

WSR 22-12-000A
PROPOSED RULES
CHARTER SCHOOL COMMISSION
[Filed June 1, 2022, 4:36 p.m.]

Continuance of WSR 22-11-054.

Preproposal statement of inquiry was filed as WSR 22-07-099.

Title of Rule and Other Identifying Information: General administrative and procedural rule changes in chapters 108-30 and 108-40 WAC. Changes are proposed to WAC 108-30-020, 108-30-030, 108-40-070, and 108-40-090. Hearing date has been changed.

Hearing Location(s): On July 28, 2022, at 10:00 a.m., Zoom <https://zoom.us/j/3607255511>, Dial 646-558-8656, Meeting ID 360 725 5511.

Date of Intended Adoption: August 18, 2022.

Submit Written Comments to: Jessica de Barros, 1068 Washington Street S.E., Olympia, WA 98501, email charterschoolinfo@k12.wa.us, by June 29, 2022.

Assistance for Persons with Disabilities: Contact Jessica de Barros, phone 360-725-5511, TTY 800-833-6388, email charterschoolinfo@k12.wa.us, by June 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to update procedural and administrative rule changes in order to clarify existing language and timelines and provide more detailed information about standards set out by the commission in adopted policies. The changes in existing rules include:

- Changes to a term from "school specific goals" to "mission specific goals";
- The updating of the process to better assist the charter public schools in navigating a renewal charter application and contract;
- Updated timeline associated with the updated renewal process;
- Updating terminology to align with state standards from "achievement index" to "school improvement framework"; and
- Updated performance ratings for the organizational and financial performance frameworks to include an "approaching standard" rating.

Reasons Supporting Proposal: The changes are proposed as above to update language to align with currently used terminology. The commission has determined that an update of the renewal process should occur to align with the commission adopted policy and feedback from the inaugural process by schools and stakeholders, as the current process does not provide a streamlined timeline and order that is most relevant and meaningful for the evaluation of performance of a charter school in its fourth year of operation.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28A.710.100, 28A.710.170, 28A.710.190.

Statute Being Implemented: RCW 28A.710.170, 28A.710.190.

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

Name of Proponent: Charter school commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jessica de Barros, 1068 Washington Street S.E., Olympia, WA 98501, 360-725-5511.

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

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency that is required to perform an analysis under RCW 34.05.328

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

June 9, 2022

Jessica de Barros
Interim Executive Director

OTS-3033.1

AMENDATORY SECTION (Amending WSR 15-10-070, filed 5/1/15, effective 6/1/15)

WAC 108-30-020 Performance framework. (1) "Performance framework" means the standards that will be used by the commission to evaluate the performance of each charter school. The performance framework will be a source of information used by the commission to make decisions involving corrective action, renewal, modification, revocation, and/or termination of a charter school.

(2) The performance framework evaluates charter school performance and compliance in the areas of academic, financial, organizational, legal and mission specific performance and compliance. The commission will develop and post performance framework guidance for charter schools on the commission website.

(3) Academic performance and compliance. Academic performance and compliance measures whether the charter school meets or is making sufficient progress towards academic performance expectations. Academic performance and compliance includes, but is not limited to:

(a) Student achievement. Evaluation of student achievement includes evaluation of student academic proficiency in English language arts, science, and mathematics; evaluation of student achievement gaps in both proficiency and growth. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(b) Comparative performance. Comparative performance is evaluated by comparing charter school students' performance on required state and federal assessments to performance of students in traditional public schools and charter schools with similar demographics. This is a comparison of overall student performance in English language arts (reading and writing), math, and science, as well as any other subjects that will in the future be tested. To the extent data is available comparison schools may include, but are not limited to, district-of-residence schools and peer or comparable schools whether charter or noncharter. As additional data for comparisons become available, the comparative performance evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, pov-

erty status, special education status, English language learner status, and highly capable status.

(c) Student progress. Student progress is evaluated using the school's median student growth percentile in reading and mathematics. As additional growth-related data become available, this evaluation will be adjusted. In addition to aggregate data, when available, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(d) Post secondary readiness (high school evaluation). Evaluation of post secondary readiness includes overall graduation rates in accordance with the state of Washington reporting requirements; comparison of charter school to district-of-residence graduation rates; comparison of charter school to peer or similar school graduation rates; and enrollment in post secondary institutions. As additional comparison data such as dual credit accrual, industry certification, 11th grade assessments, or others, become available, this evaluation will be adjusted. In addition to aggregate data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(e) State and federal accountability. Evaluation of the charter school's compliance with state and federal accountability rules, regulations, and laws and whether the school has met the targets set forth by the state accountability system including, but not limited to, provision of basic education, instruction in the essential academic learning requirements, statewide student assessments, performance improvement goals. In addition to overall data, this information must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status.

(f) (~~Mission~~) School specific accountability. Evaluation of whether the charter school has met (~~mission~~) school specific goals identified in its contract.

(4) Financial performance and compliance. Financial performance and compliance measures the financial health and viability of a charter school. Financial performance and compliance includes, but is not limited to:

(a) Near term indicators. Evaluation of financial performance and compliance includes evaluation of charter school's assets and liabilities, available cash; actual enrollment as compared to enrollment projection and associated budget; loan and grant status.

(b) Sustainability indicators. Evaluation of sustainability indicators includes evaluation of net income and revenue; debt to asset ratio; cash flow; debt service ratio.

(c) Audit and accounting indicators. Evaluation of audit and accounting indicators includes evaluation of the charter school's compliance with generally accepted accounting principles; audit results and findings, if any.

(5) Organizational performance and compliance. Organizational performance and compliance measures compliance with specific terms and provisions of the charter contract and state and federal legal requirements. Organizational performance and compliance includes, but is not limited to:

(a) Education program. Evaluation of the education program includes evaluation of the charter school's education program in terms of compliance with specific performance expectations set forth in the

charter contract; compliance with requirements of local education agencies and public schools under those federal laws and regulations including, but not limited to, compliance with the Individuals With Disabilities Education Act, the Rehabilitation Act, the Federal Educational Rights Privacy Act, the Elementary And Secondary Education Act, McKinney-Vento Act, and any other applicable education laws or regulations.

(b) Charter school law compliance. Evaluation of charter school law compliance includes evaluation of the charter school's compliance with chapter 28A.710 RCW. This includes review of policies and practices related to admissions, waiting lists, recruitment, security and privacy.

(c) Safety and welfare compliance. Evaluation of student and employee compliance includes evaluation of the charter school's compliance with laws concerning employment of faculty and staff including, but not limited to, certification requirements and background checks; evaluation of student and employee disciplinary policies and procedures and application of associated legal and constitutional protections; evaluation of compliance with health and safety laws and regulations.

(d) Board performance and stewardship. Evaluation of board performance and stewardship will include evaluation of compliance with all applicable laws, rules, and terms of the charter contract as well as willingness and skill in identifying issues with management of the school and taking corrective action and in implementing any corrective actions imposed by the commission.

(e) Student involvement and retention. Evaluation of student involvement and retention will include evaluation of attendance and re-current enrollment.

(f) Mission specific accountability. Evaluation of whether the charter school has met mission specific goals identified in its contract including, but not limited to, proactive public engagement in student recruitment and demonstrated execution of a mission appropriate enrollment plan.

(6) Other. The commission may also include additional rigorous, valid, and reliable indicators to augment evaluations of the charter school's performance.

[Statutory Authority: RCW 28A.710.070. WSR 15-10-070, § 108-30-020, filed 5/1/15, effective 6/1/15; WSR 13-18-017, § 108-30-020, filed 8/23/13, effective 9/23/13.]

AMENDATORY SECTION (Amending WSR 13-18-017, filed 8/23/13, effective 9/23/13)

WAC 108-30-030 Rating categories. Unless otherwise deemed appropriate, academic measures will be rated using the following categories: Exceeds standard; meets standard; does not meet standard; falls far below standard. Financial and organizational measures will be rated using the following categories: Meets standard (~~(\oplus)~~); approaching standard; does not meet standard. Each of these ratings will be defined in relation to the measure being evaluated.

[Statutory Authority: RCW 28A.710.070. WSR 13-18-017, § 108-30-030, filed 8/23/13, effective 9/23/13.]

OTS-3052.1

AMENDATORY SECTION (Amending WSR 17-08-011, filed 3/24/17, effective 4/24/17)

WAC 108-40-070 Renewal process. (1) No later than six months before the expiration of the charter school contract, the commission will issue a written performance report addressing the information outlined in WAC 108-40-080. The performance report will be sent to the school and posted on the commission's website.

(2) The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-40-090, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.

(3) In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

(b) Describe improvements undertaken or planned for the school;
and

(c) Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.

(4) For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing charter contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representations to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have ten days to submit a written response to the renewal inspection report.

(5) Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-40-100.

(6) Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's website.

(7) No later than ((May 1st, one school year before the expiration of the charter school contract)) thirty days after receiving a performance report, the charter school must notify the commission in writing of its decision to either:

(a) Apply for renewal of the contract; or

(b) Cease operation at the expiration of the contract term.

~~((2))~~ (8) If the school has decided to cease operation at the expiration of the contract term, a termination protocol shall be implemented.

~~((3))~~ (9) If the school is requesting renewal under the existing contract, ~~((it must submit a renewal application before the final school year begins.))~~ the renewal application must be submitted no later than ~~((June))~~ September 1st and must be received by the commission by 5:00 p.m.; if ~~((June))~~ September 1st falls on a weekend, the renewal application must be received by the commission no later than 5:00 p.m. on the Monday following ~~((June))~~ September 1st.

~~((4))~~ Within ninety days of receiving a renewal application, the commission will issue a written performance report addressing the information outlined in WAC 108-40-080. The performance report will be sent to the school seeking renewal and posted on the commission's web site.

~~(5)~~ The school may submit a response to the performance report that corrects or clarifies information contained in the report. If the school is subject to the ineligibility presumptions enumerated in WAC 108-40-090, then the school must rebut those presumptions by demonstrating exceptional circumstances that justify renewal in the response to the performance report. If the school submits a response, it must be received by the commission within thirty days of issuance of the performance report.

~~(6)~~ In conjunction with the performance report, the commission will issue renewal application guidance. The renewal application guidance will, at a minimum, provide the charter school with an opportunity to:

~~(a)~~ Present additional evidence, beyond the data contained in the performance report, supporting its case for charter contract renewal;

~~(b)~~ Describe improvements undertaken or planned for the school; and

~~(c)~~ Detail the school's plans for the next charter contract term. The renewal application guidance will also contain the criteria that will guide the commission's renewal decisions.

~~(7)~~ For those renewal applications deemed eligible for renewal consideration, individuals designated by the commission may conduct a school site visit (renewal inspection) during the renewal applicant school's final school year under the existing charter contract. The renewal inspection may serve as one of the mechanisms for the commission to evaluate and document the charter school's performance and representations to inform the commission's renewal decision. The renewal inspection will include a review of the school's performance and satisfaction of its obligations under the charter contract, with specific focus on any concerns identified in the performance report. Within fourteen days following the renewal inspection, a renewal inspection report will be issued. The school will have ten days to submit a written response to the renewal inspection report.

~~(8)~~ Those renewal applications deemed ineligible for renewal consideration may appeal this determination in accordance with the procedures outlined in WAC 108-40-100.

~~(9)~~ Interested parties, including members of the public, may submit written comments to the commission regarding the potential renewal of a school's charter contract. The deadline for submitting comments will be posted on the commission's web site.)

(10) For applications deemed eligible for renewal consideration, commission staff will review renewal applications, the renewal inspection report, and other relevant information, and make a recommenda-

tion, based on the renewal criteria, to approve, deny, or conditionally approve the renewal application. This recommendation will be provided to the school and commissioners. This recommendation shall serve as notice of the prospect of and reasons for nonrenewal. Within twenty days of issuance of this recommendation, the school may request an opportunity to respond to the recommendation in accordance with the procedures outlined in WAC 108-40-100; failure to make such a request shall constitute a waiver of the school's right to respond.

(11) The commission will pass a resolution approving, denying, or conditionally approving the renewal application. Renewal may be for a term of up to five years. This term may be shorter depending on the school's performance, demonstrated capacities and particular circumstances.

(12) Upon approval of a school's renewal application, the school must execute a new charter contract (~~(within ninety days of the approval decision)~~) before the expiration of the existing charter contract. The charter contract must include specific conditions that the commission determines are required for necessary improvements to the school; provided, however, if approval of the renewal application is conditional, the renewal conditions must be included in the charter contract.

(13) If circumstances warrant it, the commission may alter time frames within these rules.

[Statutory Authority: RCW 28A.710.070, 28A.710.180, 28A.710.190, and 28A.710.200. WSR 17-08-011, § 108-40-070, filed 3/24/17, effective 4/24/17; WSR 14-12-065, § 108-40-070, filed 6/2/14, effective 7/3/14.]

AMENDATORY SECTION (Amending WSR 17-08-011, filed 3/24/17, effective 4/24/17)

WAC 108-40-090 Renewal decision and presumptions. (1) In making charter contract renewal decisions, the commission will:

(a) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence that forms the basis for its decision. Specific criteria guiding the commission's renewal decisions will be set out in the commission's renewal application guidance.

(2) Schools are presumed to be ineligible for renewal if they have:

(a) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;

(b) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(c) Failed to meet generally accepted standards of fiscal management;

(d) Substantially violated any material provision of law from which the charter school is not exempt;

(e) Fallen in the bottom quartile of schools on the state board of education's Washington ((~~achievement index~~) school improvement framework) at the time of the renewal application; and

(f) Are subject to an active corrective action plan for the failures or violations listed in (a) through (f) of this subsection.

(3) The presumption of ineligibility can be rebutted if the school demonstrates exceptional circumstances that the authorizer finds justifiable. The school must satisfy this burden in its application and response to the performance report.

(4) A decision to renew, conditionally renew, or nonrenew a school's charter contract will be memorialized in a resolution that sets forth the action taken, the reasons for the decision, and assurances of compliance with the commission's procedural requirements. A report of action, with the resolution attached, must be submitted to the renewal applicant and the state board of education within ten days of the decision.

[Statutory Authority: RCW 28A.710.070, 28A.710.180, 28A.710.190, and 28A.710.200. WSR 17-08-011, § 108-40-090, filed 3/24/17, effective 4/24/17; WSR 14-12-065, § 108-40-090, filed 6/2/14, effective 7/3/14.]

WSR 22-12-010

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed May 19, 2022, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-105.

Title of Rule and Other Identifying Information: WAC 458-20-18801 (Rule 18801) Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment. This rule provides tax-reporting information for persons making sales of medical products. It also provides information about the retail sales tax and use tax exemptions available for the sale and use of certain medical products for humans.

Hearing Location(s): On July 13, 2022, at 11:00 a.m., virtual meeting. Contact Atif Aziz, AtifA@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: July 27, 2022.

Submit Written Comments to: Tim Danforth, P.O. Box 47467, Olympia, WA 98504-7467, email TimD@dor.wa.gov, phone 360-534-1538.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384, email JulieKi@dor.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is considering updating the rule to make technical corrections and to more comprehensively describe the documentation and/or information required for buyers and sellers to substantiate that they are entitled to make purchases or sales exempt from retail sales tax. The proposed amendment to the rule makes a technical correction so that the rule conforms to RCW 82.08.02806; updates the department's contact information; and adds advice that, to make a retail sales tax exempt purchase, a buyer may provide to the seller an exemption certificate such as a streamlined sales tax agreement certificate of exemption or the seller may capture the relevant data elements that would otherwise be captured in a completed streamlined sales and use tax agreement exemption certificate or otherwise meet the requirements of RCW 82.08.050(7).

Reasons Supporting Proposal: Businesses making retail sales tax exempt sales or purchases will find that the updates to the rule will assist them in substantiating retail sales tax exempt sales or purchases.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.050, 82.08.020, 82.08.050, 82.08.02806, 82.12.02748, 82.08.0283, 82.08.0281, 82.08.02795, 82.12.02745, 82.12.0275, 82.08.935, 82.12.935, 82.08.940, 82.12.940, 82.08.925, 82.12.925, 82.08.0293, 82.12.0277, 18.36A.020, 82.08.985, 82.12.985, 82.08.945, 82.12.945, 82.08.803, 82.12.803, 82.08.804, 82.12.804, 82.08.190, 82.08.195.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Danforth, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1538; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses as it does not impose any new fees, filing requirements, or recordkeeping requirements not already established by statute.

May 19, 2022
Atif Aziz
Rules Coordinator

OTS-3698.1

AMENDATORY SECTION (Amending WSR 14-18-019, filed 8/25/14, effective 9/25/14)

WAC 458-20-18801 Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

PART 1 - INTRODUCTION

(101) **Introduction.** This rule provides tax-reporting information for persons making sales of medical products. It also provides information about the retail sales tax and use tax exemptions available for the sale and use of certain medical products for humans.

(102) **How is this rule organized?** This rule is divided into five parts as follows:

(a) **Part 1 - Introduction.** Part 1 provides information relating to the purpose of the rule, how the rule is organized, and provides a listing of additional rules that may be helpful to the reader in determining taxability related to medical products.

(b) **Part 2 - Medical products.** Part 2 of this rule identifies what "medical products" include for purposes of this rule. Medical products is not a statutory term, but instead, is a term used simply to collectively describe the medical items addressed by this rule.

(c) **Part 3 - Applicable taxes.** Part 3 of this rule provides information on the taxes that apply to the sale, use, purchase, or manufacture of medical products.

(d) **Part 4 - Common exemptions.** Part 4 of this rule provides information on common retail sales tax and use tax exemptions related to medical products.

(e) **Part 5 - Bundled transactions.** Part 5 of this rule addresses the treatment of bundled transactions involving medical products.

(103) **How are examples included in this rule to be used?** This rule contains examples which identify a number of facts and then states a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(104) **What are some other department of revenue rules that address medical or health related providers that might apply?** The department of revenue (department) has adopted other rules addressing the taxability of various activities related to the providing of health care. Readers may want to refer to the following (~~list of~~) rules for additional information:

- (a) WAC 458-20-150, Optometrists, ophthalmologists, and opticians;
- (b) WAC 458-20-151, Dentists, audiologists, and other health care providers (~~(r)~~) — Dental laboratories (~~(r)~~) and dental technicians;
- (c) WAC 458-20-168, Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

PART 2 - MEDICAL PRODUCTS

(201) **What are medical products for purposes of this rule?** Medical products include durable medical equipment, drugs, mobility enhancing equipment, over-the-counter drugs, and prosthetic devices as defined by Washington statute. Medical products also include other tangible personal property used for medical purposes, not covered by one of the statutory definitions. The remainder of Part 2 of this rule describes these medical products.

(202) **What is durable medical equipment?** Durable medical equipment is equipment, including repair and replacement parts for durable medical equipment that:

- (a) Can withstand repeated use;
- (b) Is primarily and customarily used to serve a medical purpose;
- (c) Generally is not useful to a person in the absence of illness or injury; and
- (d) Is not worn in or on the body. See RCW 82.08.0283. Also, see subsection (206) (b) of this rule for an explanation of what is considered "worn in or on the body."

Table 1 provides a nonexclusive list of durable medical equipment product examples.

Table 1

Durable Medical Equipment Examples
<ul style="list-style-type: none"> • Anesthesia machine and ventilator • Apnea monitors • Atomizers (medical - Reusable) • Beds, bags, trays, bedpans, commodes, pads, pillows, crash carts, lamps, bulbs, and tables (medical) • Blood parameter monitor, pulse oximetry equipment, and blood gas analyzer • Bone growth stimulator (not worn on the body) • Bovie (cauterization) • Cardiopulmonary bypass machine • Cofflator • Continuous passive motion devices • Continuous positive airway pressure (CPAP & BI-PAP) machine (not worn on the body) • Diagnostic equipment - Audiology, cardiology, mammography, radiology • Electronic speech aids (not worn on the body) • Endoscopes

Durable Medical Equipment Examples
<ul style="list-style-type: none"> • Enteral feeding bags, tubing, and connectors • Feeding plugs • Glucose meters • Instruments - Reuseable, e.g., clamps, drills, forceps, retractors, scalpels, reamers, scissors • Intravenous (IV) stands and poles • Kidney dialysis devices • Lasers • Lithotripters • Nebulizers • Respiratory humidifier • Reusable needles or reusable staplers • Sling scales • Stapler (must be empty as staples are not durable medical equipment) • Stethoscopes, stirrups, and stretchers (medical) • Suction regulators • TENS units (not worn on the body) • Tourniquets • Ultrasound probes, transducers, and mini dopplers • Whirlpools (medical) • X-ray equipment

(203) (a) **What is a drug?** A "drug" is a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, alcoholic beverages, or marijuana, useable marijuana, or marijuana-infused products:

- (i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or
- (ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (iii) Intended to affect the structure or any function of the body. See RCW 82.08.0281.

Table 2 provides a nonexclusive list of drug product examples.

Table 2

Drug Examples
<ul style="list-style-type: none"> • Dermal fillers - Injectable • Dialysis dialysate solution • Federal prescription (RX) drugs, including biologicals • Gases - Medical grade (nitrous oxide, oxygen, carbon dioxide, helium) • Implanted radioactive isotopes • Insulin • Parenteral nutrition formulas - By prescription • Prescription medicated cotton swabs and gauze wraps • Sterile water - 1cc, 5cc, 10cc vials, sterile normal saline (.9%) - 1cc, 5cc, 10cc vials - Solutions for adding to mixtures and irrigation • Vaccines

(b) **Substances that are necessary to the performance of durable medical equipment are not drugs.** A compound, substance, or preparation that is necessary for durable medical equipment to perform its function is not a drug, even when it otherwise meets the definition of drug in this subsection.

(c) **Examples of compounds, substances, preparations that are necessary in order for the durable medical equipment to perform its function.**

Example 1. A Coulter Blood Cell Counter uses an electrolytic solution to perform its function. The solution is entirely contained within the device and does not physically interact with the patient's tissue (blood) apart from the device. The device cannot perform its function without the electrolytic solution. The solution is an integral part of the Coulter Blood Cell Counter and is not a drug even though the device is used to diagnose disease and the test it performs is conducted pursuant to a prescription.

Example 2. A cryoablation device uses extremely cold, thermally conductive solution inside a hollow probe or needle to freeze and remove diseased or malfunctioning cells within a patient's body. The solution is entirely contained within the device and does not physically interact with the patient's tissue apart from the device. The device cannot perform its function without the solution. The solution is an integral part of the device and is not a drug even though the device is used in the cure, mitigation, and treatment of disease as part of a prescribed procedure.

Example 3. A specialized medical laser uses certain gases (e.g., argon, helium) to determine the wavelength of the light emitted. This allows the laser to identify specific cells or substance types. The gas is entirely contained within the laser and does not physically interact with the patient's tissue apart from the device. The device cannot perform its function without the gas. The gas is an integral part of the device and is not a drug even though the gas is consumed and the laser is used in the cure, mitigation, and treatment of disease as part of a prescribed procedure.

(204) **What is mobility enhancing equipment?** Mobility enhancing equipment is equipment, including repair and replacement parts for mobility enhancing equipment that:

(a) Is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle;

(b) Is not generally used by persons with normal mobility; and

(c) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. See RCW 82.08.0283.

Table 3 provides a nonexclusive list of mobility enhancing equipment products.

Table 3

Mobility Enhancing Equipment Examples
<ul style="list-style-type: none"> • Bath aids - Raised toilet seat, tub and shower stools • Bed pull-up T • Canes • Car seats (mobility enhancing) • Crutches • Handrails and grab bars to assist in rising from commode, tub, or shower

Mobility Enhancing Equipment Examples
<ul style="list-style-type: none"> • Lift chairs and replacement parts • Lifts (hydraulic or electric) used to raise or transfer patients from bed to chair, commode, or bath • Scooters and transporters • Swivel seats enabling the disabled to rotate in order to rise from a chair • Transfer belts to assist in the transfer of patients • Walkers • Wheelchairs • Wheelchairs adapted for specific uses or functions, e.g., all terrain wheelchairs

(205) **Over-the-counter drugs.** An over-the-counter drug is a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(a) A "drug facts" panel; or

(b) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation. See RCW 82.08.0281.

Table 4 provides a nonexclusive list of over-the-counter drug products.

Table 4

Over-the-Counter Drug Examples
<ul style="list-style-type: none"> • Antihistamines • Anti-inflammatory • Analgesic • Contact lenses solution • Eternal nutrition formulas with drug facts box • Hydrogen peroxide • Medicated cotton swabs and gauze wraps (nonlegend) • Povidone iodine • Rubbing alcohol

(206) (a) **What is a prosthetic device?** A prosthetic device is a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct a physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body. See RCW 82.08.0283.

Table 5 provides a nonexclusive list of prosthetic device products.

Table 5

Prosthetic Device Examples
<ul style="list-style-type: none"> • Abdominal belts, binders, and supports • Acetabular cups • Ankle brace • Antiembolism stocking • Artificial eyes, heart valves, larynx, limbs • Back braces

Prosthetic Device Examples

- | |
|--|
| <ul style="list-style-type: none"> • Bone cement and wax • Bone pins, plates, nails, screws • Breast implants and external prosthesis • Cervical collars • Cochlear implant • Continuous positive airway pressure (CPAP) machines which are specifically designed to be wholly worn on the body and portable • Corrective eye glasses and contact lenses • Dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers • Drainage devices for single patient use because they serve the same drainage functions as the body's natural systems • Ear, nose, and throat implants • Eye glass frames and lenses • Foley catheter • Gastric bands and intragastric balloons • Hand and feet implants • Head halters • Hearing aids • Implanted pacemakers • Insulin pumps • Knee immobilizers • Mastectomy surgical bras • Maxillofacial devices implanted • Membrane implants (neutron, spinal, joint) • Ocular implants • Orthobiologics implants • Orthopedic shoes, shoe lifts, inserts, arch supports, heel protectors • Pressure garments - Edema gloves • Pressure garments - Mast pants, burn garments • Salem sump with anti-reflux valve • Shoulder and elbow implants • Skin implants - Synthetic • Slings, braces, collars, casts, splints, embolism stockings, arch pads, pelvic traction belts, traction pulley clamp assemblies and cords • Slings - Medical • Specialized orthotic shoes, post-operation shoes, cast shoes, diabetic shoes and inserts, and other similar apparatus • Speech aids (electronic) worn on the body • Sphincters - Medical • Splints and splint materials • Stent implants through endoscopy • Stents (biliary, coronary and urinary) • Stockings - Compression |
|--|

Prosthetic Device Examples
<ul style="list-style-type: none"> • Sutures, staples, and skin glue for closing wounds • Tendon implants • TENS units worn on the body • Testicular and penile implants • Trachea tubes • Trusses

(b) **When is a device not worn on or in the body?** For the purpose of this exemption, "worn on the body" means the entire device is something a person puts on or has on their person, to be carried with and habitually becomes part of the person as a whole, much in the sense that a person wears clothing or other personal items. Such devices are designed to be wholly worn on the body and portable. A device is not "worn on or in the body" simply because part of it is attached to the body in some way for a period of time. These devices cannot be partially floor-standing, plugged into an outlet, or moved by virtue of dragging, wheels, or with the assistance of a separate device (e.g., a cart or intravenous stand).

(c) **Examples of items that are not prosthetic devices worn on or in the body.** The following are examples of items not considered prosthetic devices worn on or in the body.

Example 4. Continuous positive airway pressure (CPAP) machines are commonly used by patients with sleep apnea disorders to facilitate normal breathing. Patients using a CPAP machine are normally hooked up to the machine via tubing and individually tailored masks. Even though the mask is normally "worn" for significant periods of time each night, the mask by itself cannot accomplish the intended purpose. The machine performing the function is not worn on the body as a complete system. Neither the mask separately, nor the machine as a whole system, is a prosthetic device.

Example 5. Heart-lung machines generally replace the function of the heart and lungs during surgery, as well as regulating body temperature and providing an avenue of introduction for anesthetics or other medications directly into a patient's bloodstream. While a heart-lung machine is attached to the patient, it is commonly a floor-standing or wheeled unit and is not a prosthetic device.

PART 3 - APPLICABLE TAXES

(301) **What basic tax information do I need to be aware of when selling, purchasing, using or manufacturing medical products?** This subsection provides general tax-reporting information for persons who sell, purchase, use, or manufacture, medical products.

(302) **How are medical products taxed?** In general, sales of medical products are taxable. Sales of medical products to consumers such as doctors, hospitals, or patients are subject to retailing business and occupation (B&O) tax and the retail sales tax. These taxes apply to the sale of medical products as follows:

(a) **Retail sales tax.** Retail sales tax applies to the sale of medical products to a consumer unless a specific exemption applies. RCW 82.04.050 and 82.08.020. Specific exemptions are discussed in Part 4 of this rule.

(b) **Retailing B&O tax.** There is no general B&O tax exemption for sales of medical products. Even if a sale of a medical product is exempt from retail sales tax, the gross proceeds from the sale of the medical product to a consumer is subject to the retailing B&O tax.

(c) **Wholesaling B&O tax.** Sales to persons who resell the medical products (e.g., pharmacies) are subject to the wholesaling B&O tax. Persons making wholesale sales should refer to WAC 458-20-102 for information regarding their responsibility to obtain a reseller permit.

(d) **Manufacturing B&O tax.** Persons who manufacture products including medical products, in this state are subject to the manufacturing B&O tax upon the value of these products. Manufacturers selling the products at retail or wholesale in this state are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a Multiple Activities Tax Credit (MATC). Refer to WAC 458-20-19301 for a more detailed explanation of the MATC.

Persons who manufacture molds or other products that they use in a manufacturing process are subject to the manufacturing B&O tax upon the value of the product manufactured. (See also WAC 458-20-112 and 458-20-134 regarding "value of products" and "commercial or industrial use," respectively.) Such persons also incur a use tax liability with respect to their use of the molds or products, unless a specific exemption applies. For example, RCW 82.12.02565 provides a use tax exemption for the use of certain molds in a manufacturing operation. Refer to WAC 458-20-13601 for additional information regarding the manufacturers machinery and equipment sales tax and use tax exemptions.

(e) **Use tax or deferred retail sales tax.** Purchases of medical products at retail are subject to retail sales tax unless a specific exemption exists in the law. If the seller does not collect retail sales tax, a buyer who is not reselling the products must pay the retail sales tax (commonly referred to as the "deferred retail sales tax") or use tax directly to the department, unless the specific items purchased are exempt under the law. For additional information on use tax see WAC 458-20-178.

(303) Retail sales tax should be paid by the consumer based on the principal use of the product. Some medical products can be put to both an exempt and taxable use. At the time of purchase a buyer may not know exactly how the item or items will be used. In such cases, retail sales tax must be paid to the seller at the time of purchase when the buyer expects to principally (i.e., more than ~~((fifty))~~ 50 percent of the time) put the item to a taxable use in the normal course of business. However, if the buyer expects to principally put the item to use in an exempt manner, the buyer may provide the seller with an appropriately completed exemption certificate that lists the retail sales tax exempt item or types of items included in the purchase, such as a Streamlined Sales Tax Agreement Certificate of Exemption (SSUTA exemption certificate), or the seller may capture the relevant data elements that would otherwise be captured in a completed SSUTA exemption certificate, or otherwise meet the requirements of RCW 82.08.050(7). See subsection (304) of this rule for more information on exemption certificates and other department approved documentation. When a seller receives an appropriately completed exemption certificate or other approved documentation, that seller is relieved of the responsibility to collect the retail sales tax for those specific items or types of items identified on the certificate and sold in that transaction.

(a) **Items put to taxable use where tax was not paid.** If the buyer does not pay sales tax on an item, and later puts that item to use in a manner that is not exempt of sales tax, the buyer must pay deferred

sales or use tax to the department. The deferred sales tax liability should be reported by the buyer on the use tax lines of the excise tax return (including both state and local portions of the tax). The tax should be reported based on the location and sales tax rate which is in effect where the buyer took possession of the item.

(b) **Items put to exempt use where tax was paid.** If the buyer does not give an exemption certificate or other approved documentation to the seller indicating a certain item is exempt of retail sales tax, or the seller does not capture the relevant data elements required under SSUTA or otherwise meet the requirements of RCW 82.08.050(7), the seller must collect the tax at the time of purchase on that item. If the buyer later puts that item to first use in an exempt manner, the buyer may take a deduction on the excise tax return equal to the value of the item. This deduction should be claimed in the deduction column of the retail sales tax line, and should be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet. When completing the local sales tax section of the tax return, the value of the item must be credited using the seller's tax location code (assuming the buyer took possession of the item at the seller's location) and computed at the local sales tax rate paid to the seller.

(c) **Examples.**

Example 6. Purchase of items which are principally exempt. ABC Medical Center (ABC) purchases a case of sterile silicon tubing. One case contains (~~twenty~~) 20 units of sterile tubing in individually sealed sterile packaging. The tubing purchased by ABC is either used to deliver medically prescribed oxygen from tanks to a patient (an exempt use), or used by ABC's laboratory to conduct certain tests (not an exempt use). At the time of purchase, ABC does not know how many of the (~~twenty~~) 20 packages in the case will be used for oxygen tank systems versus how many will be drawn out of inventory by the lab. However, according to ABC's inventory records from past periods, the tubing will principally be used as part of the medically prescribed oxygen systems. ABC provides the seller of the tubing with a properly completed exemption certificate (in this case, the "Sales Tax Exemption Certificate for Health Care Providers") or other approved documentation. The seller is not required to collect retail sales tax on the case of sterile tubing. As ABC puts the tubing to use, it must keep track of when a package of tubing is used by the laboratory. Deferred sales tax is due and should be reported on and remitted with the excise tax return for the period in which ABC used the tubing.

Example 7. Purchase of items which are principally taxable. Assume the same items and situation as in Example 6, except that for this example, according to ABC's inventory records from past periods, the tubing will be principally used for retail sales taxable purposes in the laboratory. ABC cannot provide an exemption certificate or other approved documentation for purchase of the tubing and must pay retail sales tax to the seller. As ABC puts the tubing to use, it may keep track of when a package of tubing is put to exempt use with a medically prescribed oxygen system. ABC may then take on its excise tax return a tax paid at source deduction for the value of the package used.

(304) **Sellers must obtain (~~an exemption certificate~~) required exemption documentation or information on any retail sales exempted from the retail sales tax.** Unless otherwise provided in this rule, sellers making retail sales to medical practitioners, nursing homes, and hospitals must obtain an exemption certificate approved by the department, such as a SSUTA exemption certificate, capture the relevant

data elements required in completing a SSUTA exemption certificate, or otherwise meet the requirements of RCW 82.08.050(7) to document any tax-exempt sales of the products discussed in this rule when those businesses are the consumers. Information about exemption certificates may be obtained by:

- (a) Using the department's website at dor.wa.gov/; ((~~☎~~))
- (b) Reference to RCW 82.08.050(7); or
- (c) Calling the department's telephone information center at ((~~1-800-647-7706~~)) 1-360-705-6705.

PART 4 - COMMON RETAIL SALES TAX AND USE TAX EXEMPTIONS

(401) What common retail sales tax and use tax exemptions apply to the sale of medical products? This part of the rule provides a non-exhaustive list of retail sales tax and use tax exemptions available with respect to various medical products.

(402) Sales of medical products pursuant to a prescription. Most retail sales tax exemptions available for sales of medical products require that the item is purchased under authority of a prescription.

(a) **What is a prescription?** A "prescription" is an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe. See RCW 82.08.0281. The specific requirements for a prescription may differ depending on the item exempted and the RCW chapter under which the person issuing the prescription is licensed. Close attention must be paid to the details given for each specific exemption explained in the following subsections of this rule.

(b) **No automatic exemption.** A prescription does not automatically qualify a sale of a medical product for a sales tax or use tax exemption. Unless a specific exemption exists in statute for the sale or use of the item in question the item is not exempt, even with a prescription. For example, if a physician prescribes a regimen of exercise at the local fitness club, the mere issuance of the prescription does not qualify the sales of that service for a retail sales tax exemption because no such exemption exists in statute.

(c) **When medical procedures are prescribed.** When a medical procedure is prescribed by a duly licensed practitioner authorized to prescribe the same, that overall prescription fulfills the prescription requirement (if any) for each eligible exempt item used in the procedure. For example, an orthopedic surgeon conducts joint replacement surgery for a patient's diseased joint. As part of that surgical procedure, prescription drugs and other eligible exempt items are used. The surgeon does not specifically issue a separate written prescription for each eligible exempt item. The surgeon's order for the surgical procedure and the oral directions provided by the surgeon during the procedure fulfill any prescription requirement for each eligible item used in an exempt manner during that procedure.

(d) **Dispensed pursuant to a prescription.** The purchase of drugs to be dispensed in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the body, by hospitals or other persons licensed to prescribe such drugs, are considered dispensed pursuant to a prescription and therefore exempt, providing the buyer gives the seller an exemption certificate or other approved documentation as discussed in Part 3 of this rule.

(403) Sales tax and use tax exemptions available with respect to various medical products.

(a) **Sales to a free hospital are exempt from sales tax and use tax.** RCW 82.08.02795 and 82.12.02745 provide retail sales tax and use tax exemptions for items sold to and used by a "free hospital" when those items are reasonably necessary for the operation of, and provision of health care by a free hospital. For the purpose of these exemptions, "free hospital" is a hospital that does not charge patients for health care provided by the hospital.

(b) **Sales of drugs for human use can be exempt from retail sales tax and use tax when sold under the authority of a prescription.** RCW 82.08.0281 and 82.12.0275 provide retail sales tax and use tax exemptions for drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. These exemptions apply to the distribution of "sample" prescription drugs provided free of charge to duly licensed practitioners authorized by the laws of this state to prescribe. For the exemptions to apply, the drug involved must be intended to interact with a specific patient through direct contact with that patient, whether applied internally or externally to the patient's body, or as part of a test conducted on a tissue sample taken from that patient. A seller is not required to collect sales tax when it obtains a properly completed exemption certificate indicating prescription drugs, intended for human use sold to medical practitioners, nursing homes, and hospitals, will be put to an exempt use under the authority of a prescription, captures the data elements described in subsection (304) of this rule, or otherwise meets the requirements of RCW 82.08.050(7). Otherwise, the retail sales tax must be collected. See Part 3 of this rule for information about exemption certificates and other approved documentation.

(c) **Sales of disposable devices used to deliver prescription drugs for human use.** RCW 82.08.935 and 82.12.935 provide retail sales tax and use tax exemptions for disposable devices used to deliver drugs for human use, pursuant to a prescription.

(i) **What are disposable devices used to deliver drugs?** "Disposable devices used to deliver drugs" include single-use items such as a single-use syringe, intravenous (IV) tubing, and IV catheters. A stand or device that holds the tubing or catheter is not a disposable device used to deliver drugs.

(ii) **Example 8. Disposable devices.** A nursing home purchases single-use syringes, tubing used to deliver drugs, and stands used to hold the IV fluid containers. If the nursing home provides the seller with a completed "Sales Tax Exemption Certificate for Health Care Providers," or other approved documentation, retail sales tax does not apply to the purchase of single-use syringes and tubing. However, retail sales tax applies to the IV stands because the stands are "durable medical equipment," not disposable or single-use, and no specific exemption for them exists in the law. For information about durable medical equipment, see Part 2 of this rule.

(d) **Sales of "over-the-counter" drugs with a prescription are exempt from retail sales tax and use tax.** RCW 82.08.940 and 82.12.940 provide retail sales tax and use tax exemptions for over-the-counter drugs sold for human use, pursuant to a prescription. See subsection (205) of this rule for the definition of over-the-counter drug.

(i) **Example 9.** A patient's medical practitioner prescribes over-the-counter pain relief medication. The patient takes the prescription to a pharmacy. The sale of the over-the-counter drug is exempt from retail sales tax. In contrast, if the patient's medical practitioner simply recommends that the patient use an over-the-counter pain relief

medication, without completing a prescription for the medication, the sale of the over-the-counter drug is subject to retail sales tax.

(ii) **Example 10.** A hospital makes bulk purchases of various over-the-counter drugs to dispense to patients pursuant to a doctor's prescription. The hospital's purchases of such drugs are exempt from retail sales tax providing the hospital gives the seller an exemption certificate or other approved documentation as discussed in Part 3 of this rule.

(iii) **Example 11.** An employer purchases drug test kits from a local drug store and administers them to current and prospective employees as a condition of employment. The employer's purchase of the drug tests is subject to retail sales tax because the tests are not prescribed by a licensed physician for the employees or prospective employees.

(e) **Dietary supplements (also known as nutrition products) with a prescription are exempt from retail sales and use taxes.** Sales of dietary supplements not covered by either of the retail sales tax or use tax exemptions for "food and food ingredients" are generally subject to retail sales tax or use tax. See RCW 82.08.0293 and 82.12.0293. However, RCW 82.08.925 and 82.12.925 provide specific retail sales tax and use tax exemptions for sales of "dietary supplements" for human use, pursuant to a prescription. A "dietary supplement" is any product, other than tobacco, intended to supplement the diet, and that satisfies all three of the criteria listed in (e)(i) through (iii) of this subsection.

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection.

(ii) Is intended for ingestion in tablet, capsule, powder, soft-gel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003. See RCW 82.08.0293.

(f) **Licensed naturopaths have their own retail sales tax and use tax exemptions available.** The sale or use of medicines of mineral, animal, and botanical origin which are prescribed, administered, dispensed, or used by a licensed naturopath in the treatment of a human patient are exempt from retail sales and use taxes. See RCW 82.08.0283 and 82.12.0277.

"Naturopathic medicines" are vitamins, minerals, botanical medicines, homeopathic medicines, hormones, and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the secretary of health. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW. See RCW 18.36A.020.

(g) **Drugs and devices used for family planning may be exempt.** RCW 82.08.0281 and 82.12.0275 provide sales tax and use tax exemptions for

drugs and devices sold or used under certain conditions for family planning purposes. Family planning purposes include promoting, inhibiting, preventing, and determining of conception. This includes all single-patient use items, whether ingested, attached, or applied to persons for family planning purposes. Persons making tax-exempt sales of these drugs and devices to medical practitioners, clinics, or hospitals must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale, as discussed in Part 3 of this rule.

The purchase, sale, or use qualifies for exemption when either one of the following conditions exists:

- The drug or device is supplied by a family planning clinic that is under contract with the Washington state department of health to provide family planning services; or
- The family planning items are or will be dispensed to patients, pursuant to a prescription. Persons dispensing these items are required to obtain and maintain files of prescriptions to document the exempt nature of such sales.

(h) **Medically prescribed oxygen is exempt from retail sales tax and use tax.** RCW 82.08.0283 provides a retail sales tax exemption for sales of medically prescribed oxygen for an individual prescribed by a person licensed under chapter 18.57 RCW (Osteopathy—Osteopathic medicine and surgery) or chapter 18.71 RCW (Physicians) for use in the medical treatment of that individual. A comparable use tax exemption is provided in RCW 82.12.0277. Persons making tax-exempt sales of these items must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale as discussed in Part 3 of this rule.

(i) **What is medically prescribed oxygen?** The exemption for "medically prescribed oxygen" is not limited to gaseous or liquid oxygen (chemical designation O²). Medically prescribed oxygen is defined by RCW 82.08.0283 to include, among other things, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems. The primary use of the equipment must be for the generation or storage of medically prescribed oxygen (O²). These systems include regulators, cannulae, masks, and similar items used to deliver the oxygen to the individual from the tax-exempt oxygen generation or storage device.

(ii) **Accessories may not be exempt.** Exempt medical oxygen systems are sometimes connected to the patient through taxable systems. The exemption for medically prescribed oxygen only applies to items up to the point the exempt oxygen system is connected to the taxable system. From that point of connection forward to the patient, masks, tubing, or other similar items remain part of the taxable system and are subject to retail sales tax.

(iii) **Examples.**

(A) **Example 12.** A physician prescribes oxygen for a patient. The patient rents an oxygen concentrator system and a separate cart to transport the system. The prescribed oxygen concentrator system can be rented exempt of sales tax. However, the exemption for "medically prescribed oxygen" does not include a separate cart used to transport a tax-exempt system. For information about durable medical equipment, see Part 2 of this rule. If the oxygen concentrator system and cart are rented for one nonitemized price the rental may be a bundled

transaction. See Part 5 of this rule for information on how tax applies to a bundled transaction.

(B) **Example 13.** A physician prescribes a "continuous positive airway pressure (CPAP)" system for a patient diagnosed with a sleep apnea disorder. The CPAP system primarily supplies room air, under pressure, to keep the patient's airway passages open and thereby prevent obstruction of airflow in and out of the lungs. As a result, the sale of the CPAP system is subject to retail sales tax because it is not a system that satisfies the statutory definition of "medically prescribed oxygen." Note: Certain CPAP systems, when designed to be entirely worn on the body, can qualify for exemption from retail sales tax as prosthetic devices. See Part 2 of this rule for more information.

(C) **Example 14.** Assume the same facts for a CPAP system as provided in the previous example (h) (i) (B) of this subsection. In addition, the physician prescribes an oxygen trickle by which medical oxygen is provided to the patient from an oxygen tank through a tube attached to the mask of the CPAP system. The addition of an oxygen trickle does not change the purpose or taxability of any part of the CPAP system. The CPAP system does not generate or store oxygen and is not eligible for the exemption provided for medically prescribed oxygen. The oxygen, oxygen tank, and any tubing used to convey the oxygen is covered by the exemption for medically prescribed oxygen, but only up to the point that it attaches to the taxable CPAP system.

(i) **Insulin has its own specific exemption from retail sales tax and use tax - No prescription is required.** RCW 82.08.985 and 82.12.985 provide specific sales tax and use tax exemptions for insulin for human use. A prescription is not required for the sale of insulin to be exempt from tax.

(j) **Sales of laboratory reagents and other diagnostic substances may be exempt from retail sales and use taxes, under the right circumstances.** The definition of drug includes compounds, substances, or preparations (e.g., laboratory reagents and other diagnostic substances) used for the diagnosis of disease. Thus, sales of laboratory reagents and other diagnostic substances are not subject to retail sales tax when prescribed for an individual by a duly licensed practitioner and used to diagnose, cure, mitigate, treat, or prevent disease in humans. RCW 82.08.0281. A comparable use tax exemption is provided in RCW 82.12.0275. Laboratory reagents and diagnostic substances must physically interact with a specific patient's specimen to qualify for exemption. Persons making tax-exempt sales of these items must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale as discussed in Part 3 of this rule.

(i) **What are laboratory reagents and other diagnostic substances?** "Laboratory reagents and other diagnostic substances" are substances employed to produce a chemical reaction in order to detect, measure, or produce, other substances. To be a diagnostic substance, the application of the substance to a patient's specimen must result in identification of the characteristics of a particular disease.

(ii) **Laboratory reagents, other diagnostic substances or prepared media when sold in a container.** Reagents, diagnostic substances, and prepared media often come prepared in a container (test tube, vial, cylinder, Petri dish, etc.) ready for use. It makes no difference to the taxability of the substance if it is sold with or without a container. The function of the substance determines its taxability. The

term "prepared media" includes transport media if the resulting culture grown on the medium is used in performing diagnostic tests for specific patients.

(iii) **Laboratory reagents and other diagnostic substances.** This subsection provides examples of laboratory reagents and other diagnostic substances that may qualify for sales and use tax exemptions under RCW 82.08.0281 and 82.12.0275, provided all requirements for the exemptions are met. The following items are reagents or other diagnostic substances:

(A) Stains, dyes, and decolorizers that react with and cause a change in a cellular tissue. The substances are used to stain the cell tissues in a manner that will mark or highlight certain portions of cells;

(B) Decalcifying solution, dehydrating solution, and clearing agents that chemically react with the patient's specimen; and

(C) Test strips impregnated with a reagent which, when applied to a patient's specimen, test for indicators of a disease.

(iv) **What substances are not reagents?** Some substances are used solely for purposes of preparing specimens for examination and diagnosis or to facilitate examination of a specimen. Such substances do not themselves produce a chemical reaction resulting in the detection, measurement, or production of another substance. They merely facilitate or enable specimen testing and are not exempt under RCW 82.08.0281 or 82.12.0275. The following lists examples of substances and items which are not reagents:

(A) Paraffin that is extracted from a tissue specimen without having chemically altered the cells;

(B) Gelatin that is extracted out of the specimen before staining and leaves the cell structures unaffected;

(C) Electrodes;

(D) Tissue cassettes;

(E) Freezing medium;

(F) Liquid agar when used to gel patient specimens;

(G) Test tubes or cylinders that do not contain a reagent;

(H) Plain slides and cover slips that are not coated with a reagent;

(I) Mounting medium to adhere the cover slip to the slide; and

(J) Acids and other solutions when used for cleaning purposes.

(v) **What about reagents and diagnostic substances that can be used in more than one way (multiple use substances)?** Some reagents or other diagnostic substances have multiple uses, some of which may qualify for a sales or use tax exemption. Such substances are exempt only to the extent they are used as part of a test prescribed to diagnose disease in humans. For example, alcohol can be used either as a reagent (e.g., to react with a cellular tissue) or to clean counters, furniture, etc. Alcohol used as a cleaning agent is subject to retail sales or use tax. See Part 3 of this rule for guidance on when to apply retail sales tax to products with multiple uses, with both retail sales taxable and exempt uses being possible.

(k) **Sales of controls, calibrators, and standards used with laboratory test equipment are not exempt from retail sales and use taxes.** The sales tax and use tax exemptions provided by RCW 82.08.0281 and 82.12.0275 do not apply to drugs (compounds, substances, or preparations) used as a control, calibrator or standard in conjunction with the test of patient specimens in a medical laboratory.

(i) **What are controls?** A "control" is a material, solution, lyophilized (freeze-dried) preparation or pool of collected serum de-

signed to be used in the process of quality control. Controls do not physically interact with a specific patient's specimen. The concentrations of the substances of interest in the control are known within limits determined during its preparation or before routine use. Controls are generally used with each test of patient specimens to validate the accuracy of that particular test.

(ii) **What are calibrators?** A "calibrator" is a material, solution, or lyophilized (freeze-dried) preparation designed to be used in calibration of medical laboratory machines. The values or concentrations of substances of interest in the calibration material are known within limits determined during its preparation or before use. Calibrators are generally used at specified intervals such as every eight hours, at midnight, or at shift changes, in accordance with the machine manufacturer's requirements or the requirements of administering agencies to verify the accuracy of the machine.

Calibrators are subject to retail sales tax or use tax because they are used to diagnose problems with machines and they do not physically interact with a patient's specimen to diagnose disease.

(iii) **What are standards?** A "standard" is a reference material of fixed and known chemical composition capable of being prepared in an essentially pure form. Standard also includes any certified reference material generally accepted or officially recognized as the unique standard used to test and calibrate medical lab equipment. Standards are often used in the original setup of medical lab equipment.

A standard is subject to retail sales tax and use tax because it is used to test and calibrate equipment and does not physically interact with a patient's specimen.

(l) **Sales of human blood, tissue, organs, or body parts may be exempt from retail sales and use taxes - No prescription or exemption certificate is required.** RCW 82.08.02806 provides a retail sales tax exemption for human blood, tissue, organs, bodies or body parts when used for medical research ((~~or~~)) and quality control testing purposes. RCW 82.12.02748 provides a comparable use tax exemption.

(i) **Definitions of human blood, tissue, organs, or body parts.** For the purposes of this exemption the following definitions apply:

(A) "Blood" means human whole blood, plasma, blood derivatives, and related products (e.g., bone marrow).

(B) "Tissue" includes human musculoskeletal tissue, musculoskeletal tissue derivatives, ligament tissue, skin tissue, heart valve tissue, human bone, and human eye tissue.

(C) "Organs" or "body parts" means a part of a human body having a special function.

(ii) **Materials consisting of both human and animal components.**

Materials consisting of both human and animal components are not "human blood, tissue, organs, or body parts" and do not qualify for this exemption.

(iii) **Sales of spermatozoa.** These retail sales tax and use tax exemptions do not apply to sales or purchases of spermatozoa (male reproductive cell).

(m) **Durable medical and mobility enhancing equipment - Retail sales tax or use tax applies in most cases.** Retail sales tax or use tax applies to the sale or use of durable medical equipment and mobility enhancing equipment, unless a specific exemption applies. See subsections (202) and (204) of this rule for the definition of durable medical and mobility enhancing equipment.

(n) **Sales of prosthetic devices may be exempt of retail sales and use taxes.** RCW 82.08.0283 provides a retail sales tax exemption for

sales of prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices. The exemption includes repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving prosthetic devices. RCW 82.12.0277 provides a corresponding use tax exemption. Persons making tax-exempt sales of these prosthetic devices to medical practitioners, nursing homes, and hospitals, must obtain an exemption certificate, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7) to substantiate the exempt nature of any sale as described in Part 3 of this rule. See subsection (206) of this rule for the definition of prosthetic device.

(o) **Kidney dialysis devices are exempt of retail sales and use taxes with a prescription.** RCW 82.08.945 provides a retail sales tax exemption for sales of kidney dialysis devices for human use pursuant to a prescription. The exemption also includes repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving kidney dialysis devices. RCW 82.12.945 provides a comparable use tax exemption. For the purpose of this exemption, a "kidney dialysis device" is a device which physically performs the dialyzing or separating process on blood. Kidney dialysis device does not include other equipment or tools used in conjunction with a kidney dialysis device.

Example 15. A kidney dialysis device is wired to a dedicated backup generator that exists only to service the dialysis device when the main source of power is interrupted or is unavailable. Under those conditions the dialysis process cannot be performed without the use of the generator to power the dialysis device. Even so, the generator does not perform the actual dialysis process on the patient's blood and is not a kidney dialysis device.

(p) **Nebulizers are exempt of retail sales and use taxes with a prescription.** RCW 82.08.803 and 82.12.803 provide sales tax and use tax exemptions in the form of a refund for the sale or use of a nebulizer for human use pursuant to a prescription. A nebulizer is "a device, and not a building fixture, that converts a liquid medication into a mist so that it can be inhaled." The exemptions include repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving a nebulizer.

Under these exemptions, sellers must collect the tax on sales subject to these exemptions. To obtain a refund of tax paid, buyers must apply for a refund directly from the department by submitting a completed refund application form to the department and including the original sales receipt. Any buyer submitting an application for refund should refer to WAC 458-20-229 or use the department's website at dor.wa.gov/content/ContactUs.

(q) **Ostomic items are exempt of retail sales and use taxes - No prescription is required.** RCW 82.08.804 and 82.12.804 provide specific sales tax and use tax exemptions for ostomic items for colostomy, ileostomy, or urostomy patients. "Ostomic items" are disposable medical supplies used by colostomy, ileostomy, and urostomy patients and include bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and related supplies. "Ostomic items" do not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets. A prescription is not required for the sale of ostomic items to be exempt from tax.

PART 5 - BUNDLED TRANSACTIONS

(501) **What is a bundled transaction?** A "bundled transaction" is the retail sale of two or more products, except real property and services to real property, where:

- The products are otherwise distinct and identifiable; and
- The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the buyer of the products included in the transaction.

(a) **How are bundled transactions generally taxed for retail sales tax purposes?** A transaction is generally considered a bundled transaction subject to retail sales tax if more than (~~ten~~) 10 percent of the purchase price or sales price is attributable to retail sales taxable products. RCW 82.08.190 and 82.08.195.

(b) **Exception.** A transaction which otherwise meets the definition of a "bundled transaction" is not a bundled transaction when both of the following are true:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies; and

(ii) The seller's purchase price or sales price of the taxable tangible personal property is (~~fifty~~) 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the (~~fifty~~) 50 percent determination for a transaction.

(502) **How are kits (or trays) used for medical procedures taxed if they contain a combination of individually taxable and nontaxable items?** Medical procedure kits are often purchased as a plastic-wrapped package that includes the various items needed to perform a particular medical procedure. A procedure kit can combine items that are either subject to retail sales tax or exempt from retail sales tax if sold separate from a kit or tray, as individual items. However, when a kit involves a bundled transaction sold for one nonitemized price, the sale of the entire kit is either subject to retail sales tax or exempt. This subsection explains how to determine whether a particular medical procedure kit is subject to or exempt from retail sales tax. Persons making a tax-exempt sale of a kit must obtain an exemption certificate from the buyer that lists the general item types within the kit that are exempt as discussed in Part 3 of this rule, capture the data elements described in subsection (304) of this rule, or otherwise meet the requirements of RCW 82.08.050(7). If a particular item within a kit is only exempt pursuant to a prescription, the item (or the procedure in which the item is used) must be prescribed by a duly licensed practitioner authorized by the laws of this state to prescribe the same.

Example 16. A glucose testing kit is prescribed for a human patient. The kit includes a glucose meter, five sample test reagent strips, and a lancet. The glucose meter is durable medical equipment, has a purchase price of \$40.00, and is subject to retail sales tax when sold separately. (See Part 2 of this rule for more information concerning durable medical equipment.) The lancet is a single-use tool not covered by any exemption, has a purchase price of \$40.00, and is subject to retail sales tax when sold separately. In this case, the test reagent strips qualify as disposable drug delivery devices, have a purchase price of \$20.00, and are exempt from retail sales tax when

sold separately pursuant to a prescription. The total purchase price of the kit is \$100.00.

To determine if the full purchase price of the kit is subject to retail sales tax, the purchase (or sales) price of the taxable components should be compared to the total purchase (or sales) price of the kit. If the taxable components exceed (~~(fifty)~~) 50 percent of the price, the entire kit is subject to retail sales tax. In this case, the purchase price for both the glucose meter and lancet (\$40.00 + \$40.00 = \$80.00) are more than (~~(fifty)~~) 50 percent of the total kit purchase price of \$100.00. Therefore, retail sales tax is due on the sale of the kit. But if the taxable components were (~~(fifty)~~) 50 percent or less of the total kit purchase price, sales tax would not be due on the kit.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 14-18-019, § 458-20-18801, filed 8/25/14, effective 9/25/14. Statutory Authority: RCW 82.32.300. WSR 92-05-065, § 458-20-18801, filed 2/18/92, effective 3/20/92; WSR 87-05-042 (Order 87-1), § 458-20-18801, filed 2/18/87; WSR 83-07-032 (Order ET 83-15), § 458-20-18801, filed 3/15/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. WSR 78-07-045 (Order ET 78-4), § 458-20-18801 (Rule 188), filed 6/27/78; Order 74-2, § 458-20-188 (codified as WAC 458-20-18801), filed 6/24/74.]

WSR 22-12-015

PROPOSED RULES

SECRETARY OF STATE

[Filed May 20, 2022, 12:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-096.

Title of Rule and Other Identifying Information: Protecting county vote counting systems from unauthorized access.

Hearing Location(s): On July 5, 2022, at 1:00 p.m., at 520 Union Avenue, Olympia, 98504. The hearing will be conducted using [Microsoft] Teams. To join the hearing, call phone 1-206-899-2560 and enter the Conference ID 267 267 330#. People will be able to hear and comment.

Date of Intended Adoption: July 6, 2022.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule change is necessary to protect county vote counting systems from unauthorized access, provide clear requirements related to access and operation of vote counting systems, and clarify prohibition against allowing vote counting access to non-authorized parties.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state, and enhancing security of the ballot counting process.

Statutory Authority for Adoption: RCW 29A.04.230, 29A.04.611, 29A.12.190, 29A.12.200, 42.56.420.

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

Name of Proponent: Randy Bolerjack, deputy secretary of state, governmental.

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

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

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

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

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

May 20, 2022

Randy Bolerjack

Deputy Secretary of State

OTS-3705.1

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-260 Decertification of voting systems and vote tabulating systems. (1) The secretary of state may decertify a voting system or vote tabulating system or any component thereof and withdraw authority for its future use or sale in Washington if, at any time after certification the secretary of state determines that:

(a) The system or component fails to meet the standards set forth in applicable federal guidelines or state statutes or rules;

(b) The system or component was materially misrepresented in the certification application; (~~(e)~~)

(c) The applicant has installed unauthorized modifications to the certified software or hardware; or

(d) The system or component was operated or accessed in Washington state at any time by anyone other than an authorized staff member of the office of the secretary of state, an authorized individual employed by the county that has been delegated any task under RCW 29A.60.140(2), for the purposes of preparation, maintenance, and operation under RCW 29A.12.060, an independent testing authority designated by the United States election assistance commission, or an independent testing authority and the test plan has received approval by both the county auditor and secretary of state.

(i) County auditors shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified voting systems, or any components of such systems including, but not limited to: Voting software and systems, tabulators, scanners, counters, automatic tabulating equipment, voting devices, servers, ballot marking devices, paper ballot printers, portable memory media devices, and any other hardware, software, or devices being used as part of the voting system.

(ii) If access described in (d)(i) of this subsection occurs, those pieces of voting equipment will be considered no longer secure or reliable to use in subsequent elections. As a result, the incidents will be treated as a security breach under RCW 29A.12.180 and the office of the secretary of state may decertify the use of the system or component.

(2) The secretary of state must provide written notice of intent to decertify to the original applicant or its successor, if known, to all county auditors, and to the public. The notice must specify the reasons why the certification of the system may be rescinded. The applicant or successor or any county auditor may, within thirty days after the issuance of the notice, file with the secretary of state a written explanation as to why the system or component should not be decertified. The secretary of state may extend or shorten the time for filing of a written explanation for good cause. After reviewing the explanation, the secretary of state may either discontinue the decertification process, in which case the system or component remains certified, or schedule a public hearing pursuant to subsection (3) of this section. If no explanation is timely filed, the secretary of state may either discontinue the decertification process or issue a final order pursuant to subsection (4) of this section.

(3) A decertification proceeding shall constitute an adjudicative proceeding pursuant to chapter 34.05 RCW.

(a) The secretary of state adopts the model rules of procedure as set forth in chapter 10-08 WAC, except as they may be inconsistent with this chapter. The proceeding may be conducted as an emergency ad-

judicative proceeding pursuant to RCW 34.05.479 if the secretary of state finds that immediate action is required to preserve the integrity of the electoral process.

(b) The secretary of state shall designate the presiding officer.

(c) The certification remains valid pending resolution of the administrative proceeding, unless the secretary of state finds, following notice and opportunity for written or oral input, which may be expedited, that the public interest requires that the decertification should take effect on a temporary basis pending hearing.

(d) The argument in favor of decertification may be presented by an employee of the secretary of state or by an assistant attorney general. Other parties may be represented by a certified election administrator or by any person permitted to appear by ~~((WAC 434-180-560))~~ the county auditor.

(4) The presiding officer or secretary shall enter an order specifying the system or component at issue, whether or not it is decertified, the effective date of any decertification, and explain the basis for the decision. The effective date of decertification shall not be less than five days after the entry of the order, but may be delayed to any reasonable date. An order issued by the secretary pursuant to subsection (2) of this section is a final order. An order issued by the presiding officer is regarded as an initial order unless the secretary of state, assistant secretary of state, deputy secretary of state, or director of elections presides, in which case the decision of the presiding officer shall be final and no further review is available within the agency.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-260, filed 8/29/05, effective 9/29/05.]

WSR 22-12-040
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 25, 2022, 3:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-069.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?

Hearing Location(s): On July 5, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than July 6, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by July 5, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [tencza@dshs.wa.gov], by June 21, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments reflect increases in the ongoing maximum monthly ABD program payment standards to \$417 for a single individual and \$528 for a married couple. The 2022 supplemental operating budget (ESSB 5693) includes funding to support this change, effective September 1, 2022.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, and 74.62.030.

Statute Being Implemented: 2022 Supplemental operating budget (ESSB 5693, chapter 297, Laws of 2022).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nicholas Swiatkowski, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-3494.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

May 25, 2022
 Katherine I. Vasquez
 Rules Coordinator

SHS-4929.1

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance? The maximum monthly payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units are:

Assistance Unit Size	Payment ((s)) Standard
1	\$((197)) <u>417</u>
2	\$((248)) <u>528</u>

[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, § 388-478-0033, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-478-0033, filed 4/27/12, effective 6/1/12.]

WSR 22-12-053

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 26, 2022, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-082.

Title of Rule and Other Identifying Information: WAC 246-850-030 and 246-850-060, orthotics and prosthetics. The department of health (department) is proposing clarifying language regarding national exam requirements for licensure under this chapter. The changes do not alter the effect of the existing rule.

Hearing Location(s): On July 6, 2022, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing. This is to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_OzWqhjTsS2WO--j_veesmQ. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: July 13, 2022.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Orthotic and Prosthetic Advisory Committee, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by July 6, 2022.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov, by June 28, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to address any confusion for the applicant by simplifying and clarifying language. Citations and internal WAC references have been corrected and names and dates of required exams have been clarified. The department amended chapter 246-850 WAC in 2019 to clarify and update examination requirements for orthotists and prosthetists. Applicants who complete their education after January 1, 2020, are now required to show completion of the clinical patient management exam as prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics. The proposed rule removes unnecessary mention of examination names and now simply references the exam requirements listed in WAC 246-850-060. WAC 246-850-060 has been updated to state clearly the organization and national exams required for each profession. The language makes clear that the national exams required by the 2019 rule amendments are for those completing their education and applying after January 1, 2020. None of the changes identified would change the effect of the existing rule.

Reasons Supporting Proposal: During a periodic rule review required by RCW 43.70.041, the department and the orthotics and prosthetics advisory committee identified several needed clarifications as reflected in this proposal.

Statutory Authority for Adoption: RCW 18.200.050.

Statute Being Implemented: Chapter 18.200 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5) (b) (iv) exempts rules that only correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule does not affect the underlying rule requirements and does not impact small businesses.

May 25, 2022
 Kristin Peterson, JD
 Deputy Secretary
 Policy and Planning
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3652.1

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-850-030 Application requirements. An applicant for licensure shall submit to the department the following:

(1) A completed application and fee as required in chapter 246-12 WAC, Part 2;

(2) ~~((a))~~ Official transcripts, certificate, or other documentation forwarded directly from the issuing agency where the applicant has earned a bachelor degree or completed a certificate program from a program accredited by NCOPE or CAAHEP, or any other accrediting body with substantially equivalent requirements;

~~((b) Documentation of successful completion of the clinical patient management course, if the applicant completes education requirements for licensure on or after January 1, 2020;))~~

(3) Documentation of completion of an approved internship or residency as described in WAC 246-850-050;

(4) Documentation of successful completion of licensing examinations as ~~((approved by the secretary))~~ described in WAC 246-850-060;

(5) Verification from all states in which the applicant holds or has held a license, whether active or inactive, indicating that the applicant is or has not been subject to charges or disciplinary action for unprofessional conduct or impairment; and

(6) Additional documentation as required by the secretary to determine whether an applicant is eligible for licensure.

[Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-850-030, filed 12/23/20, effective 1/23/21. Statutory Authority: RCW 18.200.050. WSR 19-09-065, § 246-850-030, filed 4/16/19, effective 5/17/19. Statutory Authority: RCW 18.200.050(1). WSR 98-21-086, § 246-850-030, filed 10/21/98, effective 11/21/98.]

AMENDATORY SECTION (Amending WSR 19-09-065, filed 4/16/19, effective 5/17/19)

WAC 246-850-060 Examination requirements. (1) An applicant for licensure as an orthotist shall successfully complete the following examinations:

- (a) The Washington state jurisprudence examination; and
- (b) As prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics:
 - (i) ~~The orthotic written multiple choice examination ((prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics));~~
 - ~~((b))~~ (ii) ~~The orthotic written simulation examination ((prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics)); and~~
 - (c) ~~((The Washington state jurisprudence examination.))~~ If the applicant completes the education requirements for licensure on or after January 1, 2020, the orthotic clinical patient management exam.

(2) An applicant for licensure as a prosthetist shall successfully complete the following examinations:

- (a) The Washington state jurisprudence examination; and
- (b) As prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics:
 - (i) ~~The prosthetic written multiple choice examination ((prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics));~~
 - ~~((b))~~ (ii) ~~The prosthetic written simulation examination ((prepared and administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics)); and~~
 - ~~((c) The Washington state jurisprudence examination.))~~ (iii) If the applicant completes the education requirements for licensure on or after January 1, 2020, the prosthetic clinical patient management exam.

(3) An applicant who has successfully completed examinations administered by the American Board for Certification in Orthotics, Prosthetics and Pedorthics prior to July 1, 1991, may be considered by the secretary in order to determine if the applicant meets alternative standards that are substantially equivalent.

[Statutory Authority: RCW 18.200.050. WSR 19-09-065, § 246-850-060, filed 4/16/19, effective 5/17/19. Statutory Authority: RCW 18.200.050(8). WSR 99-07-122, § 246-850-060, filed 3/24/99, effective 4/24/99.]

WSR 22-12-057

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 26, 2022, 1:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-055.

Title of Rule and Other Identifying Information: Family initiated treatment (FIT) - Appropriately trained professional person, WAC 182-130-0100.

Hearing Location(s): On July 5, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_WTXFmGytRneqXTKRdsCGcA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 6, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 5, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by June 17, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The authority is amending these rules to fix an error in the final CR-103P rule text filed under WSR 21-18-058. The agency held a public hearing and agreed to a request from the hearing to add psychiatric advanced registered nurse practitioners to the definition of appropriately trained person in addition to other housekeeping changes. The authority agreed, however, the final rule text filed under WSR 21-18-058, effective September 26, 2021, inadvertently did not include the addition of psychiatric advanced registered nurse practitioners or the other housekeeping fixes.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71.34.670, 41.05.021, 41.05.160.

Statute Being Implemented: RCW 71.34.670, 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Enos Mbajah, P.O. Box 55056, Olympia, WA 98504-5056, 360-725-1879.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose a disproportionate cost impact on businesses.

May 26, 2022
Wendy Barcus
Rules Coordinator

OTS-3800.1

AMENDATORY SECTION (Amending WSR 21-18-058, filed 8/26/21, effective 9/26/21)

WAC 182-130-0100 Family initiated treatment (FIT)—Appropriately trained professional person. (1) An appropriately trained professional person means a psychiatrist, psychologist, psychiatric nurse, social worker, licensed marriage and family therapist, licensed mental health counselor, psychiatric advanced registered nurse practitioner, and other mental health professionals as defined by the department of health under chapter 71.05 RCW.

(2) An appropriately trained professional person can also be a substance use disorder professional, or those who hold co-occurring substance use disorder and mental health credentials as defined by the department of health under chapter 18.205 RCW.

(3) The professional person evaluating for purposes of admission or outpatient treatment for a mental health disorder must hold mental health or co-occurring credentials.

(4) The professional person evaluating for purposes of admission or outpatient treatment for a substance use disorder must hold substance use disorder or co-occurring credentials.

[Statutory Authority: RCW 71.34.670, 41.05.021 and 41.05.160. WSR 21-18-058, § 182-130-0100, filed 8/26/21, effective 9/26/21.]

WSR 22-12-067
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed May 27, 2022, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-096.

Title of Rule and Other Identifying Information: New WAC
415-02-210 What is an indexed retirement allowance?

Hearing Location(s): On July 5, 2022, at 10:00 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom link <https://us02web.zoom.us/j/81536579335>, Meeting ID 815 3657 9335, Dial-In 253-215-8782.

Date of Intended Adoption: July 6, 2022.

Submit Written Comments to: Rubi Reaume, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by June 24, 2022.

Assistance for Persons with Disabilities: Contact Rubi Reaume, phone 360-664-7311, email drs.rules@drs.wa.gov, by June 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Plan 3 of the public employees' retirement system (PERS), school employees' retirement system (SERS), and teachers' retirement system (TRS), and the law enforcement officers' and firefighters' retirement system (LEOFF) Plan 2 provide an increased benefit if retirement is delayed following separation from employment after 20 or more years of service. The increase is referred to as a benefit "index." This rule-making action will clarify how the indexed retirement benefit is calculated.

Reasons Supporting Proposal: The rule clarifies the application of the benefit indexing when a person separates on the first day of a month so that month is included in the calculation as there was ambiguity in the statute.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 41.50 RCW.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

May 27, 2022
Rubi Reaume
Rules Coordinator

OTS-3702.2

NEW SECTION

WAC 415-02-210 What is an indexed retirement allowance? If you are a member of an indexed retirement plan as defined in WAC 415-02-030 and have at least 20 years of service credit when you leave employment, your pension benefit will increase by three percent for each year you delay receiving it, up to your full retirement age. The increased amount is referred to as an indexed retirement allowance.

(1) **How will my indexed retirement allowance be calculated?** If there is a period of at least one month between your separation from employment in the plan and your date of retirement, the department will calculate your indexed retirement allowance in the following way:

Using the average salary, increase the retirement allowance from the date both of the following have occurred and end on the last day of the month prior to attainment of the full retirement age.

- (a) Separation from the retirement plan; and
- (b) Accrual of 20 years of service credit.

Example: A PERS Plan 3 member separates December 24, 2017, with 23 years of service credits at age 63 and defers receiving their retirement until age 65, January 1, 2019. This member will receive indexing starting January 2018 through December 2018 (12 months of indexing).

(2) **What if I return to service after completing 20 years of service credit?** If you separate with at least 240 months of service credits, wait to retire, then return to membership before retiring, the indexing of your retirement benefit will be calculated two ways, with the higher of the two being used for your retirement calculation.

(a) Method 1: Use the average salary from the first separation after you attained 20 years of service credit. Indexing would apply to the number of calendar months starting from the first separation date. Indexing ends the month prior to the chosen retirement date or attainment of the full retirement age whichever is sooner, and excludes the months of re-employment following the first separation date.

(b) Method 2: Use the highest average salary based on all earnings throughout the entire employment period. Indexing would apply from the last separation date to the end of the month prior to the chosen retirement date or full retirement age, whichever is sooner.

Example: You are a member of a single DRS retirement system who separates with at least 240 months of service credits, waits to retire, then returns to membership before retiring. You now have 20 years of service credits on your inactive employment period, and will have at least two separation dates. DRS will calculate the benefit in the following two ways and provide you the higher of the two results:

Method 1 - System AFC/FAS with Interruptive Indexing.

- Use the AFC/FAS from the first separation after you attained 20 years of service credit excluding months when you were reemployed.

Method 2 - System AFC/FAS without Interruptive Indexing.

- Use the highest AFC/FAS based on all earnings, where indexing only be allowed from the last separation date to the retirement date.

(3) If your separation from employment occurs on the first of the month, that month will be included in the months indexed between separation and retirement. Any separation date after the first of the month will have indexing begin the following month.

[]

WSR 22-12-068

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 27, 2022, 10:49 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-292-010, Definitions, abbreviations and acronyms, and 246-292-085 Grandparented certification. The department of health (department) is proposing to eliminate the term "grandparented certification" and replaces it with the term "legacy certification."

Hearing Location(s): On July 12, 2022, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health (DOH) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Register in advance for this webinar <https://us02web.zoom.us/join/91012022001>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: July 19, 2022.

Submit Written Comments to: Nina Helpling, DOH, Division of Environmental Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, nina.helpling@doh.wa.gov [nina.helpling@doh.wa.gov], by July 12, 2022.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by July 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal replaces the historically racist term "grandparent" with the term "legacy" without making a substantive change. Currently, the existing rules use the term "grandparented certification" to mean a certified operator who received their certification prior to January 1, 2001, and has been granted an exemption from the operator in responsible charge requirements for the initial education, experience, and examination requirements for the public water system's assigned certification classification and can continue to operate under the existing set of regulations; however, the term "grandfathered" carries problematic connotations, as it was coined in the late 1800s to suppress voting rights. The proposed change is intended to help achieve procedural and outcome fairness, promoting dignity, honor, and respect for all people.

Reasons Supporting Proposal: The ratification of the 15th Amendment stated that all citizens of the United States to vote shall not be denied or abridged by the United States or by any state in the account of race, color, or previous condition of servitude. Some states enacted amendments to prevent African American citizens from exercising their right to vote, by stating that an illiterate man could vote as long as he or his lineal ancestor (i.e., grandfather) had been a registered voter before 1867 - three years before the passage of the 15th Amendment.

E2SHB 1783, chapter 332, Laws of 2020, was adopted and as a result established the formulation of chapter 43.06D RCW, Office of equity (OOE). OOE was founded to foster guiding principles to identify and coordinate effective strategies that focus on eliminating systemic

barriers for historically and currently marginalized groups by providing a unified vision around equity for all state agencies. OOE uses equitable lenses to assist government agencies to promote diversity, equity, and inclusion in all aspects of their decision making; including, but not limited to, services, programming, policy development, budgeting, and staffing. These equitable lenses were designed to develop, strengthen, and support policies and procedures that distribute and prioritize resources to those who have been historically and currently marginalized, eliminate systemic barriers that have been deeply entrenched in systems of inequality and oppression, and achieve procedural and outcome fairness, promoting dignity, honor, and respect for all people.

In order to embrace principles established by the OOE, the department is proposing amendments to the term "grandfather" within the waterworks operator certification rule, chapter 269-292 WAC.

The department consulted with the Environmental Protection Agency (EPA) Region 10, to determine if amending the term to legacy would conform to EPA's anti-backsliding provisions. In February 2022, EPA's Region 10 office informed the department that changing the term, while not changing its intended use or making any substantive changes, would be an acceptable modification of the rule language.

The proposed amendments do not diminish the department's enforceability of the chapter to carry out an operator certification program pursuant to Safe Drinking Water Act regulations and the primacy agreement between the department and EPA. Making this change advances the department's desire to be equitable and inclusive of all people.

Statutory Authority for Adoption: RCW 70A.120.050.

Statute Being Implemented: RCW 70A.120.050.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: William Bernier, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3562.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 27, 2022
Lauren Jenks
Assistant Secretary

OTS-3759.1

AMENDATORY SECTION (Amending WSR 22-07-025, filed 3/9/22, effective 4/9/22)

WAC 246-292-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Air gap"** means a physical separation measured vertically between the lowest point of a free-flowing discharge end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

(2) **"Approved air gap"** is defined in chapter 246-290 WAC.

(3) **"Approved AVB (approved atmospheric vacuum breaker)"** is defined in chapter 246-290 WAC.

(4) **"Approved backflow preventer"** is defined in chapter 246-290 WAC.

(5) **"Approved backflow prevention assembly"** is defined in chapter 246-290 WAC.

(6) **"Authority having jurisdiction"** means the local official, board, department, or agency authorized to administer and enforce the Uniform Plumbing Code adopted in chapter 19.27 RCW.

(7) **"AVB (atmospheric vacuum breaker)"** means a device that contains an air inlet, vent, air inlet valve, and check seat and is used to prevent backsiphonage backflow.

(8) **"BAT (backflow assembly tester)"** means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to inspect, field test, maintain, and repair backflow prevention assemblies, devices, and air gaps that protect the public water system.

(9) **"Backflow"** means the reversal of flow of water or other substances through a cross-connection into the public water system or consumer's water system.

(10) **"Backflow preventer"** means a backflow prevention assembly, air gap, or AVB.

(11) **"Backflow preventer inspection and field test"** means the set of procedures and measurements performed by a BAT to evaluate a backflow preventer's approval status, installation, and performance to determine compliance with the requirements in WAC 246-290-490.

(12) **"Backflow prevention assembly"** means a mechanical backflow preventer designed for in-line testing and repair including, but not limited to:

(a) Reduced pressure backflow assembly;

(b) Reduced pressure detector assembly;

(c) Double check valve assembly;

(d) Double check detector assembly;

(e) Pressure vacuum breaker assembly; or

(f) Spill-resistant vacuum breaker assembly.

(13) **"BTO (basic treatment operator)"** means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform routine on-site duties in a water treatment plant. BTO duties affect water treatment plant performance, public water system performance, water quality, water quantity, or public health protection.

(14) **"CCS (cross-connection control specialist)"** means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to develop and implement a cross-connection control program.

(15) "**Certificate**" means a document issued annually by the department stating that the operator has met the requirements for a specific certified operator classification in WAC 246-292-060.

(16) "**Certified operator**" means an individual meeting the requirements of this chapter, certified under chapter 70A.120 RCW, and who has a valid certificate for one or more of the following classifications:

- (a) BAT;
- (b) BTO;
- (c) CCS;
- (d) WDS;
- (e) WDM; or
- (f) WTPO.

(17) "**CEU (continuing education unit)**" means the nationally recognized measurement, similar to college credit, developed by IACET, in which one CEU is awarded for every 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(18) "**College credit**" means a measurement that documents completion of educational courses earned toward a college degree from an accredited college or university.

(19) "**Community water system**" means any Group A public water system providing service to 15 or more service connections used by year-round residents for 180 or more days within a calendar year, regardless of the number of people, or regularly serving at least 25 year-round (i.e., more than 180 days per year) residents.

(20) "**Consumer**" means any person receiving water from a public water system from either the meter or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(21) "**Consumer's premises**" means a consumer's real property, any easement held by a consumer for the purpose of delivering the water to the consumer's real property, and all buildings and fixtures on the consumer's real property.

(22) "**Consumer's water system**" means any potable or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(23) "**Contract operator**" means a certified operator who is approved by the department to operate three or more Group A public water systems.

(24) "**Cross-connection control program**" means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

(25) "**Department**" means the Washington state department of health.

(26) "**Distribution system**" means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

(27) "**GED**" means the general educational development test of the American Council on Education.

(28) (~~"Grandparented certification" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the public water system's assigned certification classification.~~

~~(29))~~ **"Gross negligence"** means an act or omission performed or not performed in reckless disregard of a legal duty, or without even slight care.

~~((30))~~ (29) **"GWI (groundwater under the direct influence of surface water)"** means any water beneath the surface of the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

~~((31))~~ (30) **"IACET"** means the International Association for Continuing Education and Training.

(31) "Legacy certification" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience, and examination requirements for the public water system's assigned certification classification.

(32) **"Major segment"** means a distinct portion of a public water system based on system size and complexity that a purveyor assigns to one or more certified operators in responsible charge.

(33) **"Nationally recognized association of certification authorities"** means an organization that:

(a) Serves as an information center for certification activities;

(b) Recommends minimum standards and guidelines for classification of potable water treatment plants, distribution systems, and certification of operators;

(c) Facilitates reciprocity between a state or provincial program; and

(d) Assists authorities in establishing new certification programs and updating existing programs.

(34) **"Noncommunity water system"** means a Group A public water system that is not a community water system. Noncommunity water systems are further defined as nontransient noncommunity and transient noncommunity.

(35) **"Nontransient noncommunity water system"** means a Group A public water system that provides service opportunities to 25 or more of the same nonresidential people for 180 or more days within a calendar year.

(36) **"OIT (operator in training)"** means an individual with less than the required amount of operating experience meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform routine on-site duties in a water treatment plant or distribution system.

(37) **"Operating experience"** means the routine performance or management of duties:

(a) In a water treatment plant or distribution system; and

(b) That affect water treatment plant performance, distribution system performance, water quality, water quantity, or public health protection.

(38) "**Operating shift**" means a designated period of time in which a certified operator makes decisions and takes actions that directly impact drinking water quality, water quantity, or public health protection.

(39) "**Person**" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(40) "**Premises isolation**" is defined in chapter 246-290 WAC.

(41) "**Professional growth reporting period**" means a designated period of time not less than three years, in which a certified operator completes the professional growth requirement in WAC 246-292-095.

(42) "**Public water system (Group A public water system)**" means:

(a) A system with 15 or more service connections, regardless of the number of people; or

(b) A system serving an average of 25 or more people per day for 60 or more days within a calendar year, regardless of the number of service connections; and

(c) In addition, a Group A public water system is further defined in WAC 246-290-020.

(43) "**Purveyor**" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(44) "**Relevant excess education**" means science, applied science, or technology CEUs or college credits that exceed the minimum education required for certification in a specific certified operator classification. Example fields of study include, but are not limited to:

(a) Biology;

(b) Chemistry;

(c) Engineering;

(d) Geology; and

(e) Physics.

(45) "**Relevant water system training**" means training that directly relates to information and procedures that influence water quality, water quantity, or public health protection, including:

(a) The operation or maintenance activities of a public water system; or

(b) Managing the operation or maintenance activities of a public water system.

(46) "**Responsible charge**" means the authority a purveyor grants to a certified operator to make decisions:

(a) That will directly impact water quality, water quantity, or public health protection of a public water system; and

(b) Regarding the daily operational activities, process control, or system integrity of a water treatment plant or distribution system.

(47) "**SMA (satellite system management agency)**" means a person that is approved by the department under chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis without the necessity for a physical connection between the systems.

(48) "**Surface water**" means a body of water open to the atmosphere and subject to surface runoff.

(49) "**Transient noncommunity water system**" means a Group A public water system that serves:

(a) Twenty-five or more different people each day for 60 or more days within a calendar year; or

(b) Twenty-five or more of the same people each day for 60 or more days, but less than 180 days within the calendar year.

(50) "**USC**" means the University of Southern California.

(51) "**Validated examination**" means an examination that is independently reviewed by subject matter experts, to verify that the examination is based on a job analysis and, where applicable, is related to the classification of a water treatment plant and distribution system.

(52) "**Water-related experience**" means experience:

(a) Operating a water treatment plant or distribution system;

(b) Working in water quality, water resources, or water infrastructure in a federal, state, county, local, or other governmental agency;

(c) Working in industrial water;

(d) Working in wastewater treatment; or

(e) Working as a consulting engineer or operations consultant in water quality, water resources, or water infrastructure.

(53) "**Water treatment plant**" means that portion of a public water system that treats or improves the physical, chemical, or microbial quality of the system's water to comply with water quality requirements in chapter 246-290 WAC.

(54) "**WDM (water distribution manager)**" means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform or manage routine on-site duties in the distribution system of a public water system that serves more than 250 people. WDM duties affect the public water system performance, water quality, water quantity, or public health protection.

(55) "**WDS (water distribution specialist)**" means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform or manage on-site duties in a distribution system of a public water system that serves 250 people or less. WDS duties affect public water system performance, water quality, water quantity, or public health protection.

(56) "**WFI (water facilities inventory)**" means the department form required in WAC 246-290-480(2) that summarizes a public water system's characteristics.

(57) "**WTPO (water treatment plant operator)**" means an individual meeting the requirements of this chapter and certified under chapter 70A.120 RCW to perform or manage on-site duties in a water treatment plant. WTPO duties affect plant performance, public water system performance, water quality, water quantity, or public health protection.

[Statutory Authority: RCW 43.70.040 and 2020 c 20. WSR 22-07-025, § 246-292-010, filed 3/9/22, effective 4/9/22. Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-010, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW. WSR 05-06-122, § 246-292-010, filed 3/2/05, effective 4/2/05. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-010, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-010, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-010, filed 12/27/90, effective 1/31/91. Statutory Author-

ity: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-020, filed 9/22/78.]

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

WAC 246-292-085 ((Grandparented)) Legacy certification. (1) A certified operator who received a ((grandparented)) legacy certification prior to January 1, 2001, remains subject to the following:

(a) A ((grandparented)) legacy operator certification is valid only for the designated public water system and is not transferable to another operator or public water system;

(b) An operator with a ((grandparented)) legacy certification shall meet all renewal requirements in WAC 246-292-090; and

(c) If an operator with a ((grandparented)) legacy certification fails to renew the certificate as required in WAC 246-292-090, the operator shall no longer be certified. If the certificate expires, the operator must apply for a new certification and meet all the requirements of a new applicant as required in WAC 246-292-060 and 246-292-070.

(2) If the classification of a water treatment plant or distribution system changes to a higher level, the ((grandparented)) legacy certification is no longer valid. The purveyor shall comply with the requirements for obtaining a certified operator, as required in WAC 246-292-040 and 246-292-050.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-085, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW. WSR 05-06-122, § 246-292-085, filed 3/2/05, effective 4/2/05. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-085, filed 12/29/00, effective 1/29/01.]

WSR 22-12-069
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed May 27, 2022, 1:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-004.

Title of Rule and Other Identifying Information: Licensing—Foundational quality standards for early learning programs. WAC 110-300-0221 Diaper changing areas and disposal.

Hearing Location(s): On July 5, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including July 5, 2022, will be considered.

Date of Intended Adoption: July 6, 2022.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by July 5, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by July 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to prevent someone not affiliated with an early learning program and not on its premises from viewing its diaper changing area. The proposed change to the existing rule requires early learning providers to cover, or otherwise obscure, any windows through which someone on the public right-of-way could view the program's diaper changing area to eliminate the possibility of someone on the public right-of-way from viewing undressed, or partially undressed, infants and toddlers during diaper changes. Providers working in programs housed in buildings with occupants offering other services will be required to prevent visibility of their diaper changing areas for people in the building not affiliated with their programs and not entering the licensee's premises.

Reasons Supporting Proposal: DCYF was petitioned to amend WAC 110-300-0221, more specifically to "add a subsection to specifically detailing [sic] what a diaper-changing area must NOT have/be." Petitioner noted that his child attends a day care with a diaper changing area "directly adjacent to external windows," and that his daughter's diaper changes were visible from the public sidewalk in front of the building. Since early learning providers are not necessarily able, nor are they expected to, control the activities happening on sidewalks or other areas external to their programs' licensed space, DCYF must protect the safety of children in care by preventing the potential for viewing, photographing, or filming diaper changes.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065, and 43.216.250.

Statute Being Implemented: RCW 43.216.250.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DCYF believes the proposed rule protects children while allowing impacted providers the flexibility to choose the modification that works best for their

program, including no- or low-cost options such as covering windows with paper, fabrics, program-related posters, or purchased vinyl cling privacy film.

Name of Proponent: Michael C. Bennett, petitioner, and DCYF, private and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tyler Farmer, Olympia; Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DCYF staff circulated a draft rule to all licensed early learning program providers and solicited their comments. The comments were considered, the draft rule was revised, and staff met with groups of family home child cares and child care centers to share the revised draft and hear comments.

Early learning programs that require diaper changing areas are located in family homes or centers. A family home-based program must have one diaper changing area; a center-based program must have one diaper changing area per classroom or age grouping of children that require diapering. The licensee or program staff determine where to locate the diaper changing area within the licensed space.

DCYF staff discussed with family home and center providers no- or lost [low-cost] options for covering windows, such as paper, fabric, or program-related posters. Some providers expressed reluctance to cover their windows and block the natural light they provide and reluctance to relocate their diaper changing area.

Privacy control frosted window film obscures visibility through the window without blocking the natural light. This window film is available from home improvement stores and mail order sources at a cost of no more than \$35 for a 48-in. x 78-in. panel. The film is a vinyl cling with easy do-it-yourself installation that requires only a spray bottle, water, towels or paper towels, a squeegee, and, if necessary, scissors to cut the vinyl to the window size. A 48-in. x 78-in. panel covers one pane of a standard-sized sliding glass door.

DCYF staff believes the vinyl cling window film to be the highest-cost compliance option, and it is well below the \$2,992 (minor cost calculation) or \$1,015 (0.3 percent of average annual gross business income) minor cost thresholds that trigger a small business economic impact statement.

May 27, 2022
Brenda Villarreal
Rules Coordinator

OTS-3766.1

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

WAC 110-300-0221 Diaper changing areas, privacy, and disposal.

(1) ((A)) Center early learning providers must have a designated diaper changing area, including stand-up diapering, for each classroom or for every age grouping of children who require diapering. Only one diaper changing area is required ((at a)) for family home early learning ((provider)) programs.

(a) ((A)) Diaper changing areas must:

(i) Be separate from areas where food is stored, prepared, or served;

(ii) Have a sink with hot and cold running water, not used for food preparation and clean up;

(iii) Have a sturdy surface or mat that:

(A) Is not torn or repaired with tape;

(B) Is washable;

(C) Has a moisture resistant surface that is cleanable; and

(D) Is large enough to prevent the area underneath the diaper changing area from being contaminated with bodily fluids.

(iv) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and

(v) Be uncluttered and not used for storage of any items not used in diapering a child.

(b) ((An)) Early learning providers must not leave ((a child)) children unattended on the diaper changing surface or mat during the diaper changing process;

(c) ((An)) Early learning providers must not use safety belts on diaper changing tables because they are neither cleanable nor safe; ((and))

(d) ((An)) Early learning providers must post an easily viewable diaper changing procedure at each station and must follow each step described in the procedure; and

(e) Early learning providers must prevent the viewing of a partially or fully undressed child during diaper changes by members of the public who are not on the early learning premises. For the purpose of this subsection, "members of the public" means anyone not affiliated with the providers' early learning programs.

(2) If ((an)) early learning providers use((s)) a diaper changing station, the station must:

(a) Have a handwashing sink within arm's reach of, or be readily accessible to, an early learning provider to prevent cross contamination; and

(b) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and either:

(i) A table or counter large enough to accommodate the length of a child, with a protective barrier at least three and one-half inches high on all sides from the surface the child lays on; or

(ii) A wall mounted diaper changing station that meets manufacturer guidelines and specifications in addition to the requirements of this section.

(3) If ((an)) early learning providers use((s)) reusable or cloth diapers, the diapers must:

(a) Not be rinsed;

(b) Be placed in a securely sealed moisture impervious bag;

(c) Be stored in a separate disposal container; and

(d) Be delivered to a commercial laundry service or given to the child's parent or guardian at least daily.

(4) (~~An~~) Early learning providers must provide a container designated for disposing of soiled diapers and diapering supplies only. The diaper disposal container must be:

(a) Hands-free and covered with a lid to prevent cross contamination;

(b) Lined with a disposable plastic trash bag; and

(c) Within arm's length of the diaper changing area.

[WSR 18-15-001, recodified as § 110-300-0221, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0221, filed 6/30/18, effective 8/1/19.]

WSR 22-12-070
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed May 27, 2022, 1:33 p.m.]

Supplemental Notice to WSR 22-01-207.

Preproposal statement of inquiry was filed as WSR 21-01-032.

Title of Rule and Other Identifying Information: WAC 110-145-1425

What are the qualifications of an executive director or administrator?, 110-145-1430 What are the requirements of an on-site program manager?, 110-145-1440 What are the duties and qualifications of case management staff?, 110-145-1445 What are the qualifications of direct care staff persons?, 110-145-1450 What additional qualifications must the crisis residential center direct care staff have?, 110-145-1460 Do I need to employ consultants at my facility?, 110-145-1475 What are the requirements for volunteers working directly with children and youth at my facility?, and 110-145-1725 When do I need a treatment plan for children under my care?

Hearing Location(s): On July 5, 2022, telephonic. Oral comments may be made by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through and including July 5, 2022, will be considered.

Date of Intended Adoption: July 6, 2022.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, Olympia, WA 98504-0975, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by July 5, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by July 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules expand the qualified pool of potential employees for licensed foster care group care facilities by amending the required education, prerequisite work experience, and other requirements as follows:

- Eliminate college degree concentration restriction of "social services or a closely related field."
- Expand allowed work experience to include "caring for vulnerable populations."
- Increase case management consulting time from 1:20 hours to 1:40 [hours] of case management work.
- For executive directors and administrators:
 - Align the required education and experience for executive directors with that of program managers, and
 - Allow more types [of] acceptable work experience.
- For program managers:
 - Lower the college degree requirements and reduce the required work experience from four to three years for individuals who have no degree,
 - Allow employers to determine when program managers must be on-site, and
 - Require telephone availability when not on-site only during business hours.
- For case managers:

- Allow a college degree equivalency.
 - For all direct care staff:
 - Reduce the required work experience from one year to six months.
 - For direct care staff who are not employed by a residential crisis center:
 - Create a work experience equivalency for students who are attending certain classes, and
 - Expand the criteria under which 18- to 21-year-olds may work in licensed facilities.
 - For volunteers:
 - Lower the minimum age from 21 to 18, and
 - Establish requirements for supervising volunteers.
- The proposed rules require all positions to:
- Meet additional duties and qualifications detailed in any written agreement between their employing agency and any governmental entity, and
 - Comply with any accreditation requirements that apply to their agencies.

Finally, the proposals clarify when treatment plans for children in care are needed and what they must contain, and require agencies to have and follow a written policy that describes the duties, responsibilities, and professional qualifications, and safety requirements for direct care staff.

Reasons Supporting Proposal: The proposed rules give licensees more flexibility for hiring decisions, expand the pool of potential employees, and provide experienced workers more pathways to promotional opportunities.

Statutory Authority for Adoption: RCW 74.15.030.

Statute Being Implemented: RCW 74.15.030.

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

Name of Proponent: DCYF at the request of and in partnership with licensed group care facilities and their advocates, The Mockingbird Society, Youthcare, and the Washington Association for Children and Families, public and governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Olympia, Washington, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)] (i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Briefly summarize the agency's analysis showing how costs were calculated. There are nominal to no costs associated with the proposed rules for small businesses. The rules pertain to group care facilities' potential employees' required education and work experience.

May 27, 2022
Brenda Villarreal
Rules Coordinator

OTS-3325.7

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1425 What are the duties and qualifications of an executive director or administrator? (1) ~~((You must have))~~ An executive director or administrator ~~((who is available telephonically during business hours and meets the qualifications to))~~ must:

(a) Manage the financial ~~((and))~~ administrative, and service operations of the ~~((program))~~ facility;

(b) Be available by telephone during the regularly scheduled business hours of the facility and in-person as needed;

(c) Ensure that the program complies with all relevant and applicable laws, specifically chapter 74.15 RCW, and the licensing rules ~~((contained))~~ in this chapter;

~~((e Effectively))~~ (d) Communicate to the department the roles, expectations, and purposes of the program;

~~((d))~~ (e) Assume responsibility for health, safety, and well-being of children in ~~((your))~~ the care of their facility; ~~((and~~ (e)) (f) Comply with any professional accreditation requirements that apply to the agency; and

(g) Work with representatives of other agencies.

(2) An executive director or administrator must ~~((have))~~:

(a) ~~((Appropriate education relevant to the specific program; and))~~ Meet the experience and education requirements of a program manager, detailed in WAC 110-145-1430(4), unless the facility employs another person as the program manager;

(b) ~~((Four years of successful))~~ Have experience with the same or similar duties ~~((and responsibilities for))~~ . Such experience must be relevant to the administrative oversight ~~((r))~~ and program and fiscal management of an agency as indicated in the agency's policies and procedures; and

(c) Meet additional duties and qualifications detailed in any written agreement between the agency and any state governmental entity, if applicable. If the requirements of this section conflict with the terms in a written and signed agreement, then the higher standard shall apply.

[WSR 18-14-078, recodified as § 110-145-1425, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1425, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1430 What are the ~~((requirements))~~ duties and qualifications of ~~((an on-site))~~ a program manager? (1) ~~((On days your facility is operational, you must have an on-site))~~ A program manager must be on-site at ~~((your))~~ their facility ~~((during business hours when youth are present. Staffed residential facilities licensed for five or fewer are required to have an on-site program manager during~~

~~business hours when youth are present if the focus of the program is behavioral and a child's behavior poses a risk. The on-site program manager must meet the qualifications to:))~~ according to written and agreed upon terms detailed in the agency's program manager position description, policies and procedures, and in any written and signed agreement between the agency and a state governmental entity, if applicable.

(2) A program manager must:

~~(a) Coordinate and oversee the facility's day-to-day ((operations of the program))~~ services provided to children or youth;

~~(b) Supervise ((the)) case ((management))~~ managers and direct care staff; ((and))

~~(c) ((Have the responsibility to))~~ Monitor staff development and training;

~~(d) Ensure ((the completion of)) each child's or youth's treatment and care plan ((of care and treatment.~~

~~(2) When youth are not present and the program manager is not on-site, he or she must be available by telephone))~~ is executed and completed;

(e) Comply with any professional accreditation requirements that apply to the agency; and

(f) Be available by telephone during the agency's regularly scheduled business hours according to written and agreed upon terms detailed in the agency's program manager position description, policies and procedures, and any written and signed agreement between the agency and any governmental entity, if applicable.

~~(3) ((An on-site))~~ A program manager must have ((one or more of the following)):

~~(a) A ((master's))~~ bachelor's degree ((in social services or a closely related field)) from an accredited ((school)) college or university and one year of similar, full-time experience working with ((children or youth)) vulnerable populations;

~~(b) ((A bachelor's))~~ An associate's degree ((in social services or a closely related field)) from an accredited ((school)) college or university and two years of similar, full-time experience working with ((children or youth)) vulnerable populations; or

~~(c) ((Five))~~ Three years of ((successful)) similar, full-time experience ((in a relevant field)) working with ((children or youth; and

~~(i) Supervisory abilities that promote effective staff performance; and~~

~~(ii) Relevant experience, training and demonstrated skills in each area that he or she will be managing or supervising))~~ vulnerable populations.

~~(4) ((An on-site))~~ Program managers must not provide clinical oversight to case ((management staff)) managers unless ((they)) the program manager also meets the ((supervision requirements)) qualifications detailed in WAC ((388-145-1440(3))) 110-145-1440(2).

~~(5) A case ((management staff))~~ manager or another person with the equivalent training and experience of ((an on-site)) a program manager may ((satisfy this requirement)) serve as a program manager.

~~(6) ((For overnight youth shelters, the required prior experience must be in working with adolescents.))~~ A program manager must meet additional duties and qualifications detailed in any written and signed agreement between the agency and any governmental entity, if applicable. If the requirements of this section conflict with the terms in a written and signed agreement, then the higher standard shall apply.

[WSR 18-14-078, recodified as § 110-145-1430, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1430, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1430, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1440 What are the ((requirements)) duties and qualifications of a case ((management staff)) manager? (1) Case managers are required for facilities that provide medical or therapeutic services to children or youth. A case ((management staff will provide individualized case management and coordination of)) manager must coordinate and administer services ((. For emergency respite centers and resource and assessment centers, the on-site program manager may provide individualized case management and coordination of services so additional case managers are not required. The on-site program manager must meet qualifications in WAC 388-145-1430)) for individual children and youth served by the agency.

(2) ((Case management staff hired before January 10, 2015 must have five years of experience or a bachelor's degree in social services or closely related field from an accredited school.)) A case manager must have:

(a) A master's degree from an accredited college or university;

(b) A bachelor's degree from an accredited college or university and consult with a person with a master's degree at least one hour for every 40 hours of case management work; or

(c) Four years' full-time work experience directly working with, managing, or overseeing vulnerable populations in a related field and consult with a person with a master's degree at least one hour for every 40 hours of case management work.

(3) ((Case management staff hired after January 10, 2015 must have a master's or bachelor's degree in social services or a closely related field from an accredited school.

(4) Case management staff who has only a bachelor's degree must consult with a person with a master's degree in social services or closely related field. One hour of consultation must occur every twenty hours the employee works.

(5-)) Case managers must ((maintain)):

(a) Maintain training, experience, knowledge, and demonstrated skills in each area ((s/he)) they will be supervising;

(b) Maintain skills and understanding needed to effectively manage cases; and

(c) ((The ability to monitor staff development and training)) Comply with any professional accreditation requirements that apply to the agency.

((+6) You)) (4) An agency may use case ((management staff)) managers employed or provided by another agency if ((these staff meet)):

(a) The case manager meets the ((educational qualifications and you have)) experience and education requirements in this section; and

(b) There is a written agreement ((with the agency)) between the agencies describing the scope of services to be provided by the case manager.

(5) A case manager must meet additional duties and qualifications detailed in any written and signed agreement between the agency and any state governmental entity, if applicable. If the requirements of this section conflict with the terms in a written and signed agreement, then the higher standard shall apply.

[WSR 18-14-078, recodified as § 110-145-1440, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1440, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1440, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1445 What are the duties and qualifications of direct care staff? (1) ~~((Each))~~ Direct care staff must:

(a) Be at least ~~((twenty-one))~~ 21 years of age, ~~((unless they meet the requirements))~~ except as provided for in subsection (2) of this section;

(b) Have a high school diploma or ~~((high school or equivalency course of study (GED/HSEC))~~ equivalent credential, for example, a GED or HSEC;

~~((Have one year of experience working directly with children. Two years of social services education may be substituted for the required experience;~~

~~((d))~~ Have the skills and ability to ((work successfully with the special)) assist with the needs of children and youth in care; ((and

~~((e) Have effective communication and problem solving skills.))~~

(d) Meet at least one of the following criteria:

(i) Have at least six months of similar, full-time experience working directly with vulnerable populations; or

(ii) Be attending classes at an accredited college or university related to caring for vulnerable populations; and

(e) If applicable, meet additional duties and qualifications detailed in:

(i) Any professional accreditation requirements that apply to the agency; and

(ii) Any written and signed agreement between the agency and any state governmental entity. If the requirements of this section conflict with the terms in a written and signed agreement, then the higher standard shall apply.

(2) Direct care staff may be between ~~((eighteen))~~ 18 and ~~((twenty-one))~~ 21 years of age if ~~((they provide sufficient documentation demonstrating one or more of the following))~~ the direct care staff meet the requirements detailed in subsection (1)(b) through (e) of this section, and work:

~~(a) ((They are professionals licensed by the Washington department of health;)) At a facility licensed only to provide care for children younger than 13 years of age; or~~

~~(b) ((They have an associate of arts, the equivalent degree, or greater; or~~

~~(c) They are enrolled in an internship or practicum program with an accredited college or university.~~

~~(3) Direct care staff under twenty-one years of age and enrolled in an internship or practicum program must be supervised by staff at least twenty-one years of age.~~

~~(4) You)) At a facility licensed to provide care for children 13 years of age and older if the direct care staff person works at all times with at least one other staff person who:~~

~~(i) Is at least 21 years old;~~

~~(ii) Is on-site and readily available to help when needed; and~~

~~(iii) Has at least one year of similar, full-time experience working directly with vulnerable populations.~~

~~(3) An agency must maintain sufficient direct care staff who meet the education and training requirements defined in this chapter to ensure the health, safety, and well-being of children and youth in care.~~

~~((5) Case aides must meet the requirements for direct care staff.)) (4) (a) A facility licensed under this chapter that employs direct care staff persons, must have and follow a written policy that describes the duties, responsibilities, professional qualifications, and safety requirements for direct care staff persons.~~

~~(b) A policy under this section must be reviewed and approved by the department:~~

~~(i) After the effective date of subsection (3) of this section but before any newly hired direct care staff person provides services directly to children or youth on behalf of the facility; or~~

~~(ii) Prior to the agency renewing its license.~~

[WSR 18-14-078, recodified as § 110-145-1445, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1445, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1445, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1450 What are the duties and additional qualifications ((must the)) for crisis residential center direct care staff ((have))? (1) Direct care staff at a crisis residential center (CRC) must care for, supervise, and manage the behavior of children or youth in care.

(2) At least ((fifty)) 50 percent of ((the)) direct care staff at a CRC must have completed:

(a) A bachelor's degree from an accredited college or university;
or

(b) At least two academic years' worth of credit hours from an accredited college or university and one year of full-time work ((in) experience at a group residential program for adolescents ~~((and (e)))~~.

(3) Direct care staff at a CRC under subsection (2) of this section may substitute experience for ((education)) educational requirements on a year-for-year basis.

~~((2) The remaining))~~ (4) Direct care staff ((at a CRC)) who do not meet the requirements detailed in subsection (2) of this section must have ((a minimum of)) a high school diploma or ((high school equivalency course of study (GED/HSEC)) equivalent credential, for example, a GED or HSEC and at least one of the following:

(a) ((One year of successful)) Six months of full-time experience working with youth in a group setting; or

(b) One year of ((successful)) experience as a foster parent ~~((and (e)))~~ with placement of one or more children or youth in their 24-hour care.

(5) Direct care staff at a CRC under subsection (4) of this section may substitute two academic years' worth of credit hours from an accredited college ((may be substituted)) or university for the required experience under subsection (4) (a) and (b) of this section.

~~((3) The primary duties of the))~~ (6) If applicable, direct care staff at a crisis residential center ((are the care, supervision, and behavioral management of youth)) must meet additional duties and qualifications detailed in:

(a) Any professional accreditation requirements that apply to the agency; and

(b) Any written and signed agreement between the agency and any state governmental entity. If the requirements of this section conflict with the terms in a written and signed agreement, then the higher standard shall apply.

(7) (a) A CRC licensed under this chapter that employees direct care staff persons must have and follow a written policy that describes the duties, responsibilities, professional qualifications, and safety requirements for direct care staff persons.

(b) A policy under this section must be reviewed and approved by the department:

(i) After the effective date of this subsection but before any newly hired direct care staff person provides services directly to children or youth on behalf of the facility; or

(ii) Prior to the agency renewing their license.

[WSR 18-14-078, recodified as § 110-145-1450, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1450, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1460 ((Do I need to employ)) What are the duties and qualifications for case management consultants ((at my facility))?

(1) ((You)) An agency must have case management consultants available

as needed to work with ~~((your))~~ its staff, the children ~~((you serve))~~ and youth in care, and the ~~((children's))~~ families of children and youth in care. ~~((Other))~~ Additional consultants may be used ~~((for))~~ to support programs ~~((support))~~ and services.

(2) A case management consultant is responsible for:

(a) Reviewing treatment or case plans as appropriate;

(b) ~~((Providing one hour of consultation/supervision to))~~ Consulting with or supervising case ~~((management staff))~~ managers at least one hour for every ~~((twenty))~~ 40 hours ~~((a person works))~~ of case management work. Staff consultations ~~((shall))~~ must be documented and available ~~((to))~~ for staff ~~((on an as-needed basis))~~ to review as needed; ~~((and))~~

(c) Monitoring ~~((staff's))~~ and documenting the skill development ~~((in order to effectively manage their cases))~~ of staff; and

(d) Complying with any professional accreditation requirements that apply to the agency.

(3) Each case management consultant must have:

(a) A master's degree ~~((in social services or a closely related field))~~ from an accredited ~~((school))~~ college or university;

(b) The training, experience, knowledge, and demonstrated skills for each area ~~((in))~~ which ~~((he or she))~~ they will be supervising or advising;

(c) The ability to ensure staff develop their skills, are adequately trained, and have the understanding needed to effectively manage cases; and

(d) Knowledge of mandatory child abuse and neglect reporting requirements.

(4) A case management consultant(s) may be ~~((hired as staff))~~ employed by an agency or operate under a contract ~~((and))~~.

(5) A case management consultant must meet or exceed the ~~((full))~~ professional competency requirements and academic training ~~((in))~~ required by their ~~((respective))~~ professional field(s).

~~((5))~~ (6) In addition to the requirements in this section, a case management consultant(s) working in an emergency respite center(s, they) must ~~((also))~~ have training and experience in early childhood education.

(7) A case management consultant must meet any written and signed agreement between the agency and any state governmental entity, if applicable. If the requirements of this section conflict with the terms in a written and signed agreement, then the higher standard shall apply.

[WSR 18-14-078, recodified as § 110-145-1460, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1460, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1460, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1475 What are the requirements for volunteers working directly with children and youth at my facility? (~~((1) These~~) Volunteers who do or may have access to children or youth must ((meet the licensing requirements listed in this chapter, including meeting the qualifications for direct care staff and must)):

~~((a))~~ (1) Be at least ((twenty-one)) 18 years of age ((unless they are between eighteen and twenty-one years of age in an internship or practicum program as per WAC 388-145-1445; and

~~(b))~~;

(2) Be supervised by a staff person who:

(a) Is at least 21 years of age; and

(b) Has at least one year of similar, full-time experience working directly with vulnerable populations;

(3) Receive the facility's preservice training that addresses the roles, responsibilities, and duties of a volunteer, as well as the needs of the population of children in care who the volunteer will be working with;

(4) Not have unsupervised access to children in care unless the volunteer:

(a) Satisfies the preservice training requirements detailed in WAC 110-145-1490; and

(b) Meets the qualifications of a direct care staff person detailed in WAC 110-145-1445;

(5) Meet all other relevant requirements detailed in this chapter and Title 110 WAC, including background check requirements under chapter 110-04 WAC; and

(6) Meet additional duties and qualifications detailed in the agency's position description, policies and procedures, and any written agreement between the agency and any state governmental entity, if applicable.

[WSR 18-14-078, recodified as § 110-145-1475, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1475, filed 5/23/18, effective 6/23/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1475, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1725 When do I need a treatment plan for children ((under my)) in care and what must be included in the plan? (1) (~~((if you are providing care to))~~) An agency must develop and implement an individualized written treatment plan for each child or youth in care if the agency:

(a) Provides care or services to children or youth who are under the care and authority of the department((, and you have contracts or agreements)); and

(b) Has an agreement with the department to provide treatment or therapeutic services (~~(, you must assist in developing and implementing a written treatment plan for each child by the thirtieth day in care)~~).

(2) ~~((The))~~ Treatment plans required by this section must:

(a) Be developed and implemented on or before the child or youth's 30th day in care;

(b) Be approved by a case manager or consultant;

(c) Identify the service needs of the child (~~((r))~~) or youth and the child or youth's parent or guardian;

~~((b))~~ (d) Describe the treatment goals and strategies for achieving those goals;

~~((e))~~ (e) Include an ongoing account of the treatment received by the child or youth and others involved in the treatment plan, such as any group treatment or individual counseling; and

~~((d))~~ (f) Be updated at least quarterly to show the progress toward meeting goals and (~~(list)~~) identify barriers to the permanent plan.

(3) ~~((A master's level case management staff person or consultant must review and sign approving the child's treatment plan.))~~ An individual instruction and support plan required under WAC 388-826-0044 for youth receiving out-of-home services administered by the department of social and health services, developmental disabilities administration will satisfy the requirement in subsection (1) of this section.

[WSR 18-14-078, recodified as § 110-145-1725, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1725, filed 12/11/14, effective 1/11/15.]

WSR 22-12-079

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 31, 2022, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-011.

Title of Rule and Other Identifying Information: The department is proposing to repeal and amend sections of chapter 388-71 WAC, Home and community services and programs; and chapter 388-113 WAC, Disqualifying crimes and negative actions.

Hearing Location(s): On July 5, 2022, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see DSHS website for the most current information.

Date of Intended Adoption: Not earlier than July 6, 2022.

Submit Written Comments to: DSHS rules coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., July 5, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on June 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to repeal and amend sections of chapters 388-71 and 388-113 WAC because of the implementation of the consumer directed employer (CDE) with the passage of SB [ESSB] 6199 in 2018, and the change from individuals providers contracted with the department to individual providers employed by CDE. The current rules will no longer be applicable once all individual providers have been hired by CDE.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.39A.250.

Statute Being Implemented: RCW 74.08.090, 74.39A.250.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-2071.

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

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(b)(iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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

Is exempt under RCW 34.05.328 (5)(b)(iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 26, 2022

Katherine I. Vasquez

SHS-4923.3

AMENDATORY SECTION (Amending WSR 22-06-088, filed 3/1/22, effective 4/1/22)

WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through WAC 388-71-05640? "Agency provider" means a long-term care worker who works for a home care agency.

"Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management services and supports to individuals ((eighteen)) 18 and older who receive medicaid-funded LTC in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Background check" means a name and date of birth check, or a fingerprint-based background check, or both.

"Background check result" is defined in WAC 388-113-0010.

"Background check central unit (BCCU)" means the DSHS entity responsible for conducting background checks for the department.

"Character, competence, and suitability determination (CC&S)" is defined in WAC 388-113-0050.

"Client" means an individual receiving medicaid-funded in-home long term services from the department.

"Department" means the department of social and health services or its designees.

"Family member" includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

"Home care agency (HCA)" means an entity that is licensed by the department of health to provide home care services through a contract arrangement with the department to clients in places of permanent or temporary residence.

"Home care agency long-term care worker" means a long-term care worker who works for a home care agency.

~~(("Individual provider (IP)" as defined in RCW 74.39A.240 limited to individual providers contracted with the department.))~~

"Long-term care worker" as defined in RCW 74.39A.009(17) but limited to ((individual providers contracted with the department or)) caregivers hired by the home care agency.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"Negative actions" are listed in WAC 388-113-0030.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074. WSR 22-06-088, § 388-71-0503, filed 3/1/22, effective 4/1/22. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0503, filed 8/30/21, effective 10/1/21.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0510 What are the qualifications of a LTC worker ((providing in-home services)) under this chapter? In order to be qualified as a long-term care worker, an applicant must:

- (1) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;
- (2) Not be disqualified based on a character, competence, and suitability determination;
- (3) Complete training and certification requirements listed in WAC 388-71-0520 and WAC 388-71-0523; and
- (4) If required, have an active home care aide certification or other qualifying credential by the department of health((†))

~~((5) In addition to the qualifications listed in subsections (1) through (4) of this section, an individual provider must:~~

- ~~(a) Have a current and valid individual provider services contract with DSHS to provide personal care services;~~
- ~~(b) Pass the federal exclusion list screening;~~
- ~~(c) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23;~~
- ~~(d) Be eighteen years of age or older;~~
- ~~(e) Provide the department with a valid: Social Security card and picture ID, as determined by DSHS)).~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0510, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0510, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0510, filed 12/20/12, effective 1/20/13. Statutory Authority: 2004 c 276 § 206 (6)(b) and *Townsend vs. DSHS*, U.S. District Court, Western District of Washington, No. C 00-0944Z. WSR 04-16-029, § 388-71-0510, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0510, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0510, filed 1/13/00, effective 2/13/00.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0511 When is a background check required of an (~~individual provider or~~) agency provider? (~~(1) Individual providers are required to complete and pass a name and date of birth background check before initial contracting with the department.~~)

~~((2))~~ (1) Agency providers are required to complete and pass a name and date of birth background check prior to working with a client.

~~((3))~~ (2) (~~Individual providers and a~~) Agency provider workers are required to complete and pass a name and date of birth background check:

(a) Every two years; and

(b) Any time (~~the department or~~) the home care agency employer requests a new check.

~~((4))~~ (3) In addition to the name and date of birth background check, (~~individual providers and~~) agency providers are required to complete and pass a fingerprint-based background check:

(a) If hired after January 7, 2012, and in accordance with provisional hire rules in WAC 388-113-0109;

(b) If they have lived out of state since the last fingerprint-based background check was completed; or

(c) Any time the (~~department or~~) home care agency requests a new check.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0511, filed 8/30/21, effective 10/1/21.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0513 How does an (~~individual provider or~~) agency provider complete a background check? (1) The (~~individual provider or~~) agency provider must:

(a) Complete the background check authorization form;

(b) Answer all questions on the background check authorization form truthfully;

(c) Obtain a fingerprint-based background check result;

(d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;

(e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and

(f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.

(2) It is the responsibility of the home care agency to ensure compliance with subsection (1) of this section for its agency providers.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326,

74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0513, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0513, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0513, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0513, filed 5/4/01, effective 6/4/01.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0520 What are the training requirements for ((an individual provider or)) a home care agency long-term care worker? ((An individual provider or a)) A home care agency long-term care worker, hired on or after January 7, 2012, must meet the training requirements described in WAC 388-71-0836 through 388-71-1006. These training requirements also apply to ((individual providers or)) home care agency long-term care workers who were hired before January 7, 2012, if they did not complete prior training requirements within ((one hundred twenty)) 120 days of hire and they want to be reinstated to work as a long term care worker. These training requirements and certification, if required, must be met prior to reinstating these individuals to work as a long term care worker.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0520, filed 12/20/12, effective 1/20/13. Statutory Authority: 2008 c 146, RCW 18.20.090, 74.08.090, chapter 70.128 RCW. WSR 09-03-066, § 388-71-0520, filed 1/14/09, effective 2/14/09. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0520, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. WSR 04-02-001, § 388-71-0520, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. WSR 02-10-117, § 388-71-0520, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0520, filed 1/13/00, effective 2/13/00.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0523 What are the training and certification requirements for individual providers and home care agency long-term care workers? The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers, including criteria for those providers working limited hours for one person, caring ((for only)) only for one's child or parent, and providing respite services only((-)):

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, CN-A, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required ((twelve)) <u>12</u> hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	<u>Not required.</u> Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839.
(2) An individual provider or home care agency long-term care worker with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on date of his or her hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	Required. ((Twelve)) <u>12</u> hours ((from July 1, 2012)) under WAC 388-71-0990 and 388-71-0991.	Not required.
(3) An individual provider or home care agency long-term care worker.	((Contracted with the department or hired)) <u>Hired</u> by a licensed home care agency <u>or the consumer directed employer</u> to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours ((per)) <u>under</u> WAC 388-71-0860.	Required. ((Seventy)) <u>70</u> hours under WAC 388-71-0870 and 388-71-0875.	Required. ((Twelve)) <u>12</u> hours under WAC 388-71-0990 and 388-71-0991.	Home care aide certification required under WAC 388-71-0975. Home care aide certification required under WAC 388-71-0975 within ((two hundred)) <u>200</u> days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(4) An individual provider who works limited hours for one person.	Contracted individual providing ((twenty)) <u>20</u> hours or less of care for one person per calendar month and does not meet the criteria in (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) <u>30</u> hours under WAC 388-71-0880.	Not required.	Not required.
(((6) WAC 388-71-0523 REGISTER NO.: WSR 21-10-001, filed 8/30/21 PROBLEM: filed new text should (5))) (5) An individual who provides only respite services and works ((three hundred)) <u>300</u> hours or less in any calendar year.	(a) ((Contracted)) <u>An individual providing only respite care and works no more than ((three hundred)) <u>300</u> hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section.</u> (b) <u>Individual providing only respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.</u>	Required. Two hours under WAC 388-71-0860.	((An individual who provides only respite services and works three hundred or less in any calendar year.)) <u>Required. Three hours under WAC 388-71-0860.</u>	((Contracted individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (7) of this section.)) <u>Required. Seven hours under WAC 388-71-0890.</u>	((Required. Two hours under WAC 388-71-0860.)) <u>Not required.</u>	((An individual who provides only respite services and works three hundred hours or less in any calendar year.)) <u>Not required.</u>
(6) An individual provider caring only for his or her biological, step, or adoptive adult child.	((Contracted)) <u>An individual providing care only for his or her adult child that receives services through the developmental disabilities administration and not exempt under (1) or (2) of this section.</u>	Required. Two hours per WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(7) An individual provider caring only for his or her biological, step, or adoptive child, or parent.	((Contracted)) An individual providing care only to his or her child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) 30 hours under WAC 388-71-0880.	Required((-An)) for an individual provider caring only for his or her biological, step, or adoptive child or parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for his or her biological, step, or adoptive child under WAC 388-71-1001.	Not required.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0523, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0523, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-113-0010 What definitions apply to this chapter? "Applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that may have unsupervised access, as defined in RCW 43.43.830 to minors or vulnerable adults.

"Authorized entity" means a service provider, licensee, contractor, or other public or private agency that:

- (1) Is required to conduct background checks under the rules listed in WAC 388-113-0005; and
- (2) Is authorized to conduct the background checks through the background check central unit.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check central unit (BCCU)" means a division within the department that processes background checks for department authorized service providers and department programs who serve vulnerable individuals across Washington state.

"Background check result" means a notification letter produced by the BCCU that describes the outcome of the background check, as described in WAC 388-113-0101, but does not, by itself, include criminal history record information (CHRI).

"Criminal history record information" means the information found in the Records of Arrests and Prosecutions (RAP) sheet about a person's arrests and convictions.

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

"Drug" means a:

- (1) Controlled substance as defined in RCW 69.50.101;
- (2) Legend drug, as defined in RCW 69.41.010;
- (3) Precursor drug under Chapter 69.43 RCW; or
- (4) Imitation controlled substance, as defined in RCW 69.52.020.

"Final finding" is described in WAC 388-71-0105.

"Founded" is defined in WAC 110-30-0020.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation (FBI).

"Individual provider (IP)" as defined in RCW 74.39A.240.

"Minor" means any person under the age of ((eighteen)) 18 who is receiving services from a program or facility under chapter 388-71 WAC, Home and community services and programs, chapter 388-106 WAC, Long-term care services, chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-78A WAC, Assisted living facility licensing rules, chapter 388-97 WAC, Nursing homes, chapter 388-101 WAC, Certified community residential services and supports, chapter 388-107 WAC, Licensing requirements for enhanced service facilities, or chapter 388-825 WAC, Developmental disabilities administration service rules.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"Negative Action" means actions as described in WAC 388-113-0030.

"Pending charge" means a criminal charge for a crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

"Record of Arrest and Prosecution (RAP sheet)" means a record kept by law-enforcement authorities of a person's arrests and convictions.

"Requesting entity" means the person or entity that requested the background check from the background check central unit (BCCU).

"Unsupervised access" is described in RCW 43.43.830(13).

"Vulnerable adult" is defined in RCW 74.34.020(17).

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0010, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0010, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 21-23-014, filed 11/4/21, effective 12/5/21)

WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access

to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, 388-115, and 388-107 WAC? (1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, 388-115, and 388-107 WAC must not work in a position that may involve unsupervised access to minors or vulnerable adults if the individual has been convicted of or has a pending charge for any of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2 (less than five years);
- (g) Assault 3 (less than five years);
- (h) Assault 4/simple assault (less than three years);
- (i) Assault 4 domestic violence felony;
- (j) Assault of a child;
- (k) Burglary 1;
- (l) Child buying or selling;
- (m) Child molestation;
- (n) Coercion (less than five years);
- (o) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (p) Communication with a minor for immoral purposes;
- (q) Controlled substance homicide;
- (r) Criminal mistreatment;
- (s) Custodial assault;
- (t) Custodial interference;
- (u) Custodial sexual misconduct;
- (v) Dealing in depictions of minor engaged in sexually explicit conduct;
- (w) Drive-by shooting;
- (x) Drug crimes involving one or more of the following:
- (i) Manufacturing or possession with the intent to manufacture a drug;
- (ii) Delivery or possession with the intent to deliver a drug other than marijuana;
- (iii) Delivery of marijuana (less than three years).
- (y) Endangerment with a controlled substance;
- (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- (bb) Forgery (less than five years);
- (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (dd) Identity theft (less than five years);
- (ee) Incendiary devices (possess, manufacture, dispose);
- (ff) Incest;
- (gg) Indecent exposure/public indecency (felony);
- (hh) Indecent liberties;
- (ii) Kidnapping;
- (jj) Luring;
- (kk) Malicious explosion 1;
- (ll) Malicious explosion 2;
- (mm) Malicious harassment;
- (nn) Malicious placement of an explosive 1;

- (oo) Malicious placement of an explosive 2 (less than five years);
- (pp) Malicious placement of imitation device 1 (less than five years);
- (qq) Manslaughter;
- (rr) Murder/aggravated murder;
- (ss) Possess depictions minor engaged in sexual conduct;
- (tt) Promoting pornography;
- (uu) Promoting prostitution 1;
- (vv) Promoting suicide attempt (less than five years);
- (ww) Prostitution (less than three years);
- (xx) Rape;
- (yy) Rape of child;
- (zz) Residential burglary;
- (aaa) Robbery 1;
- (bbb) Robbery 2 (less than five years);
- (ccc) Selling or distributing erotic material to a minor;
- (ddd) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (eee) Sexual exploitation of minors;
- (fff) Sexual misconduct with a minor;
- (ggg) Sexually violating human remains;
- (hhh) Stalking (less than five years);
- (iii) Theft 1 (less than (~~ten~~) 10 years);
- (jjj) Theft from a vulnerable adult 1;
- (kkk) Theft 2 (less than five years);
- (lll) Theft from a vulnerable adult 2 (less than (~~ten~~) 10 years);
- (mmm) Theft 3 (less than three years);
- (nnn) Unlawful imprisonment;
- (ooo) Unlawful use of building for drug purposes (less than five years);
- (ppp) Use of machine gun in a felony;
- (qqq) Vehicular assault;
- (rrr) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;
- (sss) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and
- (ttt) Voyeurism.

(2) If "(less than (~~ten~~) 10 years)," "(less than five years)," or "(less than three years)" appears after a crime listed in subsection (1) of this section, the individual is not automatically disqualified if the required number of years has passed since the date of the conviction. This will result in a letter from the background check central unit indicating a character, competence, and suitability review is required before allowing unsupervised access to children or vulnerable adults. This provision applies to convictions that the department has determined under subsection (3) of this section as equivalent to a crime listed in subsection (1) of this section once the period of time listed in subsection (1) of this section has passed.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

(4) In instances where a court has issued a certificate of restoration of opportunity of one of the crimes listed above, according to the procedure in RCW 9.97.020, the conviction is not automatically disqualifying but is subject to a character, competence, and suitability review.

[Statutory Authority: RCW 74.08.090, 43.43.842, and 74.39A.056. WSR 21-23-014, § 388-113-0020, filed 11/4/21, effective 12/5/21; WSR 18-08-066, § 388-113-0020, filed 4/2/18, effective 5/3/18. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0020, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-113-0025 Are there any exceptions to the automatic disqualification under WAC 388-113-0020?

(1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

(a) Has worked continuously for the same employer for whom he or she was working on July 24, 2014; and

(b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on July 24, 2014; and

(c) Works for a program or facility that operates under chapters 388-71 WAC, (~~Individual providers and~~) home care agencies; 388-115 WAC, individual providers; 388-106 WAC, long-term care services; 388-76 WAC, Adult family ((home)) homes; 388-78A WAC, Assisted living ((facility)) facilities; or 388-97 WAC, Nursing homes and was convicted of, or has a pending charge for:

(i) Residential burglary;

(ii) Unlawful use of building for drug purposes (five or more years);

(iii) Vehicular assault; or

(d) Works for a program or facility that operates under chapter 388-825 WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:

(i) Assault 3;

(ii) Manufacture of a controlled substance;

(iii) Delivery of a controlled substance; or

(iv) Possession of a controlled substance with the intent to manufacture or deliver.

(2) In addition to the requirements under subsection (1) (~~(7)~~) of this section, in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:

(a) The conviction date for the crimes listed in (1)(c) and (d) must be before July 25, 2014;

(b) The individual has to continue to work for the same employer; and

(c) The employer or hiring entity must:

(i) Review the individual's character, competence, and suitability to have unsupervised access to minors or to vulnerable adults, and;

(ii) Have documentation on file demonstrating the results of the character, competence, and suitability review; and

(iii) Have documentation on file demonstrating that the individual meets all of the conditions in subsection (2) of this section, including a copy of a background check result letter dated prior to July 25, 2014, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, recodified as § 388-113-0025, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0040, filed 6/24/14, effective 7/25/14.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0500	What is the purpose of this section of the chapter?
WAC 388-71-0505	Who hires and supervises an individual provider?
WAC 388-71-0507	What responsibilities do clients have related to individual provider work week limits?
WAC 388-71-0518	What responsibilities do individual providers have related to work week limitation?
WAC 388-71-0540	When will the department reject your choice of individual provider?
WAC 388-71-05410	What are the client's rights if the department rejects their choice of individual provider?
WAC 388-71-0543	When may the department reject your choice of an individual provider?
WAC 388-71-0561	When does an individual provider have the right to an administrative hearing and how can a hearing be requested?
WAC 388-71-05640	Self-directed care—Who must direct self-directed care?
WAC 388-71-06020	What is the purpose of WAC 388-71-06020 through 388-71-06165?
WAC 388-71-06040	What definitions apply to WAC 388-71-06020 through 388-71-06165?
WAC 388-71-06060	What is the purpose of the referral registry?
WAC 388-71-06080	Who is eligible to request a list of providers from the referral registry?

- WAC 388-71-06125 Who hires an IP or prospective IP?
- WAC 388-71-06145 What requirements must an applicant satisfy to be placed on the referral registry as a provider?
- WAC 388-71-06150 What requirements does an IP or prospective IP have to meet in order to continue to be listed on the referral registry?
- WAC 388-71-06155 When will an IP or prospective IP be removed from the referral registry?
- WAC 388-71-06165 Can the removal of an IP or prospective IP from the referral registry be contested?

WSR 22-12-085

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 31, 2022, 6:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-174.

Title of Rule and Other Identifying Information: WAC 246-811-010, 246-811-030, 246-811-035, 246-811-046, and new WAC 246-811-025 and 246-811-050 in chapter 246-811 WAC, Substance use disorder professionals and substance use disorder professional trainees. The department of health (department) is proposing amending and creating new rule sections to implement and align with EHB 1311 (chapter 165, Laws of 2021), which allows individuals to meet substance use disorder professional education requirements by completing an apprenticeship program. The proposed rules create definitions pertaining to apprenticeships, set instruction and experience hour requirements for trainees completing apprenticeships, and make other amendments necessary to clarify the chapter and add apprenticeship as a pathway to becoming a substance use disorder professional or trainee.

Hearing Location(s): On July 12, 2022, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_IzJ_ktxfTQaDCcPN2wV7Uw. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: July 19, 2022.

Submit Written Comments to: Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, by July 12, 2022.

Assistance for Persons with Disabilities: Contact Ted Dale, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov, by July 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to and new sections in chapter 246-811 WAC: (1) Create definitions pertaining to apprenticeships, (2) set hour requirements for instruction and experience, (3) clarify substance use disorder professional and trainee credential requirements for individuals completing apprenticeship programs, (4) make other amendments necessary to add apprenticeship as a pathway to become a substance use disorder professional or trainee, (5) update internal cross-references and other terminology, and (6) make other amendments as appropriate to clarify requirements for substance use disorder professionals and trainees. These amendments implement EHB 1311 and create the regulatory framework necessary for individuals completing substance use disorder apprenticeships to become credentialed by the department.

The department of labor and industries (L&I) regulates all Washington apprenticeships. The proposed rules align with L&I regulations and allows individuals to complete substance use disorder professional education requirements by completing an apprenticeship approved by both the department and L&I.

Reasons Supporting Proposal: Currently, chapter 246-811 WAC, which regulates SUDP and SUDPT, requires college coursework to meet requirements for certification. EHB 1311 amended the statute to also

allow apprenticeship. The proposed rules are necessary to create the regulatory framework for individuals to become credentialed after completing substance use disorder apprenticeships instead of college coursework. Creating enforceable standards through rule will allow the department to consistently monitor and enforce rules that protect patient safety.

Statutory Authority for Adoption: RCW 18.205.060.

Statute Being Implemented: EHB 1311 (chapter 165, Laws of 2021).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Dale, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2991.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov.

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments do not impact businesses.

May 31, 2022
 Kristin Peterson, JD
 Deputy Secretary
 Policy and Planning
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3521.2

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly states otherwise.

(1) "Agency" means a community behavioral health agency or facility operated, licensed, or certified by the state of Washington, a federally recognized Indian tribe located with the state, a county, a federally qualified health center, or a hospital.

(2) "Apprentice" means an individual enrolled in an approved and registered apprenticeship program.

(3) "Approved and registered apprenticeship program" means a substance use disorder apprenticeship program approved by the secretary under chapter 18.205 RCW and registered by the department of labor and industries under chapter 49.04 RCW.

(4) "Approved school" means any college or university accredited by a national or regional accrediting body, at the time the applicant completed the required education or other educational programs approved by the secretary.

~~((3))~~ (5) "Competent instructor" has the same meaning as provided in WAC 296-05-003.

(6) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee, that offer, assist, or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential.

~~((4))~~ (7) "Core competencies of substance use disorder counseling" means competencies oriented to assist individuals with substance use disorder in their recovery. Core competencies include the following nationally recognized areas:

- (a) Knowledge;
- (b) Skills;
- (c) Attitudes of professional practice, including assessment and diagnosis of substance use disorder;
- (d) Substance use disorder treatment planning and referral;
- (e) Patient and family education in substance use disorder;
- (f) Individual and group counseling;
- (g) Relapse prevention counseling; and
- (h) Case management.

~~((5))~~ (8) "Department" means the department of health.

(9) "Direct supervision" means the supervisor is on the premises and available for immediate consultation.

~~((6))~~ (10) "Enrolled" means participating in an approved school ((and progressing toward the completion of the course work, or completion of the course work to be certified as)) or approved and registered apprenticeship program, whether a substance use disorder professional trainee is engaged in or has completed course work as described in WAC 246-811-030 ((2)) (3)(a) through (w).

~~((7))~~ (11) "Individual formal meetings" means a meeting with an approved supervisor, involving one approved supervisor and no more than four supervisees.

~~((8))~~ (12) "Official transcript" means the transcript from an approved college or school, in an envelope readily identified as having been sealed by the school.

~~((9))~~ (13) "Out-of-state" means any state or territory of the United States.

~~((10))~~ (14) "Probationary license" means a temporary license issued to out-of-state applicants qualifying for licensure reciprocity in Washington state under the restrictions and conditions of RCW 18.205.140 and this chapter.

((11)) (15) "Reciprocity" means licensure of out-of-state licensed counselors based on substantial equivalence between Washington state scope of practice and the scope of practice of the other state or territory, subject to a probationary licensure period to complete outstanding Washington state licensure requirements as determined necessary by the secretary to gain full licensure.

((12)) (16) "Recovery" means a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential. Recovery often involves achieving remission from active substance use disorder.

((13)) (17) "Related field" means health education, behavioral science, sociology, psychology, marriage and family therapy, mental health counseling, social work, psychiatry, nursing, divinity, criminal justice, and counseling education.

((14)) (18) "Related/supplemental instruction" or "RSI" has the same meaning as provided in WAC 296-05-003.

(19) "Substance use disorder counseling" means employing the core competencies of substance use disorder counseling to assist or attempt to assist individuals with substance use disorder in their recovery.

((15)) (20) "Substance use disorder professional" or "SUDP" means an individual certified in substance use disorder counseling under chapter 18.205 RCW and this chapter.

((16)) (21) "Substance use disorder professional trainee" or "SUDPT" means an individual (~~holding a credential~~) credentialed as an SUDPT and working toward the education and experience requirements for certification as a substance use disorder professional under chapter 18.205 RCW and this chapter.

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-811-010, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 18.205.100 and 18.205.060. WSR 16-14-052, § 246-811-010, filed 6/29/16, effective 7/30/16. Statutory Authority: Chapter 18.205 RCW. WSR 09-14-111, § 246-811-010, filed 6/30/09, effective 7/1/09. Statutory Authority: RCW 18.205.060(1). WSR 99-13-084, § 246-811-010, filed 6/14/99, effective 7/15/99.]

NEW SECTION

WAC 246-811-025 Certification of a substance use disorder professional. (1) An applicant for a substance use disorder professional certificate shall submit to the department:

- (a) An application on forms provided by the department;
- (b) Official transcripts or apprenticeship certificate of completion to verify meeting educational requirements under WAC 246-811-030;
- (c) Verification of meeting supervised experience hour requirements under WAC 246-811-046 or 246-811-050 on forms provided by the department;

(d) Official verification of meeting examination requirements under WAC 246-811-060; and

(e) The fee required under WAC 246-811-990.

(2) An applicant for a substance use disorder professional certificate under the alternative training path shall submit to the department:

- (a) An application on forms provided by the department;

- (b) Verification of meeting eligibility requirements for the alternative training path under WAC 246-811-076;
- (c) Official verification of meeting educational requirements under WAC 246-811-077;
- (d) Verification of obtaining the 1,000 supervised experience hours required under WAC 246-811-046 on forms provided by the department;
- (e) Official verification of meeting examination requirements under WAC 246-811-060; and
- (f) The fee required under WAC 246-811-990.

[]

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-030 Educational requirements. ~~((1))~~ Except as provided for in WAC 246-811-077 and 246-811-078, to be eligible for certification as a substance use disorder professional an applicant shall meet the education requirements in this section.

(1) The minimum education requirements for a substance use disorder professional credential are:

(a) An associate's degree in human services or related field from an approved school; ~~((or))~~

(b) Successful completion of ~~((ninety))~~ 90 quarter or ~~((sixty))~~ 60 semester college credits in courses from an approved school; or

(c) Successful completion of an approved and registered apprenticeship program.

(2) The minimum amount of instruction required in topics related to the substance use disorder profession is at least:

(a) Forty-five quarter ~~((or))~~ college credits;

(b) Thirty semester college credits ~~((must be in courses relating to the substance use disorder profession and shall))~~; or

(c) Four hundred fifty hours of related/supplemental instruction provided by a competent instructor in an approved and registered apprenticeship program.

(3) Education and apprenticeship program course work must include the following topics specific to individuals with substance use disorder in their recovery:

(a) Understanding addiction;

(b) Pharmacological actions of alcohol and other drugs;

(c) Substance abuse and addiction treatment methods;

(d) Understanding addiction placement, continuing care, and discharge criteria, including American Society of Addiction Medicine (ASAM) criteria;

(e) Cultural diversity including people with disabilities and its implication for treatment;

(f) Substance use disorder clinical evaluation (screening and referral to include comorbidity);

~~((ent))~~ (g) HIV/AIDS brief risk intervention for ~~((the chemically dependent))~~ individuals with a substance use disorder;

(h) Substance use disorder treatment planning;

(i) Referral and use of community resources;

(j) Service coordination (implementing the treatment plan, consulting, continuing assessment and treatment planning);

- (k) Individual counseling;
- (l) Group counseling;
- (m) Substance use disorder counseling for families, couples and significant others;
- (n) Client, family and community education;
- (o) Developmental psychology;
- (p) Psychopathology/abnormal psychology;
- (q) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data;
- (r) Substance use disorder confidentiality;
- (s) Professional and ethical responsibilities;
- (t) Relapse prevention;
- (u) Adolescent substance use disorder assessment and treatment;
- (v) Substance use disorder case management; and
- (w) Substance use disorder rules and regulations.

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-811-030, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 18.205.100 and 18.205.060. WSR 16-14-052, § 246-811-030, filed 6/29/16, effective 7/30/16. Statutory Authority: Chapter 18.205 RCW. WSR 09-14-111, § 246-811-030, filed 6/30/09, effective 7/1/09. Statutory Authority: RCW 18.205.060(1). WSR 99-13-084, § 246-811-030, filed 6/14/99, effective 7/15/99.]

AMENDATORY SECTION (Amending WSR 21-20-030, filed 9/24/21, effective 10/25/21)

WAC 246-811-035 Certification of a substance use disorder professional trainee. (1) ~~((The department of health will issue))~~ To apply for a substance use disorder professional trainee certificate ~~((to))~~ ~~an~~ ~~((individual who))~~ applicant shall:

- (a) ~~Submit~~ ~~((s))~~ an application on forms provided by the department ~~((provides))~~, including any written documentation needed to provide proof of meeting the eligibility requirements as indicated on the application;
- (b) ~~((Includes written documentation to meet the eligibility criteria;~~
- ~~-(e-))~~ Declare ~~((s))~~ that ~~((he or she is))~~ they are enrolled in an approved school or approved and registered apprenticeship program and gaining the experience required to receive a substance use disorder professional credential; and
- (c) Pay applicable fees in WAC 246-811-990.

(2) To apply for annual renewal, a substance use disorder professional trainee must submit to the department applicable fees in WAC 246-811-990 and a signed declaration with their annual renewal that states they:

- (a) Are enrolled in an approved ~~((education))~~ educational program or approved and registered apprenticeship program ~~((r));~~ or
- (b) Have completed the educational requirements ~~((r))~~ in WAC 246-811-030 and are obtaining the experience requirements for a substance use disorder professional credential in WAC 246-811-046 or 246-811-050.

(3) A substance use disorder professional trainee certificate can only be renewed four times, except as provided in RCW 18.205.095.

[Statutory Authority: RCW 18.225.040, 18.205.060, and 2021 c 57; RCW 18.225.145, 18.205.095. WSR 21-20-030, § 246-811-035, filed 9/24/21, effective 10/25/21. Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-811-035, filed 12/23/20, effective 1/23/21. Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-811-035, filed 6/1/20, effective 7/2/20. Statutory Authority: Chapter 18.205 RCW. WSR 09-14-111, § 246-811-035, filed 6/30/09, effective 7/1/09.]

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-046 Number of experience hours required for certification as a substance use disorder professional. Except as provided in WAC 246-811-050 and 246-811-070(1), an applicant (~~must~~) for substance use disorder professional certification shall complete the following experience requirements based on their level of formal education(~~-~~):

- (1) Two thousand five hundred hours of substance use disorder counseling, for individuals who have an associate degree; (~~or~~)
- (2) Two thousand hours of substance use disorder counseling for individuals who have a baccalaureate degree in human services or a related field from an approved school; (~~or~~)
- (3) One thousand five hundred hours of substance use disorder counseling for individuals who possess a master or doctoral degree in human services or a related field from an approved school; or
- (4) One thousand hours of substance use disorder counseling for individuals who are credentialed according to WAC 246-811-076. The experience must be supervised by an approved supervisor meeting the requirements under WAC 246-811-049(8).

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-811-046, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 18.205.100 and 18.205.060. WSR 16-14-052, § 246-811-046, filed 6/29/16, effective 7/30/16. Statutory Authority: Chapter 18.205 RCW. WSR 09-14-111, § 246-811-046, filed 6/30/09, effective 7/1/09. Statutory Authority: RCW 18.205.060(1). WSR 99-13-084, § 246-811-046, filed 6/14/99, effective 7/15/99.]

NEW SECTION

WAC 246-811-050 Certification of a substance use disorder professional or trainee through an apprenticeship program. (1) An ap-

prentice accepted into an approved and registered apprenticeship program:

- (a) May begin completing related/supplemental instruction at any time after becoming an apprentice; and
 - (b) Must be credentialed as a substance use disorder professional trainee under WAC 246-811-035 to obtain hours of supervised experience in substance use disorder counseling under subsection (2)(b) of this section.
- (2) To be eligible for certification as a substance use disorder professional under WAC 246-811-025, an apprentice shall:
- (a) Complete education requirements under WAC 246-811-030;
 - (b) Complete 2,500 hours of supervised experience in substance use disorder counseling;
 - (c) Meet supervision requirements under WAC 246-811-048; and
 - (d) Meet examination requirements under WAC 246-811-060.

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