

WSR 10-08-001
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket U-090222, General Order R-559—Filed March 24, 2010, 1:22 p.m., effective April 24, 2010]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-09 issue of the Register.

WSR 10-08-007
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed March 25, 2010, 2:03 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: To repeal our perchloroethylene dry cleaner regulation because it is no longer equivalent to Environmental Protection Agency's (EPA) updated rule. This repeal will eliminate conflicts between our rule and EPA's rule. The amended sections are for cross-reference purposes.

Citation of Existing Rules Affected by this Order: Repealing Regulation III, Section 3.03; amending Regulation I, Sections 5.03 and 5.07 and Regulation III, Section 2.01.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-05-100 on February 16, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 25, 2010.

James L. Nolan
Interim Executive Director

AMENDATORY SECTION

REGULATION I SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWW, CCCCC, HHH-HHH, WWWW, XXXXXX, YYYYYY, and ZZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SO_x), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinylester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) ~~(Reserved) ((Dry cleaners subject to Section 3.03 of Regulation III))~~; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥ 4 " diameter inlet):

- (A) Activated carbon adsorption;
- (B) Afterburner;
- (C) Barometric condenser;
- (D) Biofilter;
- (E) Catalytic afterburner;
- (F) Catalytic oxidizer;
- (G) Chemical oxidation;
- (H) Condenser;
- (I) Dry sorbent injection;
- (J) Flaring;
- (K) Non-selective catalytic reduction;
- (L) Refrigerated condenser;
- (M) Selective catalytic reduction; or
- (N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥ 10 " diameter inlet):

- (A) Baghouse;
- (B) Demister;
- (C) Electrostatic precipitator;
- (D) HEPA (high efficiency particulate air) filter;
- (E) HVAF (high velocity air filter);
- (F) Mat or panel filter;
- (G) Mist eliminator;
- (H) Multiple cyclones;
- (I) Rotoclone;
- (J) Screen;
- (K) Venturi scrubber;
- (L) Water curtain; or
- (M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥ 27 " diameter inlet);

(8) Sources with any of the following equipment:

- (A) Asphalt batch plants;
- (B) Burn-off ovens;
- (C) Coffee roasters;
- (D) Commercial composting with raw materials from off-site;
- (E) Commercial smokehouses with odor control equipment;
- (F) Concrete batch plants (ready-mix concrete);
- (G) Galvanizing;
- (H) Iron or steel foundries;
- (I) Microchip or printed circuit board manufacturing;
- (J) Rendering plants;
- (K) Rock crushers or concrete crushers;
- (L) Sewage treatment plants with odor control equipment;

- (M) Shipyards;
- (N) Steel mills; ~~(($\text{\textcircled{R}}$))~~
- (O) Wood preserving lines or retorts; or ~~(($\text{\textcircled{and}}$))~~
- (P) Dry cleaners using perchloroethylene; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air

contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

AMENDATORY SECTION

REGULATION I SECTION 5.07 ANNUAL REGISTRATION FEES

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. They shall be deemed delinquent if not fully paid within 45 days of the date of the invoice and shall be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$1,000. Persons knowingly under-reporting emis-

sions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,000, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$1,750 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,000;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$25 for each ton of CO and \$50 for each ton of NO_x, PM₁₀, SO_x, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,000;

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$5,000; and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$10,000.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons \$3,550;
- (2) 3,600,001 to 6,000,000 gallons \$1,765;
- (3) 1,200,001 to 3,600,000 gallons \$1,175;
- (4) 840,001 to 1,200,000 gallons \$590;
- (5) 200,001 to 840,000 gallons \$295.

(e) The following registered sources shall be assessed an annual registration fee of \$120, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

(3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(4) Unvented dry cleaners (~~subject to Section 3.03 of Regulation III~~) using perchloroethylene; and

(5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

AMENDATORY SECTION

REGULATION III SECTION 2.01 APPLICABILITY TO TOXIC AIR CONTAMINANT SOURCES

(a) Article 2 of this Regulation III shall apply to all sources of toxic air contaminants except that Section 2.05 shall not apply to the following:

(1) Asbestos Removal Operations subject to Article 4 of Regulation III

(2) Hard and Decorative Chromium Electroplating and Chromium Anodizing subject to 40 CFR Part 63, Subpart N

(3) Perchloroethylene Dry Cleaners (~~subject to Section 3.03 of Regulation III~~)

(4) Gasoline Storage and Dispensing Operations subject to Article 2 of Regulation II

(5) Graphic Arts Systems subject to Section 3.05 of Regulation II

(6) Can and Paper Coating Operations subject to Section 3.03 of Regulation II

(7) Motor Vehicle and Mobile Equipment Coating Operations subject to Section 3.04 of Regulation II

(8) Polyester/Vinylester/Gelcoat/Resin Operations subject to Section 3.08 of Regulation II

(9) Ethylene Oxide Sterilizers and Aerators subject to Section 3.07 of Regulation III

(10) Shipyard Coating Operations where all the coatings employed comply with the requirements in Table 2 in Subpart II 40 CFR Part 63 of NESHAP Shipbuilding and Ship Repair (Surface Coating) Operations

(b) Any demonstration required by this Article shall be conducted in accordance with Section 2.07 of this Regulation.

REPEALER

REGULATION III SECTION 3.03 PERCHLOROETHYLENE DRY CLEANERS

WSR 10-08-015

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 29, 2010, 8:37 a.m., effective April 29, 2010]

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

Purpose: Revises WAC 181-78A-105. Amends time frames for reviews of preparation programs. Adds flexibility and aligns reviews with reporting requirements to board.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-105].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-01-007 on December 2, 2009.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: March 24, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 09-20-109, filed 10/7/09, effective 11/7/09)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each college or university desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board ~~((and designated staff of the office of the superintendent of public instruction,))~~ a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment. ~~((Resubmit such plan to the designated official.))~~

(3) Submit such plan to the professional educator standards board. The college or university may be granted approval for full proposal development or denied approval.

(a) If approved, the college or university shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board ~~((and designated staff of the office of the superintendent of public instruction,))~~ a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4)) ~~((, provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program admin-~~

~~istrator program until the next regularly scheduled site visit of that institution));~~

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(iii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved ~~((for up to a two-year period))~~ in a specific location(s) for a period of up to twenty-seven months following the beginning of instruction. The institution shall notify the professional educator standards board when instruction has begun. If not approved, the college or university may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) ~~((During the second year))~~ Prior to the expiration of approval, staff of the ((office of the superintendent of public instruction)) professional educator standards board shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards; provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution.

(b) If denied, the college or university may resubmit its plan based upon the suggestions of the professional educator standards board.

(4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:

(a) A description of the location and facilities;

(b) Verification that no complaints have been filed against the program in its current location(s);

(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;

(d) A statement that supports need for the program;

(e) Cost to the students;

(f) Mode(s) of the program delivery; and

(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.

WSR 10-08-017
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 29, 2010, 8:52 a.m., effective April 29, 2010]

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

Purpose: Revises WAC 181-78A-100. Amends rules for appealing professional educator standards board decisions from a board process to the office of administrative hearings. Technical improvements to language.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-100].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-05-045 on February 10, 2010.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

Date Adopted: March 24, 2010.

David Brenna
 Legislative and
 Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-16-005, filed 7/23/08, effective 8/23/08)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to (~~colleges and universities~~) programs in the revision of their existing programs.

(1) All professional education programs shall be reviewed for approval under the 1997 program approval standards of chapter 181-78A WAC by August 31, 2000. Colleges and universities may permit individuals accepted into teacher preparation programs on or before August 31, 2000, to obtain certification by meeting requirements of programs approved under approval standards described in chapter 181-78 WAC if the individuals complete the program on or before August 31, 2003, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2003: Provided, That the profes-

sional educator standards board or its designee may waive this deadline on a case-by-case basis.

(2) All principal/program administrator programs shall be reviewed for approval under the 2002 program approval standards of chapter 181-78A WAC by August 31, 2004. Colleges and universities may permit individuals accepted into principal/program administrator programs on or before August 31, 2004, to obtain a residency certificate by meeting requirements of programs approved under 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2006, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2006. Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(3) All school counselor, school psychologist, or school social worker programs shall be approved under the 2004 program approval standards of chapter 181-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor, school psychologist, or school social worker programs on or before August 31, 2005, to obtain a residency certificate by meeting requirements of programs approved under the 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2007, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(4) Individuals who completed a principal/program administrator program on or before August 31, 2004, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2004. Individuals who complete an educational staff associate program on or before August 31, 2005, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2005.

(5) Institutions shall be given at least one year notification prior to a professional educator standards board review for compliance with these standards: Provided, That if an institution requests a visit with less than a year's notice, the professional educator standards board shall consider that request.

(6) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under the 1997 program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and the National Council for the Accreditation of Teacher Education (NCATE) as such agreement relates to the NCATE accreditation cycle and allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visit. Non-NCATE accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2).

(7) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards to the professional educator standards board for the year prior to the site visit.

(a) ~~((Thirty days prior to the visit, institutions will submit a previsit))~~ Institutions shall follow professional educator standards board posted timelines to submit an institutional report that shall:

(i) Describe how the program approval standards are met for each educator preparation program scheduled for review (NCATE reports may fulfill this requirement);

(ii) Describe how "unmet" standards or program weaknesses, identified during the previous site visit, have been corrected;

(iii) Describe major program(s) changes implemented since the last site visit;

(iv) Summarize all WEST-E data since the last site visit;

(v) Summarize all program completer survey data compiled since the last site visit;

(vi) Include all professional education advisory board reports submitted since the last site visit;

(vii) Summarize complaints related to the program(s) and actions taken to remedy the complaints; and

(viii) Describe the criteria used by the program(s) to assess, in multiple ways over time, its candidates' knowledge and skills, including evidence of positive impact on student learning.

(b) The site visit shall be conducted by a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) ~~((The professional education and certification division leader, who))~~ A designated professional educator standards board staff member shall serve as team leader. Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The ((office of superintendent of public instruction)) professional educator standards board liaison for that institution ((and the professional certificate program specialist, if a professional certificate program will be reviewed,)) may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(c) The site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board.

(d) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(e) Institutions may submit a ~~((rejoinder))~~ reply to the report within two weeks following ~~((the public posting))~~ receipt of the report. The reply may address issues for consideration, including a request for appeal per subsection (g)

of this section, limited to factual errors, evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

(f) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(6).

(g) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an ~~((appeal team whose members shall include three individuals selected from a cadre of trained site visit team members, including at least one higher education representative and one K-12 practitioner))~~ administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(8) Institutions seeking National Council for the Accreditation of Teacher Education, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

WSR 10-08-018

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 29, 2010, 9:01 a.m., effective April 29, 2010]

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

Purpose: Revises WAC 181-79A-213 and 181-79A-250. In WAC 181-79A-250, removes professional growth plan as renewal vehicle for teachers continuing or professional certification. Amends section to permit administrators completing a professional growth plan to use the plan as a substitute for continuing credit hour requirements. Technical improvements to language in WAC 181-79A-213.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-79A-213 and 181-79A-250].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-05-092 on February 16, 2010.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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Date Adopted: March 24, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-213 Issues of abuse course work requirement for continuing certification—Administrators. Candidates who apply for a continuing or professional administrator certificate after August 31, 1994, must have successfully completed the abuse course work requirement as defined in WAC 181-79A-030(6).

AMENDATORY SECTION (Amending WSR 10-03-019, filed 1/8/10, effective 2/8/10)

WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program. Individuals who hold a residency certificate that expires in 2010 or 2011 may

have the certificate renewed for two years by registering for the external assessment pursuant to WAC 181-79A-206. Provided, that individuals who are unable to complete the professional certificate program by the expiration date on the two-year renewal who have not taught for any portion of the nine years between employment and expiration date of the renewal can obtain an additional two-year renewal upon verification they had been unemployed during those years, been on a leave of absence or were unemployed due to a reduction in force.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

~~((iv) Individuals who complete the requirements in their school district professional growth plan may use that completed plan to maintain the continuing certificate or renew the professional certificate.))~~

(b) Principals/program administrators.

(i) Individuals who hold ~~((or have held,))~~ a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold ~~((or have held,))~~ residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator

that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection. Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or state board of education-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b).

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals who complete the requirements of the annual professional growth plan to renew their administrator professional certificate may use that completed plan to waive thirty hours of continuing education requirements for their continuing or professional teaching or education staff associate certificate.

(iii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university

with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

WSR 10-08-023

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 30, 2010, 11:39 a.m., effective April 30, 2010]

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

Purpose: This rule amendment incorporates into rule language that informs hospital providers of the requirements

to bill for outpatient hospital services according to the national correct coding initiative (NCCI) standards.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-7050, 388-550-7200, and 388-550-7300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Adopted under notice filed as WSR 10-05-083 on February 15, 2010.

A final cost-benefit analysis is available by contacting Carolyn Adams, DSHS/HRSA, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1854, fax (360) 753-9152, e-mail Carolyn.adams@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 25, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 09-12-062, filed 5/28/09, effective 7/1/09)

WAC 388-550-7050 OPPS—Definitions. The following definitions and abbreviations and those found in WAC 388-550-1050 apply to the department's outpatient prospective payment system (OPPS):

"Ambulatory payment classification (APC)" means a grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

"Budget target" means the amount of money appropriated by the legislature or through the department's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjustor" means a department-established component of the APC payment calculation applied to all payable ambulatory payment classifications (APCs) to allow the department to reach and not exceed the established budget target.

"Discount factor" means the percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Medical visit" means diagnostic, therapeutic, or consultative services provided to a client by a healthcare professional in an outpatient setting.

"Modifier" means a two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"National correct coding initiative (NCCI) is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The centers for medicare and medicaid services (CMS) maintain NCCI policy. Information can be found at <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

"National payment rate (NPR)" means a rate for a given procedure code, published by the centers for medicare and medicaid (CMS), that does not include a state or location specific adjustment.

"Nationwide rate" see "national payment rate."

"NCCI edit" is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, department fee schedules, billing instructions, and other publications. The department has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or department policy.

"Observation services" means services furnished by a hospital on the hospital's premises, including use of a bed and periodic monitoring by hospital staff, which are reasonable and necessary to evaluate an outpatient's condition or determine the need for possible admission to the hospital as an inpatient.

"Outpatient code editor (OCE)" means a software program that the department uses for classifying and editing claims in ambulatory payment classification (APC) based OPSS.

"Outpatient prospective payment system (OPPS)" means the payment system used by the department to calculate reimbursement to hospitals for the facility component of outpatient services. This system uses ambulatory payment classifications (APCs) as the primary basis of payment.

"Outpatient prospective payment system (OPPS) conversion factor" see "outpatient prospective payment system (OPPS) rate."

"Outpatient prospective payment system (OPPS) rate" means a hospital-specific multiplier assigned by the department that is one of the components of the APC payment calculation.

"Pass-throughs" means certain drugs, devices, and biologicals, as identified by centers for medicare and medicaid services (CMS), for which providers are entitled to additional

separate payment until the drugs, devices, or biologicals are assigned their own ambulatory payment classification (APC).

"Significant procedure" means a procedure, therapy, or service provided to a client that constitutes the primary reason for the visit to the healthcare professional.

"Status indicator (SI)" means a code assigned to each medical procedure or service by the department that contributes to the selection of a payment method.

"SI" see "status indicator."

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7200 OPSS—Billing requirements and payment method. (1) This section describes hospital provider billing requirements and the payment methods the department uses to pay for covered outpatient hospital services provided by hospitals not exempted from the outpatient prospective payment system (OPSS).

(2) Providers must bill according to national correct coding initiative (NCCI) standards. NCCI standards are based on:

(a) Coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual;

(b) Current standards of medical and surgical coding practice;

(c) Input from specialty societies; and

(d) Analysis of current coding practices.

The centers for medicare and medicaid services (CMS) maintains NCCI policy.

AMBULATORY PAYMENT CLASSIFICATION (APC) METHOD

~~((2))~~ (3) The department uses the APC method when ~~((the centers for medicare and medicaid services (CMS)))~~ (CMS) has established a national payment rate to pay for covered services. The APC method is the primary payment methodology for OPSS. Examples of services paid by the APC methodology include, but are not limited to:

(a) Ancillary services;

(b) Medical visits;

(c) Nonpass-through drugs or devices;

(d) Observation services;

(e) Packaged services subject to separate payment when criteria are met;

(f) Pass-through drugs;

(g) Significant procedures that are not subject to multiple procedure discounting (except for dental-related services);

(h) Significant procedures that are subject to multiple procedure discounting; and

(i) Other services as identified by the department.

OPSS MAXIMUM ALLOWABLE FEE SCHEDULE

~~((3))~~ (4) The department uses the outpatient fee schedule published in the department's billing instructions to pay for covered:

(a) Services that are exempted from the APC payment methodology or services for which there are no established weight(s);

(b) Procedures that are on the CMS inpatient only list;

(c) Items, codes, and services that are not covered by medicare;

(d) Corneal tissue acquisition;

(e) Devices that are pass-throughs (see WAC 388-550-7050 for definition of pass-throughs); and

(f) Dental clinic services.

HOSPITAL OUTPATIENT RATE

~~((4))~~ (5) The department uses the hospital outpatient rate described in WAC 388-550-3900 and 388-550-4500 to pay for the services listed in subsection ~~((3))~~ (4) of this section for which the department has not established a maximum allowable fee.

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7300 OPPTS—Payment limitations. (1)

The department limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient fee schedule and published in the department's hospital billing instructions, subject to the following:

(a) To receive payment for services, providers must bill claims according to national correct coding initiative (NCCI) standards. See WAC 388-550-7200(2) for more information on NCCI standards. When a unit limit for services is not stated in the outpatient fee schedule, department pays for services according to the program's unit limits stated in applicable WAC and published issuances.

(b) Because multiple units for services may be factored into the ambulatory payment classification (APC) weight, department pays for services according to the unit limit stated in the outpatient fee schedule when the limit is not the same as the program's unit limit stated in applicable WAC and published issuances.

(2) The department does not pay separately for covered services that are packaged into the APC rates. These services are paid through the APC rates.

(3) The department:

(a) Limits surgical dental services payment to the ambulatory surgical services fee schedule and pays:

(i) The first surgical procedure at the applicable ambulatory surgery center group rate; and

(ii) The second surgical procedure at fifty percent of the ambulatory surgery center group rate.

(b) Considers all surgical procedures not identified in subsection (a) to be bundled.

(4) The department limits outpatient services billing to one claim per episode of care. If there are late charges, or if any line of the claim is denied, the department requires the entire claim to be adjusted.

WSR 10-08-025
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 31, 2010, 7:56 a.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: The department is amending WAC 388-448-0030 and 388-448-0040 in order to clarify and align the medical evidence rules with the intent of RCW 74.04.005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-448-0030 and 388-448-0040.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.005, 74.04.050, 74.04.055, and 74.04.057.

Adopted under notice filed as WSR 10-04-110 on February 3, 2010.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: March 30, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-07-140, filed 3/22/04, effective 5/1/04)

WAC 388-448-0030 What medical evidence do I need to provide? You must provide medical evidence that clearly ~~((explains if))~~ shows you have an impairment and how that impairment prevents you from being capable of gainful employment. Medical evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

(a) ~~((For physical impairment:~~

~~((i)))~~ Laboratory test results;

~~((ii)))~~ (b) Pathology reports;

~~((iii)))~~ (c) Radiology findings including results of X rays and computer imaging scans;

~~((iv)))~~ (d) Clinical finding, including but not limited to ranges of joint motion, blood pressure, temperature or pulse; and ~~((observations from))~~ documentation of a physical examination; or

~~((v)))~~ (e) Hospital history and physical reports and admission and discharge summaries; or

~~((vi)))~~ (f) Other medical history and physical reports related to your current impairments.

~~((b) For mental impairment:~~

~~(i) Examination results including:~~

~~(A)) (2) Objective evidence for mental impairments means:~~

~~(a) Clinical interview observations, including objective mental status exam results and interpretation(~~;-and~~).~~

~~((B)) (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).~~

~~((C)) (c) Hospital, outpatient and other treatment records related to your current impairments.~~

~~(d) Testing results, if any, including:~~

~~((A)) (i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or~~

~~((B)) (ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.~~

~~((2) To be complete.) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-448-0020 and must include:~~

~~(a) A diagnosis for the impairment, or impairments, based on an examination performed within twelve months of application;~~

~~(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-448-0010(5) (~~including signs and observations of drug or alcohol abuse and whether any limitations on ability to perform work-related activities would continue after sixty days of abstinence from use of drugs or alcohol~~);~~

~~(c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within the ninety days of the date of application or the forty-five days before the month of incapacity review; and~~

~~(d) Facts in addition to objective evidence to support the medical provider's opinion that you are unable to be gainfully employed, such as proof of hospitalization(~~;-and~~~~

~~(d) Based on an examination done within the ninety days of the date of application or the forty-five days prior to the month of incapacity review)).~~

~~((3)) (4) When making an incapacity decision, we do not use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.~~

~~((4)) (5) We don't use symptoms related to substance abuse or a diagnosis of addiction or chemical dependency when determining incapacity.~~

~~(6) We consider diagnoses that are independent of addiction or chemical dependency when determining incapacity.~~

~~(7) We determine you have a diagnosis that is independent of addiction or chemical dependency if the impairment will persist at least ninety days after you stop using drugs or alcohol.~~

~~(8) If you (~~cannot get~~) can't obtain medical evidence of an impairment that prevents you from working without cost to you and you meet the eligibility conditions other than incapacity in WAC 388-400-0025, we pay the costs to obtain objective evidence based on our published payment limits and (~~designated~~) fee schedules.~~

~~((5)) (9) We decide incapacity based solely on the objective information we receive. We are not obligated to accept a decision that you are incapacitated or unemployable made by another agency or person.~~

~~(10) We can't use a statement from a medical professional to determine that you are incapacitated unless the statement is supported by objective medical evidence.~~

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

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0040 PEP step I—Review of medical evidence required for eligibility determination. When we receive your medical evidence, we review it to see if it is ~~(complete and)~~ sufficient to decide whether your circumstances ~~(match GAU program)~~ meet incapacity requirements.

(1) We require a written medical report to determine incapacity. The report must:

(a) Contain sufficient information as described under WAC 388-448-0030;

(b) Be written by an authorized medical professional described in WAC 388-448-0020;

(c) Document the existence of a potentially incapacitating condition; and

(d) Indicate an impairment is expected to last ninety days or more from the application date.

(2) If the information received ~~(is not)~~ isn't clear, we may require more information before we decide your ability to be gainfully employed. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny incapacity ~~(when)~~ if:

(a) There is only one impairment ~~(with a)~~ and the severity rating is less than three;

(b) A reported impairment ~~(is not)~~ isn't expected to last ninety days (twelve weeks) or more from the date of application;

(c) ~~(The practitioner is not able to determine that the physical or mental impairment would remain incapacitating after at least sixty days of abstinence from alcohol and drugs)~~ The only impairment supported by objective medical evidence is drug or alcohol addiction; or

(d) We ~~(do not)~~ don't have clear and objective medical evidence to approve incapacity.

WSR 10-08-028

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed March 31, 2010, 8:33 a.m., effective May 1, 2010]

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

Purpose: The rule-making order amends chapter 16-302 WAC by modifying current seed certification standards to allow for trait verification as criteria for seed certification for varieties that contain a GMO or other novel trait(s).

Additionally, amendments to seed certification rules will be made to provide clarity in regards to prohibited noxious weeds by specifying that prohibited noxious weed[s] must be controlled to prevent seed formation when they are present in a seed field.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-080, 16-302-170, 16-302-560, and 16-302-685.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Adopted under notice filed as WSR 10-05-117 on February 17, 2010.

Changes Other than Editing from Proposed to Adopted Version: The chemical name Imazamox was substituted for the brand name of Beyond, which is the herbicide that Clearfield wheat is resistant to.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: March 31, 2010.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-080 What will cause a seed field to be ineligible for seed certification? (1) A seed field is not eligible for certification unless a field inspection is made prior to defoliation or harvesting.

(2) ~~((The presence of prohibited noxious weeds or))~~ Prohibited noxious weeds must be controlled to prevent seed formation. Follow-up inspections may be conducted to ensure weed control was sufficiently carried out to prevent prohibited noxious weed seeds from being harvested with the seed crop. Excessive objectionable weeds may be cause for rejection of a seed field. Excessive weeds, poor stands, lack of vigor, or other conditions which make inspection inaccurate may be cause for rejection. A field producing foundation or registered seed that warrants a rejection because of noxious weeds may be reclassified to certified blue tag class if upon reinspection the field meets certified blue tag standards.

(3) If a seed field is rejected for certification, the grower may reapply to the certifying agency and pay a fee for reinspection after the cause for rejection is corrected, unless otherwise specified in chapter 16-302 WAC. No more than two reinspections are permitted for each field per year.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-170 Other considerations in applying the standards for certification. (1) Any crop certification standard, with the exception of germination that is expressed as a percent will be derived from a test based on the minimum weight for purity analysis as specified in the 2000 AOSA rules for that crop unless otherwise specified in rule.

(2) Any crop certification standard that is based on a number per pound will be derived from a test based on the minimum weight for noxious weed seed examination as specified in the 2000 AOSA rules for that crop unless otherwise specified in rule.

(3) For species that have a high rate of inherent dormancy, it will be acceptable to use the percent of total viability instead of germination percentage for certification only. State and federal seed laws require seed be labeled on a germination test.

(4) For species or varieties that contain GMO (genetically modified organism) traits, herbicide resistant traits, or other novel traits, each seed lot may be required to meet minimum trait standards as defined by the breeder or trait owner. The variety description must define the trait. To determine the level of trait present, a test such as PCR (polymerase chain reaction) or specified bioassay test may be required.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification. (1) Field inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

(a) For field pea and chickpea (garbanzo bean) - when seed crop is in full bloom and at maturity;

(b) For lentil - when seed crop is in full bloom and at maturity;

(c) For soybean - when seed crop is in full bloom and/or of mature color;

(d) For open pollinated sorghum - when seed crop is in full bloom, and optionally again when seed crop begins to show mature color;

(e) For hybrid sorghum - two inspections during bloom and one inspection after seed begins to show mature color;

(f) For small grains - when seed crop is fully headed and of mature color;

(g) For millet - one inspection during bloom and one inspection after seed begins to show mature color; and

(h) For buckwheat - one inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation ~~((in bindweeds, Canada thistle or jointed goatgrass))~~ of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection ((except for formation of bindweed or Canada thistle in fields of chickpea, lentil, and field pea seed)).

Fields rejected for jointed goatgrass at first inspection are not eligible for reinspection and must remain ineligible for any production of certified classes of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabilitation period at such time that the jointed goatgrass would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass is found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared

ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. CLEARFIELD is a trait that makes a plant resistant to the Imazamox herbicide.

AMENDATORY SECTION (Amending WSR 04-06-018, filed 2/23/04, effective 3/25/04)

WAC 16-302-685 Small grains standards for seed certification. (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

CLASS	FIELD STANDARDS				
	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	WILD OAT MAXIMUM PLANTS/ACRE
Foundation	2*	90 same genus** 3 different genus	None found	None found***	None found
Registered	1*	10 same genus 3 different genus**	1/148,000	1/148,000***	5
Certified	1*	10 same genus 3 different genus**	1/49,000	1/49,000***	5

* Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.

** Each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet from other triticale, rye and wheat fields for foundation and registered class, and ten feet for certified class, unless otherwise stated by the plant breeder.

*** Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; and no vetch is permitted in barley, oat, rye, triticale, or wheat.

(2) Small grains - seed standards:

For CLEARFIELD varieties: For all classes - each lot must pass the CLEARFIELD Confirm test by bioassay or PCR as defined by the trait owner. The CLEARFIELD Confirm test verifies that the seed is resistant to the Imazamox herbicide.

Class	Foundation	Registered	Certified
Pure seed (min.)	98%	98%	98%
Inert (max.)	2%	2%	2%
off-type(*) (max.)	None found	2/lb	4/lb
Other small grain(*) (max.)	None found	1/lb	2/lb
Other crop(**) (max.)	None found	0.03%	0.05%

Weed seed (max.)	0.01%	0.01%	0.03%
Objectionable weed seed(***) (max.)	None found	None found	1/lb None found (****)
Wild oat (max.)	None found	None found	(****)
Viability(*****) (min.)	85%	85%	85%

Date Adopted: March 31, 2010.

Dan Newhouse
Director

- (*) The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye or triticale, is none found in barley, oat, or wheat. The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.
- (**) Excluding off-type and other small grain. No vetch is allowed in small grain seed
- (***) Excluding wild oat.
- (****) 1/lb for certified class oat.
- (*****) A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain determinations are based on 500 grams examined. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-070 When is a seed field inspected by the certifying agency? The certifying agency conducts field inspections as follows:

- (1) A seedling field is inspected at the most appropriate time after receipt of seedling application. If the field produces seed the same year of planting, a seedling producing inspection is made prior to harvest.
- (2) Each year a crop of certified seed is produced, field inspections are made at a time when factors affecting certification are most evident.
- (3) The unit of certification is defined as the entire field standing at the time of inspection. A portion of a field may be certified if the area to be certified is clearly defined by flagging, stakes or other visual means. The border area of the field is considered the unit of certification if it is planted to the same crop and is inclusive of the acreage applied for.
- (4) The unit of inspection may include areas adjacent to a field or areas of surveillance if these areas contain factors that would impact the certification eligibility of the seed crop as defined in the specific crop standards. Such factors may be, but are not limited to, contaminating pollen sources.

WSR 10-08-029
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed March 31, 2010, 8:34 a.m., effective May 1, 2010]

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

Purpose: The rule-making order amends WAC 16-302-070 by clarifying the definition of what constitutes an area of inspection of a field for the purposes of seed certification, and establishes areas of surveillance that are adjacent to a field that may be included in a field inspection if dictated by the specific crop standards.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-070.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Adopted under notice filed as WSR 10-05-118 on February 17, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

WSR 10-08-030
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 31, 2010, 10:00 a.m., effective May 1, 2010]

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

Purpose: Revises WAC 181-78A-010, definition of accrediting bodies is revised to include the distant education and training council (DETC).

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-010].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-04-059 on January 29, 2010.

Changes Other than Editing from Proposed to Adopted Version: Permits educators with degrees from institutions of higher education accrediting by DETC to be eligible for salary schedules.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: March 24, 2010.

David Brenna
Legislative and
Policy Coordinator

(Effective Until December 1, 2011.)

AMENDATORY SECTION (Amending WSR 07-19-056, filed 9/14/07, effective 10/15/07)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) "College or university" means any regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies:

- (a) Middle States, Association of Colleges and Schools;
- (b) New England Association of Schools and Colleges;
- (c) North Central Association of Colleges and Schools;
- (d) Northwest Association of Schools and of Colleges and Universities;
- (e) Southern Association of Colleges and Schools;
- (f) Western Association of Schools and Colleges; Accrediting Commission for Junior and Senior Colleges.

(7) "Accredited institution of higher education," for purposes of credit on salary schedule per RCW 28A.415.024, means a regionally accredited institution of higher education, or a community college, college, or university, which is a

candidate for accreditation or is accredited by the distance education and training council (DETC).

~~((7))~~ (8) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

~~((8))~~ (9) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

~~((9))~~ (10) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - course work, experiences, competencies, knowledges and skills - of the candidate's professional growth plan.

~~((10))~~ (11) "Professional growth team."

(a) Teacher "professional growth team" means a team comprised of the candidate for professional certification, a colleague specified by the candidate, a college or university advisor appointed by the college or university, and a representative from the school district in which the candidate teaches.

(b) Principal/program administrator "professional growth team," for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a district representative or designee, a professional association representative, and a college or university advisor. "Professional growth team," for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and the superintendent, or superintendent designee or appointed representative.

(c) School counselor, school psychologist, and school social worker "professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a college/university program administrator/designee, and a colleague/peer from the same professional role specified by the candidate. A district representative is also required to serve on the professional growth team. Provided that, a candidate may petition the university to have membership of a district representative waived.

~~((11))~~ (12) "Individual professional growth plan" means the document which identifies the specific competencies, knowledges, skills and experiences needed to meet the standards set forth in WAC 181-78A-540. The individual

professional growth plan shall meet requirements set forth in WAC 181-78A-535 (4)(a).

~~((12))~~ (13) "Preassessment seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate, in collaboration with members of his/her professional growth team, identifies specific competencies, knowledges, skills and/or experiences needed to meet standards for the certificate as required by WAC 181-78A-540. The preassessment seminar shall meet requirements set forth in WAC 181-78A-535 (4)(a).

~~((13))~~ (14) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535 (4)(e).

(Effective December 1, 2011.)

AMENDATORY SECTION (Amending WSR 09-22-023, filed 10/26/09, effective 12/1/11)

WAC 181-78A-010 Definition of terms. The following definitions shall be used in this chapter:

(1) "College or university" means any regionally accredited baccalaureate degree granting Washington institution of higher learning or cooperative group of such institutions which has or develops programs of preparation in education which are submitted to the professional educator standards board for approval.

(2) "Endorsement" means a specification placed on a certificate to indicate the subject area, grade level, and/or specialization for which the individual is prepared to teach.

(3) "Interstate compact" means the contractual agreement among several states authorized by RCW 28A.690.010 and 28A.690.020 which facilitates interstate reciprocity.

(4) "Program approval" means the approval by the professional educator standards board of an educator preparation program within Washington state.

(5) "Field experience" means a sequence of learning experiences which occur in actual school settings or clinical or laboratory settings. Such learning experiences are related to specific program outcomes and are designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor.

(6) "Regionally accredited institution of higher education" means a community college, college, or university which is a candidate for accreditation or is accredited by one of the following regional accrediting bodies:

- (a) Middle States, Association of Colleges and Schools;
- (b) New England Association of Schools and Colleges;
- (c) North Central Association of Colleges and Schools;
- (d) Northwest Association of Schools and of Colleges and Universities;
- (e) Southern Association of Colleges and Schools;
- (f) Western Association of Schools and Colleges; Accrediting Commission for Junior and Senior Colleges.

(7) "Accredited institution of higher education," for purposes of credit on salary schedule per RCW 28A.415.024, means a regionally accredited institution of higher education, or a community college, college, or university, which is a candidate for accreditation or is accredited by the distance education and training council (DETC).

~~((7))~~ (8) "An approved performance-based educator preparation program" means a program that requires the candidate to demonstrate in multiple ways, over time, specific professional educator standards board required standards, criteria, knowledge and skills, including, where appropriate, evidence related to positive impact on student learning.

~~((8))~~ (9) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

~~((9))~~ (10) "Collaboration" (as used in WAC 181-78A-500 through 181-78A-540) means ongoing communication among the professional growth team members using a variety of formats (e.g., conferences, electronic mail, conference calls, etc.) to reach consensus regarding the content - course work, experiences, competencies, knowledge and skills - of the candidate's professional growth plan.

~~((10))~~ (11) "Professional growth team."

(a) Principal/program administrator "professional growth team," for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a district representative or designee, a professional association representative, and a college or university advisor. "Professional growth team," for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and the superintendent, or superintendent designee or appointed representative.

(b) School counselor, school psychologist, and school social worker "professional growth team" for the purpose of professional certification, means a team comprised of the candidate for the professional certificate, a college/university program administrator/designee, and a colleague/peer from the same professional role specified by the candidate. A district representative is also required to serve on the professional growth team. Provided that, a candidate may petition the university to have membership of a district representative waived.

~~((11))~~ (12) "Individual professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-78A-540.

~~((12))~~ (13) "Culminating seminar" means that component of the approved professional certificate program in which the candidate for a professional certificate presents

his/her final documentation and evidence of professional certificate level knowledge, skill and performance, and positive impact on student learning. The culminating seminar shall meet requirements set forth in WAC 181-78A-535(2).

WSR 10-08-036
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 31, 2010, 3:18 p.m., effective May 1, 2010]

Effective Date of Rule: May 1, 2010.

Purpose: The community services division is amending sections of chapter 388-448 WAC to revise general assistance incapacity criteria, including how the department uses social and vocational factors to determine eligibility. The department proposed amendments to more closely align the general assistance incapacity criteria with the Social Security disability criteria to provide a concise description of the general intent proposed revisions. The department conducted an intensive case review of general assistance unemployable (GA-U) recipients who had received more than twelve consecutive months of benefits as of July 1, 2009. The results of the intensive review revealed that approximately twenty percent of the GA-U recipients reviewed either met, or were likely to meet SSI criteria, which includes the disability definition of being unable to engage in substantial gainful activity, despite having an impairment for more than twelve months. RCW 74.04.005 defines general assistance as aid to a person in need who is incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department. Although the department reviewed SSA regulations and consulted with disability policy experts in the incapacity rule revision process, it was not the department's intention to imply SSA regulations were being adopted. The department is amending the incapacity rules, including how we apply social and vocational factors, to ensure that only persons who are unable to perform gainful employment are granted assistance, but the incapacity standard for general assistance remains less stringent than the disability criteria for SSI.

Citation of Existing Rules Affected by this Order: Amending WAC 388-448-0050, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.005.

Adopted under notice filed as WSR 10-04-109 on February 3, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- A provision was added that a fifty-five year old limited to sedentary work, and who was unable to perform past work, would meet incapacity criteria.
- Social and cognitive factors were revised to clarify and separate the ability to work safely as the ability

to be aware of normal hazards and take appropriate precautions.

- Social and cognitive factors were also revised to include the ability to communicate and perform effectively in both work settings with and without public contact.
- The mental health and combination tables used to determine if a person can perform other work were revised to reflect the changes in the social and cognitive factors listed above.

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

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

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

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

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

Date Adopted: March 31, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-078, filed 5/18/09, effective 6/18/09)

WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments. If you are diagnosed with a mental impairment by a professional described in WAC 388-448-0020, we use information from the provider to determine ~~((if you))~~ how the impairment ~~((prevents you from being able to work))~~ limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining practitioner that show how your impairment affects your ability to perform basic work-related activities.

(2) We exclude diagnosis and related symptoms of alcohol or substance abuse or addiction;

(3) We exclude disorders that don't impair thought, mood, memory, or cognition, such as:

- (a) Passive behaviors.
- (b) Learning deficits.

(4) If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence Scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
((85)) <u>76</u> or above	<u>None (1)</u>
((71)) <u>65</u> to ((84)) <u>75</u>	<u>Moderate (3)</u>
((70)) <u>64</u> or lower	<u>Severe (5)</u>

~~((4))~~ (5) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

~~((5))~~ (6) We base the severity of ~~((a functional disorder))~~ an impairment diagnosed as a mood, thought, memory, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

- (a) Affect your ability to perform basic work related activities; and
- (b) Are consistent with a diagnosis of a mental impairment as listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

~~((6))~~ (7) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

Symptom Ratings or Condition	Severity Rating
(a) ((The)) <u>You are diagnosed with a functional ((mental impairment is diagnosed)) <u>disorder</u> with psychotic features;</u> (b) You have had two or more hospitalizations for psychiatric reasons in the past two years; (c) You have had more than six months of continuous psychiatric ((hospital)) <u>inpatient</u> or residential treatment in the past two years; (d) The ((overall assessment of symptoms is rated three; or (e) At least three symptoms are rated three or higher)) <u>objective evidence and global assessment of functional score are consistent with a significant limitation on performing work activities.</u>	<u>Moderate (3)</u>
((#)) <u>(e) The ((overall assessment of symptoms is rated four; or</u> (g) At least three symptoms are rated four or five)) <u>objective evidence and global assessment of functioning score are consistent with very significant limitations on ability to perform work activities.</u>	<u>Marked (4)</u>

Symptom Ratings or Condition	Severity Rating
((#)) <u>(f) The ((overall assessment of symptoms is rated five; or</u> (i) At least three symptoms are rated five)) <u>objective evidence and global assessment of functioning score are consistent with the absence of ability to perform work activities.</u>	<u>Severe (5)</u>

~~((7))~~ (8) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with <u>moderate severity (3)</u> ratings ((of three)) ; or (b) One or more disorders rated ((three)) <u>moderate severity (3)</u> ; and one rated ((four)) <u>marked severity (4)</u> .	<u>Marked (4)</u>
(c) Two or more disorders rated ((four)) <u>marked (4) severity.</u>	<u>Severe (5)</u>

~~((8))~~ (9) We deny incapacity when you haven't been diagnosed with a significant physical impairment and your overall mental severity rating is one or two;

~~((9))~~ (10) We approve incapacity when you have an overall mental severity rating of severe (five).

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment. If you have a mental impairment we evaluate your cognitive and social functioning in a work setting. Functioning means your ability to perform ~~((the))~~ typical tasks that would be required ~~((of you on the))~~ in a routine job setting and your ability to ~~((get along with your coworkers, supervisors and other people you would be in contact with while on the job))~~ interact effectively while working.

(1) We evaluate cognitive ~~((factors))~~ and social functioning by assessing your ability to:

(a) Understand, remember, and persist in tasks by following simple ~~((, one or two step))~~ instructions(;) of one or two steps.

(b) Understand, remember, and persists in tasks by following complex instructions ~~((, with))~~ of three or more steps(;).

(c) Learn new tasks(;).

(d) ~~((Exercise judgment and make decisions; and~~

~~((#))~~ Perform routine tasks without undue supervision.

~~((2))~~ We approve incapacity when the practitioner's evaluation shows you are:

(a) ~~At least moderately impaired in your ability to understand, remember, and follow simple instructions and at least moderately limited in your ability to:~~

(i) ~~Learn new tasks, exercise judgment, and make decisions; and~~

(ii) ~~Perform routine tasks without undue supervision; or~~

(b) Able to understand, remember, and follow simple instructions, but are:

(i) At least moderately impaired in the ability to understand, remember, and follow instructions with three or more steps; and

(ii) Markedly impaired in the ability to learn new tasks, exercise judgment and make decisions, and perform routine tasks without undue supervision.

(3) The practitioner's evaluation reports your social factors after assessing your ability to:

(a) Relate appropriately to coworkers and supervisors;

(b) Relate appropriately in contacts with the public;

(c) Tolerate the pressures of a work setting;

(d) Perform self-care activities, including personal hygiene; and

(e) Maintain appropriate behavior in a work setting.

(4) We approve incapacity if you are rated at least two in one area of social functioning and at least three in all other areas of social functioning)) (e) Be aware of normal hazards and take appropriate precautions.

(f) Communicate and perform effectively in a work setting with public contact.

(g) Communicate and perform effectively in a work setting with limited public contact.

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have a physical impairment. In Step V of the PEP we review the medical evidence you provide and make a determination of how your physical impairment prevents you from working. This determination is then used in Steps VI and VII of the PEP to determine your ability to perform either work you have done in the past or other work.

(1) "**Exertion level**" means ~~((the ability))~~ having strength, flexibility, and mobility to lift, carry, stand ~~((and))~~ or walk ~~((with the strength))~~ as needed to fulfill job duties in the following work ~~((categories))~~ levels. For this section, "occasionally" means less than one-third of the time and "frequently" means one-third to two-thirds of the time. ~~((We only consider your strength, mobility, and flexibility. We review any work limits you have in the following areas, and then assign an exertion level and determine exertional limitations.))~~

The following table is used to determine your exertion level. Included in this table is a strength factor, which is your ability to perform physical activities, as defined in Appendix C of the Dictionary of Occupational Titles (DOT), Revised Edition, published by the U.S. Department of Labor.

	Then we assign this exertion level
(a) ((Can not)) <u>Lift</u> ((at least)) <u>no more than two pounds or unable to stand</u> ((and)) <u>or walk.</u>	Severely limited

If you are able to:	Then we assign this exertion level
(b) ((Can)) <u>Lift</u> ten pounds maximum and frequently lift ((and)) <u>or</u> carry light-weight articles. Walking ((and)) <u>or</u> standing ((are)) <u>only</u> ((required)) for brief periods.	Sedentary
(c) ((Can)) <u>Lift</u> twenty pounds maximum and frequently lift ((and)) <u>or</u> carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday ((, with)) . <u>Sitting and using pushing or/pulling arm or leg movements</u> most of the day.	Light
(d) ((Can)) <u>Lift</u> fifty pounds maximum and frequently lift ((and)) <u>or</u> carry up to twenty-five pounds.	Medium
(e) ((Can)) <u>Lift</u> one hundred pounds maximum and frequently lift ((and)) <u>or</u> carry up to fifty pounds.	Heavy

(2) "**Exertionally related limitation**" means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. If you have exertionally related limitations, we consider them in determining your ability to work.

(3) "**Functional physical capacity**" means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the physical impairment is assigned an overall severity rating of three or four. We determine functional physical capacity based on your exertional, exertionally related and nonexertional limitations. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) "**Nonexertional physical limitation**" means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which could include, among other things, your inability to work in an area where you would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work. If your overall severity rating is moderate (three) or marked (four) and we have reached this stage of the PEP and have not approved or denied your application, we decide if you can do the same or similar work as you have done in the past. We look at your

current physical and/or mental limitations from cognitive, social, and vocational factors to make this decision. Vocational factors are education, relevant work history, and age.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enables you to meet job requirements. We classify education as:

If you	Then your education level is
(a) ((Can not)) <u>Can't</u> read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the ((eleventh)) <u>tenth</u> grade; or (c) ((Have)) <u>Had</u> participated in special education in <u>basic academic classes of reading, writing, or mathematics in high school.</u>	Limited education
(d) Have received a high school diploma or general equivalency degree (GED); or (e) Have received skills training and were awarded a certificate, degree or license.	High school and above level of education

(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work ~~((that))~~:

(a) ~~((Is normally done for pay or profit. We exclude work done in a sheltered workshop, a job where you were given special consideration, or activities you may have performed as a student or homemaker;))~~ Defined as gainful employment per WAC 388-448-0010.

(b) Has been performed in the past ~~((five))~~ ten years~~((; and))~~.

(c) You ~~((have done))~~ performed long enough ~~((for you))~~ to ~~((have acquired))~~ acquire the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation you have had, we determine:

(a) The exertional or skill requirements of the job~~((; and))~~.

Highest work level assigned by the practitioner	Your age	Your education level	((Other vocational factors))
<u>Sedentary</u>	<u>Fifty-five and older</u>	<u>Any level</u>	
Sedentary	Any age	((Any level)) <u>Limited education or limited English proficiency (LEP)</u>	((Does not apply))
((Light))	((Fifty and older))	((Any level))	((Does not apply))
Light	((Thirty-five)) <u>Fifty</u> and older	((Illiterate)) <u>Limited education or LEP</u>	((Does not apply))
((Light))	((Eighteen and older))	((Limited education))	((Does not have any past work))

(b) Current cognitive, social, or nonexertional factors that significantly limit your ability to perform past work.

(4) After considering vocational factors, we ~~((approve or))~~ deny incapacity ~~((based on the following))~~ when you have:

((If you))	((Then we take this action on incapacity))
((a)) <u>Have the physical or mental ability to perform past work and there is no significant cognitive, social or nonexertional limitation.</u>	((Deny))
((b)) <u>Have recently acquired specific work skills through completion of vocational training, enabling you to work within your current physical or mental capacities.</u>	((Deny))
((e)) <u>Are fifty-five years of age or older and have an impairment that is assigned an overall severity rating of at least three and do not have the physical or mental ability to perform past work or do not have work experience.</u>	((Approve))

(a) The physical and mental ability to perform past work, and there is no significant cognitive, social or nonexertional limitation that would prevent you from performing past work; or

(b) Recently acquired specific work skills through completion of schooling or training, for jobs within your current physical or mental capacities.

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work. If we decide you cannot do work that you've done before, we then decide if you can do any other work. ~~((In making this decision, we again consider vocational factors of age, education and limited English proficiency (LEP).))~~

(1) We approve incapacity if you have a physical impairment ~~((only))~~ and meet the vocational factors below:

Highest work level assigned by the practitioner	Your age	Your education level	((Other vocational factors))
((Medium))	((Fifty and older))	((Limited education))	((Does not have any past work))
Medium	Fifty-five and older	((Any level)) <u>Limited education or LEP</u>	((Does not apply))
((Heavy))	((Fifty five and older))	((Any level))	((Environmental restrictions apply))

(2) We approve incapacity when you have a moderate (three) or marked (four) mental health impairment (~~((only))~~) and (~~((meet the age and social functioning limitations below))~~) we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrates social or cognitive factors described in WAC 388-448-0080, interfere with working as follows:

((Social limitation))	((Age))
((a) Can not appropriately relate to coworkers and supervisors (rated three); and (b) Can not tolerate the pressures of a work setting (rated four)-))	((Fifty years and older))
((c) Can not tolerate the pressures for a work setting (rated five)-))	((Eighteen to fifty four))
((d) A mental disorder severity rated four; (e) One or more symptoms from WAC 388-448-0050(4) (rated five); (f) Can not appropriately relate to coworkers and supervisors (rated three); and (g) Can not tolerate the pressures of a work setting (rated four)-))	((Eighteen to forty nine))

- (a) You have a moderate impairment in your ability to:
 - (i) Be aware of normal hazards and take appropriate precautions.
 - (ii) Communicate and perform effectively in a work setting with public contact.
 - (iii) Understand, remember, and persist in tasks by following complex instructions of three or more steps.
- (b) You have marked impairment in your ability to:
 - (i) Be aware of normal hazards and take appropriate precautions.
 - (ii) Communicate and perform effectively in a work setting with limited public contact.
- (c) You have a marked impairment in your ability to:
 - (i) Understand, remember, and persist in tasks by following simple instructions of one or two steps;
 - (ii) Perform routine tasks without undue supervision;
 - (iii) Communicate and perform effectively in a work setting with limited public contact.

(3) We approve incapacity when you have (~~((both))~~) at least a moderate (three) mental ((and)) health impairment, a moderate (three) physical ((impairments)) impairment and ((vocational)) we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrate social or cognitive factors, as described in WAC 388-448-0080, interfere with working as follows:

((Your age)) <u>Work Level</u>	((Your education))	Your other restrictions
((Any age)) <u>Sedentary</u>	((Any level))	(a) ((Can not appropriately relate to coworkers and supervisors (rated three); and (b) Can not tolerate pressures of a work setting (rated four))) <u>You are moderately impaired in your ability to:</u> (i) <u>Understand, remember, and persist in tasks by following complex instructions of three or more steps;</u> (ii) <u>Learn new tasks;</u> (iii) <u>Perform routine tasks without undue supervision.</u>
<u>Sedentary</u>		(b) <u>You are moderately impaired in your ability to:</u> (i) <u>Communicate and perform effectively in a work setting with public contact.</u>

((Your age)) <u>Work Level</u>	((Your education))	Your other restrictions
((Fifty or older)) <u>Light</u>	((Limited education))	((e) Restricted to medium work level or less) (c) <u>You are markedly impaired in your ability to:</u> <u>(i) Understand, remember, and persist in tasks by following complex instructions of three or more steps;</u> <u>(ii) Learn new tasks;</u> <u>(iii) Perform routine tasks without undue supervision.</u>
<u>Light</u>		(d) <u>You are markedly impaired in your ability to:</u> <u>(i) Communicate and perform effectively in a work setting with public contact.</u>
((Eighteen to forty-nine)) <u>Medium</u>	((Limited education))	((d) Restricted to light work level) (e) <u>You are markedly impaired in your ability to:</u> <u>(i) Understand, remember, and persist in tasks by following simple instructions of one or two steps.</u> <u>(ii) Learn new tasks.</u> <u>(iii) Perform routine tasks without undue supervision.</u>

(4) ~~((If we do not find that you are incapacitated by the end of Step VII of the PEP, an administrative review team (ART) makes the incapacity decision. The review team consists of two or more persons within the community service office (CSO) who are not in the position of providing direct eligibility or incapacity services to you. The ART reviews the medical evidence and your vocational factors))~~ We deny incapacity if we decide you don't meet the criteria listed above.

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

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

Date Adopted: April 1, 2010.

Walt Fahrer
Rules Coordinator

WSR 10-08-037

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed April 1, 2010, 8:13 a.m., effective May 2, 2010]

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

Purpose: To increase the fees in the boxing, martial arts and wrestling program.

Citation of Existing Rules Affected by this Order: Amending WAC 36-12-165 Event fees to be paid by promoter, 36-12-195 License fees, renewals and requirements, 36-13-005 Event fees to be paid by promoter, 36-13-010 License fees, renewals and requirements, 36-14-108 Event fees to be paid by promoter, and 36-14-110 License fees, renewals and requirements.

Statutory Authority for Adoption: RCW 67.08.017, 43.24.086, 67.08.105.

Adopted under notice filed as WSR 10-05-114 on February 17, 2010.

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

AMENDATORY SECTION (Amending WSR 09-14-028, filed 6/23/09, effective 7/24/09)

WAC 36-12-165 Event fees to be paid by promoter.

(1) A promoter shall pay an event fee equal to ~~((five))~~ six percent of the gross receipts paid for admission to events plus one dollar per ticket sold as required and defined in RCW 67.08.002, 67.08.050, and 67.08.055.

(2) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of complimentary tickets not subject to an event fee shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to an event fee.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-195 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	\$((40.00)) <u>65.00</u>
Referee	-	\$((15.00)) <u>65.00</u>
Boxer	-	\$((15.00)) <u>25.00</u>
Matchmaker	-	\$((40.00)) <u>65.00</u>
Second	-	\$((15.00)) <u>25.00</u>
Inspector	-	\$((40.00)) 65.00
Judge	-	\$((40.00)) 65.00
Timekeeper	-	\$((40.00)) 65.00
Announcer	-	\$((40.00)) 65.00
Event physician	-	(((\$40.00)) <u>No charge</u>
Event chiropractor	-	\$((40.00)) <u>65.00</u>
Promoter	-	\$((50.00)) 200.00

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (boxer and referee only).

(c) Federal identification card (boxer only).

(d) One small current photograph, not more than two years old (boxer only).

(e) Payment of license fee.

(f) Certification from an organization approved by the department under RCW 67.08.100(3) and WAC 36-12-196.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

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

AMENDATORY SECTION (Amending WSR 09-14-028, filed 6/23/09, effective 7/24/09)

WAC 36-13-005 Event fees to be paid by promoter.

(1) A promoter shall pay an event fee equal to ((five)) six percent of the gross receipts paid for admission to events plus one dollar per ticket sold as required and defined in RCW 67.08.002, 67.08.050, and 67.08.055.

(2) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of complimentary tickets not subject to an event fee shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to an event fee.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-13-010 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Wrestling participant	-	\$((15.00)) <u>25.00</u>
Inspector	-	\$((40.00)) <u>65.00</u>
Announcer		
(nonparticipant)	-	\$((40.00)) <u>65.00</u>
Event physician	-	(((\$40.00)) <u>No charge</u>
Promoter	-	\$((50.00)) <u>200.00</u>

(2) No license fee is required for persons licensed under chapter 36-12 or 36-14 WAC as an inspector, announcer, event physician or promoter.

(3) In addition to license requirements found in chapter 67.08 RCW, licensees and applicants shall submit a small photograph of themselves that is not more than two years old.

AMENDATORY SECTION (Amending WSR 09-14-028, filed 6/23/09, effective 7/24/09)

WAC 36-14-108 Event fees to be paid by promoter.

(1) A promoter shall pay an event fee equal to ((five)) six percent of the gross receipts paid for admission to events plus one dollar per ticket sold as required and defined in RCW 67.08.002, 67.08.050, and 67.08.055.

(2) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of complimentary tickets not subject to an event fee shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to an event fee.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-14-110 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	\$((40.00)) <u>65.00</u>
Referee	-	\$((15.00)) <u>65.00</u>
Kickboxer	-	\$((15.00)) <u>25.00</u>
Martial arts participant	-	\$((15.00)) <u>25.00</u>
Matchmaker	-	\$((40.00)) <u>65.00</u>
Second	-	\$((15.00)) <u>25.00</u>
Inspector	-	\$((40.00)) <u>65.00</u>
Judge	-	\$((40.00)) <u>65.00</u>
Timekeeper	-	\$((40.00)) <u>65.00</u>
Announcer	-	\$((40.00)) <u>65.00</u>
Event physician	-	(((\$40.00)) <u>No charge</u>
Event chiropractor	-	\$((40.00)) <u>65.00</u>
Promoter	-	\$((50.00)) <u>200.00</u>

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (kickboxer, martial arts participant and referee only).

(c) One small current photograph, not more than two years old (kickboxer and martial arts participant only).

(d) Payment of license fee.

(e) Certification from an organization approved by the department under RCW 67.08.100(3).

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

WSR 10-08-046
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed April 2, 2010, 10:26 a.m., effective May 3, 2010]

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

Purpose: Spokane Regional Clean Air Agency's (SRCAA) amended regulation is intended to clearly communicate the odor standards to the public and the regulated community, and is straightforward for inspectors to apply in appropriate cases. SRCAA's proposed regulation also provides an enforcement standard which is consistent with the standard established in the Washington Clean Air Act for nuisance odors. SRCAA expects that these changes to the rule will strengthen the enforceability of nuisance occurrences. This regulation applies to all individuals, businesses, industries, and local/state/federal governmental agencies with offices/property within Spokane County, except on Native American tribal lands.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article VI, Section 6.04.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Adopted under notice filed as WSR 10-07-008 on March 4, 2010.

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

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

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

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

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

Date Adopted: April 1, 2010

Charles E. Studer
Environmental Engineer

ATTACHMENT A

AMENDATORY SECTION (Amending Order Res. 04-01, Filed 03/04/2004)

SECTION 6.04 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY ((ODORS AND NUISANCES))

A. Definitions: All definitions in SRCAA Regulation I, Article 1, Section 1.04 apply to this Section, unless otherwise defined herein.

B. The Agency implements and enforces WAC 173-400-040 in Spokane County in addition to Section 6.04. The provisions of RCW 70.94.640 are herein incorporated by reference.

C. It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be:

1. Injurious to the health or safety of human, animal, or plant life;

2. Injurious or cause damage to property; or

3. Which unreasonably interferes with enjoyment of life and property.

D. With respect to odor, the Agency may take enforcement action, pursuant to chapter 70.94 RCW, under this section if the Control Officer or a duly authorized representative has documented all of the following:

1. The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:

Level 0 – no odor detected,

Level 1 – odor barely detected,

Level 2 – odor is distinct and definite, any unpleasant characteristics recognizable,

Level 3 – odor is objectionable enough or strong enough to cause attempts at avoidance, and

Level 4 – odor is so strong that a person does not want to remain present.

2. An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and

3. The source of the odor.

E. With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation

F. When determining whether to take formal enforcement action authorized in subsection D and E above, the Agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction

of the Agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the Agency may decline to pursue formal enforcement action.

G. The Agency will document all the criteria used in making its determination in subsection F above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW 70.94.205, will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties.

H. Nothing in this Section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

~~((A. Effective control apparatus and measures shall be installed and operated to reduce odor-bearing gases and particulate matter emitted into the atmosphere to a reasonable minimum.~~

~~B. The Board or Control Officer may establish reasonable requirements that the building or equipment be closed and ventilated in such a way that all the air, gas, and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.~~

~~C. Odors caused by agricultural activities consistent with good agricultural practices exempt from this section:~~

~~1. Odors caused by agricultural activities consistent with good agricultural practices on agricultural land are exempt from the requirements of this section unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the Authority shall consult with a recognized third-party expert in activity prior to issuing any notice of violation.~~

~~2. Any notice of violation issued under this section pertaining to odors cause by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.~~

~~3. In any appeal to the Pollution Control Hearings Board or any judicial appeal of final order pertaining to odors caused by agricultural activity, the Authority shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.~~

~~4. If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.~~

~~5. As used in this section:~~

~~a. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.~~

~~b. "Good agricultural practices" mean economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.~~

~~e. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.~~

~~6. The Authority, implements and enforces WAC 173-400-040(4), in Spokane County in addition to Parts A through C.6 of this Section. The more stringent requirement in WAC 173-400-040(4) or Section 6.03 supersedes the lesser.))~~

Reviser's note: The typographical errors in the above section occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 10-08-069
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed April 6, 2010, 11:51 a.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: In 2002, the department rewrote the window cleaning rules for clarity. As part of that process, an allowance from ANSI/IWCA 1-14.1-2001, Window Cleaning Safety, Section 5.7.12 was omitted from the final rule language. This language would allow employers to use a rope descent system above three hundred feet in height if the windows cannot be safely and practicably accessed by other work practices. The purpose of this rule making is to add this allowance to WAC 296-878-20010 Safely use rope descent systems.

Citation of Existing Rules Affected by this Order: Amending chapter 296-878 WAC, Safety standards for window cleaning, WAC 296-878-20010 Safely use rope descent systems.

- Updated language to allow employers to use a rope descent system above three hundred feet in height if the windows cannot be safely and practicably accessed by other work practices.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 10-01-168 on December 22, 2009.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: April 6, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

WAC 296-878-20010 Safely use rope descent systems.

You must:

(1) Make sure workers use extreme care when using rope descent equipment around electrical service, heat sources, and turbulent areas, such as air vents.

(2) Connect the seatboard or boatswain's chair to the descent device with a manual or auto locking carabiner.

(3) Make sure workers are positioned in the seatboard or boatswain's chair before being suspended.

(4) Make sure workers do not reach more than six feet in any direction as measured from a centerline straight down from where the suspension rope bears on the building.

(5) Make sure workers do not descend rapidly, swing excessively, or stop suddenly.

(6) Make sure that, in addition to the suspended worker, there is one other person at the jobsite who is skilled in using the rope descent system and rescue procedures.

(7) Make sure you do not exceed a three hundred-foot height of descent as measured from grade or building setback unless the windows cannot be safely and practicably accessed by other means.

(8) Make sure your site-specific service plan addresses the following hazards for descents over one hundred thirty feet as measured from grade or building setback:

- Sudden weather changes, such as wind gusts, micro bursts, or tunneling wind currents
- Inability of the rope descent system to function without using excessive force
- Workers suspended for long periods of time
- Rerigging and movement of main suspension and safety lines.

(9) Stabilize workers suspended from a rope descent system whenever the descent is higher than one hundred thirty feet, as measured from grade or building setback.

(10) Prohibit workers from working when wind speed makes any stabilization equipment ineffective.

- Note:** Provisions for stabilizing workers may include:
- Continuous stabilization, such as mullion tracks
 - Intermittent stabilization, such as detent pins/buttons
 - Work station stabilization, such as suction cups.

WSR 10-08-074

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 6, 2010, 12:58 p.m., effective May 7, 2010]

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

Purpose: The department is amending and adopting new rules in chapter 388-106 WAC, Long-term care services, as follows:

- Updating how the individual budget amount is calculated after the New Freedom participant is assigned a classification as a result of an assessment performed in CARE.
- Updating how unused funds from New Freedom individual budgets will be maintained and/or returned to the department.
- Clarifying what services are available under the New Freedom waiver.
- Updating the role of a designated New Freedom representative to not allow payment as a personal care provider.
- New WAC to address institutionalized participants and their budgets.
- New WAC to address what services are not allowed under New Freedom.
- Adding two applicable definitions for clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010, 388-106-1400, 388-106-1405, 388-106-1422, 388-106-1435, 388-106-1445, and 388-106-1455.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 10-02-096 on January 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Editorial changes only.

A final cost-benefit analysis is available by contacting Karen Fitzharris, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2446, fax (360) 407-7582, e-mail Karen.Digre-Fitzharris@dshs.wa.gov.

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

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

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

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

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

Date Adopted: April 6, 2010.

Susan N. Dreyfus
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-09 issue of the Register.

WSR 10-08-093
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed April 7, 2010, 7:48 a.m., effective May 8, 2010]

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

Purpose: SHB 1254, chapter 33, Laws of 2009 (later codified as chapter 15.115 RCW) replaced the wheat commission and barley commission with the Washington grain commission. On August 14, 2009, the grain commission certified to the director, department of agriculture that the transition from the wheat and barley commissions to the grain commission had been completed. RCW 15.115.130(5), "...The Washington wheat commission and Washington barley commission cease to exist as of the date that certification is received by the director. Once the direct [director] has received the certification, the director is authorized and shall take action to repeal the marketing orders addressing wheat or barley." This action repeals marketing orders for the wheat and barley commissions.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-528-002, 16-528-004, 16-528-005, 16-528-010, 16-528-020, 16-528-040, 16-528-050, 16-528-060, 16-530-005, 16-530-006, 16-530-010, 16-530-020, 16-530-040, 16-530-050, and 16-530-060.

Statutory Authority for Adoption: RCW 15.115.130.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-04-044 on January 28, 2010.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 15.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 15.

Date Adopted: April 7, 2010.

Dan Newhouse
 Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-528-002 Director's final decision approving a marketing order.
- WAC 16-528-004 Marketing order for Washington wheat—Policy statement.
- WAC 16-528-005 Marketing order purposes.

- WAC 16-528-010 Definitions.
- WAC 16-528-020 Wheat commission—Structure—Powers, duties—Procedure.
- WAC 16-528-040 Assessments and collection.
- WAC 16-528-050 Effective time.
- WAC 16-528-060 Separability.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-530-005 Marketing order for Washington barley—Policy statement.
- WAC 16-530-006 Marketing order purposes.
- WAC 16-530-010 Definition of terms.
- WAC 16-530-020 Barley commission.
- WAC 16-530-040 Assessments and collection.
- WAC 16-530-050 Effective time.
- WAC 16-530-060 Separability.

WSR 10-08-110
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 7, 2010, 10:20 a.m., effective May 8, 2010]

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

Purpose: The chapter is intended to assure that medicaid resources will be available to those who truly need them by helping to ensure that those with resources can contribute to the cost of their long-term care (LTC). These amendments (1) remove medicare cost savings from estate recovery; (2) allow for future implementation of the LTC partnership agreement which will permit clients to protect assets or resources from both eligibility for LTC services and from estate recovery at the time of death through the purchase of a qualified LTC partnership agreement insurance policy; and (3) improve quality of care for DSHS clients through the application of agency policy that is transparent, consistent, cost-effective and complies with federal regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-527-2730, 388-527-2733, 388-527-2737, 388-527-2742, 388-527-2754, 388-527-2790, and 388-527-2820.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 2008 Medicare Improvements for Patient and Providers Act (which amended Section 1917 (b)(1)(B)(ii) of the Social Security Act); Deficit Reduction

Act of 2005 (incorporating language regarding LTC partnership agreements).

Adopted under notice filed as WSR 10-04-119 on February 3, 2010.

Changes Other than Editing from Proposed to Adopted Version: Corrected the typo in WAC 388-527-2820 Liens prior to death, subsection (8) ~~Distributed Disputed~~ assets must not be distributed while in litigation.

A final cost-benefit analysis is available by contacting Shawn Hoage, P.O. Box 45862, Olympia, WA 98504-5862, phone (360) 664-5483, fax (360) 586-9727, e-mail hoagesl@dshs.wa.gov.

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

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

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

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

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

Date Adopted: April 7, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 09-07-038, filed 3/10/09, effective 4/10/09)

WAC 388-527-2730 Definitions. The following definitions apply to this chapter:

"Contract health service delivery area (CHSDA)" means the geographic area within which contract health services will be made available by the Indian Health Service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Sec. 136.21(d) and 136.22.

"Domestic partner" means an adult who meets the requirements for a valid registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership by the Washington Secretary of State. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state registered domestic partner" or "state registered domestic partnership."

"Estate" means all property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. The value of the estate will be reduced by any valid liability against the decedent's property at the time of death. An estate also includes:

(1) For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets as defined by RCW 11.02-.005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997 and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the recipient immediately before death.

"Heir" means the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.

"Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Lis pendens" means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.

"Long-term care services" means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services for clients of the home and community services division and division of developmental disabilities including, but not limited to, nursing facility care and home and community services.

"Medicaid" means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act.

"Medical assistance" means ((both)) medicaid ((and medical care)) services funded under title XIX or state-funded medical services.

"Medicare Savings programs" means the programs described in WAC 388-517-0300 that help a client pay some of the costs that medicare does not cover.

"Property": Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:

(1) **"Personal property"** means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) **"Real property"** means land and anything growing on, attached to, or erected thereon;

(3) **"Title property"** means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.

(4) **"Trust property"** means any type of property interest titled in, or held by, a trustee for the benefit of another person or entity.

"State-only funded long-term care" means the long-term care services that are financed with state funds only.

"Qualified long-term care insurance partnership" means an agreement between the centers for medicare and medicaid services (CMS), the Washington state insurance commission which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917(b)(1)(C)(iii) of the act.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2733 Estate liability. (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

- (a) A surviving spouse; or
- (b) A surviving child who was either:
 - (i) Under twenty-one years of age; or
 - (ii) Blind or disabled as defined under chapter 388-511 WAC.

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.005 is not liable for the cost of adult protective services (APS) financed with state funds only.

(4) On or before December 31, 2009, the client's estate is not liable for amounts paid for medicare premiums and other cost-sharing expenses incurred on behalf of a client who is eligible only for the medicare savings programs (MSP), and not otherwise medicaid eligible.

(5) On or after January 1, 2010, the client's estate is not liable for amounts paid for medical assistance cost-sharing for benefits for clients who received coverage under a MSP only or for clients who receive coverage under a medicare savings program and medicaid as described in 42 USC 1396a(a)(10)(E).

AMENDATORY SECTION (Amending WSR 09-07-038, filed 3/10/09, effective 4/10/09)

WAC 388-527-2737 Deferring recovery. (1) For a client who died after June 30, 1994, the department defers recovery from the estate until:

- (a) The death of the surviving spouse, if any; and
- (b) There is no surviving child who is:
 - (i) Twenty years of age or younger; or
 - (ii) Blind or disabled at the time of the client's death, as defined under WAC 388-475-0050.

~~((2) The department may place a lien against property to evidence the department's right to recover after the deferral period specified in subsection (1) of this section.))~~

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2742 Services subject to recovery. The department considers the medical services the client received and the dates when the services were provided to the client, in order to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this sec-

tion covers liability for medicaid services (~~(and)~~), subsection (2) covers liability for state-only funded long-term care services, and subsection (3) covers liability for all other state-funded services. An estate can be liable under (~~both~~) any of these subsections.

(1) The client's estate is liable for:

(a) All medicaid services provided from July 26, 1987 through June 30, 1994;

(b) The following medicaid services provided after June 30, 1994 and before July 1, 1995:

- (i) Nursing facility services;
- (ii) Home and community-based services; and
- (iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.

(c) The following medicaid services provided after June 30, 1995 and before June 1, 2004:

- (i) Nursing facility services;
- (ii) Home and community-based services;
- (iii) Adult day health;
- (iv) Medicaid personal care;
- (v) Private duty nursing administered by the aging and disability services administration of the department; and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(d) The following services provided on and after June 1, 2004 through December 31, 2009:

(i) All medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving medicaid;

(iii) Medicare premiums only for individuals also receiving medicaid; and

(iv) Premium payments to managed care organizations.

(e) The following services provided on or after January 1, 2010:

(i) All medicaid services except those defined under subsection (d)(ii) and (d)(iii) of this section;

(ii) All institutional medicaid services described in subsection (c) of this section;

(iii) Premium payments to managed care organizations; and

(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Home and community services' clients on and after July 1, 1995; and

(b) Division of developmental disabilities' clients on and after June 1, 2004.

(3) The client's estate is liable for all state-funded services provided regardless of the age of the client at the time the services were provided.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2754 Assets not subject to recovery and other limits on recovery. (1) Recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and is limited to thirty-five percent of the remaining value of the estate for services the client:

- (a) Received before July 25, 1993; and
- (b) When the client died with:
 - (i) No surviving spouse;
 - (ii) No surviving child who is:
 - (A) Under twenty-one years of age;
 - (B) Blind; or
 - (C) Disabled.
 - (iii) A surviving child who is twenty-one years of age or older.

(2) For services received after July 24, 1993, all services recoverable under WAC 388-527-2742 will be recovered, even from the first fifty thousand dollars of estate value that is exempt above, except as set forth in subsections (3) through (8) of this section.

(3) For a client who received services after July 24, 1993 and before July 1, 1994, the following property, up to a combined fair market value of two thousand dollars, is not recovered from the estate of the client:

- (a) Family heirlooms;
- (b) Collectibles;
- (c) Antiques;
- (d) Papers;
- (e) Jewelry;
- (f) Photos; and
- (g) Other personal effects of the deceased client and to which a surviving child is entitled.

(4) Certain properties belonging to American Indians/Alaska Natives (AI/AN) are exempt from estate recovery if at the time of death:

- (a) The deceased client was enrolled in a federally recognized tribe; and
- (b) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:
 - (i) Within the most recent boundaries of a prior federal reservation; or
 - (ii) Within the Contract Health Service Delivery Area boundary for social services provided by the deceased client's tribe to its enrolled members.

(5) Protection of trust and nontrust property under subsection (4) is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians, such as spouses and step-children, that their culture would nonetheless protect as family members, to a tribe or tribal organization and/or to one or more Indians.

(6) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds

from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(7) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom.

(8) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

(9) Assets protected under a qualified long term care partnership agreement.

AMENDATORY SECTION (Amending WSR 06-17-075, filed 8/14/06, effective 9/14/06)

WAC 388-527-2790 Filing liens. (1) The department ~~((files))~~ may file liens ~~((, seeks adjustments, and uses other means))~~ to recover the cost of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of a client consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

(2) Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

- (a) The address of the property and other assets subject to the lien;
- (b) The probate estate's personal representative, if any;
- (c) Any other person known to have title to the affected property and/or to the decedent's heir(s) as defined by WAC 388-527-2730; and
- (d) The decedent's last known address or the address listed on the title, if any.

(3) The notice in subsection (2) of this section includes:

- (a) The decedent's name, identification number, date of birth, and date of death;
- (b) The amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client that the department seeks to recover;
- (c) The department's intent to file a lien against the deceased client's property and other assets to recover the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client;

(d) The county in which the property and other assets are located; and

(e) The procedures to contest the department's decision to file a lien by applying for an administrative hearing.

(4) An administrative hearing only determines:

- (a) Whether the medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the decedent alleged by the department's notice is correct;
- (b) Whether the decedent had legal title to the property; and

(c) Whether a lien is allowed under the provisions of Title 42 USC Section 1396p (a) and (b).

(5) A request for an administrative hearing must:

- (a) Be in writing;

(b) State the basis for contesting the lien;
 (c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the department mailed the notice.

(6) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(7) Disputed assets must not be distributed while in litigation.

(8) An administrative hearing under this section is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

~~((8))~~ (9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the department only files a lien against the decedent's property and other assets only if upheld by the final agency decision.

~~((9))~~ (10) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 09-07-038, filed 3/10/09, effective 4/10/09)

WAC 388-527-2820 Liens prior to death. (1) Subject to the requirements of 42 USC Section 1396p and the conditions of this section, the department is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution as described in WAC 388-500-0005;

(b) The department determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing, in the client's home:

(i) The client's spouse or domestic partner;

(ii) The client's child who at the time of the client's death is twenty years of age or younger, or is blind or permanently and totally disabled as defined in Title 42 USC Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such home and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

(2) If the client is discharged from the medical facility and returns home, the department dissolves the lien.

(3) Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;

(b) The department's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and

(d) The procedures to contest the department's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the department's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the department mailed the notice.

(7) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) Disputed assets must not be distributed while in litigation.

(9) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

~~((9))~~ (10) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the department only files a lien against the client's property and other assets only if upheld by the final agency decision.

~~((10))~~ (11) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (3) of this section.