (a) Met all eligibility requirements for the months being considered; and
 - (b) Received medical services covered by medicaid during that time.
- (6) A person who is eligible for WAH MN without a spenddown is certified for up to ((~~twelve~~) 12) months. For a person who must meet a spenddown, refer to WAC 182-519-0110. For a person who is eligible for a WAH long-term care MN program, refer to WAC ((~~182-513-1305~~) 182-513-1395) and 182-513-1315.
- (7) A person must reapply for each certification period. There is no continuous eligibility for WAH MN.

[Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0150, filed 3/14/14, effective 4/14/14. Statutory Authority: RCW 41.05.021. WSR 12-20-001, § 182-512-0150, filed 9/19/12, effective 10/20/12. WSR 11-24-018, recodified as § 182-512-0150, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-002, § 388-475-0150, filed 4/7/04, effective 6/1/04.]

WSR 22-12-071
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 27, 2022, 2:13 p.m., effective June 27, 2022]

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

Purpose: To amend the dual endorsement requirement to remove special education and early childhood special education from the list of endorsements that require a second endorsement. These endorsements would no longer require a second endorsement to obtain a teaching certificate.

Citation of Rules Affected by this Order: Amending WAC 181-79A-132.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 22-08-098 on May 19 [April 5], 2022.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: May 19, 2022.

Jisu Ryu
Rules Coordinator

OTS-3676.1

AMENDATORY SECTION (Amending WSR 18-08-025, filed 3/26/18, effective 4/26/18)

WAC 181-79A-132 Dual endorsement requirement. Per WAC 181-82A-215, all teachers are required to hold at least one endorsement, provided, a teacher who obtains a (~~special education, early childhood special education,~~) bilingual education, or English language learner endorsement after September 1, 2019, must earn and/or hold a second endorsement in another endorsement area that may be earned at the preresidency level. (~~Special education, early childhood special education,~~) Bilingual education, English language learner, and traffic safety do not qualify as the other endorsement area. Provided, that individuals applying for a Washington state teacher certificate that have completed an out-of-state teacher preparation program may have two years in which to add the second endorsement.

[Statutory Authority: RCW 28A.410.220. WSR 18-08-025, § 181-79A-132, filed 3/26/18, effective 4/26/18. Statutory Authority: RCW 28A.410.210. WSR 14-24-005, § 181-79A-132, filed 11/19/14, effective 12/20/14.]

WSR 22-12-072
PERMANENT RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 27, 2022, 2:14 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: Establish a working connections and seasonal child care program infant rate enhancement of \$90 per infant per month for providers who care for infants aged birth to 11 months.

Citation of Rules Affected by this Order: New WAC 110-15-0215; and amending WAC 110-15-0003, 110-15-0225, and 110-15-3770.

Statutory Authority for Adoption: RCW 43.216.579.

Adopted under notice filed as WSR 22-09-019 on April 11, 2022.

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 1, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: May 27, 2022.

Brenda Villarreal
Rules Coordinator

OTS-3687.2

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Administrative error" means an error made by DCYF through no fault of the consumer or provider.

"Approved activity" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"Authorization" means the transaction created by DCYF which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

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

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person eligible to receive:

- (a) WCCC benefits as described in part II of this chapter; or
- (b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay to the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

"Days" means calendar days unless otherwise specified.

"DCYF" means the department of children, youth, and families.

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

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

- (a) Part II of this chapter to receive WCCC program subsidies; or
- (b) Part III of this chapter to receive SCC program subsidies.

"Eligibility period" means the months for which households are eligible to receive WCCC or SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by DCYF, and subsidized employment, such as:

- (a) Working in a federal or state paid work study program; or
- (b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to themselves or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

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

"Infant" means a child from birth to 11 months.

"Living in the household" means people who reside at the same physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Newly eligible consumer" means a consumer that has at least one full calendar month break in benefit eligibility.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Overpayment" means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age 30 months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through 12 years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in a legal, income-generating activity earned directly from an individual's trade or business that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S.

"Sign" means placing a name or legal mark on a document by physically writing or using an electronic signature.

"State median income (SMI)" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"TANF" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"Technical assistance" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"To the extent of available funds" means one or more of the following:

- (a) Limited or closed enrollment;
- (b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or
- (c) Subject to a waiting list.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

"WCCC" means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0003, filed 2/3/22, effective 3/6/22. Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0003, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0003, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0003, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-013, § 170-290-0003, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0003, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0003, filed 4/15/16, effective 5/16/16; WSR 14-12-050, § 170-290-0003, filed 5/30/14, effective 6/30/14; WSR 12-11-025, § 170-290-0003, filed 5/8/12, effective 6/8/12; WSR 11-12-078, § 170-290-0003, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0003, filed 10/28/09, effective 12/1/09.]

NEW SECTION

WAC 110-15-0215 Infant enhanced rate. Licensed and certified child care providers accepting state subsidy may receive an infant enhancement payment of \$90 per month for each infant who is enrolled in their child care and attends at least one day per month.

[]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0225 Special needs rates—Licensed or certified child care ((facilities)) centers and seasonal day camps. (1) In addition to the base rate for licensed or certified child care ((facilities))

centers and seasonal day camps listed in WAC (~~(170-290-0200, DSHS)~~) 110-15-0200, DCYF may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC (~~(170-290-0220)~~) 110-15-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (One month) Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

(i) Centers in Clark County are paid Region 3 rates;

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

(a) Be at least (~~eighteen~~) 18 years of age;

(b) Meet the requirements for being an assistant under chapter (~~(170-295)~~) 110-300 WAC; and

(c) Maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who is age (~~thirteen~~) 13 years or older and has special needs according to WAC (~~(170-290-0220, DSHS)~~) 110-15-0220, DCYF authorizes the special needs payment rate as described in subsection (1) of this section using the five through (~~twelve~~) 12 year age range for comparison.

[WSR 18-14-078, recodified as § 110-15-0225, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0225, filed 4/15/16, effective 5/16/16; WSR 14-12-050, § 170-290-0225, filed 5/30/14, effective 6/30/14; WSR 14-03-060, § 170-290-0225, filed 1/13/14, effective 2/13/14. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0225, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0225, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0225, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0225, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0225, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0225, filed 5/31/02,

effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0225, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers as described in WAC 110-15-0190, 110-15-0200, ~~((and))~~ 110-15-0205, and 110-15-0215.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-3770, filed 2/3/22, effective 3/6/22; WSR 20-08-077, § 110-15-3770, filed 3/26/20, effective 4/26/20. WSR 18-14-078, recodified as § 110-15-3770, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3770, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3770, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3770, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3770, filed 10/28/09, effective 12/1/09.]

WSR 22-12-073
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 27, 2022, 2:18 p.m., effective June 27, 2022]

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

Purpose: Communities continue to experience a public health crisis related to the outbreak of the novel coronavirus, COVID-19. Educator preparation programs and their candidates face ongoing challenges related to this public health situation. These emergency rule changes would extend existing pandemic supports that address these challenges for educator preparation programs and candidates. The pandemic supports include:

- WAC 181-78A-027 Waiver of clinical practice and course work by a preparation program provider, this section allows preparation program providers to review a candidate's work and learning experiences, and waive required clinical practice and/or coursework if the program determines the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or coursework.
- WAC 181-79A-228 Emergency teacher certificates, this section allows for emergency certificates for teacher preparation program candidates who have not completed assessment requirements, but have completed all other program completion requirements. These emergency certificates are valid for one year.

Citation of Rules Affected by this Order: Amending WAC 181-78A-027 and 181-79A-228.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 22-08-099 on May 19 [April 5], 2022.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: May 19, 2022.

Jisu Ryu
Rules Coordinator

OTS-3569.1

AMENDATORY SECTION (Amending WSR 20-16-033, filed 7/25/20, effective 8/25/20)

WAC 181-78A-027 Waiver of clinical practice and course work by a preparation program provider. (1) Based on review of current educational settings, and review of a candidate's previous course work, field experiences, work experiences, and alternative learning experiences, an educator preparation program provider may waive or reduce in length the required clinical practice, and/or waive required course work, if based on the review the provider determines that the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or course work.

(2) Under this section, educator preparation program providers may waive or reduce in length the required clinical practice and/or course work through June 30, (~~(2021)~~) 2023.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-16-033, § 181-78A-027, filed 7/25/20, effective 8/25/20.]

OTS-3570.1

AMENDATORY SECTION (Amending WSR 21-08-001, filed 3/24/21, effective 4/24/21)

WAC 181-79A-228 Emergency teacher certificates. Emergency teacher certificates, valid for one year, may be issued by the superintendent of public instruction under the following conditions:

(1) A teacher preparation program approved by the professional educator standards board has recommended the candidate as having met all requirements for program completion with the exception of one or more of the following:

(a) The performance assessment as described in WAC 181-78A-232;

(b) The content knowledge assessment as described in chapter 181-78A WAC; and

(c) The basic skills assessment as described in WAC 181-78A-232.

(2) During the validity period of the certificate, preparation program providers are required to inform, advise, and support applicants on assessment requirements as described in WAC 181-78A-231(3).

(3) Teacher preparation programs may recommend candidates for an emergency certificate under this section through (~~December 31, 2021~~) June 30, 2023.

(4) One additional one-year emergency certificate may be issued upon recommendation by the preparation program provider. Teacher preparation programs may recommend candidates for this additional one-year emergency certificate through June 30, (~~(2022)~~) 2024.

(5) Candidates recommended for an emergency certificate under this section must apply for that certificate through the office of superintendent of public instruction no later than December 31, (~~(2022)~~) 2024.

[Statutory Authority: Chapter 28A.410 RCW. WSR 21-08-001, § 181-79A-228, filed 3/24/21, effective 4/24/21; WSR 20-16-034, § 181-79A-228, filed 7/25/20, effective 8/25/20.]

WSR 22-12-074
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed May 27, 2022, 4:27 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: To align Title 357 WAC with Governor Jay Inslee's Executive Order 19-01 directing state agencies to bridge employment opportunities to increase veteran employment. Veteran placement programs (VPP) are considered bridge employment opportunities and state agencies are strongly encouraged to use them. A new section is added to define VPP; to allow employers to change the status of a nonpermanent appointment to probationary or trial service if the nonpermanent position was filled by using a VPP; and to state that an employer's Washington management service recruitment and selection policy and/or procedure should consider making appointments from a VPP. The proposed amendment to WAC 357-19-400(1) is to repeal the language "if the employee held permanent status prior to the nonpermanent appointment" because, in order for an employee, to be in a trial service they must hold permanent status.

To align Title 357 WAC with the choice performance confirmation (CPC) program. In September 2016 state human resources (SHR) launched CPC pilot program, a modified version of the performance management confirmation (PMC) program. The pilot was designed to assist state employers in the development of a performance management program that: (1) Creates and manages a performance-based culture; (2) links individual, team, and organizational performance goals; (3) meaningfully distinguishes among different levels of performance; and (4) develops a fair and transparent performance program. The pilot program included changes to the performance-based incentives for confirmed agencies. While the CPC was operating as a pilot program, it remained operating under PMC program title. During the preparation for the pilot, SHR met with all CPC confirmed agencies to solicit feedback and recommendations. During that process, SHR learned that participating agencies had never and do not intend to use layoff as part of the program. We are proposing to remove layoff as an option for performance-based incentives. Removing the language "factor employee performance when making layoff decisions["] will not impact confirmed agencies. The amendment to WAC 357-01-073 and 357-58-065(2) is to define "choice performance confirmation" and the repeal of WAC 357-01-230 and 357-58-065(9) is to remove the prior definition for performance management confirmation. In addition, to amend the current PMC WAC to reflect the CPC program title change and remove language referencing the ability to factor employee performance when making layoff decisions.

Citation of Rules Affected by this Order: New WAC 357-01-073 and 357-01-351; repealing WAC 357-01-230; and amending WAC 357-19-400, 357-31-565, 357-37-050, 357-37-055, 357-37-060, 357-46-020, 357-46-050, 357-58-065, 357-58-190, 357-58-425, 357-58-430, and 357-58-435.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 22-08-023 on March 25, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 12, Repealed 1.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 12, 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 2, Amended 12, Repealed 1.

Date Adopted: May 27, 2022.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-3647.2

NEW SECTION

WAC 357-01-073 Choice performance confirmation. Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

[]

NEW SECTION

WAC 357-01-351 Veterans placement program. A program that is designed to grant transitioning service members and veterans additional support to attain state employment.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-230 Performance management confirmation.

OTS-3622.3

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-400 May an employer convert a nonpermanent appointment to a probationary or trial service appointment? (1) When an employer uses a competitive process to make a nonpermanent appointment to fill a position in the absence of a permanent employee or fill a position nonpermanently due to the impending or actual layoff of a permanent employee(s), the employer may change the status of the appointment to probationary or ~~((if the employee held permanent status prior to the nonpermanent appointment))~~ to trial service if:

(a) The permanent employee does not return to the position or the layoff action has been implemented; and

(b) The employer needs to fill the position permanently.

(2) When an employer uses a veterans placement program to fill a nonpermanent position for any reason listed in WAC 357-19-360, the employer may change the status of the appointment to probationary or to trial service.

(3) At the discretion of the appointing authority, time spent in the nonpermanent appointment may count towards the probationary or trial service period for the permanent position.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-400, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 06-15-066, § 357-19-400, filed 7/13/06, effective 8/14/06; WSR 05-01-206, § 357-19-400, filed 12/21/04, effective 7/1/05.]

OTS-3648.1

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

WAC 357-31-565 May employers grant paid leave for purposes of recognition? Employers who have received choice performance (~~management~~) confirmation may grant employees up to five days of paid leave within a (~~twelve-month~~) 12-month period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

(1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;

(2) Must be used within (~~twelve~~) 12 months of the leave being granted.

[Statutory Authority: Chapter 41.06 RCW. WSR 07-17-124, § 357-31-565, filed 8/20/07, effective 9/20/07; WSR 06-23-091, § 357-31-565, filed 11/14/06, effective 12/18/06; WSR 05-08-140, § 357-31-565, filed 4/6/05, effective 7/1/05.]

OTS-3649.1

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-37-050 May an employer factor in employee performance when granting recognition leave (~~and when making layoff decisions~~)? An employer may factor in an employee's performance when granting recognition leave (~~and when making layoff decisions~~) if the employer has received choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-050, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-050, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-37-055 How does an employer receive choice performance (~~management~~) confirmation which enables them to factor in employee performance when granting recognition leave (~~and when making layoff decisions~~)? Employers may request choice performance (~~management~~) confirmation from the director. The director will use the elements listed in WAC 357-37-060 to assess and evaluate an employer's readiness to fairly and objectively factor in employee performance when granting recognition leave (~~and when making layoff decisions~~). If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance (~~management~~) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-055, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-055, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-37-060 What elements will the director evaluate to determine if an employer should be granted choice performance (~~management~~) confirmation? The director will evaluate the following elements to determine if an employer should receive choice performance (~~management~~) confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;

- (8) Internal mechanisms for managing funding for performance-based recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-37-060, filed 2/12/16, effective 3/14/16; WSR 05-01-194, § 357-37-060, filed 12/21/04, effective 7/1/05.]

OTS-3650.1

AMENDATORY SECTION (Amending WSR 10-11-068, filed 5/14/10, effective 6/15/10)

WAC 357-46-020 What must be included in the employer's layoff procedure? The employer's layoff procedure must:

(1) Identify clearly defined layoff unit(s) that minimize disruption of the employer's total operation and provide options to employees scheduled for layoff;

- Employers may establish separate and exclusive layoff units for project employment, employee business units, or special employment programs.

(2) Provide opportunities to avoid or minimize layoff, such as transfers, voluntary demotion, voluntary reduced work schedule, or voluntary leave without pay;

(3) Require the appointing authority to provide written notice of layoff to employees in accordance with WAC 357-46-025;

(4) Provide layoff options for permanent employees being laid off as provided in WAC 357-46-035;

(5) Address the time frame in which employees must select a layoff option;

(6) Define what the employer considers when determining the comparability of a position;

(7) Identify the employer's legitimate business requirements if the employer is going to consider those requirements in determining layoff options under WAC 357-46-035;

- Legitimate business requirements may include requirements such as circumstances or characteristics that render a position uniquely sensitive to disruption in continuity such as meeting critical deadlines, continuity in patient care, or research progress.

(8) Describe how employment retention ratings will be calculated (~~(, including options for factoring performance into ratings)~~); and

(9) Specify how the employer will break ties when more than one employee has the same employment retention rating.

(10) Higher education employers address in their layoff procedure whether or not employees have layoff list rights to classes they held permanent status in prior to any breaks in state service.

[Statutory Authority: Chapter 41.06 RCW. WSR 10-11-068, § 357-46-020, filed 5/14/10, effective 6/15/10; WSR 07-11-092, § 357-46-020, filed 5/16/07, effective 7/1/07; WSR 04-18-114, § 357-46-020, filed 9/1/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-12-084, filed 5/27/05, effective 7/1/05)

WAC 357-46-050 How does an employer determine an employee's employment retention rating? The employer determines an employee's employment retention rating using seniority as calculated in WAC 357-46-055 for general government employees and 357-46-053 for higher education employees. (~~Employers with performance management confirmation may consider properly documented performance in addition to seniority. If performance is not considered, an employee's employment retention rating is equal to the employee's seniority.~~)

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-084, § 357-46-050, filed 5/27/05, effective 7/1/05; WSR 04-18-114, § 357-46-050, filed 9/1/04, effective 7/1/05.]

OTS-3651.3

AMENDATORY SECTION (Amending WSR 19-11-136, filed 5/22/19, effective 7/1/19)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Choice performance confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave.

(3) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

~~((3))~~ (4) **Director.** State human resources director within the office of financial management.

~~((4))~~ (5) **Dismissal.** The termination of an individual's employment for disciplinary reasons.

~~((5))~~ (6) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((6))~~ (7) **Evaluation points.** The points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((7))~~ (8) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a

series of progressively larger units within an employer's organization.

~~((8))~~ (9) Management bands. A series of management levels included in the WMS. Placement in a band reflects the nature of management, decision-making environment and policy impact and scope of management accountability and control assigned to the position.

~~((9) Performance management confirmation.~~ Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave and when making layoff decisions.)

(10) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

(11) **Reassignment.** An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and the employee in that position from one section, department or geographical location to another section, department or geographical location.

(12) **Review period.** A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

(13) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

(14) **Separation.** Separation from state employment for nondisciplinary reasons.

(15) **Suspension.** An absence without pay for disciplinary reasons.

(16) **Transfer.** An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

(17) Veterans placement program. A program that is designated to grant transitioning service members and veterans additional support to attain state employment.

(18) Washington general service (WGS). The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((18))~~ (19) Washington management service (WMS). The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.150. WSR 19-11-136, § 357-58-065, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-065, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-065, filed 11/10/11, effective 12/13/11; WSR 07-11-092, § 357-58-065, filed 5/16/07, effective 7/1/07; WSR 05-21-060, § 357-58-065, filed 10/13/05, effective 11/15/05; WSR 05-12-068, § 357-58-065, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy must:

- (1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;
- (2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;
- (3) Support workforce diversity and affirmative action goals;
- (4) Consider the career development of the agency's employees and other state employees;
- (5) Consider making appointments from a veterans placement program;
- (6) Ensure that hiring decisions are not based on patronage or political affiliation;
- ~~((+6))~~ (7) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;
- ~~((+7))~~ (8) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;
- ~~((+8))~~ (9) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-58-190, filed 2/20/20, effective 3/30/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-190, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-58-425 May an employer factor in employee performance when granting recognition leave ~~((and when making layoff decisions))~~ for WMS employees? A general government employer may factor in an employee's performance when granting recognition leave ~~((and when making layoff decisions))~~ if the employer has received choice performance ~~((management))~~ confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-425, filed 2/12/16, effective 3/14/16; WSR 05-12-071, § 357-58-425, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-58-430 How does an employer receive choice performance ~~((management))~~ confirmation which enables them to factor in performance when granting recognition leave ~~((and when making layoff deci-~~

sions)) for WMS employees? Employers may request choice performance ((management)) confirmation from the director for WMS employees. The director will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor in performance when granting recognition leave ((and when making layoff decisions)). If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted choice performance ((management)) confirmation.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-430, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-430, filed 11/10/11, effective 12/13/11; WSR 05-12-071, § 357-58-430, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

WAC 357-58-435 What elements will the director evaluate to determine if an employer should be granted choice performance ((management)) confirmation? The director will evaluate the following elements to determine if an employer should receive choice performance ((management)) confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-056, § 357-58-435, filed 2/12/16, effective 3/14/16; WSR 11-23-054, § 357-58-435, filed 11/10/11, effective 12/13/11; WSR 05-12-071, § 357-58-435, filed 5/27/05, effective 7/1/05.]

WSR 22-12-075
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed May 27, 2022, 4:41 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: To amend WAC 357-04-045, 357-19-435, and 357-19-450 to align with the July 1, 2022, part-time/temporary/nonpermanent implementation effective date. RCW 41.06.070 previously exempted both part-time and temporary employees, as defined by the office of financial management (OFM), from state civil service rules (Title 357 WAC). In 2018, the legislature amended RCW 41.06.070 by removing part-time employees from the exemption; only temporary employees, as defined by OFM, are now exempt from civil service rules. Title 357 WAC does not distinguish between part-time and temporary employees for higher education employers; therefore, OFM worked with both higher education employers and union organizations to amend Title 357 WAC to align with the new law. The rule amendments redefine temporary higher education appointments and expand the current general government nonpermanent rules to include higher education employers. These rules were proposed for permanent adoption at the June 10 special director's meeting. David Schumacher, OFM director, adopted these rules on a permanent basis effective on January 1, 2022. On December 15, 2021, an extension was filed with the code reviser's office to extend the implementation rule effective date for the part-time/temporary/nonpermanent rules from January 1 to July 1, 2022. The purpose of this extension was to allow an appropriate amount of time for: (1) The Washington state public employment relations commission to finalize rule making and to clarify bargaining unit descriptions; (2) higher education employers and unions to bargain changes for represented employees; and (3) higher education employers to configure their payroll systems. This rule making aligns certain timelines in the adopted rules with the current effective date of the rules.

Citation of Rules Affected by this Order: Amending WAC 357-04-045, 357-19-435, and 357-19-450.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 22-08-025 on March 25, 2022.

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

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

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

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

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

Date Adopted: May 27, 2022.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-3639.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-04-045 Which temporary employees of higher education employers are exempt from civil service rules? (1) Temporary higher education employees are exempt from civil service rules under the following circumstances:

- (a) The employee is employed (~~((twelve))~~) 12 consecutive months or less;
- (b) The employee is employed for (~~((one thousand fifty))~~) 1,050 hours or less in that same (~~((twelve))~~) 12 consecutive month period which begins from the original date of hire or (~~((January))~~) July 1, 2022, whichever is later; and
- (c) The employee is limited to one appointment only with the same higher education employer that meets the criteria in (a) and (b) of this subsection.

(2) Temporary appointments under the provisions of this section are subject to remedial action in accordance with WAC 357-19-450.

(3) Temporary employees who are exempt under subsection (1) of this section and who work more than (~~((three hundred fifty))~~) 350 hours in a (~~((twelve))~~) 12 consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the (~~((three hundred fifty))~~) 350 hours. For purposes of counting the (~~((three hundred fifty))~~) 350 hours, the (~~((twelve-month))~~) 12-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-04-045, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: RCW 41.06.150. WSR 10-11-021, § 357-04-045, filed 5/10/10, effective 6/10/10. Statutory Authority: Chapter 41.06 RCW. WSR 04-15-016, § 357-04-045, filed 7/8/04, effective 7/1/05.]

OTS-3640.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-435 For what reasons may a higher education employer appoint an individual to a temporary appointment? A higher education employer may appoint an individual to a temporary appointment for the following reasons:

- (1) The number of hours to be worked by the individual will not exceed (~~((one thousand fifty))~~) 1,050 hours in a (~~((twelve))~~) 12 consecutive month period from the original date of hire or (~~((January))~~) July 1, 2022, whichever is later, in accordance with WAC 357-04-045; or

(2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months. In accordance with WAC 357-19-441(2), temporary appointments under this subsection are not exempt from civil service rules.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-435, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-435, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

WAC 357-19-450 When may the director take remedial action for individuals in higher education temporary appointments and what does remedial action include? For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary and establish seniority when it is determined that the following conditions exist:

(1) The individual has worked in one or more temporary positions as identified in WAC 357-04-045 for more than (~~one thousand fifty~~) 1,050 hours in any (~~twelve~~) 12 consecutive month period since the original hire date or (~~January~~) July 1, 2022, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the (~~one thousand fifty~~) 1,050 hours.)

(2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-450, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-192, § 357-19-450, filed 12/21/04, effective 7/1/05.]

WSR 22-12-076
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed May 27, 2022, 4:43 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: To amend chapter 357-31 WAC to align with ESSB 5115 and to align with the COVID-19 response. ESSB 5115 passed during the 2021 legislative session with an effective date of May 11, 2021. This bill added a new section to chapter 49.17 RCW (codified as RCW 49.17.062), The Washington Industrial Safety and Health Act. RCW 49.17.062 (6) (a) states "during a public health emergency, no employer may discharge, permanently replace, or in any manner discriminate against an employee who is high risk as a result of the employee seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease, or, if no accommodation is reasonable." Employers must allow an employee to use all available leave options including leave without pay. The Washington state department of labor and industries confirmed that leave may be used in any order and employers may not prescribe the type of leave an employee chooses or the order in which leave is taken. In addition, during the course of the COVID-19 pandemic, certain proclamations and requirements impacted employees and their families which resulted in the need to expand the reasons in which certain leave options may be provided to employees beyond the state of emergency; clean up language for consistency; and allow employers to consider approving leave based on workload demands and business needs rather than looking at essential services.

To expand leave options for high-risk employees seeking an accommodation to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable, besides the use of leave; expand sick leave use to employees when the employee needs to provide care for a child, household, or family member who has been exposed to a contagious disease and is required to quarantine, or when a child's school or place of care has been closed for health-related reasons; remove references to the emergency proclamation; repeal outdated language addressing an employee's eligibility to use compensatory time in lieu of temporary layoff during the 2009-11 biennium; expand leave with pay options to include COVID-19 booster vaccines; and expand leave without pay options from "essential services" to "current workload demands and business needs."

Citation of Rules Affected by this Order: New WAC 357-31-133; and amending WAC 357-31-070, 357-31-100, 357-31-130, 357-31-145, 357-31-160, 357-31-200, 357-31-230, 357-31-325, 357-31-326, 357-31-327, 357-31-330, 357-31-490, 357-31-567, and 357-31-845.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 22-08-030 on March 28, 2022.

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 1, Amended 14, 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 14, 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 14, Repealed 0.

Date Adopted: May 27, 2022.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-3678.3

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday? (1) An employer must approve the use of a personal holiday as long as:

- (a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;
- (b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and
- (c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

- (a) To care for a minor/dependent child with a health condition that requires treatment or supervision;
- (b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;
- (c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; ((e))

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW; or

(f) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-070, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-070, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-070, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-070, filed 7/11/08, effective 10/1/08; WSR 07-03-054, § 357-31-070, filed 1/12/07, effective 2/15/07; WSR 05-08-136, § 357-31-070, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

- (1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);
- (2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;
- (3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;
- (4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;
- (5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond ~~((eighteen))~~ 18 weeks in accordance with WAC ~~((357-31-130))~~ 357-31-133;
- (6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC;
- (7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC; ~~((and))~~
- (8) Address whether a general government employee may take additional accrued leave beyond ~~((thirty))~~ 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570; and
- (9) Allow a high risk employee, as defined in RCW 49.17.062, seeking a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave and leave without pay if the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-100, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-100, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-100, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-100, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-100, filed 5/14/14, effective 6/16/14; WSR 10-11-071, § 357-31-100, filed 5/14/10, effective 6/15/10; WSR 09-03-013, § 357-31-100, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-100, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-100, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-025, filed 11/20/20, effective 12/28/20)

WAC 357-31-130 When ((may)) must an employer allow an employee to use their accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

((+)) Employers **must** allow the use of accrued sick leave under the following conditions:

((+)) (1) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

((+)) (2) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

((+)) (3) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

((+)) (6) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

((+)) (7) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

~~((f))~~ (8) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection ~~((1)(d))~~ (6) of this section.

~~((i))~~ (a) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

~~((ii))~~ (b) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

~~((g))~~ (9) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

~~((h))~~ (10) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

~~((i))~~ (11) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~((j))~~ (12) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to ~~((eighteen))~~ 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

~~((2) Employers **may** allow the use of accrued sick leave under the following conditions:~~

~~(a) For condolence or bereavement;~~

~~(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;~~

~~(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or~~

~~(d) When a child is a family member of an employee or member of an employee's household and the child's school or place of care has been closed while proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, is in effect.)~~

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-025, § 357-31-130, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-130, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW

41.06.133. WSR 19-11-135, § 357-31-130, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-130, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-130, filed 5/14/14, effective 6/16/14; WSR 09-17-057 and 09-18-112, § 357-31-130, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-130, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-130, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-130, filed 4/6/05, effective 7/1/05.]

NEW SECTION

WAC 357-31-133 When may an employer allow an employee to use their accrued sick leave? The employer may require verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

Employers **may** allow the use of accrued sick leave under the following conditions:

- (1) For condolence or bereavement;
- (2) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255;
- (3) To bond with a newborn, adoptive or foster child for a period beyond 18 weeks as allowed in WAC 357-31-130 (1)(j). Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond WAC 357-31-130 (1)(i) must be addressed in the employer's leave policy in accordance with WAC 357-31-100; or
- (4) When a child is a family member of an employee or member of an employee's household and:
 - (a) The child's school or place of care has been closed by order or recommendation of a public official for any health-related reason; or
 - (b) The child has been exposed to a contagious disease and is required to quarantine.

[]

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-145 When an employee is on vacation leave and a condition listed in WAC 357-31-130(~~(1)~~) arises, can the employee use sick leave in place of vacation leave? When a condition listed in WAC 357-31-130(~~(1)~~) arises while the employee is on vacation leave, the employer may allow the employee to use accrued sick leave in place of vacation leave. The employee must request the use of accrued sick leave in place of vacation leave according to the employer's leave policy.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-136, § 357-31-145, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-160 When a former employee is re-employed, is sick leave restored? Former employees who are re-employed within five years of their separation from service must be restored unused sick leave credits, if any, to which they were entitled at the time of separation. The employee may use the restored balance in accordance with WAC 357-31-130 and 357-31-133.

If the employee was retired from government service before being re-employed, when the employee subsequently retires again or dies, only that unused sick leave accrued since the date of reemployment minus that taken within the same period may be compensated per the conversion provisions of WAC 357-31-150.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-136, § 357-31-160, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

- (a) As a result of the employee's serious health condition.
- (b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.
- (c) To care for a minor/dependent child with a health condition that requires treatment or supervision.
- (d) For parental leave as provided in WAC 357-31-460.
- (e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.
- (f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.

(h) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-200, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-200, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-200, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-200, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-200, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-230 When ((may)) must an employee be granted the use of accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final ((~~sixty~~)) 60 days of a biennium.

(7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(8) ((~~During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.~~)) A high risk employee, as defined in RCW 49.17.062, seeking a reasonable ac-

commodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-230, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-31-230, filed 11/10/11, effective 12/13/11; WSR 10-23-120, § 357-31-230, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-230, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-230, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-230, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-230, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-019, filed 12/3/21, effective 1/3/22)

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons? Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

- (1) To allow an employee to receive assessment from the employee assistance program.
- (2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.
 - (a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.
 - (b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.
- (3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.
- (4) To allow a general government employee to take paid leave, not to exceed (~~thirty~~) 30 days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.
 - (a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.
 - (b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.
- (5) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose or booster of COVID-19 (~~immunization~~) vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate

travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. (~~This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 (~~immunization~~) vaccine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-019, § 357-31-325, filed 12/3/21, effective 1/3/22; WSR 21-12-020, § 357-31-325, filed 5/24/21, effective 7/1/21; WSR 20-24-019, § 357-31-325, filed 11/20/20, effective 12/28/20; WSR 14-11-033, § 357-31-325, filed 5/14/14, effective 6/16/14; WSR 10-23-041, § 357-31-325, filed 11/10/10, effective 12/13/10; WSR 09-03-014, § 357-31-325, filed 1/9/09, effective 2/13/09; WSR 08-07-062, § 357-31-325, filed 3/17/08, effective 4/18/08; WSR 05-21-055, § 357-31-325, filed 10/13/05, effective 11/15/05; WSR 05-08-138, § 357-31-325, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-019, filed 12/3/21, effective 1/3/22)

WAC 357-31-326 When may an employer grant leave with pay? (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after (~~ten~~) 10 consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after (~~twenty-one~~) 21 consecutive calendar days performing emergency work under an incident command system.

(4) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 (~~immunization~~) vaccine if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. (~~This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.~~) This subsection no longer applies if state or federal law otherwise provides

paid leave specifically for employees to receive the COVID-19 (~~(immunization)~~) vaccine.

(5) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose or booster of COVID-19 (~~(immunization)~~) vaccine if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. (~~(This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.)~~) This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 (~~(immunization)~~) vaccine.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-019, § 357-31-326, filed 12/3/21, effective 1/3/22; WSR 21-12-020, § 357-31-326, filed 5/24/21, effective 7/1/21; WSR 20-24-019, § 357-31-326, filed 11/20/20, effective 12/28/20; WSR 17-18-029, § 357-31-326, filed 8/28/17, effective 10/2/17. Statutory Authority: RCW 41.06.133. WSR 17-11-049, § 357-31-326, filed 5/15/17, effective 6/19/17. Statutory Authority: Chapter 41.06 RCW. WSR 09-03-014, § 357-31-326, filed 1/9/09, effective 2/13/09.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-327 When must an employer grant leave without pay?

An employer must grant leave without pay under the following conditions:

- (1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;
- (2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or
- (3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.
- (4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.
- (5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010.

(6) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-327, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 14-24-024, § 357-31-327, filed 11/21/14, effective 12/22/14; WSR 09-17-057 and 09-18-112, § 357-31-327, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-327, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-327, filed 7/11/08, effective 10/1/08; WSR 07-17-129, § 357-31-327, filed 8/20/07, effective 9/20/07.]

AMENDATORY SECTION (Amending WSR 21-12-020, filed 5/24/21, effective 7/1/21)

WAC 357-31-330 For what reasons may an employer grant leave without pay? Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

- (1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;
- (2) Educational leave;
- (3) Leave for government service in the public interest;
- (4) Military leave of absence as required by WAC 357-31-370;
- (5) Parental leave as required by WAC 357-31-460;
- (6) Family care emergencies as required by WAC 357-31-295;
- (7) Bereavement or condolence;
- (8) Absence due to inclement weather as provided in WAC 357-31-255;
- (9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;
- (10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;
- (11) Leave taken voluntarily to reduce the effect of an employer's layoff;
- (12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability;
- (13) Employees receiving time loss compensation; or
- (14) For an employee to protect themselves, or a relative or household member, from risks related to coronavirus disease 2019 (COVID-19). In determining whether to grant leave, an employer may consider (~~whether the employee is needed to provide essential services because the employee is a health care provider, an emergency responder or otherwise necessary to maintain public safety. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later~~) current workload demands and business needs that require employees to perform their duties.

[Statutory Authority: Chapter 41.06 RCW. WSR 21-12-020, § 357-31-330, filed 5/24/21, effective 7/1/21; WSR 09-17-056 and 09-18-113, §

357-31-330, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-330, filed 1/9/09, effective 2/13/09; WSR 05-08-138, § 357-31-330, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

WAC 357-31-490 Will time off for parental leave be paid or unpaid? (1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, holiday credit, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC 357-31-130 and 357-31-133 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

(2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The employer designates when during the month paid leave will be interspersed to maintain benefits.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-490, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-490, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-08-140, § 357-31-490, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-06-008, filed 2/20/20, effective 5/1/20)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730;

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; ((and))

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW; and

(d) When a high risk employee, as defined in RCW 49.17.062, seeks a reasonable accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1) (a) and (b) above may be subject to verification that the condition or circumstance exists.

~~((3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.))~~

[Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-567, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-567, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-567, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-567, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-567, filed 7/11/08, effective 10/1/08.]

AMENDATORY SECTION (Amending WSR 18-03-081, filed 1/15/18, effective 2/16/18)

WAC 357-31-845 What definitions apply to the foster parent shared leave pool? The following definitions apply to the foster parent shared leave pool:

"Caring for" means taking a foster child to health care appointments, court appointments, visitation with family members and/or any other reasons that sick leave may be used for in WAC 357-31-130 and 357-31-133.

"Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained as defined in RCW 41.04.655.

"Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

"Preparing for" means arranging a foster child's living space, enrolling in school, and/or enrolling in child care.

[Statutory Authority: Chapter 41.04 RCW. WSR 18-03-081, § 357-31-845, filed 1/15/18, effective 2/16/18.]

WSR 22-12-077

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed May 28, 2022, 7:00 p.m., effective June 28, 2022]

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

Purpose: This rule making amends the Washington cranberry commission marketing order by: (1) Removing term limits from board member term of office, (2) updating public disclosure rules to implement the provisions of RCW 42.56.120, and (3) clarifying language regarding research funded by the commission.

Citation of Rules Affected by this Order: New WAC 16-565-080, 16-565-085, 16-565-090, 16-565-095, 16-565-100 and 16-565-105; and amending WAC 16-565-020 and 16-565-030.

Statutory Authority for Adoption: RCW 15.65.047.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 22-07-022 on March 9, 2022.

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 6, Amended 2, Repealed 0.

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

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

Date Adopted: May 28, 2022.

Derek I. Sandison
Director

OTS-3655.1

AMENDATORY SECTION (Amending WSR 85-15-018, filed 7/8/85)

WAC 16-565-010 Definition of terms. For the purpose of this marketing order:

~~((1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.~~

~~(2) "Department" means the department of agriculture of the state of Washington.~~

~~(3) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.~~

~~(4) "Person" means any person, firm, association, or corporation.~~

~~(5) "Affected producer" means any person who produces cranberries in the state of Washington, in commercial quantities for fresh market, for processing, or for sale to processors.~~

~~(6) "Commercial quantity" means any cranberries produced for a market, by a producer in any calendar year.~~

~~(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, or distributing cranberries not produced by him.~~

~~(8) "Cranberry commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-565-020.~~

~~(9) "Cranberries" means and includes all kinds, varieties, and hybrids of "vaccinium macrocarpon" grown and marketed in the state of Washington.~~

~~(10) "Fiscal year" means the twelve-month period beginning with September 1 of any year and ending with the last day of August following, both dates being inclusive.~~

~~(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to cranberries. A producer-handler shall be deemed to be a producer with respect to the cranberries which he produces and a handler with respect to the cranberries which he handles, including those produced by himself.~~

~~(12) "Affected area" means the state of Washington.~~

~~(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, other than those sold retail by the producer.~~

~~(14) "Affected unit" means one hundred pounds (barrel) net of cranberries.~~

~~(15) "Substantial portion" means five percent or more.~~

~~(16) "Order" means marketing order.)~~

"Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

"Affected area" means the state of Washington.

"Affected producer" means any person who produces cranberries in the state of Washington, in commercial quantities for fresh market, for processing, or for sale to processors.

"Affected unit" means 100 pounds (barrel) net of cranberries.

"Commercial quantity" means any cranberries produced for a market, by a producer in any calendar year.

"Cranberries" means and includes all kinds, varieties, and hybrids of "vaccinium macrocarpon" grown and marketed in the state of Washington.

"Cranberry commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-565-020.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of agriculture of the state of Washington or his duly appointed representative.

"Disclosure" means inspection or copying.

"Fiscal year" means the 12-month period beginning with September 1 of any year and ending with the last day of August following, both dates being inclusive.

"Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, or distributing cranberries not produced by the handler.

"Order" means marketing order.

"Person" means any person, firm, association, or corporation.

"Producer-handler" means any person who acts both as a producer and as a handler with respect to cranberries. A producer-handler shall be deemed to be a producer with respect to the cranberries which they

produce and a handler with respect to the cranberries which they handle, including those they produced.

"Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the commission regardless of physical form or characteristics.

"Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, other than those sold retail by the producer.

"Substantial portion" means five percent or more.

[Statutory Authority: RCW 15.65.380. WSR 85-15-018 (Order 1864), § 16-565-010, filed 7/8/85. Statutory Authority: Chapter 15.65 RCW. WSR 80-13-037 (Order 1713), § 16-565-010, filed 9/12/80, effective 10/13/80.]

AMENDATORY SECTION (Amending WSR 00-10-023, filed 4/24/00, effective 5/25/00)

WAC 16-565-020 Cranberry commodity board. (1) Administration.

The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership.

(a) The board shall consist of eight members. Seven members shall be affected producers elected as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the department and the public.

(b) For the purpose of nomination and election of producer members of the board, the affected area shall be the state of Washington and shall be divided into three representative districts as follows:

District I shall have two board members, being Positions 1 and 2, and shall comprise that portion of Pacific County lying south of the Willapa River.

District II shall have four board members, being Positions 3, 4, 5, and 6, and shall comprise that portion of Pacific County and that portion of Grays Harbor County lying between the Willapa River and the Chehalis River.

District III shall have one board member, being Position 7, and shall comprise the rest of the state.

(3) Board membership qualifications. The affected producer members of the board shall be practical producers of cranberries and shall be citizens and residents of the state of Washington, over the age of (~~twenty-five~~) 25 years, each of whom is and has been actually engaged in producing cranberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of (~~his~~) their income therefrom. Producer-handlers shall be considered to be acting only as producers for purpose of election and membership on a commodity board. The qualifications of members of the board as herein set forth must continue during the terms of office.

(4) Term of office.

(a) The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through seven and the member appointed by the director, position eight.

~~((c) The term of office for the initial board members shall be as follows:~~

~~Positions one and three — One year;~~

~~Positions four and five — Two years;~~

~~Positions two, six, seven, and eight — Three years.~~

~~(d) No elected member of the board may serve more than two full consecutive three-year terms.)~~

(5) **Nomination and election of board members.** Each year the director shall call for a nomination meeting. Such meeting shall be held at least ~~((thirty))~~ 30 days in advance of the date set by the director for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the production area not less than ~~((ten))~~ 10 days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the director pursuant to RCW 15.65.200 of the act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer may be nominated orally for membership on the board at such nomination meeting. Nominations may also be made within five days after any such meeting by written petition filed with the director, signed by not less than five affected producers. At the inception of this marketing order, nominations may be made at the issuance hearing.

(6) **Election of board members.**

(a) Members of the board shall be elected by secret mail ballot within the month of June under the supervision of the director. Affected producer members of the board shall be elected by a majority of the votes cast by the affected producers. Each affected producer shall be entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the production area not less than ~~((ten))~~ 10 days in advance of the date of such election. Not less than ~~((ten))~~ 10 days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears on the list of such affected producers maintained by the director in accordance with RCW 15.65.200. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(7) **Vacancies prior to election.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may receive per diem in accordance with RCW 15.65.270 for each day in actual attendance at or traveling to and from meetings of the board or on special assignment

for the board, together with travel expenses at the rates allowed state employees.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft, or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To accept grants and gifts and expend the same consistent with the policies and purpose of this order.

(f) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(g) To establish a "cranberry board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not-to-exceed (~~one hundred dollars~~) \$100, shall be deposited each day or as advisable.

(h) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within (~~thirty~~) 30 days after the completion thereof to the governor, the director, the state auditor, and the board.

(i) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(j) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(k) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(l) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(m) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(n) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him/her by the act or the order.

(o) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.

(p) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) **Procedures for board.**

(a) The board shall hold regular meetings, at least semiannually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act).

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least (~~ten~~) 10 days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.

[Statutory Authority: RCW 15.65.050. WSR 00-10-023, § 16-565-020, filed 4/24/00, effective 5/25/00. Statutory Authority: RCW 15.65.380. WSR 85-15-018 (Order 1864), § 16-565-020, filed 7/8/85. Statutory Authority: Chapter 15.65 RCW. WSR 80-13-037 (Order 1713), § 16-565-020, filed 9/12/80, effective 10/13/80.]

AMENDATORY SECTION (Amending WSR 80-13-037, filed 9/12/80, effective 10/13/80)

WAC 16-565-030 Marketing order purpose. The order is to promote the general welfare of the state to enable producers of cranberries to help themselves develop production methods and/or programs for the control of diseases, insects, weeds, and other problems associated with cranberry production and to provide for the dissemination of information to the affected producers.

Insofar as practicable, such research shall be carried on by experiment stations of Washington State University, but if in the judgment of the board, said experiment stations do not have the facilities or the staff for a particular project (~~or if some other research agency has better facilities therefor~~), the project may be carried out by other researchers or research agencies selected by the board.

[Statutory Authority: Chapter 15.65 RCW. WSR 80-13-037 (Order 1713), § 16-565-030, filed 9/12/80, effective 10/13/80.]

NEW SECTION

WAC 16-565-080 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington Cranberry Commission, P.O. Box 597, Grayland, Washington, 98547. The written request should include:

- (a) The name, address and telephone number or other contact information of the person requesting the records;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection.

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee.

(c) Public records may not be marked or altered in any manner during the inspection.

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

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NEW SECTION

WAC 16-565-085 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

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NEW SECTION

WAC 16-565-090 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within 15 days of receipt of invoice payable to the Washington cranberry commission. The commission may require that all charges be paid in advance of release of the copies of the records.

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NEW SECTION

WAC 16-565-095 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.65 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.65 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2)).

[]

NEW SECTION

WAC 16-565-100 Review of denial of public records requests. (1)

Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement that constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within 10 business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

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NEW SECTION

WAC 16-565-105 Records index. The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

- (1) Commission authorizing statute;
- (2) Commission marketing order;
- (3) Minutes of commission meetings;
- (4) Commission board roster; and
- (5) List of research projects.

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WSR 22-12-081

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 31, 2022, 2:14 p.m., effective July 1, 2022]

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

Purpose: The department is adding two new sections in chapters 388-71 and 388-112A WAC. The intent is to respond to the backlog of long-term care workers needing training and/or testing for certification caused by the COVID-19 pandemic. These rules will allow additional time for long-term care workers to be trained and certified by requiring them to complete training requirements by certain dates based on [no further information supplied]. Workers are also credited with continuing education hours for on-the-job training during the COVID-19 emergency, and deadlines for completing continuing education are also extended.

If the timelines for training, certification, and continuing education are not extended, the inability of long-term care workers to access training, certification, and continuing education during the COVID-19 public health emergency will result in a shortage of long-term care workers which will directly affect public access to quality long-term care services.

Citation of Rules Affected by this Order: New WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 22-08-112 on April 6, 2022.

A final cost-benefit analysis is available by contacting David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2366, email david.chappell@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 4, 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 4, Amended 0, Repealed 0.

Date Adopted: May 31, 2022.

Lisa N. H. Yanagida
Interim Chief of Staff

SHS-4888.10

NEW SECTION

WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term

care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[]

NEW SECTION

WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, home care agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No

physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.

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NEW SECTION

WAC 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[]

NEW SECTION

WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.

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