

WSR 10-16-082**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed July 30, 2010, 11:20 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The purpose of this proposed rule making is to amend these rules and add new sections to implement chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007.

The department has proposed amending WAC 388-76-10000 Definitions, 388-76-10160 Criminal history background check—Required, 388-76-10165 Criminal history background check—Valid for two years, 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted, 388-76-10174 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities, 388-76-10175 Employment—Conditional—Pending results, 388-76-10180 Employment and other unsupervised access decisions, 388-76-10130 Qualifications—Provider, entity representative and resident manager, and 388-76-10135 Qualifications—Caregiver.

The department has proposed repealing WAC 388-76-10155 Unsupervised access to vulnerable adults—Prohibited and 388-76-10173 Disclosure of employee information—Employer immunity—Rebuttable presumption.

The department has proposed adding new sections WAC 388-76-10161 Background check—Washington state—Who is required to have, 388-76-10162 Background check—National fingerprint checks—Who is required to have, 388-76-10163 Background check—Process, 388-76-10164 Background check—Results, and 388-76-10146 Qualifications—Training and home care aide certification.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10155 and 388-76-10173; and amending WAC 388-76-10000, 388-76-10130, 388-76-10135, 388-76-10160, 388-76-10165, 388-76-10170, 388-76-10174, 388-76-10175, and 388-76-10180.

Statutory Authority for Adoption: RCW 70.128.040, chapter 74.39A RCW.

Adopted under notice filed as WSR 10-10-120 on May 5, 2010.

Changes Other than Editing from Proposed to Adopted Version: Changes, other than editing changes are shown with new language underlined and deleted text lined through.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10000 Definitions. "Willful" means the deliberate or nonaccidental action or inaction by an (~~alleged perpetrator~~) individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

- (1) Be twenty one years of age or older;
- (2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:
 - (a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;
 - (b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an Associate's degree;
 - (c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;
 - (d) Graduation from a foreign or United States college or university, including award of a Bachelor's degree;
 - (e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a Master's degree; or
 - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.
- (3) ~~Completion~~ Completion of the training requirements that were in effect on the date they were hired, including the requirements described in chapter 388-112 WAC;
- (4) Have good moral and responsible character and reputation;
- (5) Be literate in the English language, or meet alternative requirements by assuring that a person is on staff and available at the home who is:
 - (a) Able to communicate or make provisions for communicating with the resident in his or her primary language; and
 - (b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.
- (6) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;
- (7) Have completed at least three hundred and twenty hours of successful direct care experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home;
- (8) Have no criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;
- (9) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and
- (10) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10135 Qualifications—Caregiver. The adult family home must ensure each caregiver has the following minimum qualifications:

- (1) Be eighteen years of age or older;
- (2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;
- (3) Have basic communication skills to:
 - (a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;
 - (b) Understand and speak English well enough to:
 - (i) Respond appropriately to emergency situations; and
 - (ii) Read, understand and implement resident negotiated care plans.
- (4) Completion of the training requirements that were in effect on the date they were hired including requirements described in chapter 388-112 WAC;
- (5) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;
- (6) Have a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and
- (7) Have tuberculosis screening to establish tuberculosis status per this chapter.

NEW SECTION

WAC 388-76-10146 Qualifications—Training and home care aide certification. (1) The adult family home must ensure ~~All~~ adult family home caregivers, entity representatives, and resident managers hired on or after January 1, 2011, ((must)) meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

- (a) Orientation and safety;
- (b) Basic;
- (c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs ((as primary diagnosis));
- (d) Cardiopulmonary resuscitation and first aid; and
- (e) Continuing education.

(2) All persons listed in subsection (1) of this section, must obtain the home-care aide certification ((as)) required by chapter 246-980 WAC.

(3) All adult family home applicants on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home-care aide certification ((as)) required by chapter 246-980 WAC before licensure.

(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain ((P))persons including ((exempt from long-term care worker training and certification requirements include but are not limited to adult family home applicants, caregivers, entity representatives, and resident managers who are)) registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant

program are exempt from long-term care worker training requirements.

(5) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

NEW SECTION

WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have. (1) After January 1, 2012, ((A))an adult family home applicant and anyone affiliated with an applicant, ((after January 1, 2012)) must have a background check that includes a national fingerprint-based background check.

(2) The adult family home must ensure that all caregivers, entity representatives and resident managers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

NEW SECTION

WAC 388-76-10164 Background check—Results. (1) The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The adult family home must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request in writing, a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10180 Background check—Employment—Disqualifying information. ((Until the adult family home receives a successful background check result)) Unless hired conditionally as specified in WAC 388-76-10175, the adult family home must not use or employ anyone, directly or by contract, who is listed in WAC 388-76-10161 if the individual has:

(1) Any of the convictions, history, or findings, described below:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;

(c) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) Has been convicted of:

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA); or

(iv) Violation of the uniform precursor drug act (VUPDA).

(f) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by

court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under title 26, RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

The changes were made because of the comments the department received and to provide clarification.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW
<p>GENERAL COMMENTS: Suggestions that the rules need to include more details about the training requirements.</p> <p>Statement that the small business economic impact statement (SBEIS) is "inadequate" and does not reflect the "significant and profound" financial impact of the proposed rule change.</p> <p>Concern about the cost of implementing new background check requirements.</p> <p>Concern about the financial impact of current and future backlog that will be created by the fingerprint system.</p>	<p>No change was made.</p> <p>The training required by the proposed rules is required by chapter 74.39A RCW, including RCW 74.39A.073. The specific details about the training requirements are described in chapter 388-112 WAC. The rules proposed for this chapter do not describe the details of the training requirements. Instead, the rules require compliance with chapter 388-112 WAC, the residential training requirements for boarding homes and adult family homes.</p> <p>No change was made.</p> <p>As explained in the SBEIS and cost-benefit analysis (CBA) that was filed with these rules, an evaluation of the costs and benefits of the proposed rules is not required by RCW 34.05.328(5), because they are explicitly and specifically required by law, including chapters 74.39A and 18.88B RCW.</p> <p>No change suggested or made.</p> <p>The department currently pays the cost of all background checks for providers and their employees. Department practice related to background check costs will be consistent with RCW 74.39A.055, which does not allow the department to pass the costs of fingerprint-based background checks to the adult family homes or their employees.</p> <p>No change suggested or made.</p> <p>This comment will be forwarded to DSHS's BCCU, which is responsible for background check processing issues. RCW 74.39A.055 requires that background checks be checked against the federal bureau of investigation fingerprint identification records after January 1, 2012. The department is working to mitigate issues related to processing delay. Recent changes have resulted in a reduction in the time it takes to process background</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW
<p>Concern that the proposed rule change does not reflect their collective bargaining rights stating that the proposed rule changes represent changes that are mandatory subjects of bargaining.</p> <p>Concerns about cost of training and that Initiative 1029 requires the state to pay for the required training.</p> <p>Comment that the costs and benefits in the SBEIS are utterly lacking.</p> <p>Concern that there is no process for how to obtain fingerprints detailed.</p> <p>WAC 388-76-10000, under the definition of "willful," delete the term "alleged perpetrator" and replace with the term individual.</p> <p>WAC 388-76-10130(3), editorial change for clarification.</p> <p>WAC 388-76-10135(4), editorial change.</p> <p>WAC 388-76-10146 (1) and (5), proposed changes in this WAC and chapter 388-112 WAC that would eliminate the orientation training requirement for certain staff, such as volunteers, making it inconsistent with statutory requirements.</p> <p>WAC 388-76-10146 [(1)](a), we received a comment concerning the increased requirements for orientation and safety training.</p> <p>WAC 388-76-10146 [(1)](b), define "basic," is this the "fundamentals of care"?</p>	<p>checks for new applicants and newly hired staff from nearly three months in May 2010 to two days in July 2010. The processing time for all background checks is now taking five days.</p> <p>No change suggested or made.</p> <p>The changes to this chapter are required by the long-term care initiative, I-1029, which has been codified in chapters 74.39A and 18.88B RCW. This process is consistent with the department's authority and provisions under RCW 70.128.040 (2)(a). The scope of bargaining identified in RCW 41.56.029 does not require bargaining over regulations. Concerns about mandatory subjects for collective bargaining under RCW 41.56.029 should be directed to Diane Lutz, lead negotiator, office of financial management at (360) 725-5513 or via e-mail at Diane.Lutz@ofm.wa.gov .</p> <p>No change suggested or made.</p> <p>RCW 74.39A.073 requires additional training, but it does not require the state pay the cost of the training.</p> <p>All comments or concerns related to training requirements have been forwarded to the DSHS division responsible for implementing training requirements.</p> <p>No change was made.</p> <p>As explained in the SBEIS and CBA that was filed with these rules, an evaluation of the costs and benefits of the proposed rules is not required by RCW 34.05.328(5), because they are explicitly and specifically required by law, including chapters 74.39A and 18.88B RCW.</p> <p>No change suggested or made.</p> <p>This comment will be forwarded to DSHS's BCCU, which is responsible for background check processing issues.</p> <p>A change was made in response to this comment. To be consistent with wording used throughout the chapter, the definition of "willful" was changed as recommended.</p> <p>"Complete" was changed to "completion of."</p> <p>"Complete" was changed to "completion of."</p> <p>Clarifying changes were made requiring that adult family homes ensure that long-term care worker training and certification requirements are met and that all staff, including volunteers, receive orientation and training pertinent to the duties of their job.</p> <p>No change suggested or made.</p> <p>Orientation and safety training is specifically required by RCW 74.39A.073(4). Details about this training requirement can be found in chapter 388-112 WAC. All comments or concerns related to training requirements have been forwarded to the DSHS division responsible for implementing the training requirements.</p> <p>No change was made.</p> <p>Basic training is defined in chapter 388-112 WAC. All comments or concerns related to training requirements have been forwarded to the DSHS division responsible for implementing the training requirements.</p>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW
<p>WAC 388-76-10146 [(1)](c), clarify language associated with specialty training.</p>	<p>A clarifying change was made to this section to delete "primary diagnosis" and insert "primary special needs" to be consistent with current rule language and chapter 388-112 WAC.</p>
<p>WAC 388-76-10146 [(1)](e), the specific number of continuing education hours need to be included and defined. The current provision of ten hours annually does not reflect the twelve hours called for in I-1029.</p>	<p>No change was made. This rule requires compliance with chapter 388-112 WAC, which describes the number of hours required for continuing education. All comments or concerns related to training requirements have been forwarded to the DSHS division responsible for implementing the training requirements.</p>
<p>WAC 388-76-10146(2), one comment conveyed a disagreement with the requirement to obtain home care aide certification due to increased labor cost.</p>	<p>No change suggested or made. Home care aide certification is required by RCW 18.88B.020. All comments or concerns related to home care aide certification have been forwarded to the department of health, which is responsible for home care aide certification.</p>
<p>WAC 388-76-10146(4), recommend a grandfather clause to accommodate existing providers who open a new AFH after January 2011.</p>	<p>No change was made. Under most circumstances providers licensed before January 2011 who met the training requirements in place at the time of licensure do not have to meet the new training requirements.</p>
<p>WAC 388-76-10146(4), add "under RCW 18.88B.040 and chapter 246-980 WAC" to clarify who is exempt from the long-term care worker training requirements.</p>	<p>A change was made to add the statutory and rule references.</p>
<p>WAC 388-76-10161 and 388-76-10162, we received a comment stating that the "anyone affiliated" wording of the proposed rule is beyond the scope of the language in I-1029.</p>	<p>No change was made. The term "affiliated with an applicant" is defined in current WAC 388-76-1000 [388-76-10000] as "any person listed on the application as a partner, officer, director, resident manager or majority owner of the applying entity, or is the spouse or domestic partner of the applicant." As defined, the scope of the rule is consistent with statutory requirements.</p>
<p>WAC 388-76-10162, editorial change for clarification.</p>	<p>The phrase "after January 1, 2012," was moved to the beginning of the sentence for clarification.</p>
<p>WAC 388-76-10164 (2)(c), unclear about the requirement for providers to notify both the department and the licensing agency about resignations/terminations due to background check results.</p>	<p>A clarifying change was made. For clarity the word "other" was added before "appropriate licensing or certification agency" to distinguish DSHS from other agencies; e.g. the department of health.</p>
<p>WAC 388-76-10165, does not indicate for how long the fingerprint is valid.</p>	<p>No change was made. The law does not specify a recheck requirement for national fingerprint-based background checks.</p>
<p>WAC 388-76-10174, concern that the financial impact will be profound for the state, for providers, and for caregivers. Are the fingerprint checks transferrable? Many caregivers work in more than one AFH, or in multiple LTC facilities.</p>	<p>No change suggested or made. RCW 74.39A.055(2) requires DSHS to share federal and state background checks with the department of health, but it explicitly prohibits these agencies from sharing the federal background check results with any other state agency or person. It is our understanding that the BCCU will retain copies of federal fingerprint check results in order to reduce the number of checks that need to be completed. Your comments have been forwarded to the BCCU.</p>
<p>WAC 388-76-10180, language is inconsistent with WAC 388-76-10175. Individuals may be hired conditionally pending the result of a background check.</p>	<p>A change was made to clarify that a person may be hired on a conditional basis as described in WAC 388-76-10175.</p>

A final cost-benefit analysis is available by contacting Michael Tornquist, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2589, fax (360) 438-7903, e-mail tornqmj@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 5, Amended 8, Repealed 2.

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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 9, Repealed 2.

Date Adopted: July 29, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

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

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

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

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - the resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" (~~for purposes other than training~~) means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or

services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to

be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

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

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW ((9A.41.100)) 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical

nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter (~~and chapter 388-112 WAC~~); or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter (~~and chapter 388-112 WAC~~).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an (~~alleged perpetrator~~) individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an Associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a Bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a Master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) (~~Meet~~) Completion of the (~~department's~~) training requirements (~~of~~) that were in effect on the date they were

hired, including the requirements described in chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate in the English language, or meet alternative requirements by assuring that a person is on staff and available at the home who is:

(a) Able to communicate or make provisions for communicating with the resident in his or her primary language; and

(b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(7) Have completed at least three hundred and twenty hours of successful direct care experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home;

(8) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(9) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

(10) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10135 Qualifications—Caregiver. The adult family home must ensure each caregiver has the following minimum qualifications:

(1) Be eighteen years of age or older;

(2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;

(3) Have basic communication skills to:

(a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;

(b) Understand and speak English well enough to:

(i) Respond appropriately to emergency situations; and

(ii) Read, understand and implement resident negotiated care plans.

(4) ~~((Meet))~~ Completion of the ((department's)) training requirements ((of)) that were in effect on the date they were hired including requirements described in chapter 388-112 WAC;

(5) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(6) Have a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and

(7) Have tuberculosis screening to establish tuberculosis status per this chapter.

NEW SECTION

WAC 388-76-10146 Qualifications—Training and home care aide certification. (1) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers hired on or after January 1, 2011, meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(2) All persons listed in subsection (1) of this section, must obtain the home-care aide certification required by chapter 246-980 WAC.

(3) All adult family home applicants on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home-care aide certification required by chapter 246-980 WAC.

(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(5) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10160 ~~((Criminal history)) Background check—((Required)) General.~~ ~~((To assist in determining the character, suitability, and competence of a potential employee and before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must))~~ Background checks conducted by the department and required in this chapter include but are not limited to:

(1) ~~((Require the person to complete the residential care services background inquiry form which includes))~~ Washington state background checks including:

(a) ~~((A disclosure statement))~~ Department and department of health findings; and

(b) ~~((A statement authorizing the home, the department, and the Washington state patrol to conduct a background inquiry))~~ Criminal background check information from the Washington state patrol and the Washington state courts.

(2) ~~((Verbally inform the person:~~

(a) ~~That he or she may ask for a copy of the background inquiry result; and~~

(b) ~~Of the inquiry result within ten days of receiving the result))~~ After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(3) ~~((Send the information to the department and any additional documentation and information as requested by~~

~~the department to satisfy the requirements of this section; and)) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.~~

~~(4) ((Notify the appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record)) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.050(8).~~

NEW SECTION

WAC 388-76-10161 Background check—Washington state—Who is required to have. (1) An adult family home applicant and anyone affiliated with an applicant must have a Washington state background check before licensure.

(2) The adult family home must ensure the following individuals employed directly or by contract, have Washington state background checks:

- (a) Caregivers, including volunteers and students who may have unsupervised access to residents;
- (b) Entity representatives;
- (c) Resident managers; and
- (d) All household members over the age of eleven who may have unsupervised access to residents.

NEW SECTION

WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have. (1) After January 1, 2012, an adult family home applicant and anyone affiliated with an applicant, must have a background check that includes a national fingerprint-based background check.

(2) The adult family home must ensure that all caregivers, entity representatives and resident managers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

NEW SECTION

WAC 388-76-10163 Background check—Process. Before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

- (1) Require the person to complete a DSHS background authorization form; and
- (2) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

NEW SECTION

WAC 388-76-10164 Background check—Results. (1) The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The adult family home must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10165 ~~((Criminal history))~~ Background check—Valid for two years. ~~((+))~~ A Washington state background ~~((inquiry result))~~ check is valid for two years from the initial date it is conducted~~((;))~~. The adult family home must ensure:

(1) A new DSHS background authorization form is submitted to the BCCU every two years for individuals listed in WAC 388-76-10161;

(2) ~~((The adult family home must have))~~ There is a valid ~~((criminal history))~~ Washington state background check for all ~~((persons in the home who may have unsupervised access to any resident; and~~

~~((3) The home must submit, receive and keep the results of the check every two years))~~ individuals listed in WAC 388-76-10161.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10170 ~~((Criminal history))~~ Background check—~~((Information—))~~Confidentiality—Use restricted—Retention. The adult family home must establish and implement procedures that ensure all background authorization forms, background check results, related information, and all copies are:

(1) ~~((Establish and implement procedures that ensure:~~
~~((a) All disclosure statements, background inquiry applications, responses, related information, and all copies are))~~ Kept in a confidential and secure manner;

~~((b) All background inquiry results and disclosure statements are))~~ (2) Used for employment purposes only;

~~((c) Background inquiry results and disclosure statements are))~~ (3) Not disclosed to any person except:

~~((i))~~ (a) The person about whom the home made the disclosure or background ~~((inquiry))~~ check;

~~((ii))~~ (b) Licensed facilities, an employer of an authorized program, or an in-home services agency employer identified in WAC ~~((388-76-10173))~~ 388-76-10174;

~~((iii))~~ (c) Authorized state and federal employees; and

~~((iv))~~ (d) The Washington state patrol auditor.

~~((2))~~ ~~Keep a record of inquiry results for eighteen months~~) ~~(4) Kept for two years~~ after the date an employee either quits or is terminated.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10174 Background check~~(s)~~—Disclosure of information—Sharing of ~~((criminal))~~ background information by health care facilities. In accordance with RCW 43.43.832 a health care facility may share ~~((criminal))~~ Washington state background ~~((information))~~ check results with other health care facilities under certain circumstances. Results of the national fingerprint-based background check may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share ~~((copies of))~~ completed ~~((criminal))~~ Washington state background ~~((inquiry information))~~

~~((2))~~ ~~A health care facility may share completed criminal background inquiry information~~) check results only if:

(a) The health care facility sharing the ~~((criminal))~~ background ~~((inquiry))~~ check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed ~~((from))~~ between the date the person was last employed at a licensed health care facility ~~((to))~~ and the date of ~~((their))~~ the person's current employment application; and

(c) The ~~((criminal))~~ background ~~((information))~~ check is no more than two years old.

~~((3))~~ ~~(2)~~ If ~~((criminal))~~ background ~~((inquiry))~~ check information is shared, the health care facility employing the subject of the ~~((inquiry))~~ check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in ~~((RCW 43.43.842))~~ WAC 388-76-10180 since the completion date of the most recent ~~((criminal))~~ background ~~((inquiry))~~ check.

~~((4))~~ ~~(3)~~ Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in ~~((RCW 43.43.842))~~ WAC 388-76-10180, after the completion date of their most recent ~~((criminal))~~ background ~~((inquiry))~~ check:

(a) Cannot rely on the applicant's previous employer's ~~((criminal))~~ background ~~((inquiry))~~ check information; and

(b) Must request a new ~~((criminal))~~ background ~~((inquiry pursuant to RCW 43.43.830 through 43.43.842))~~ check as required by this chapter.

~~((5))~~ ~~(4)~~ Health care facilities that share ~~((criminal))~~ background ~~((inquiry))~~ check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

~~((6))~~ ~~(5)~~ Health care facilities must send and receive the ~~((criminal))~~ background ~~((inquiry))~~ check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

~~(6)~~ In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10175 Background check employment—Conditional hire—Pending results. An adult family home may conditionally employ a person directly or by contract, pending the result of a background ~~((inquiry))~~ check, provided the home:

(1) ~~((Asks))~~ Requests the background check no later than one business day after conditional employment;

(2) Requires the individual ~~((if they have))~~ to sign a disclosure statement and the individual denies having been convicted of a disqualifying crime ~~((listed under RCW 43.43.830 or 43.43.842 and the individual denies they have a conviction))~~;

~~((2))~~ Requests the background inquiry within seventy two hours of the conditional employment) or a disqualifying finding under WAC 388-76-10180;

(3) Does not allow~~((s))~~ the ~~((conditionally hired person))~~ individual to have unsupervised access to any resident ~~((with-out))~~;

~~((4))~~ Ensures direct supervision of the individual, as defined in WAC 388-76-10000; and

~~((4))~~ ~~(5)~~ Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements ~~((in))~~ under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10180 Background check—Employment ~~((and other unsupervised access decisions))~~—Disqualifying information. Unless hired conditionally as specified in WAC 388-76-10175, the adult family home must not use or employ ~~((any person))~~ anyone, directly or by contract, ~~((or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member over the age of eleven unsupervised access to any resident if the person or background inquiry discloses that the person))~~ who is listed in WAC 388-76-10161 if the individual has:

(1) Any of the convictions, history, or findings, described below:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;

(c) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) Has been convicted of:

(i) Violation of the imitation controlled substances act (VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA); or

(iv) Violation of the uniform precursor drug act (VUPDA).

(f) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under title 26, RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10155 Unsupervised access to vulnerable adults—Prohibited.

WAC 388-76-10173 Disclosure of employee information—Employer immunity—Rebuttable presumption.

WSR 10-16-084 PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2010, 11:24 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The department is amending existing sections and adding new sections to chapter 388-101 WAC, Certified community residential services and supports. The purpose of amending and adding to these rules is to implement chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007.

The department is proposing new sections WAC 388-101-3245 Background check—General, 388-101-3253 National fingerprint background checks—Required, 388-101-3255 Background checks—Provisional hire—Pending results, 388-101-3258 Training requirements for staff hired before January 1, 2011, and 388-101-3302 Certified community residential services and supports—General training requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-101-3000, 388-101-3050, 388-101-3220, and 388-101-3250.

Statutory Authority for Adoption: RCW 71A.12.080, chapter 74.39A RCW.

Adopted under notice filed as WSR 10-10-079 on May 3, 2010.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than editing changes, follow: Changes are shown below with new language underlined and deleted text lined through.

WAC 388-101-3000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse

includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

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

"Associated with the applicant" means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

"Case manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Certification" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

"Chaperone agreement" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

"Chemical restraint" means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"Client services" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Crisis diversion" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

"Crisis diversion bed services" means crisis diversion that is provided in a residence maintained by the service provider.

"Crisis diversion support services" means crisis diversion that is provided in the client's own home.

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

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

"Functional assessment" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

"Group home" means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Group training home" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

"Immediate" or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

"Individual financial plan" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

"Individual instruction and support plan" means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

"Individual support plan" means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

"Instruction" means goal oriented teaching that is designed for acquiring and enhancing skills.

"Instruction and support services staff" means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the ~~contractor~~ service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements of chapter 388-112 WAC.

"Legal representative" means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attor-

ney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Managing client funds" means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

"Mechanical restraint" means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

"Medication assistance" means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Medication service" means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

"Neglect" means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or
- (2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Physical intervention" means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

"Physical restraint" means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

"Psychoactive" means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

"Psychoactive medications" means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

"Restrictive procedure" means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which

he/she does not want to do, or removes something the client owns or has earned.

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230.

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Support" means assistance a service provider gives a client based on needs identified in the individual support plan.

"Supported living" means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

"Vulnerable adult" includes a person:

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

"Willful" means the deliberate, or nonaccidental, action or inaction by an ~~alleged perpetrator~~ individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

WAC 388-101-3050 Application for initial certification. (1) To apply for initial certification an applicant must submit to the department:

- (a) A letter of intent that includes:
 - (i) Contact information;
 - (ii) Geographical area of service; and
 - (iii) Type of service provided, including group home, supported living, community protection, or group training home.
- (b) A completed and signed application on forms designated by the department;
- (c) All attachments specified in the application and any other information the department may request including but not limited to:
 - (i) Administrator resumes;
 - (ii) Statements of financial stability;
 - (iii) Professional references;
 - (iv) Relevant experiences and qualifications of the individual or agency;
 - (v) On or after January 1, 2011, a certificate of completion of the instruction and support services staff training

~~required under chapter 388-112 WAC, if the applicant may provide instruction and support services to a client or may supervise staff who provide such instruction and support services to clients, a certificate of completion of the instruction and support services staff training required in chapter 388-112 WAC; and~~

(vi) Assurances the applicant will not discriminate against any client or employee.

(d) A copy of the license if applying for certification as a group home;

(e) The name of the administrator of the program; and

(f) The department background authorization form for:

(i) The applicant;

(ii) Anyone associated with the applicant; and

(iii) The individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

WAC 388-101-3250 Background checks—Washington state. (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. The service provider must also follow background check requirements under WAC 388-101-3253.

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

(5) The service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested,

a copy of the background check results must be provided within ten working days of the request;

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(6) The service provider must renew the Washington state background check at least every thirty-six months and keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

WAC 388-101-3258 Training requirements for staff hired before January 1, 2011. The service provider must ensure that staff hired before January 1, 2011 have meet the training requirements under defined in WAC 388-101-3260 through 388-101-3300.

WAC 388-101-3302 Certified community residential services and supports—General training requirements.

(1) On or after January 1, 2011~~2~~, the service provider must ensure the following must meet the instruction and support services staff meet the training requirements ~~of under~~ chapter 388-112 WAC, including orientation and safety training, and basic training:

~~(a) Applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services to clients or who may supervise instruction and support services staff;~~

~~(ab) Administrators, hired on or after the effective date, who may provide instruction and support services to clients or who may supervise instruction and support services staff; and~~

~~(be) Instruction and support services staff; including their supervisors, who are hired on or after the effective date.~~

(2) On or after January 1, 2011, applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services staff must meet the training requirements of chapter 388-112 WAC, including orientation and safety training, and basic training.

(3) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements. Persons exempt from subsection (1) of this section include but are not limited to applicants, administrators, and staff who are registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program.

The changes were made because of comments received and to make the requirements clearer.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW
<p>WAC 388-101-3000 Definitions. (1) Under the definition of "willful," delete the term "alleged perpetrator" and replace with the term "individual."</p>	<p>A change was made in response to this comment. To be consistent with wording used throughout the chapter, the definition of "willful" was changed as recommended.</p>
<p>WAC 388-101-3250 Background checks—Washington state. (1) Is subsection (5)(c) necessary? Who is the licensing or certification agency?</p>	<p>A change was made in response to this comment. Language was amended to clarify who service providers must notify.</p>
<p>WAC 388-101-3302 Certified community residential services and supports—General training requirements. (1) Clarify that the service provider is responsible to ensure that instruction and support service staff meet training requirements. (2) Clarify who is exempt from the long-term care worker training requirements.</p>	<p>A change was made in response to this comment. Language was amended to clarify that the service provider must ensure that instruction and support services staff meet the training requirements of chapter 388-112 WAC. A change was made to add the statutory and rule references.</p>

A final cost-benefit analysis is available by contacting John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 438-7903, e-mail gaskejw@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 5, Amended 4, 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 5, Amended 4, Repealed 0.

Date Adopted: July 29, 2010.

Susan N. Dreyfus
 Secretary

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or

mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "**Sexual abuse**" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "**Physical abuse**" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) "**Mental abuse**" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

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

"Associated with the applicant" means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

"Case manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Certification" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

"Chaperone agreement" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

"Chemical restraint" means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"Client services" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Crisis diversion" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

"Crisis diversion bed services" means crisis diversion that is provided in a residence maintained by the service provider.

"Crisis diversion support services" means crisis diversion that is provided in the client's own home.

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

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than the vulnerable adult's profit or advantage.

"Functional assessment" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

"Group home" means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Group training home" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

"Immediate" or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

"Individual financial plan" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

"Individual instruction and support plan" means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

"Individual support plan" means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

"Instruction" means goal oriented teaching that is designed for acquiring and enhancing skills.

"Instruction and support services staff" means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements of chapter 388-112 WAC.

"Legal representative" means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Managing client funds" means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

"Mechanical restraint" means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

"Medication assistance" means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Medication service" means any service provided by a certified community residential services and support provider

related to medication administration or medication assistance provided through nurse delegation and medication assistance.

"Neglect" means:

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

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

"Physical intervention" means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

"Physical restraint" means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

"Psychoactive" means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

"Psychoactive medications" means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

"Restrictive procedure" means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230.

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Support" means assistance a service provider gives a client based on needs identified in the individual support plan.

"Supported living" means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal represen-

tative and/or family, provided the person consents to the family member's involvement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

"Willful" means the deliberate, or nonaccidental, action or inaction by an (~~alleged perpetrator~~) individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, (~~and~~) or anguish.

~~("Written individual plan" means a plan developed for clients in the community protection program that includes:~~

~~(1) An assessment of the client's emotional and behavioral issues as related to community protection risks;~~

~~(2) Specific intervention strategies and techniques related to community protection risks;~~

~~(3) Specific restrictions and measures, including security precautions, both in home and out of home; and~~

~~(4) Signatures of the client's case manager and the client.)~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3050 Application for initial certification. (1) To apply for initial certification an applicant must submit to the department:

(a) A letter of intent that includes:

(i) Contact information;

(ii) Geographical area of service; and

(iii) Type of service provided, including group home, supported living, community protection, or group training home.

(b) A completed and signed application on forms designated by the department;

(c) All attachments specified in the application and any other information the department may request including but not limited to:

(i) Administrator resumes;

(ii) Statements of financial stability;

(iii) Professional references;

(iv) Relevant experiences and qualifications of the individual or agency; (~~and~~)

(v) On or after January 1, 2011, a certificate of completion of the instruction and support services staff training required under chapter 388-112 WAC, if the applicant may provide instruction and support services to a client or may supervise staff who provide such services; and

(vi) Assurances the applicant will not discriminate against any client or employee.

(d) A copy of the license if applying for certification as a group home;

(e) The name of the administrator of the program; and

(f) ~~((Department criminal history background check on forms designated by the department for the))~~ The department background authorization form for:

(i) The applicant;

(ii) Anyone associated with the applicant; and

(iii) The individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-3220 Administrator responsibilities and training. (1) The service provider must ensure that the administrator delivers services to clients consistent with this chapter, and the department's residential services contract. This includes but is not limited to:

~~((1))~~ (a) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;

~~((2))~~ (b) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and

~~((3))~~ (c) Maintaining and securely storing client, personnel, and financial records.

(2) Before assuming duties, an administrator hired on or after January 1, 2011, must complete the instruction and support services staff training requirements under chapter 388-112 WAC if the administrator may provide instruction and support services to clients or may supervise instruction and support services staff.

NEW SECTION

WAC 388-101-3245 Background check—General.

(1) Background checks conducted by the department and required in this chapter include but are not limited to:

(a) Washington state background checks including:

(i) Department and department of health findings; and

(ii) Criminal background check information from the Washington state patrol and Washington state courts; and

(b) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider.

AMENDATORY SECTION (Amending WSR 10-03-065, filed 1/15/10, effective 2/15/10)

WAC 388-101-3250 Background checks—Washington state. (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. The service provider must also follow background check requirements under WAC 388-101-3253.

(2) The service provider must obtain background checks ~~((including, but not limited to background inquiries and criminal history disclosure))~~ from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results ~~((from the department))~~, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

(a) Administrators;

(b) Employees;

(c) Volunteers or students; and

(d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the service provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

~~((5))~~ ~~((Persons identified in subsection (2) of this section who have lived in Washington state less than three years or who are otherwise required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period when:~~

~~((a))~~ ~~The person is not disqualified based on the initial result of the background check from the department; and~~

~~((b))~~ ~~A fingerprint-based background check is pending.~~

~~((6))~~ ~~The service provider must ((notify)):~~

~~((a))~~ ~~Inform the person ((, within ten days)) of ((receiving)) the ((result, that he or she may request a copy)) results of the background check;~~

~~((b))~~ ~~Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request.~~

~~((c))~~ ~~Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.~~

~~((7))~~ (6) The service provider must renew the Washington state background check at least every thirty-six months and keep current ~~((department))~~ background ~~((checks))~~ check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~((8))~~ (7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~((9))~~ (8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

~~((10) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the service provider.))~~

NEW SECTION

WAC 388-101-3253 National fingerprint based background checks—Required. In addition to background checks required under WAC 388-101-3250:

(1) After January 1, 2012, applicants for initial certification and applicants for change of ownership that are not current providers, must have a background check that includes a national fingerprint-based background check.

(2) The service provider must ensure that staff who provide instruction and support services to clients, and are hired on or after January 1, 2012, submit a background check that includes a national fingerprint based background check.

NEW SECTION

WAC 388-101-3255 Background checks—Provisional hire—Pending results. (1) Persons identified in WAC 388-101-3250(2) who are hired on or before January 1, 2012 and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial results of the background check from the department; and

(b) A national fingerprint-based background is pending.

(2) Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial result of the background check from the department; and

(b) A national fingerprint-based background check is pending.

NEW SECTION

WAC 388-101-3258 Training requirements for staff hired before January 1, 2011. The service provider must ensure that staff hired before January 1, 2011 have met the training requirements under WAC 388-101-3260 through 388-101-3300.

NEW SECTION

WAC 388-101-3302 Certified community residential services and supports—General training requirements.

(1) On or after January 1, 2011, the service provider must ensure the following instruction and support services staff meet the training requirements under chapter 388-112 WAC, including orientation and safety training, and basic training:

(a) Administrators, hired on or after the effective date, who may provide instruction and support services to clients or may supervise instruction and support services staff; and

(b) Instruction and support services staff including their supervisors, who are hired on or after the effective date.

(2) On or after January 1, 2011, applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services to clients or may supervise instruction and support services staff must meet the training requirements of chapter 388-112 WAC, including orientation and safety training, and basic training.

(3) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

WSR 10-16-085

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed July 30, 2010, 11:30 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The purpose of this proposed rule making is to consider making clarifying changes and to implement chapters 74.39A and 18.88B RCW as codified from Initiative Measure No. 1029 and E2SHB 2284, chapter 361, Laws of 2007.

The department is proposing new sections WAC 388-78A-2461 Background check—General, 388-78A-2462 Background check—Washington state—Who is required to have, 388-78A-2463 Background check—National fingerprint checks—Who is required to have, 388-78A-2464 Background check—Process, 388-78A-2465 Background check—Results, 388-78A-2466 Background check—Valid for two years, 388-78A-2467 Background check—Sharing by health care facilities, 388-78A-2468 Background check—Conditional hire—Pending results, 388-78A-2469 Background check—Disclosure statement, 388-78A-2471 Background check—Confidentiality—Use restricted—Retention, and 388-78A-2474 Training and home care aide certification.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2450 Staff, 388-78A-2470 Criminal history disclosure and background checks, 388-78A-2490 Specialized training for developmental disabilities, 388-78A-2500 Specialized training for mental illness, 388-78A-2510 Specialized training for dementia, 388-78A-2550 Administrator training documentation, 388-78A-2750 Application process, and 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.

Statutory Authority for Adoption: Chapters 18.20 and 74.39A RCW.

Adopted under notice filed as WSR 10-10-119 on May 5, 2010.

Changes Other than Editing from Proposed to Adopted Version: Changes, other than editing changes are shown with new language underlined and deleted text lined through.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2450 Staff. (1) Each boarding home must provide sufficient, trained staff persons to:

(a) Furnish the services and care needed by each resident consistent with his or her negotiated service agreement;

(b) Maintain the boarding home free of safety hazards; and

(c) Implement fire and disaster plans.

(2) The boarding home must:

(a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff person with a copy of his or her job description before or upon the start of employment;

(b) Verify staff persons' work references prior to hiring;

(c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;

(d) Document and retain for twelve weeks, weekly staffing schedules, as planned and worked;

(e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience and other qualifications necessary to provide the care and services;

(f) Ensure at least one caregiver, who is eighteen years of age or older and has current cardiopulmonary resuscitation and first aid cards, is present and available to assist residents at all times:

(i) When one or more residents are present on the boarding home premises; and

(ii) During boarding home activities off of the boarding home premises.

(g) Ensure caregiver provides on-site supervision of any resident voluntarily providing services for the boarding home;

(h) Provide staff orientation and appropriate training for expected duties, including:

(i) Organization of boarding home;

(ii) Physical boarding home layout;

(iii) Specific duties and responsibilities;

(iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and boarding home policies and procedures;

(v) Policies, procedures, and equipment necessary to perform duties;

(vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the staff persons will be working; and

(vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW.

(i) Develop and implement a process to ensure caregivers:

(i) Acquire the necessary information from the preadmission assessment, on-going assessment and negotiated ser-

vice agreement relevant to providing services to each resident with whom the caregiver works;

(ii) Are informed of changes in the negotiated service agreement of each resident with whom the caregiver works; and

(iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the caregiver works.

(j) Ensure all caregivers have access to resident records relevant to effectively providing care and services to the resident.

(3) The boarding home must:

(a) Protect all residents by ensuring any staff person suspected or accused of abuse, neglect, financial exploitation, or abandonment does not have access to any resident until the boarding home investigates and takes action to ensure resident safety;

(b) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the boarding home;

(c) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the boarding home;

(d) Maintain the following documentation on the boarding home premises, during employment, and at least two years following termination of employment:

(i) Staff orientation and training or certification pertinent to duties, including, but not limited to:

(A) Training required by chapter 388-112 WAC;

(B) Home care aide certification as required by this chapter and chapter 246-980 WAC;

(C) Cardiopulmonary resuscitation;

(D) First aid; and

(E) HIV/AIDS training.

(ii) Disclosure statements and background checks as required in WAC 388-78A-2461 through 388-78A-2471; and

(iii) Documentation of contacting work references and professional licensing and certification boards as required by subsection (2) of this section.

(4) The boarding home is not required to keep on the boarding home premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to, pay records, and health and insurance benefits for staff.

[Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2450, filed 7/30/04, effective 9/1/04.]

NEW SECTION

WAC 388-78A-2462 Background check—Washington state—Who is required to have. (1) Applicants, as defined in WAC 388-78A-2740, are required to have a Washington state background check before licensure.

(2) The boarding home must ensure the following have Washington state background checks:

- (a) Caregivers, including volunteers who are not residents, and students who may have unsupervised access to residents;
- (b) Administrators;
- (c) Licensee;
- (d) Staff persons;
- (e) Managers; and
- (f) Contractors who may have unsupervised access to residents.

NEW SECTION

WAC 388-78A-2463 Background check—National fingerprint checks—Who is required to have. (1) After January 1, 2012, applicants for a boarding home license must have a background check that includes a national fingerprint-based background check.

(2) The boarding home must ensure that all caregivers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

(3) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

NEW SECTION**WAC 388-78A-2465 Background check—Results.**

(1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The boarding home must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2470 Background check—Employment-disqualifying information. ~~(3) Until the boarding home receives a successful background check result, the boarding home must not ((allow unsupervised access by any individual described in subsection (1))) use or employ any one, directly or by contract, who is listed in WAC 388-78A-2462, if the individual has been:~~ The boarding home must not allow an individual described in WAC 388-78A-2462 to have unsupervised access to residents, as defined in RCW 43.43.830, if the individual has been:

(1) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since the last conviction;

(2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(3) Convicted of:

(a) Violation of the imitation controlled substances act (VICSA);

(b) Violation of the uniform controlled substances act (VUCSA);

(c) Violation of the uniform legend drug act (VULDA); or

(d) Violation of the uniform precursor drug act (VUPDA);

(4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(5) Convicted of criminal mistreatment;

(6) Convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime described in this subsection;

~~(7) The boarding home must not allow unsupervised access by any individual described in WAC 388-78A-2462, if the individual has:~~

~~(a) Been f~~ Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

~~(b) (8): A finding of abuse, or neglect of a child that is~~ Found to have abused or neglected a child and that finding is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for finding made before December, 1998.

~~(e) (9) A finding of abuse, neglect, exploitation or abandonment of a vulnerable adult that is:~~ Found to have abused, neglected, financially exploited or abandoned a vulnerable adult and that finding is:

(a) Listed on any registry, including the department's registry;

(b) Listed on the department's background check central unit (BCCU) report; or

(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2470, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapters 18.20 and 74.34 RCW. 09-01-052, § 388-78A-2470, filed 12/10/08, effective 1/10/09. Statutory Authority: RCW 18.20.090 and chapters 18.20 and 74.34 RCW. 08-05-099, § 388-78A-2470, filed 2/15/08, effective 3/17/08. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2470, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2470, filed 7/30/04, effective 9/1/04.]

NEW SECTION

WAC 388-78A-2474 Training and home care aide certification. (1) The boarding home must ensure staff persons hired before January 1, 2011 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The boarding home must ensure all boarding home administrators, or their designees, and caregivers hired on or after January 1, 2011 meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

- (a) Orientation and safety;
- (b) Basic;
- (c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those ~~special needs as a primary diagnosis~~ primary special needs.;
- (d) Cardiopulmonary resuscitation and first aid; and
- (e) Continuing education.

(3) The boarding home must ensure all persons listed in subsection (2) of this section, ~~must~~ obtain the home-care aide certification as required by chapter 246-980 WAC.

(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including ~~exempt from subsection (2) and (3) of this section include but are not limited to:~~

~~(a) Boarding home administrators and caregivers who are registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements; and~~

~~(b) Boarding home administrators with a current nursing home administrator license.~~

(5) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

The changes were made because:

Of the comments received to make the requirements clearer.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
General: Concern about the length of time it takes to process background checks.	This comment will be forwarded to DSHS's background check central unit (BCCU), which is responsible for background check processing issues. The department's turnaround time for processing background checks has decreased dramatically due to a number of improvements within the background check unit. As of July 20 2010, general background checks are processed in five business days. Priority processing (for new hires) takes two business days.
As defined in WAC 388-78A-2020 replace the term "caregiver" with definitions for "direct care worker" and "long-term care worker" to eliminate confusion.	WAC 388-78A-2020, definition is currently not open for amendment. The following statement was added to WAC 388-78A-2463 and 388-78A-2474: <i>"For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009."</i> There are numerous sections in the WAC chapter that include the terms caregiver and staff. We will be looking at the use of terms at a later WAC chapter review.
WAC 388-78A-2450, proposed changes in this WAC and chapter 388-112 WAC, eliminate the orientation training requirement for certain staff, such as volunteers, making it inconsistent with statutory requirements.	No change was made. WAC 388-78A-2450 (2)(h) includes requirements for the boarding home to provide staff orientation and appropriate training for expected duties. Staff person is broadly defined in the definition section and includes volunteers. Details about this training requirement can be found in chapter 388-112 WAC. All comments or concerns related to training requirements have been forwarded to the DSHS division responsible for implementing the training requirements.
WAC 388-78A-2462, concern about requiring background checks for all contracted personnel.	A clarifying change was made.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
	Returned to current rule language in regards to contractors.
WAC 388-78A-2463, the requirement to have applicants for boarding home license obtain national fingerprint background check goes beyond the language in the initiative and statute.	No change was made. The rules affecting long-term care workers are explicitly and specifically required by law (chapters 74.39A and 18.88B RCW) and the rules affecting applicants are procedural rules as defined in RCW 34.05.328 (5)(c)(i).
WAC 388-78A-2465(1), requiring all newly-hired staff to work with direct supervision while pending background check is unreasonable due to the amount of time (up to three months) it takes to process background checks.	No change was made. There is no reference to "direct supervision" in WAC 388-78A-2465(1) only "unsupervised access." Under RCW 18.20.125(4) no licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.
WAC 388-78A-2465 (3)(c), unclear about the requirement for providers to notify both the department and the licensing agency about resignations/terminations due to background check result.	A clarifying change was made. For clarity the word "other" was added before "appropriate licensing or certification agency" to distinguish DSHS from other agencies, e.g. the department of health.
WAC 388-78A-2470, this section is in conflict with WAC 388-78A-2468 Conditional hires; and clarity needed to distinguish disqualifying crimes from those findings limiting the ability of an individual from providing unsupervised care. Unclear about the definition of the word "successful." Include in this section the information on requesting an exception to rule for certain disqualifying crimes, e.g. drug crimes.	A clarifying change was made. The section was changed to clarify that the boarding home must not allow unsupervised access to residents if an individual has crimes or findings listed in WAC 388-78A-2470 as defined in RCW 43.43.830. The boarding home makes the decision who to hire. The reference to "successful background check" was deleted with the above clarifying language. No change made. Exceptions to rule are handled on a case-by-case basis and are not put in WAC.
WAC 388-78A-2474, add "under RCW 18.88B.040 and chapter 246-980 WAC" to clarify who is exempt from the long-term care worker training requirements.	A change was made to add the statutory and rule references.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
	A clarifying change was also made requiring boarding homes to ensure that long-term care worker training and certification requirements are met.
WAC 388-78A-2490, 388-78A-2500, and 388-78A-2510, change the language to require specialty training if the developmental disability, mental illness or dementia is resident's "primary diagnosis" as opposed to "primary special need." This will make the sections consistent with WAC 388-78A-2474 (2)(c) that already refers to these special needs as "primary diagnoses."	The proposed language is consistent with chapter 388-112 WAC. To be consistent with WAC 388-78A-2490, 388-78A-2500, and 388-78A-2510 and chapter 388-112 WAC, a clarifying change was made to WAC 388-78A-2474 to delete "primary diagnosis" and insert "primary" "special needs." A clarifying change was also made requiring boarding homes to ensure that long-term care worker training and certification requirements are met.

A final cost-benefit analysis is available by contacting Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, fax (360) 438-7903, e-mail johnsjm1@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 3, 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 8, 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 11, Amended 8, Repealed 0.

Date Adopted: July 29, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2450 Staff. (1) Each boarding home must provide sufficient, trained staff persons to:

- (a) Furnish the services and care needed by each resident consistent with his or her negotiated service agreement;
 - (b) Maintain the boarding home free of safety hazards; and
 - (c) Implement fire and disaster plans.
- (2) The boarding home must:
- (a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff

person with a copy of his or her job description before or upon the start of employment;

- (b) Verify staff persons' work references prior to hiring;
- (c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;
- (d) Document and retain for twelve weeks, weekly staffing schedules, as planned and worked;
- (e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience and other qualifications necessary to provide the care and services;
- (f) Ensure at least one caregiver, who is eighteen years of age or older and has current cardiopulmonary resuscitation and first-aid cards, is present and available to assist residents at all times:
 - (i) When one or more residents are present on the boarding home premises; and
 - (ii) During boarding home activities off of the boarding home premises.
- (g) Ensure caregiver provides on-site supervision of any resident voluntarily providing services for the boarding home;
- (h) Provide staff orientation and appropriate training for expected duties, including:
 - (i) Organization of boarding home;
 - (ii) Physical boarding home layout;
 - (iii) Specific duties and responsibilities;
 - (iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and boarding home policies and procedures;
 - (v) Policies, procedures, and equipment necessary to perform duties;
 - (vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the staff persons will be working; and

(vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW.

(i) Develop and implement a process to ensure caregivers:

(i) Acquire the necessary information from the preadmission assessment, on-going assessment and negotiated service agreement relevant to providing services to each resident with whom the caregiver works;

(ii) Are informed of changes in the negotiated service agreement of each resident with whom the caregiver works; and

(iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the caregiver works.

(j) Ensure all caregivers have access to resident records relevant to effectively providing care and services to the resident.

(3) The boarding home must:

(a) ~~((Ensure that staff persons meet the training requirements specified in chapter 388-112 WAC;~~

~~((b)))~~ Protect all residents by ensuring any staff person suspected or accused of abuse, neglect, financial exploitation, or abandonment does not have access to any resident until the boarding home investigates and takes action to ensure resident safety;

~~((c)))~~ (b) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the boarding home;

~~((d)))~~ (c) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the boarding home;

~~((e)))~~ (d) Maintain the following documentation on the boarding home premises, during employment, and at least two years following termination of employment:

(i) Staff orientation and training or certification pertinent to duties, including, but not limited to:

(A) Training required by chapter 388-112 WAC ~~((including as appropriate for each staff person, orientation, basic training or modified basic training, specialty training, nurse-delegation core training, and continuing education));~~

(B) Home care aide certification as required by this chapter and chapter 246-980 WAC;

~~((C))~~ (C) Cardiopulmonary resuscitation;

~~((D))~~ (D) First aid; and

~~((E))~~ (E) HIV/AIDS training.

(ii) ~~((Criminal history))~~ Disclosure statements and background checks as required in WAC ~~((388-78A-2470))~~ 388-78A-2461 through 388-78A-2471; and

(iii) Documentation of contacting work references and professional licensing and certification boards as required by subsection ~~((1))~~ (2) of this section.

(4) The boarding home is not required to keep on the boarding home premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to, pay records, and health and insurance benefits for staff.

NEW SECTION

WAC 388-78A-2461 Background check—General. Background checks conducted by the department and required in this chapter include but are not limited to:

(1) Washington state background checks including:

(a) Department and department of health findings;

(b) Criminal background check information from the Washington state patrol and the Washington state courts;

(2) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(3) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

(4) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

NEW SECTION

WAC 388-78A-2462 Background check—Washington state—Who is required to have. (1) Applicants, as defined in WAC 388-78A-2740, are required to have a Washington state background check before licensure.

(2) The boarding home must ensure the following have Washington state background checks:

(a) Caregivers, including volunteers who are not residents, and students who may have unsupervised access to residents;

(b) Administrators;

(c) Licensee;

(d) Staff persons;

(e) Managers; and

(f) Contractors who may have unsupervised access to residents.

NEW SECTION

WAC 388-78A-2463 Background check—National fingerprint checks—Who is required to have. (1) After January 1, 2012, applicants for a boarding home license must have a background check that includes a national fingerprint-based background check.

(2) The boarding home must ensure that all caregivers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

(3) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

NEW SECTION

WAC 388-78A-2464 Background check—Process. (1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as a caregiver, any volunteer who is not a resident, or student, the home must:

(a) Require the person to complete a DSHS background authorization form; and

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

(2) For purposes of this section, the administrator is presumed to provide direct care.

NEW SECTION

WAC 388-78A-2465 Background check—Results.

(1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The boarding home must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

NEW SECTION

WAC 388-78A-2466 Background check—Valid for two years. A Washington state background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state background check for all individuals listed in WAC 388-78A-2462.

NEW SECTION

WAC 388-78A-2467 Background check—Sharing by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The boarding home may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

NEW SECTION

WAC 388-78A-2468 Background check—Conditional hire—Pending results. The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of a background check, provided that the boarding home:

(1) Submits the background authorization form for the individual to the department no later than one business day after the individual starts working;

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

(3) Has received three positive references for the individual;

(4) Does not allow the individual to have unsupervised access to any resident;

(5) Ensures direct supervision, of the individual, as defined in RCW 18.20.270; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks.

NEW SECTION

WAC 388-78A-2469 Background check—Disclosure statement. (1) Prior to first starting his or her duties, the boarding home must require each individual described in WAC 388-78A-2462 to make disclosures, consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the individual under penalty of perjury.

(2) The department may require the boarding home or any individual described in WAC 388-78A-2462 to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2470 (~~Criminal history disclosure and~~) Background (~~checks~~) check—Employment-disqualifying information. (~~(1)~~) This section applies to any

individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
- (b) Managers;
- (c) Volunteers who are not residents;
- (d) Contractors; and
- (e) Students.

(2) The boarding home must ensure that any individual described in subsection (1) has had a background check completed within the past two years, and that the background check is repeated every two years.

(3)) The boarding home must not allow an individual described in WAC 388-78A-2462 to have unsupervised access ((by any individual described in subsection (1))) to residents, as defined in RCW 43.43.830, if the individual has been:

((a)) (1) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since the last conviction;

((b)) (2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

((c)) (3) Convicted of:

((i)) (a) Violation of the imitation controlled substances act (VICSA);

((ii)) (b) Violation of the uniform controlled substances act (VUCSA);

((iii)) (c) Violation of the uniform legend drug act (VULDA); or

((iv)) (d) Violation of the uniform precursor drug act (VUPDA);

((e)) (4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

((f)) (5) Convicted of criminal mistreatment; ((g))

((h)) (6) Convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime described in this subsection((-));

((4) The boarding home must not allow unsupervised access by any individual described in subsection (1), if the individual has:

(a) Been)) (7) Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

((b) A finding of)) (8) Found to have abused or neglected ((of)) a child and that finding is:

((i)) (a) Listed on the department's background check central unit (BCCU) report; or

((ii)) (b) Disclosed by the individual, except for finding made before December, 1998.

((c) A finding of)) (9) Found to have abused, neglected, ((exploitation)) financially exploited or ((abandonment of)) abandoned a vulnerable adult and that finding is:

((i)) (a) Listed on any registry, including the department's registry;

((ii)) (b) Listed on the department's background check central unit (BCCU) report; or

((iii)) (c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

((5) Prior to first starting his or her duties, the boarding home must require each individual described in subsection (1) to make disclosures, consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the individual under penalty of perjury. Each individual must disclose whether he or she:

(a) Has been convicted of any crime, including the crimes listed in subsection (3);

(b) Has had findings made against him or her in any civil adjudicative proceeding; or

(c) Has one or more convictions and one or more civil adjudicative proceeding findings.

(6) Prior to first starting his or her duties, for each individual described in subsection (1), the boarding home must take one or more of the actions described in (a), (b) and (c):

(a) Initiate a background check by submitting all background check authorization forms to the department's background check central unit (BCCU), except the forms should be submitted to the aging and disability services administration with an initial license application;

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer is a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The employer providing the information is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed between the date the individual was last employed and the date of the individual's current application;

(iv) The background information is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in subsections (3) and (4); or

(e) Establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of subsections (3) and (4).

(7) The boarding home must verbally inform the named individual of his or her background check results from the department and offer to provide him or her a copy of the results within ten days of receipt.

(8) The boarding home must ensure that all disclosure statements, and background check results are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, or persons authorized by chapter 43.43 RCW.

~~(d) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.~~

~~(9) The boarding home may conditionally hire an individual described in subsection (1), pending a background inquiry, provided that the boarding home:~~

~~(a) Obtains a criminal history background check authorization form from the individual before he or she is allowed unsupervised access to resident;~~

~~(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual starts working; and~~

~~(c) Has received three positive references for the individual before he or she is allowed unsupervised access to residents.~~

~~(10) The department may require the boarding home or any individual described in subsection (1) to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified in subsections (3) and (4) of this section have occurred since completion of the previous disclosure statement or background inquiry.~~

~~(11) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the boarding home.~~

~~(12) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).~~

~~(13) As used in this section, "civil adjudicative proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative finding that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.)~~

NEW SECTION

WAC 388-78A-2471 Background check—Confidentiality—Use restricted—Retention. The boarding home must ensure that all disclosure statements, background authorization forms, background check results and related information are:

(1) Maintained on-site in a confidential and secure manner;

(2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and

for at least two years after termination of the employment or association.

NEW SECTION

WAC 388-78A-2474 Training and home care aide certification. (1) The boarding home must ensure staff persons hired before January 1, 2011 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The boarding home must ensure all boarding home administrators, or their designees, and caregivers hired on or after January 1, 2011 meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The boarding home must ensure all persons listed in subsection (2) of this section, obtain the home-care aide certification required by chapter 246-980 WAC.

(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(5) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2490 Specialized training for developmental disabilities. ~~((+))~~ The boarding home must ~~((provide caregivers with))~~ ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.

~~((2))~~ Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.)

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2500 Specialized training for mental illness. ~~((+))~~ The boarding home must ~~((provide caregivers with))~~ ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diag-*

nostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, and:

~~((a))~~ (1) Who has received the diagnosis or treatment within the previous two years; and

~~((b))~~ (2) Whose diagnosis was made by, or treatment provided by, one of the following:

~~((i))~~ (a) A licensed physician;

~~((ii))~~ (b) A mental health professional;

~~((iii))~~ (c) A psychiatric advanced registered nurse practitioner; or

~~((iv))~~ (d) A licensed psychologist.

~~((2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.)~~

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2510 Specialized training for dementia. ~~((H))~~ The boarding home must ~~((provide caregivers with))~~ ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

~~((2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.)~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2550 Administrator training documentation. The boarding home must maintain for department review, documentation of the administrator completing:

(1) Training required ~~((per))~~ by chapter 388-112 WAC ~~((Long-term care services training))~~;

(2) Department training in an overview of Washington state statutes and administrative rules related to the operation of a boarding home;

(3) As applicable, certification from a department-recognized national accreditation health or personal care organization; and

(4) As applicable, the qualifying administrator-training program.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2750 Application process. To apply for a boarding home license, a person must:

(1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;

(2) Submit all relevant attachments specified in the application;

(3) Submit ~~((criminal history))~~ department background ~~((requests))~~ authorization forms as required in WAC ~~((388-78A-2470))~~ 388-78A-2462 and 388-78A-2463;

(4) Sign the application;

(5) Submit the license fee as specified in WAC 388-78A-3230;

(6) Submit verification that construction plans have been approved by construction review services;

(7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew a boarding home license if any person described in subsection (2) of this section who may have unsupervised access to residents has a conviction or finding described in WAC 388-78A-2470 ~~((3) and (4))~~.

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the boarding home; or

(ii) Who controls or supervises the provision of care or services to the boarding home residents; or

(iii) Who exercises control over daily operations.

WSR 10-17-003

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-199—Filed August 4, 2010, 4:05 p.m., effective September 4, 2010]

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

Purpose: The purpose of this proposal [permanent rule] is to change the state's recreational halibut fishery area boundaries so they are consistent with federal boundaries. The federal boundaries are listed in Code of Federal Regulations (C.F.R.) Title 50, Part 300. This rule amendment will redefine the boundary of the northern near shore area in Marine Catch Area 2 so that it follows the 30-fathom line. This will simplify the rule for fishermen and agency enforcement.

Reasons Supporting Proposal: This proposal [permanent rule] was discussed during public meetings of the Pacific Fisheries Management Council (PFMC). The change was approved by PFMC and the International Halibut Commission, and was accepted by recreational halibut anglers.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-255.

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

Other Authority: C.F.R. Title 50, Part 300.

Adopted under notice filed as WSR 10-12-065 on May 27, 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 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 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: August 4, 2010.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 09-107, filed 6/22/09, effective 7/23/09)

WAC 220-56-255 Halibut—Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1: Open on the first Thursday in May or May 1, if May 1 is a Friday or Saturday, through the third Saturday in July, from 12:01 a.m. each Thursday through 11:59 p.m. each Saturday. The fishery will reopen on the first Friday in August through September 30, from 12:01 a.m. each Friday through 11:59 p.m. each Sunday. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish, except sablefish or Pacific cod, if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) The northern near shore fishery takes place in those waters from ((47°25.00'N.)) 47°31.70'N. lat. south to 46°58.00'N. lat. and east of ((124°30.00'W. long.)) a boundary line approximating the 30 fathom depth contour as defined by the following coordinates:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°58.00'N. lat., 124°24.24'W. long.

Open on the first Sunday in May through September 30 on days that all other waters in Area 2 are open, as specified in (b)(ii) of this subsection, and from 12:01 a.m. each Thursday through 11:59 p.m. each Sunday.

(ii) All other waters in Area 2 - Open on the first Sunday in May through the third Sunday in May from 12:01 a.m.

through 11:59 p.m. each Sunday, and from 12:01 a.m. through 11:59 p.m. each Tuesday. Beginning on the third Sunday in May through September 30, the halibut fishery will be open from 12:01 a.m. through 11:59 p.m. each Sunday.

(iii) From March 15(☿) through June 15, it is unlawful to fish for or possess bottomfish seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain sablefish and Pacific cod from May 1 through June 15 seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

47°31.70'N. lat., 124°37.03'W. long.

47°25.67'N. lat., 124°34.79'W. long.

47°12.82'N. lat., 124°29.12'W. long.

46°52.94'N. lat., 124°22.58'W. long.

46°44.18'N. lat., 124°18.00'W. long.

46°38.17'N. lat., 124°15.88'W. long.

(c) Catch Record Card Areas 3 and 4 - Open the first Thursday between May 9 and May 15 of each year through September 30, from 12:01 a.m. through 11:59 p.m. each Thursday, and from 12:01 a.m. through 11:59 p.m. each Saturday. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward-facing C-shaped closed area defined as: Beginning at 48°18'N. lat., 125°18'W. long.; thence to 48°18'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 125°18'W. long.; thence to the point of origin.

It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from May 21 through September 30, on days and times closed to halibut fishing:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(d) Catch Record Card Area 5 - Open the Thursday before Memorial Day through September 30, except closed to fishing for halibut beginning at 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.

(e) Catch Record Card Areas 6 through 13 - Open May 1 through September 30, except closed to fishing for halibut beginning at 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.

(2) Daily limit is one halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-56-156 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing ves-

sel is one daily limit. See WAC 220-56-156 for rules on Canadian-origin halibut possession.

(4) A violation of this section is punishable under RCW 77.15.370 or 77.15.380, depending on the violation.

WSR 10-17-004
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed August 5, 2010, 8:59 a.m., effective September 5, 2010]

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

Purpose: WAC 458-20-273 (Rule 273) explains the cost recovery incentive program for renewable energy systems. The department has amended Rule 273 to recognize ESSB 6170 (chapter 469, Laws of 2009) and ESSB 6658 (chapter 202, Laws of 2010). The legislation: (1) Increases the annual payment limitations to customers, (2) increases the limitations on incentive payments made by participating light and power businesses, (3) changes the formula used to determine payment amounts based on "economic development kilowatt-hours," (4) extends the incentive program to community solar projects, (5) creates three types of community solar projects, (6) sets limitations on total payments for community solar projects, and (7) sets capacity generating restrictions on systems in community solar projects.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-273 Renewable energy system cost recovery.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Adopted under notice filed as WSR 10-08-047 on April 2, 2010.

Changes Other than Editing from Proposed to Adopted Version: The following language was added at subsection (2)(d)(i):

(i) "Capable of generating up to seventy-five kilowatts of electricity" means that the solar energy system will qualify if it generates 75 kilowatts of electricity or less. If the solar energy system or a community solar project produces more than 75 kilowatts the entire project is ineligible for the incentive payment program."

The following underlined language was added to subsection (2)(d)(iii):

(iii) "Local individuals, households, nonprofit organizations, or nonutility businesses" mean individuals, households, nonprofit organizations, or nonutility businesses that are:

- Located within the service area of the light and power business where the renewable energy system is located; and
- Residents of Washington state.

The following changes were made to subsection (2)(e)(i). Language added is underlined and language removed reflected in strikethrough:

Except for utility-owned community solar projects, a system located on a leasehold interest does not qualify under this definition. For a community solar project requiring the cooperation of a local governmental entity, the ~~utility or~~

cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a ~~utility or~~ cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."

Subsection (2)(f) was changed to read as follows:

"Local governmental entity" means any unit of local government of Washington state including, but not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts;
- Public stadium authorities; or
- Public school districts.

"Local governmental entity" does not include a state or federal governmental entity, such as a:

- State park;
- State-owned building;
- State-owned university;
- State-owned college;
- State-owned community college; or
- Federal-owned building.

Subsection (4) of the rule was changed to read as follows:

Must you be a customer of a light and power business to be a recipient of an incentive payment? Yes, only owners of qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to receive incentive payments. This is because the electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems. In the case of community solar projects, the land on which the renewable energy system is located may be owned in fee simple by a local governmental entity or owned in fee simple or leased by a utility and they will be the customer of the light and power business.

The following language was added to subsection (6)(c):

The utility acting as administrator must apply for the certification if it's a utility-owned community solar project on property owned or leased by the utility.

The underlined language below was added to subsection (8):

(a) **Information required on the application to the light and power business.**

(i) The name and address of the applicant and location of the renewable energy system ...

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and

address of each member of the company that is a participant in the community solar project.

The following language was added as a new subsection (12):

(12) Must the renewable energy system be owned or can it be leased? The renewable energy system must be owned by the individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community-solar project, or company in a company-owned system. Leasing a renewable energy system does not constitute ownership.

The following language was added as a new subsection (21):

When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation? When more than one community solar project is located on one property, determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity, will treat each project's system as separate from the other projects if there are:

- Separate meters;
- Separate inverters;
- Separate certification documents submitted to the department of revenue; and
- Separate owners in each community solar project.

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 1, Repealed 0.

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

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

Date Adopted: August 5, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-097, filed 7/31/06, effective 8/31/06)

WAC 458-20-273 Renewable energy system cost recovery. ((The customer investment cost recovery incentive payment ("incentive payment") covers the purchase and use of renewable energy systems that produce electricity, such as: Solar energy systems, wind generators, and certain types of anaerobic digesters that process manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container. Any individual, business, or local government that purchases and uses such a system may apply for an

~~incentive payment from the light and power business that serves their property. Your light and power business may make payment to you in the form of a credit offsetting the amount you owe on your power bill. The light and power business then gets a credit on its public utility tax for the amount it pays to customers as incentive payments. The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, the department will only audit light and power businesses to determine whether their claimed credit amount equals the amount of the total of customers' incentive payments, whether they proportionally reduced the payments to each customer by an equal percentage if the limit of total allowed payments is reached, and whether the customer payments are based on measured production of the renewable energy systems. A light and power or gas distribution business will not qualify for an incentive payment. This program applies to measured customers' renewable energy system kilowatt-hours generated between July 1, 2005, and June 30, 2014.~~

~~The purpose of the law creating this incentive payment program is to develop a market for renewable energy systems and to promote the manufacture of these systems in Washington state. To facilitate this purpose, these regulations are written to facilitate prospective customers of renewable energy systems in the purchase and use of their systems, in conjunction with the incentive payment program.~~

~~(1) **What is my first step as a possible customer of a renewable energy system?** First, contact the light and power business serving your property to confirm it is participating in this incentive payment program. Participation by light and power businesses is discretionary. Further, ask your light and power business for a copy of its procedural requirements and application for participating in this incentive payment program. Only your light and power business has the authority to determine whether your incentive payment will be authorized or denied.~~

~~(2) **How do I certify my renewable energy system?** After contacting your light and power business, you must apply for a system certification to the department of revenue. The department of revenue will consult with the climate and rural energy development center at Washington State University's energy extension regarding your certification request. The certification form can be downloaded from the department of revenue's web site located at: dor.wa.gov, or may be obtained by calling the department at: 1-800-647-7706. The certification form requires certain verifiable information, including the following:~~

~~(a) Your name, address, and the address of the renewable energy system;~~

~~(b) Your department of revenue tax registration number, which will automatically be assigned to individuals when they submit their application and is a business' present UBI number (do not use your Social Security number or your federal employer's identification number);~~

~~(c) Your statement that your renewable energy system generating electricity is located on your own real property and that your property is also served by a participating light and power business;~~

(d) Your statement that the electricity you produce on your own renewable energy system does not include electricity generated by a light and power business or a gas distribution business;

(e) You must also state that your renewable energy electric generation system uses:

- Any solar inverter or modules manufactured in Washington state;
- A wind generator powered by blades manufactured in Washington state;
- A solar inverter manufactured in Washington state;
- A solar module manufactured in Washington state;
- Solar or wind equipment manufactured outside Washington state; or
- An anaerobic digester which processes manure from cattle into biogas and dried manure using microorganisms in a closed oxygen-free container.

(f) You must also state that your own generated electricity can be transformed or transmitted for entry into or operation in parallel with electric transmission and distribution systems;

(g) The date that your local jurisdiction issued its final electrical permit on your renewable energy system;

(h) Your statement that you understand that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that your statements are true, complete, and correct to the best of your knowledge and belief under penalty of perjury; and

(i) If you have just purchased a property with a certified renewable energy system, you must reapply for certification as the new owner.

(3) How long will it take before I receive notification of whether the department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, has approved the request for my system's certification? The department of revenue will notify you in writing within thirty days whether your request for system certification qualifies for the incentive payment program. Certification is merely an administrative and preliminary step, however, and ultimately it is the application procedure with the light and power business that serves your property which will determine whether your incentive payment is authorized or denied.

(4) After the department of revenue approves my system's certification, how do I apply for my incentive payment? The next step is to apply for your incentive payment from the light and power business that serves the property you own, on which the renewable energy system is located. You must annually apply by August 1st of each calendar year. The department of revenue will create an application form for use by customers when applying for the incentive payment with their light and power business. However, individual light and power businesses may create their own forms or use the department's form in conjunction with their additional addendums. Further, your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining

whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems, then the determination by the light and power business shall be controlling and it has the authority to decertify your system.

There is a special transition rule for the first annual period from July 1, 2005, through June 30, 2006. For only the first year of the incentive program, recognizing that each utility will establish its own procedures and requirements for metering the output of customers' renewable energy systems, the department will accept kWh production readings taken from the inverter or from an owner installed production meter. The owner must report the reading of the meter from July 1, 2005 (or make a good-faith estimation if no reading exists) and the reading on June 30, 2006. Your June 30, 2006 reading may be relied upon by your light and power business as the first reading for the subsequent year July 1, 2006, through June 30, 2007. Further, if your light and power business decides to replace your production meter during the subsequent year July 1, 2006, through June 30, 2007, it may rely on the last reading on your prior meter before it's replaced. You must also report the array size in DC watts. This information will be used to validate reported watt hours for the first year. Your participating light and power business is not required to perform independent reading or monitoring of your system's electric generation during the first year. Further, for the first year only, the light and power business serving your property shall have one hundred twenty days to notify you whether your incentive payment is authorized or denied and shall process your annual payment, if any, by January 31, 2007. You must file your request for system certification with the department of revenue no later than September 30, 2006. Each light and power business will decide its own deadline for submission of your annual application for incentive payment during this first year.

Some of the verifiable information you must provide includes:

- Your name, address, and the address of the renewable energy system;
- Your department of revenue tax registration number, which will automatically be assigned to individuals when they submit their certification request described above and is a business' present UBI number (do not use your Social Security number or your federal employer's identification number);
- The date of the letter from the department of revenue certifying that your renewable energy system is eligible for incentive payments;
- Your statement that your system has been operable throughout the year and that your light and power business will be allowed reasonable access to read your electric production meter for your system in order to calculate the kilowatt hours generated by your renewable energy system during the prior fiscal year beginning July 1st and ending on June 30th; and
- Your statement that you understand that this information is provided to the department of revenue in determining

whether the light and power business correctly calculates its credit allowed for customer incentive payments and that your statements are true, complete, and correct to the best of your knowledge and belief under penalty of perjury.

The light and power business serving your property has the authority to request other information it believes is necessary in making its determinations under the incentive payment program.

~~(5) What are the possible procedures you and your light and power business may follow in setting up your incentive payments?~~ Recommended procedures you should follow when requesting your light and power businesses to set up your incentive payments and the possible procedures your light and power business may follow are as follows:

- First, since participation under this incentive program is voluntary for light and power businesses, contact the light and power business serving your property and ask whether it is participating and what application procedures you must follow.

- If your light and power business is participating in the incentive program, then you submit an application to your light and power business.

- You submit to your light and power business proof that your renewable energy system is certified by the department of revenue for the incentive payment program.

- You submit to the light and power business a copy of the approved certification and letter from the department of revenue. You should submit this information to the light and power business before August 1st in order to receive payment for any production that occurred prior to July 1st.

- If your light and power business approves your application, then it will require a signed agreement that it will provide to you.

- You or your licensed electrical contractor or certified electrician obtain an electrical permit and install the system. (A licensed electrical contractor or certified electrician must install the system, unless you perform the work yourself on your home with the help of an uncompensated volunteer who assists you. See WAC 296-46B-025(13) for guidance on the proper installation of your system.)

- Once installation is complete your renewable energy system must pass a final electrical inspection from the local code official.

- Your local light and power business will send a utility serviceman to inspect your system and may install an electric production meter if one meeting its qualifications is not already installed.

- Your production meter is read by the light and power business at least annually and it processes your annual incentive payment.

- Your light and power business notifies you within sixty days whether your incentive payment is authorized or denied.

- Your light and power business calculates annual production payments based on the meter reading or readings made prior to the accounting date of July 1st.

- Your incentive payment check (or credit to your account) is sent to you by your light and power business on or before December 15th.

~~(6) What is the formal agreement between me and my light and power business?~~ The formal agreement between

you and the light and power business serving your property governs the relationship between you and your light and power business. This document may:

- Contain the necessary safety requirements and inter-connection standards;

- Allow the light and power business the contractual right to review your substantiation documents for four years, upon five working days' notice;

- Allow the light and power business the contractual right to assess against you, with interest, for any overpayment of incentive payments made to you;

- Delineate any extra metering costs for an electric production meter to be installed on your property;

- Contain a statement allowing the department of revenue to send proof of your system's certification electronically to your light and power business, which will include your department of revenue taxpayer's identification number; and

- Contain other information required by the light and power business to effectuate and properly process your incentive payment.

~~(7) How long will it take before I receive notification as to whether the light and power business that serves my property has approved my incentive payment?~~ The light and power business that serves your property has sixty days to notify you in writing as to whether your request for an incentive payment is authorized or denied.

~~(8) How is my incentive payment calculated?~~ Your incentive payment is calculated using a formula. First the incentive payment may be paid at fifteen cents per "economic development kilowatt hour." An economic development kilowatt-hour is the actual kilowatt-hour measurement of your generated electricity multiplied by the appropriate economic development factor. The economic development factors, which you multiply to the base rate of fifteen cents per actual kilowatt hours that your renewable energy system produces, are:

- Two and four tenths (2.4) if your system generates electricity using only solar modules manufactured in Washington;

- One and two tenths (1.2) if your solar or wind system uses an inverter manufactured in Washington;

- One (1.0) if your wind system uses only blades manufactured in Washington, or if your system is an anaerobic digester, or if your solar system is other than described above; and

- Eight tenths (0.8) if your system is a wind generator with blades not manufactured in Washington.

The following table describes the application of the economic development factors. The actual incentive payment you receive must be computed using your renewable energy system's actual measured electric kilowatt-hours generated.

Annual Investment Cost Recovery Incentive Payment Calculation Table

Customer-generated power Applicable rates	Base rate (0.15) multiplied by applicable factor equals incen- tive payment rate	Kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules manufactured in Washington state Factor: 2.4 (two and four- tenths)	\$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state Factor: 1.2 (one and two- tenths)	\$0.18		
Anaerobic digester or other solar equipment or wind gen- erator equipped with blades manufactured in Washington state Factor: 1.0 (one)	\$0.15		
All other electricity produced by wind Factor: 0.8 (eight-tenths)	\$0.12		

(9) **Are the factors for systems cumulative?** The factors are cumulative. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your economic development hours by using the factor three and six tenths (3.6) (computed 2.4 plus 1.2). Therefore you would multiply the fifteen-cent base rate per actual kilowatt-hour generated by your system by three and six tenths (3.6) to get your incentive payment rate.

(10) **What is the definition of the phrase: Manufactured in Washington state?** The department of revenue defines manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing your request for certification. Further, the climate and rural development center at Washington State University's energy extension may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

For systems installed after the date these rules are adopted, your manufacturer must supply you with a statement delineating your system's level of manufacture in the state of Washington. This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying factors discussed in subsection (8) of this section. The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether

customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program. You must retain this documentation for five years after the receipt of your last incentive payment from your light and power business.

(11) **What are the limitations on the incentive payments?** No individual, business, or local governmental entity is eligible for incentive payments in excess of two thousand dollars per year. However, as an example, if a customer installs a system on his or her home and then further installs two other separate systems on two separate business properties with different UBI numbers, then the customer is allowed the full two thousand dollar annual limit of the incentive payments for each property owned by an individual and each of the two separate businesses. In this example there are three qualifying systems on three separate properties owned by three separate entities allowing the full two thousand dollar limit on all three properties. If, however, the two business properties belong to only one business operating under one UBI number, then there are only allowed incentive payments up to the two thousand dollar annual limit for his or her home and for the one business. This is true even if the business operates from more than one location with qualifying renewable energy systems at each location because the two thousand dollar annual limit is allowed once to each individual and each business. Thus, in this case the individual and his or her one business are each only allowed one full two thousand dollar annual limit on their qualifying properties.

The issuing of incentive payments by participating light and power businesses is limited by the greater of:

(a) Twenty-five one hundredths of one percent (0.25%) of the light and power business' prior year's taxable sales under Washington state's law; or

(b) Twenty-five thousand dollars (\$25,000.00).

Based on this public utility tax credit limitation, your and all other qualifying customers' incentive payments may be proportionally reduced.

The light and power business must measure the actual kilowatt hours of your renewable energy system's generated electricity using an electric production meter. If your renewable energy system is a hybrid system of combined solar and wind, it will be classified as a solely wind system for purposes of the incentive payment program, unless the solar and wind productions are separately metered. Systems that are interconnected to gas, diesel, ethanol, natural gas or other similarly fueled generators do not qualify for the incentive payment program. If a customer has an older system not manufactured in Washington and a separate new system manufactured in Washington on the same property, both systems will be classified as not made in Washington, unless the old and new systems' production are separately metered.

(12) Does the light and power business serving my property have to participate in the incentive payment program? No, each light and power business will have the discretion to decide whether to be part of the incentive payment program.

(13) If I install a qualified renewable energy system on the apartment building where I am a tenant, can I submit for incentive payments? No, you must own the property which is served by your renewable energy system. Even if your renewable energy system meets all requirements, except that it is installed on a building where you have a leasehold interest, it will not qualify for incentive payments.

(14) May an individual, business, or local governmental entity involved in the light and power business or in the gas distribution business apply for incentive payments? No, the law excludes both light and power businesses and gas distribution businesses from participating in the incentive payment program.

(15) Must I retain all my records, which substantiate my claim of eligibility for incentive payments? Yes, you and all other customers applying for and receiving incentive payments must retain the records substantiating your right to receive the incentive payments and the correct amount for five years. The light and power business that made the payment or the department of revenue may examine the records upon five working days' notice. If the records show that you received an overpayment, the light and power business may assess you for the amount of the overpayment. Conversely, if an underpayment has occurred, the light and power business may authorize a further payment to cover the prior deficiency. Interest will be added to overpayments of incentive payments to you and other customers. The amount of interest you would owe on an overpayment is calculated in the same manner that the department of revenue assesses interest upon delinquent taxes under RCW 82.32.050.

(16) Is there also a public utility tax credit associated with the incentive payments? Yes, the tax credit is for the benefit of the participating light and power business. Your light and power company is allowed a credit on its Washing-

ton state public utility taxes equal to the actual amount paid out as incentive payments to its customers under this law. The maximum amount of this credit is limited (see subsection (11) of this section).

(17) Does the department of revenue consider the incentive payment I receive taxable income? No, the department of revenue characterized the payment you receive, paid by your light and power company, as a subsidy or rebate for the purchase or installation of an energy conservation measure. Therefore, the department does not characterize the incentive payment as income under Washington state's law.

(18) How is my incentive payment from the light and power business handled if the incentive is paid in the form of a credit against my power bill? If your light and power business chooses this method, your incentive payment will be shown on your customer billing statement as a credit offsetting the amount you owe to the light and power business. The incentive payment is not a discount. Thus, the light and power business will only be allowed to claim a public utility tax credit for the incentive payments actually made, and is not also allowed a discount deduction.

(19) Is the federal government eligible to participate in the incentive payment program? No, only individuals, businesses, and local governments whose properties and renewable energy systems are located in the state of Washington are eligible to participate in the incentive payment program.

(20) Are individuals, businesses and local governments that are not interconnected to the electric transmission and distribution system and who are not customers of a light and power business eligible for the incentive payment program? No, only qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible for participation in the incentive payment program. The term property means within the established boundaries of the lot served by the light and power business. However, the renewable energy system generating the electricity does not itself have to be interconnected to the electric transmission and distribution system as long as it is located on a property served by a light and power business.

For example, if a customer of a light and power business living in a home connected to the power grid builds a studio addition served by a renewable energy system that is not connected to the power grid, that customer is eligible for the incentive payment program.

Another example, if a customer of a light and power business owning a manufacturing facility connected to the power grid builds an unattached vehicle garage on the same lot that the factory is located and the garage is not interconnected, the renewable energy system supplying electricity to this garage is eligible for the incentive payment program.

If the facts are the same as above, but the manufacturing facility's owner buys a new lot across the street and the only improvement on this separate lot is the unattached vehicle garage that is not connected to the power grid, then the renewable energy system attached to the garage would not be eligible for the incentive payment program.

~~(21) Does the law require that light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system and if so, how does that affect me as a customer?~~ Yes, the law does require that light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system. However, the renewable energy tax credit implementation advisory committee, consisting of the department of revenue, department of community, trade, and economic development, utilities and transportation commission, and the climate and rural energy development center at Washington State University's energy extension, has made a determination that for purposes of this incentive payment program, that the customer load requirement has been met. This decision, once made, is binding for the incentive payment program until its expiration, including any possible extensions. Thus, this requirement has no effect on any customer, when deciding whether to participate in this incentive payment program.)) (1) **Introduction.** This section explains the renewable energy system cost recovery program provided in RCW 82.16.110 through 82.16.140. This program authorizes a customer investment cost recovery incentive payment (incentive payment) to help offset the costs associated with the purchase and use of renewable energy systems located in Washington state that produce electricity. Qualified renewable energy systems include:

- Solar energy systems;
- Wind generators; and
- Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves the property. Neither a state governmental entity nor a federal governmental entity can participate in the incentive payment program.

(b) Participation by a light and power business in this incentive payment program is discretionary.

(c) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(2) **Definitions.** The definitions in this section apply throughout this section unless the context clearly requires otherwise.

(a) "Administrator" means an owner and assignee of a community solar project defined in (c)(i) and (iii) of this subsection, that is responsible for applying for the investment cost recovery incentive on behalf of the other owners and performing such administrative tasks on behalf of the other owners as may be necessary; such as receiving investment cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to other owners.

(b) "Applicant" has the following three meanings in this definition.

(i) For other than community solar projects, applicant means an individual, business, or local government, that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."

(ii) For purposes of a community solar project defined in (c)(i) or (iii) of this subsection, the administrator, defined in (a) of this subsection, is the applicant.

(iii) For purposes of a utility-owned community solar project defined in (c)(ii) of this subsection, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

(c) "Community solar project" means any one of the three definitions, below:

(i) A solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.

(ii) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for their share of the value of the electricity generated by the solar energy system.

(iii) A solar energy system located in Washington state, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for an investment cost recovery incentive payment for the same customer-generated electricity as defined in (e) of this subsection.

(A) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.

(B) A member may hold an interest in the company constituting ownership of either a portion of the solar energy system or a portion of the value of the electricity generated by the solar energy system, or both.

(d) For purposes of "community solar project" as defined in (c) of this subsection, the following definitions apply.

(i) "Capable of generating up to seventy-five kilowatts of electricity" means that the solar energy system will qualify if it generates seventy-five kilowatts of electricity or less. If the solar energy system or a community solar project produces more than seventy-five kilowatts the entire project is ineligible for the incentive payment program.

(ii) "Company" means an entity that is:

(A)(I) A limited liability company created under the laws of Washington state;

(II) A cooperative formed under chapter 23.86 RCW; or

(III) A mutual corporation or association formed under chapter 24.06 RCW; and

(B) Not a "utility" as defined in (d)(v) of this subsection.

(iii) "Local individuals, households, nonprofit organizations, or nonutility businesses" mean individuals, households, nonprofit organizations, or nonutility businesses that are:

- Located within the service area of the light and power business where the renewable energy system is located; and
- Residents of Washington state.

(iv) "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

(v) "Owned in fee simple" means an interest in land that is the broadest property interest allowed by law.

(vi) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(e) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable energy system located in Washington state, that is installed on an individual's, businesses', local government's or utility's real property and the real property involved is served by a light and power business.

(i) Except for utility-owned community solar systems, a system located on a leasehold interest does not qualify under this definition. For a community solar project requiring the cooperation of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."

(ii) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(f) "Local governmental entity" means any unit of local government of Washington state including, but not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts;
- Public stadium authorities; or
- Public school districts.

"Local governmental entity" does not include a state or federal governmental entity, such as a:

- State park;
- State-owned building;
- State-owned university;
- State-owned college;
- State-owned community college; and
- Federal-owned building.

(g) "Light and power business" means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(h) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(i) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(j) "Renewable energy system" means:

• A solar energy system used in the generation of electricity;

• An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity; or

• A wind generator used for producing electricity.

(k) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(l) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(m) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(3) **Who may receive an incentive payment?** Any of the following may receive an incentive payment:

(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or

(b) A participant in a community solar project with an ownership interest in the:

- Solar energy system;
- Company that owns the solar energy system; or
- Value of the electricity produced by the solar energy system.

(4) **Must you be a customer of a light and power business to be a recipient of an incentive payment?** Yes, only owners of qualifying renewable energy systems located on interconnected properties belonging to customers of a light and power business are eligible to receive incentive payments. This is because the electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems. In the case of community solar projects, the land on which the renewable energy system is located may be owned in fee simple by a local governmental entity or owned in fee simple or leased by a utility and they will be the customer of the light and power business.

(5) **To whom do I apply?** An applicant must apply to the light and power business serving the real property on which the renewable energy system is located. The applicant applies for an incentive payment based on customer-generated electricity during each fiscal year beginning on July 1st and ending on June 30th. Participation by a light and power business in the cost recovery incentive program is voluntary.

An applicant should first contact their light and power business to verify that it is participating

(6) Do I need a certification before applying to the light and power business? Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification request in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification found at the department of revenue's web site at www.dor.wa.gov, entitled:

- Community Solar Project Renewable Energy System Cost Recovery Certification; and
- Renewable Energy System Cost Recovery Certification.

(b) The department of revenue will evaluate these certification requests with assistance from the climate and rural energy development center at the Washington State University.

(c) In the case of community solar projects:

- Only one certification can be obtained for each system;
- Applicants may rely upon a prior issued certification of the system;
- The administrator must apply for the certification if it is a community solar project placed on property owned by a cooperating local government and owned by individuals, households, nonprofit organizations, or nonutility businesses;
- The company acting as an administrator must apply for the certification if it is a community solar project placed on property owned by a cooperating local government and owned by a company; and
- The utility acting as administrator must apply for the certification if it is a utility-owned community solar project on property owned or leased by the utility.

(d) Property purchased with existing system. Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must reapply for certification as the new owner with the department of revenue.

(e) Requirements of the certification request. This certification request must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the certification request must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the certification request must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A wind generator with an inverter manufactured in Washington state;

(D) A solar inverter manufactured in Washington state;

(E) A solar module manufactured in Washington state;

(F) Solar or wind equipment manufactured outside of Washington state; or

(G) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(f) Response from the department of revenue. Within thirty days of receipt of the certification the department of revenue must notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered by either mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center to determine eligibility for the incentive.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(7) How often do I apply to the light and power business? You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for covers the production of electricity by the system between July 1st and June 30th of each prior fiscal year.

(8) What about the application to the light and power business? The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications are found at the department of revenue's web site at www.dor.wa.gov, entitled:

- Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application; and
- Renewable Energy System Cost Recovery Annual Incentive Payment Application.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) Information required on the application to the light and power business. The application must include, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and address of each customer-ratepayer participating in the community solar project.

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of gross kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) Light and power business response. Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center to determine eligibility for the incentive payment.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(m).

(c) Light and power business may verify initial certification of system. Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business will be controlling and it has the authority to decertify your system.

(9) What are the possible procedures an applicant and their light and power business may follow in setting up incentive payments? This subsection first discusses recommended procedures an applicant should follow when requesting that the light and power businesses set up an applicant's incentive payments and second discusses the possible procedures the light and power business may follow.

(a) Steps an applicant may take include, but are not limited to:

- Contacting their light and power business to ask whether it is participating and what application procedures apply;

- Submitting an application to the light and power business that serves their property;

- Submitting to the light and power business proof that the applicant's renewable energy system is certified by the department of revenue for the incentive payment program;

- Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

- Signing an agreement that the light and power business will provide to the applicant.

(b) Steps the applicant's local light and power business may take include, but are not limited to:

- Sending a utility serviceman to inspect the system;

- Installing an electric production meter if one meeting its specifications is not already installed since a meter is required to properly measure production;

- Reading the applicant's production meter at least annually;

- Processing the annual incentive payment;

- Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

- Calculating annual production payments based on the meter reading or readings made prior to the accounting date of July 1st; and

- Sending the applicant's incentive payment check on or before December 15th; and

- Alternatively, the light and power business may credit the applicant's account on or before December 15th.

However, if the applicant is a net generator, that applicant must be paid by check. Net generator means the measured difference, in kilowatt-hours between the electricity supplied to a power and light business' customer and the electricity generated by the same customer from the renewable energy system and delivered to the light and power business at the same point of interconnection that is in excess of the electricity used at the same location.

(10) How may the procedures differ with my light and power business when dealing with a utility-owned solar energy system? A utility-owned community solar project is voluntarily funded by ratepayers of the specific light and power business offering the program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project. It is important that the customer-ratepayer realize when contributing to this program, they are in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the customer-ratepayer and the utility and this agreement is a contract. Customer-ratepayers need to protect their interest in this investment the same as a person would in any other investment.

(11) What is the formal agreement between the applicant and the light and power business? The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

- Contain the necessary safety requirements and interconnection standards;

- Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;

- Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;

- Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;

- Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;

- Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and

- In the case of a utility-owned solar energy system, contain a detailed description of the "value" the customer-ratepayer will receive in consideration of the financial support given to the utility.

(12) Must the renewable energy system be owned or can it be leased? The renewable energy system must be owned by the individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community-solar project, or company in a company-owned system. Leasing a renewable energy system does not constitute ownership.

(13) Must you keep records regarding your incentive payments? Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) Examination of records. Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) Overpayment. If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) Underpayment. If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

(14) How is an incentive payment computed? The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's gross kilowatt-hours generated to determine the incentive payment.

(a) Determining the base rate. The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

- Fifteen cents per economic development kilowatt-hour;

or

- Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) Economic development factors. For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) What if a solar system has both a module and inverter manufactured in Washington state or a wind generator has both blades and inverter manufactured in Washington state? In these two situations the above-described economic development factors are added together. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore, you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the gross kilowatt-hours generated to get the incentive payment amount. Further, if your wind generator has both blades and an inverter manufactured in Washington state you would multiply the fifteen cents base rate by two and two-tenths (2.2) (computed 1.0 plus 1.2) to get your incentive payment rate and then multiply this by the kilowatt-hours generated to get the incentive payment amount.

(d) Tables for use in computation. The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the gross kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured gross electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

<u>Customer-generated power applicable factors</u>	<u>Base rate (0.15) multiplied by applicable factor equals incentive payment rate</u>	<u>Gross kilowatt-hours generated</u>	<u>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</u>
<u>Solar modules manufactured in Washington state</u> Factor: 2.4 (two and four-tenths)	\$0.36		
<u>Solar or wind generating equipment with an inverter manufactured in Washington state</u> Factor: 1.2 (one and two-tenths)	\$0.18		
<u>Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state</u> Factor: 1.0 (one)	\$0.15		
<u>All other electricity produced by wind</u> Factor: 0.8 (eight-tenths)	\$0.12		
<u>Both solar modules and inverters manufactured in Washington state.</u> Factor: (2.4 + 1.2) = 3.6	\$0.54		
<u>Wind generator equipment with both blades and inverter manufactured in Washington state.</u> Factor: (1.0 + 1.2) = 2.2	\$0.33		

Annual Incentive Payment Calculation Table for Community Solar Projects

<u>Customer-generated power applicable factors</u>	<u>Base rate (0.30) multiplied by applicable factor equals incentive payment rate</u>	<u>Gross kilowatt-hours generated</u>	<u>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</u>
<u>Solar modules manufactured in Washington state</u> Factor: 2.4 (two and four-tenths)	\$0.72		
<u>Solar equipment with an inverter manufactured in Washington state</u> Factor: 1.2 (one and two-tenths)	\$0.36		
<u>Other solar equipment</u> Factor: 1.0 (one)	\$0.30		

<u>Customer-generated power applicable factors</u>	<u>Base rate (0.30) multiplied by applicable factor equals incentive payment rate</u>	<u>Gross kilowatt-hours generated</u>	<u>Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated</u>
Both solar modules and inverters manufactured in Washington state. Factor: $(2.4 + 1.2) = 3.6$	\$1.08		

(e) Examples to illustrate how incentive payments are calculated. Assume for the following ten examples that the renewable energy system involved generates 2,500 kilowatt-hours.

(i) If a noncommunity solar system has a module manufactured in Washington state and an inverter manufactured out-of-state the computation would be as follows: $(0.15 \times 2.4) \times 2,500 = \900.00 .

(ii) If a noncommunity solar system has an out-of-state module and inverter manufactured in Washington state the computation would be as follows: $(0.15 \times 1.2) \times 2,500 = \450.00 .

(iii) If a noncommunity solar system has both modules and an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times (2.4 + 1.2)) \times 2,500 = \$1,350.00$.

(iv) If wind generator equipment has out-of-state blades and an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times 1.2) \times 2,500 = \450.00 .

(v) If wind generator equipment has blades manufactured in Washington state and an out-of-state inverter the computation would be as follows: $(0.15 \times 1.0) \times 2,500 = \375.00 .

(vi) If wind generator equipment has both blades and an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times (1.0 + 1.2)) \times 2,500 = \825.00 .

(vii) If wind generator equipment has both out-of-state blades and an out-of-state inverter the computation would be as follows: $(0.15 \times 0.8) \times 2,500 = \300.00 .

(viii) If a community solar system has a module manufactured in Washington state and an out-of-state inverter the computation would be as follows: $(0.30 \times 2.4) \times 2,500 = \$1,800.00$.

(ix) If a community solar system has an out-of-state module and inverter manufactured in Washington state the computation would be as follows: $(0.30 \times 1.2) \times 2,500 = \900.00 .

(x) If a community solar system has both modules and an inverter manufactured in Washington state the computation would be as follows: $(0.30 \times (2.4 + 1.2)) \times 2,500 = \$2,700.00$.

(15) What constitutes manufactured in Washington? The statute authorizing this incentive payment program defines a "solar module" to mean the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. Thus, for a module to qualify as manufactured in Washington state, the manufactured module must meet this definition. However, when determining whether an inverter or blades are manufactured in Washington the department of revenue will apply the definition of manufacturing in WAC

458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification.

(16) How can an applicant determine the system's level of manufacture in Washington state? For systems installed after the date this section is adopted, the manufacturer must supply the department of revenue with a statement delineating the system's level of manufacture in Washington state, signed under penalty of perjury. The department of revenue will issue a binding letter ruling to the manufacturer stating its determination.

(a) Manufacturer's statement. This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the system for one or more of the multiplying economic development factors discussed in subsection (13) of this section. The manufacturer can request a binding letter ruling from the department of revenue at this web address: http://dor.wa.gov/content/contactus/con_TaxRulings.aspx.

(b) Penalty of perjury. The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

(c) Document retention. The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

(d) Certificate of manufacture in Washington state. If the department of revenue has issued a binding letter ruling stating a module, inverter, or blades qualifies as manufactured in Washington state, the manufacturer may apply to the climate and rural energy development center at Washington State University energy program for a certificate stating the same.

(17) What about guidelines and standards for manufactured in Washington? The climate and rural energy development center at the Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(18) Do condominiums or community solar projects need more than one meter? No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the

case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(19) Is there an annual limit on an incentive payment to one payee? There is an annual limit on an incentive payment.

(a) Applicant limit. No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

(b) Community solar projects.

- Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

- Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

(20) Are the renewable energy system's environmental attributes transferred? Except for utility-owned community solar systems, the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

(21) Is the light and power business allowed a tax credit for the amount of incentive payments made during the year? A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

- The credit must be taken in a form and manner as required by the department of revenue.

- The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

- Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

- Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.-110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

<u>Taxable Power Sales by the light and power business</u>	<u>Maximum tax credit (greater of .5% of total taxable power sales or \$100,000)</u>	<u>Maximum amount of tax credit available for incentive payments in a utility-owned community solar project</u>	<u>Maximum amount of tax credit available for incentive payments in a company-owned community solar project</u>
<u>\$5,000,000</u>	<u>\$100,000</u>	<u>\$25,000</u>	<u>\$5,000</u>
<u>\$50,000,000</u>	<u>\$250,000</u>	<u>\$62,500</u>	<u>\$12,500</u>
<u>\$500,000,000</u>	<u>\$2,500,000</u>	<u>\$625,000</u>	<u>\$125,000</u>

- The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

- Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(22) When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for

determining the seventy-five kilowatts limitation? In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

- Separate meters;

- Separate inverters;
- Separate certification documents submitted to the department of revenue; and

- Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(23) What if a light and power business claims an incentive payment in excess of the correct amount? For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

- The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

- Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

(24) Does the department of revenue consider the incentive payment taxable income? No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.

(25) What is the relationship between the department of revenue and the light and power business under this program? The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of the customer investment cost recovery incentive payment, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

- Claimed credit amount equals the amount of the total incentive payments made during the fiscal year;

- Each individual incentive payment is properly calculated;

- Payment to each applicant or participant in a community solar project is proportionally reduced by an equal percentage if the limit of total allowed credits is reached;

- Applicant payments are based on measured gross production of the renewable energy systems; and

- The credit and incentive payment limitations have not been exceeded.

WSR 10-17-007

PERMANENT RULES SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed August 5, 2010, 11:00 a.m., effective September 5, 2010]

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

Purpose: Clarify that asbestos survey contents and provisions for providing copies to SRCAA; remove reference to faxed notifications and corresponding prepayment accounts; clarify that the fee waiver for demolition by structural fire training also applies when the notification lists both asbestos removal and demolition; add a provision which allows own-

ers or contractors to file annual notifications; add a provision which allows notifications to be amended after the asbestos removal completion date on record; revise the regulation so that one person doesn't have to have multiple credentials to prepare an alternate work plan when standard asbestos removal methods can't be used; allow the agency to accept emergency notifications one working day after the emergency work commenced; change "shall" to "may" regarding the board amending the fee schedule to more accurately recover program costs; and include an additional incremental fee for incrementally larger abatement projects.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article IX and Section 10.09.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Other Authority: Chapter 70.94 RCW, 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

Adopted under notice filed as WSR 10-11-005 on May 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Nonsubstantive change to header in Section 9.04.B.2.d and typographical error in Section 10.09.A regarding annual notifications corrected to reflect ≤ 159 sq. ft. versus ≤ 160 sq. ft. which makes the number consistent with the annual notification provision being proposed in Section 9.04.A.6.j.

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 7, 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 0, Repealed 0.

Date Adopted: August 5, 2010,

Matt Holmquist

Compliance Administrator

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 10-18 issue of the Register.

WSR 10-17-015

PERMANENT RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed August 5, 2010, 3:38 p.m., effective September 5, 2010]

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

Purpose: WAC 181-82A-208 was amended in May 2009. During public hearing, the request was made and the board adopted adding a specialty endorsement for gifted education to the rule along with the proposed additions in visually impaired, mobility and environmental. The filed document did not capture this addition.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82A-208.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-11-029 on May 11, 2010.

Changes Other than Editing from Proposed to Adopted Version: Public hearing resulted in providing a waiver of experience requirement for teachers who are unemployed and hold elementary education endorsements.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, 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 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 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: August 5, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 09-12-087, filed 6/1/09, effective 7/2/09)

WAC 181-82A-208 Specialty endorsements. The following specialty endorsements may be added to an existing endorsed teaching certificate:

(1) Deaf education (per RCW 28A.410.225).

(a) This specialty endorsement is required for teachers who will be working almost exclusively with students who are deaf or hard of hearing.

(b) Program requirements are waived and this specialty endorsement granted if a candidate possesses a baccalaureate or master's degree in deaf education from a teacher training program approved by the council on education of the deaf.

(2) Environmental and sustainability education.

(3) Teacher of the visually impaired.

(4) Orientation and mobility teacher.

(5) Gifted education.

WSR 10-17-028
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 9, 2010, 10:20 a.m., effective September 9, 2010]

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

Purpose: This rule making is being adopted in response to SSB 6349 (chapter 160, Laws of 2010), which established the farm internship program. Small farms located in San Juan and Skagit counties with annual sales of less than \$250,000 per year are eligible to enroll in the program. This rule making will adopt amendments to chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance. New farm intern risk classifications have been established. Each classification will have a different composite rate depending on the type of farm.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17-31014(7); and new WAC 296-17-89503, 296-17A-4814, 296-17A-4815, and 296-17A-4816.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100.

Adopted under notice filed as WSR 10-13-135 on June 22, 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 4, 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 0, Repealed 0.

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

Date Adopted: August 9, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 04-18-025, filed 8/24/04, effective 10/1/04)

WAC 296-17-31014 Farming and agriculture. (1) Does this same classification approach apply to farming or agricultural operations?

Yes, but it may not appear so without further explanation. We classify farming and agricultural operations by type of crop or livestock raised. This is done because each type of grower will use different processes and grow or raise multiple crops and livestock which have different levels of hazards. It is common for farmers and ranchers to have several basic classifications assigned to their account covering various types of crops or livestock. If you fail to keep the records

required in the auditing recordkeeping section of this manual, and we discover this, we will assign all worker hours for which records were not maintained to the highest rated classification applicable to the work performed.

(2) I am involved in diversified farming and have several basic classifications assigned to my business. Can I have one classification assigned to my account to cover the different types of farming I am involved in?

Yes, your account manager can assist you in determining the single classification that will apply to your business. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(3) How do you determine what single farming classification will be assigned to my business?

The approach used to assign a single classification to a farming business is much the same as we use for construction or erection contractors. To do this, we will need a break down of exposure (*estimate of hours to be worked by your employees*) by type of crop or livestock being cared for (*classification*). This information will be used to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We will select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate that we produced from the estimated hours. Classification 4806 is not to be assigned to any grower as the single farming classification.

(4) How will I know what single farming classification you have assigned to my business?

We will send you a written notice of the basic classification that will apply to your business.

(5) If I requested a single classification for my farming operation can I change my mind and use multiple classifications?

Yes, but you will need to call your account manager to verify the applicable classifications.

The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(6) I am a farm labor contractor. How is my business classified?

If you are a farm labor contractor we will assign the basic classification that applies to the type of crop being grown, or livestock being cared for. If you contract to supply both machine operators and machinery on a project, all operations are to be assigned to classification 4808.

(7) Farm internship pilot program. Who may participate in the farm internship pilot program created by the department as a result of Title 49 RCW, effective June 10, 2010?

Small farms with annual sales of less than two hundred fifty thousand dollars per year located in San Juan or Skagit counties that receive a special certification from the department may have farm interns. Employers who qualify may

report no more than three farm interns. Farm internship program risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816.

NEW SECTION

WAC 296-17-89503 Farm internship program industrial insurance, accident fund and medical aid fund by class.

Class	Base Rates Effective June 11, 2010	
	Accident Fund	Medical Aid Fund
4814	.0960	.1384
4815	.2042	.3300
4816	.3345	.4912

NEW SECTION

WAC 296-17A-4814 Classification 4814.

4814-00 Farms: Internship program (to be assigned only by the agricultural specialist)

Applies to qualified farms engaged in providing an internship program for agricultural education. To qualify, the farm must hold a valid certification from labor and industries to provide an internship program that includes a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise.

Classification 4814 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4806, 4810, or 4813. For governing classification, reference: WAC 296-17-310171.

Special note: The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4814. All other farm employees hours are to be reported separately in the applicable farm classification that applies to the farm operation.

NEW SECTION

WAC 296-17A-4815 Classification 4815.

4815-00 Farms: Internship program (to be assigned only by the agricultural specialist)

Applies to qualified farms engaged in providing an internship program for agricultural education. To qualify, the farm must hold a valid certification from labor and industries to provide an internship program that includes a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise.

Classification 4815 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4802, 4803,

4805, 4809, 4811, or 4812. For governing classification, reference: WAC 296-17-310171.

Special note: The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4815. All other farm employees hours are to be reported separately in the applicable farm classification that applies to the farm operation.

NEW SECTION

WAC 296-17A-4816 Classification 4816.

4816-00 Farms: Internship program (to be assigned only by the agricultural specialist)

Applies to qualified farms engaged in providing an internship program for agricultural education. To qualify, the farm must hold a valid certification from labor and industries to provide an internship program that includes a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise.

Classification 4816 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4804, 4808, 7301, 7302, or 7307. For governing classification, reference: WAC 296-17-310171.

Special note: The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4816. All other farm employees hours are to be reported separately in the applicable farm classification that applies to the farm operation.

WSR 10-17-029

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed August 9, 2010, 11:13 a.m., effective September 9, 2010]

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

Purpose: Revises WAC 181-78A-255, 181-78A-264 and 181-78A-270; and repeals WAC 181-78A-315, 181-78A-317, 181-78A-319, and 181-78A-325. Policy changes to standards governing organizations providing teacher/educator preparations. Required by recent legislative action in the 2009 and 2010 sessions. Session law from HB 2261, SB 6696 and SB 5793.

Citation of Existing Rules Affected by this Order: Repealing WAC 181-78A-315, 181-78A-317, 181-78A-319 and 181-78A-325; and amending WAC 181-78A-255, 181-78A-264, and 181-78A-270.

Statutory Authority for Adoption: RCW 28A.410.210.

Other Authority: HB 2261, SB 6696, SB 5793.

Adopted under notice filed as WSR 10-12-087 on June 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: Board edits for clarity and additional impacts from statute on WAC 181-78A-270, related to administrators.

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 3, Repealed 4.

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 3, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 22, 2010.

David Brenna
Legislative and
Policy Coordinator

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

WAC 181-78A-255 Approval standard—Accountability. Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(2). ~~(Each college and university shall:~~

~~(1) Submit for approval to the professional educator standards board a performance based program for the preparation of teachers, administrators, and educational staff associates that identifies:~~

~~(a) A comprehensive set of learner expectations for each preparation program;~~

~~(b) An assessment system that reflects the conceptual framework(s) and state standards, and collects and analyzes data on applicant qualifications, candidate and graduate performance, unit operations and program quality;~~

~~(c) Explicit connections between professional, state, and institutional standards, and candidate assessments.~~

~~(2) During the first year following program completion, solicit feedback from program completers employed in education, and their supervisors, regarding the program's effectiveness.~~

~~(3) Maintain placement records for all program completers during the first year following program completion.~~

~~(4) Submit an annual report to the professional educator standards board for each approved program to include:~~

~~(a) An executive summary of the activities of each professional education advisory board, including membership, meeting attendance, meeting expenditure information, PEAB recommendations, and program responses to the recommendations.~~

(b) The number of students completing each approved program during the period from September 1 – August 31 of the previous year.

(c) Other information related to the preparation programs requested by the professional educator standards board.

~~(5) Collect and maintain exemplar candidate work samples that document a positive impact on student learning.)~~

(1) Each approved educator preparation program shall maintain an assessment system that:

(a) Assesses outcomes in alignment with the conceptual framework and state standards.

(b) Systematically and comprehensively gathers evidence on:

(i) Candidate learning;

(ii) Program operations, including placement rates, clinical experiences, and candidate characteristics.

(c) Collects candidate work samples that document positive impact on student learning.

(d) Aggregates key data over time.

(e) Incorporates perspectives of faculty, candidates, and P-12 partners.

(f) Includes processes and safeguards that ensure fair and unbiased assessment of candidates.

(g) Provides for regular analysis of assessment results.

(h) Is systematically linked to program decision-making processes.

(2) Each approved program shall reach agreement with the professional educator standards board on the delivery of data as described in a memorandum of understanding. The memorandum will detail the minimum data requirements for approved programs.

AMENDATORY SECTION (Amending WSR 10-07-077, filed 3/17/10, effective 4/17/10)

WAC 181-78A-264 Approval standard—Program design. Building on the mission to prepare educators who demonstrate a positive impact on student learning, ~~((the following))~~ evidence shall be evaluated to determine whether each preparation program is in compliance with the program design standard of WAC 181-78A-220(4):

(1) The conceptual framework establishes the shared vision for the unit's efforts in preparing educators to work effectively in P-12 schools. ~~((It provides the basis for coherence among curriculum, instruction, field experiences, clinical practice, assessment, and evaluation. The conceptual framework is based on current research and best practice, is cohesive and integrated, supports the state's student learning goals and for teacher preparation programs, and reflects the essential academic learning requirements. The conceptual framework reflects the unit's commitment to preparing candidates to support learning for all students and the unit's commitment to preparing candidates who are able to use educational technology to help all students learn.~~

(2) Candidates who demonstrate potential for acquiring the content and pedagogical knowledge and skills for success as educators in schools are recruited, admitted, and retained (see WAC 181-78A-200 Candidate admission policies).

These candidates include members from under represented groups:

(3) Programs shall assure that candidates are provided with opportunities to learn the pedagogical and professional knowledge and skills required for the particular certificate, and for teacher preparation programs, the competencies for endorsement areas:

(4) A set of learner expectations for program completion are identified and published:

(5)(a) The unit and its school partners design, implement, and evaluate field experiences and clinical practices so that candidates develop and demonstrate the knowledge and skills necessary to help all students learn. Provided, That candidates for an administrator certificate shall complete an internship pursuant to WAC 181-78A-325, candidates for a school psychologist certificate shall complete an internship pursuant to WAC 181-78A-317, and candidates for a school counselor certificate shall complete an internship pursuant to WAC 181-78A-315, and candidates for a school social worker certificate shall complete an internship pursuant to WAC 181-78A-319.

(b) Field experiences are integrated throughout the preparation program and occur in settings with students representing diverse populations:

(c) Clinical practice is sufficiently extensive and intensive for candidates to demonstrate competence in the professional roles for which they are preparing:

(6) The preparing institution shall assure that candidates are provided with appropriate course work and experiences in teaching methods for each endorsement area. The methods should include:

(a) Instructional strategies:

(b) Curriculum frameworks (essential academic learning requirements):

(c) Assessment strategies, including performance-based measurements of student work:

(d) Unit/lesson planning:

(7) Entry and exit criteria exist for candidates in clinical practice:

(8) Programs reflect ongoing collaboration with P-12 schools:

(9) Candidates for a teacher certificate shall hold/obtain a baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5):

(10) Beginning fall 2003, approved programs shall administer the pedagogy assessment adopted by the professional educator standards board and published by the superintendent of public instruction to all candidates in a residency certificate program:

Candidates must take the pedagogy assessment as a condition of residency program completion. However, passage is not required for program completion as long as the program can provide other evidence, separately or in combination with the results of the pedagogy assessment, that the candidate has satisfied all program completion requirements:

(11) Collaboration. The unit ensures faculty collaborate with others to improve the program:

(a) Faculty within the unit;

(b) Faculty from other units;

(c) P-12 school personnel;

(d) Members of the broader professional community.

(12) Interactions with diverse populations. The unit ensures candidates interact with diverse populations.

(a) Diverse higher education faculty;

(b) Diverse candidates;

(c) Diverse P-12 students;

(d) Diverse individuals who work with students in P-12 classrooms-)) The conceptual framework:

(a) Provides coherence among curriculum, instruction, field experiences, clinical practice, candidate assessment, and program evaluation;

(b) Establishes the philosophy, purpose, goals, and standards of the program or unit;

(c) Reflects renewing commitment to current research and best practices; and

(d) Supports the state's goals for P-12 student learning and program approval Standard V.

(2) Recruitment, admission, retention, and transition to the field.

(a) Programs recruit, admit, retain, and transition candidates to the field who:

(i) Demonstrate the content and pedagogical knowledge and skills for success as educators in schools;

(ii) Demonstrate the dispositions of a professional educator;

(iii) Address the program, state and partner districts' goals for increasing underrepresented populations in the workplace;

(iv) Address the content areas identified by work force data of the state and region.

(b) Learner expectations for program requirements, progression, and completion are identified, published, and accessible.

(c) Faculty regularly review recruitment and retention data for effectiveness of program.

Programs create, implement and communicate a recruitment and retention plan in response to data.

(3) Field experiences and clinical practice.

(a) The program(s) and its school partners design, implement, and evaluate field experiences and clinical practices.

(b) Field experiences are integrated throughout the preparation program.

(i) Field experiences provide opportunity to plan, practice and reflect on methods of instruction and differentiation;

(ii) Field experiences provide opportunity to work in communities with populations dissimilar to the background of the candidate;

(iii) Faculty supervision, including on-site visits, will be provided on an on-going basis.

(c) Mentors are instructional leaders identified collaboratively with the partner school of district.

(i) Mentors and principals are provided with a set of internship expectations;

(ii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iii) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising;

(iv) Effectiveness of mentor preparation and communication are reviewed annually by faculty.

(d) All Washington educator preparation programs operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(e) Entry and exit criteria and a process for mitigating concerns during clinical practice are provided for candidates and the mentor.

(f) Requirements for specific educator preparation programs.

(i) Teacher programs.

(A) Programs shall administer the pedagogy assessment adopted by the professional educator standards board to all candidates in a residency certificate program.

(B) Clinical practice (defined as supervised planning, instruction, and reflection) for teacher candidates should consist of no less than four hundred fifty hours in classroom settings.

(ii) School counselor programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of four hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic counseling skills and integrate professional knowledge).

(iii) School psychology programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of one thousand two hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic school psychology skills and integrate professional knowledge).

(iv) School social worker programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of three hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic school social work skills and integrate professional knowledge).

(v) Administrator programs.

(A) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(B) Components of the required internship shall include demonstration by the candidate that he or she has the appropriate, specific relevant skills pursuant to WAC 181-78A-270.

(C) An approved preparation program for superintendents shall require an internship of at least three hundred sixty hours.

(D) An approved preparation program for principals shall require for those persons beginning their internship August 1, 2009, and after, an internship which requires practice as an intern during the full school year. A "full school year" shall mean five hundred forty hours of which at least one-half shall be during school hours, when students and/or staff are present. Provided further, That an approved preparation program for principals shall require an internship that shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-270(2) and meets, at minimum, the standards-based benchmarks approved and published by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval.

(4) Program and faculty collaboration.

(a) Faculty within the program and unit collaborate for continuous program improvement.

(b) Faculty collaborate with content area specialists.

(c) Programs collaborate with P-12 schools to assess and respond to work force, student learning, and professional development needs.

(d) Faculty collaborate with members of the broader professional community.

(e) Faculty collaborate with members of under-represented populations for program improvement.

(5) Diversity in learning experiences.

(a) Candidates have significant interaction with diverse populations including colleagues, faculty, P-12 practitioners, and P-12 students and families.

(i) Candidates reflect on interactions with diverse populations in order to integrate professional growth in cultural competency as a habit of practice.

(ii) Candidates integrate their cultural and linguistic backgrounds into classroom activities in order to build the multicultural capacity of the preparation program cohort.

(b) Faculty model equity pedagogy through:

(i) Interaction with diverse populations;

(ii) Reflective practice on their own professional growth in cultural competency;

(iii) Culturally relevant communication and problem solving; and

(iv) Personalized instruction that addresses cultural and linguistic backgrounds.

AMENDATORY SECTION (Amending WSR 07-23-046, filed 11/14/07, effective 12/15/07)

WAC 181-78A-270 Approval standard—Knowledge and skills. Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

(1) TEACHER RESIDENCY CERTIFICATION.

~~(Knowledge of subject matter and curriculum goals~~

(a) Teacher candidates positively impact student learning that is:

(i) ~~Content driven.~~ All students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology.

(ii) ~~Aligned with curriculum standards and outcomes.~~ All students know the learning targets and their progress toward meeting them.

(iii) ~~Integrated across content areas.~~ All students learn subject matter content that integrates mathematical, scientific, and aesthetic reasoning.

Knowledge of teaching

(b) Teacher candidates positively impact student learning that is:

(i) ~~Informed by standards-based assessment.~~ All students benefit from learning that is systematically analyzed using multiple formative, summative, and self-assessment strategies.

(ii) ~~Intentionally planned.~~ All students benefit from standards-based planning that is personalized.

(iii) ~~Influenced by multiple instructional strategies.~~ All students benefit from personalized instruction that addresses their ability levels and cultural and linguistic backgrounds.

(iv) ~~Informed by technology.~~ All students benefit from instruction that utilizes effective technologies and is designed to create technologically proficient learners.

~~Knowledge of learners and their development in social contexts~~

(c) Evidence of teacher candidate practice reflects planning, instruction and communication that is:

(i) ~~Learner centered.~~ All students engage in a variety of culturally responsive, developmentally, and age appropriate strategies.

(ii) ~~Classroom/school centered.~~ Student learning is connected to communities within the classroom and the school, including knowledge and skills for working with others.

(iii) ~~Family/neighborhood centered.~~ Student learning is informed by collaboration with families and neighborhoods.

(iv) ~~Contextual community centered.~~ All students are prepared to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society.

Understanding teaching as a profession

(d) Teacher candidates positively impact student learning that is:

(i) ~~Informed by professional responsibilities and policies.~~ All students benefit from a collegial and professional school setting.

(ii) ~~Enhanced by a reflective, collaborative, professional growth centered practice.~~ All students benefit from the professional growth of their teachers.

(iii) ~~Informed by legal and ethical responsibilities.~~ All students benefit from a safe and respectful learning environment.)) (a) **EFFECTIVE TEACHING.**

(i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;

(ii) Applying principles of differentiated instruction, including theories of language acquisition, stages of lan-

guage, and academic language development, in the integration of subject matter across the content areas of reading, mathematical, scientific, and aesthetic reasoning;

(iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;

(iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with other;

(v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) PROFESSIONAL DEVELOPMENT. Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

(c) TEACHING AS A PROFESSION.

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) PERFORMANCE ASSESSMENT. An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning.

(2) PRINCIPAL AND PROGRAM ADMINISTRATOR.

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling

with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensitivities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, including current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and

responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards. ~~((A school administrator is an educational leader who promotes the success of all students by:))~~

(A) ~~((Facilitating))~~ A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by ~~((the))~~ school and community stakeholders;

(B) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining ~~((a))~~ district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(C) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(D) A school administrator is an educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(F) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(ii) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) SUPERINTENDENT. ~~((Superintendent candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experi-~~

ences in an approved preparation program for superintendents which shall include specific performance domains for superintendents.) An approved preparation program for superintendents shall require the candidate to demonstrate to course work and the internship the following standards:

(a) ~~((**Strategic leadership:** The knowledge, skills and attributes to identify contexts, develop with others vision and purpose, utilize information, frame problems, exercise leadership processes to achieve common goals, and act ethically for educational communities. This includes:~~

~~(i) Professional and ethical leadership.~~

~~(ii) Information management and evaluation.)) A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;~~

~~(b) ~~((**Instructional leadership:** The knowledge, skills and attributes to design with others appropriate curricula and instructional programs which implement the state learning goals and essential academic learning requirements, to develop learner centered school cultures, to assess outcomes, to provide student personnel services, and to plan with faculty professional development activities aimed at improving instruction. This includes:~~~~

~~(i) Curriculum, instruction, supervision, and learning environment.~~

~~(ii) Professional development and human resources.~~

~~(iii) Student personnel services.)) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;~~

~~(c) ~~((**Organizational leadership:** The knowledge, skills and attributes to understand and improve the organization, implement operational plans, manage financial resources, and apply decentralized management processes and procedures. This includes:~~~~

~~(i) Organizational management.~~

~~(ii) Interpersonal relationships.~~

~~(iii) Financial management and resource allocation.~~

~~(iv) Technology and information system.)) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;~~

~~(d) ~~((**Political and community leadership:** The knowledge, skills and attributes to act in accordance with legal provisions and statutory requirements, to apply regulatory standards, to develop and apply appropriate policies, to be conscious of ethical implications of policy initiatives and political actions, to relate public policy initiatives to student welfare, to understand schools as political systems, to involve citizens and service agencies, and to develop effective staff communications and public relations programs. This includes:~~~~

~~(i) Community and media relations.~~

~~(ii) Federal and Washington state educational law, public policy and political systems.)) A school administrator is an~~

educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(f) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionality, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate stu-

dent-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action

research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

- (i) Learning theory.
- (ii) Personality theory and development.
- (iii) Individual and group testing and assessment.
- (iv) Individual and group counseling and interviewing theory and techniques.
- (v) Basic statistics.
- (vi) Child development.
- (vii) Exceptional children.

(viii) Social and cultural factors.

(ix) Deviant personality.

(x) Curriculum, including the state learning goals and essential academic learning requirements.

(xi) Research design.

(xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

(i) Intellectual and cognitive assessment.

(ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.

(iii) Personality assessment.

(iv) Assessment of perceptual skills.

(v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

(i) Data taking.

(ii) Frequency measures.

(iii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

(i) Provide individual and group counseling to students and parents.

(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

(i) Function on multidisciplinary teams in evaluating and placing students.

(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

(i) Research. The candidate has knowledge and skill to:

(i) Evaluate and perform research.

(ii) Apply school-oriented research.

(iii) Construct criterion-referenced instruments with reference to such educational decisions as:

(A) Retention in grade.

(B) Acceleration and early entrance.

(C) Early entrance.

(7) **School psychologist.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools

and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

- (i) Values.
 - (A) Knowledge of profession including values, skills, and ethics; and
 - (B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.
- (ii) Human behavior and the social environment.
 - (A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);
 - (B) Systems and organizational theory (e.g., school as a bureaucracy);
 - (C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;
 - (D) Family dynamics and theories of family therapy;
 - (E) Human/child growth and development;
 - (F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;
 - (G) Theories of personality; and
 - (H) Use of computer technology for social work practice.
- (b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:
 - (i) Direct practice.
 - (A) Referring, developing, and coordinating resources and services in the local education agency and community;
 - (B) Knowledge and skills related to families;
 - (C) Case management;
 - (D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;
 - (E) Crisis intervention, conflict resolution, stress management and decision-making skills;
 - (F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;
 - (G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;
 - (H) Family interventions including parent education; referral to resources; family counseling;
 - (I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;
 - (J) Collaborating and consulting with parents and community to assure readiness to learn for all students;
 - (K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;
 - (L) Intervention case planning processes; and
 - (M) Career and academic guidance to students in their school to work transitions.
 - (ii) Indirect practice.
 - (A) Liaison and facilitator between and among home, school and community;
 - (B) Collaborate and consult with other educational staff to assure student progress;

- (C) Use computer technology for practice and efficiency;
- (D) Develop strategies for increased parental and community involvement with the school;
- (E) Develop programs of remediation for students and their families;
- (F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;
- (G) Provide staff development programs;
- (H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and
- (I) Function as change agents.
- (c) Research and evaluation. The candidate will have necessary skills and knowledge to:
 - (i) Collect and interpret data in order to evaluate student, school, and community needs;
 - (ii) Evaluate own practice;
 - (iii) Become consumer of research findings;
 - (iv) Understand use of program evaluation methods; and
 - (v) Utilize computer technology for research and evaluation.
- (d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:
 - (i) State learning goals and essential academic learning requirements;
 - (ii) Theories of learning;
 - (iii) School law and professional ethics;
 - (iv) Computer technology in the workplace; and
 - (v) Understanding of policies, laws, and procedures.
- (9) **School social workers.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:
 - (a) **Successful demonstration of standards:**
 - (i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.
 - (ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan

are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar

with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-78A-315	Program approval requirement—Field experience for school counselors.
WAC 181-78A-317	Program approval requirement—Field experience for school psychologists.
WAC 181-78A-319	Program approval requirement—Field experience for school social workers.
WAC 181-78A-325	Program approval requirement—Field experience for all administrators.

WSR 10-17-031

PERMANENT RULES

GRAYS HARBOR COLLEGE

[Filed August 9, 2010, 1:57 p.m., effective September 9, 2010]

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

Purpose: Represents changes in the student rights and responsibilities document in compliance with changed academic regulations and changes in student and societal changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 132B-120-080; and amending WAC 132B-120-010, 132B-120-030, 132B-120-040, 132B-120-055, 132B-120-065, 132B-120-075, 132B-120-130, 132B-120-135, 132B-120-170, 132B-120-180, 132B-120-190, 132B-120-210, and 132B-120-220.

Statutory Authority for Adoption: RCW 28B.50.140.13 [28B.50.140(13)].

Adopted under notice filed as WSR 10-08-031 on March 31, 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 2, Amended 13, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, 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: August 2, 2010.

Arlene Torgerson
Vice-President for
Student Services

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-010 Definitions. As used in this document the following words and phrases shall mean:

(1) "Board" shall mean the board of trustees of Community College District No. 2, state of Washington.

(2) "College" shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

~~(3) ("Liquor" shall mean the definition of liquor as contained within RCW 66.04.010 as now law or hereafter amended.~~

~~(4) "Controlled substances" shall mean the definition of controlled substances as defined in RCW 69.50.101 as now law or hereafter amended.~~

~~(5))~~ (5) "College facilities" shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated web sites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

~~(6))~~ (4) "President" shall mean the chief executive officer of the college appointed by the board of trustees.

~~(7))~~ (5) "Vice-president" shall mean the vice-president for student services or in his/her absence, the vice-president for instruction.

~~(8))~~ (6) "Faculty" shall mean any person employed on a full or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty of other colleges (whether or not employed by GHC) that provide instruction to GHC students through distance education.

~~(9))~~ (7) "Student" shall mean and include any person who is enrolled in courses through the college or is in the process of applying for admission to the college.

~~(10))~~ (8) "Employee" shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

~~(11))~~ (9) "College community" shall mean all employees and students of the college.

~~(12))~~ (10) "College official" shall mean any person employed by the college performing assigned duties.

(11) "Disciplinary action" shall mean any of the sanctions listed in WAC 132B-120-130.

~~((13))~~ (12) "Sexual harassment" shall mean unwelcome verbal or physical conduct of a sexual nature, unwelcome or unsolicited sexual advances or requests for sexual favors when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic standing or employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment.

Examples of behaviors that may constitute harassment include but are but are not limited to: Repeated, offensive and unwelcome insults and/or jokes; pressure for dates or sex, if unwelcome or repeated; repeated, unwelcome comments about an individual's body or clothing; persistent, unwelcome flirtation, advances and/or propositions of a sexual nature; deliberate and unwelcome touching, such as patting, hugging, pinching or repeated brushing against a person's body.

~~((14))~~ (13) "Hazing" shall mean any method of initiation into a student organization or association or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary institution. Hazing does not include customary athletic events or other similar contests or competitions.

~~((15))~~ (14) "Trespass" shall be defined in accordance with chapter 9A.52 RCW.

~~((16))~~ (15) "Assembly" shall mean any activity engaged in by two or more persons the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons or group of persons.

~~((17))~~ (16) "RCW" shall mean the Revised Code of Washington.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-030 Jurisdiction. All rules herein adopted concerning student conduct and discipline shall apply to every student whenever said student is engaged in or present at any college-related activity whether occurring on or off of college facilities. The college may carry out disciplinary proceedings prior to, simultaneous with, or following civil or criminal proceedings in a court. The college cooperates with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators provided the conditions do not conflict with college rules or sanctions. The college is not a policing agent for students when they are not in college facilities but does reserve the right to take action if a student's behavior is determined to threaten the health, safety, and/or property of the college and

the college community. The college has the sole discretion to determine what conduct occurring off campus adversely impacts the college and/or the pursuit of its objectives.

NEW SECTION

WAC 132B-120-035 Interpretations. The vice-president for student services and the student conduct committee shall have the authority to interpret and apply the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-040 Prohibited conduct. Disciplinary action may be taken for a violation of any provision of this student code or for a violation of other college rules and regulations which may from time to time be properly enacted or for specific prohibited conduct including but not limited to the following:

(1) Smoking and use of tobacco products anywhere other than designated smoking areas.

(2) Using, possessing, consuming, or being under the influence of, or distributing any liquor as defined in RCW 66.04.010, as now or hereafter amended, when present at or engaged in any college sponsored activity with the exception of sanctioned events approved by the president or designee and in compliance with state law.

(3) Using, possessing, distributing or being under the influence of any narcotic drug or controlled substance as defined in RCW 69.50.101, as now or hereafter amended, in a college facility or while participating in a college-related program.

(4) Engaging in lewd, indecent, or obscene behavior.

(5) Sexual misconduct of any kind including rape, indecent liberties, assault of a sexual nature, voyeurism or unwanted sexual contact.

(6) Where the student presents an imminent danger or causes unreasonable risk of harm to college property or to himself/herself or to others ~~((students or persons in college facilities on or off campus.))~~ or to the education process of the college.

~~((6))~~ (7) Interference by force or violence with, or intimidation by threat of force or violence, of another student, employee or visitor who is in the peaceful discharge or conduct of his/her duties or studies (RCW 28B.10.570 through 28B.10.572).

~~((7))~~ (8) Disorderly or abusive behavior either physical or verbal which interferes with the rights of others or that obstructs or disrupts teaching, learning, research, services, activities or administrative functions.

~~((8))~~ (9) Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may remove a student for the single class session in which disruptive conduct occurs. The

instructor will report any such exclusion from the class to the vice-president for student services or designee who may initiate further conduct proceedings as provided in this procedure.

(c) The vice-president for student services or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. The student may appeal the disciplinary sanction according to appeal procedures.

(10) Any person, thing or object brought into college facilities, without prior approval of an appropriate college official, that causes a disruption to the classroom or campus environment or causes a safety hazard.

(11) Conducting or participating in an assembly which violates the guidelines of assembly as defined in Section II E.

~~((9))~~ (12) All forms of student academic dishonesty, including cheating, falsification, plagiarism or facilitating, aiding and abetting academic dishonesty or engaging in any conduct specifically prohibited by a faculty member in the course syllabus or class discussion.

(a) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

(b) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

~~((10))~~ (13) Forgery of or unauthorized alteration of or access to any college document, record, funds or instrument of identification, including electronic hardware, software and records.

~~((11))~~ (14) Providing false information to the college or the intentional making of false statements and/or filing of false charges against the college and/or members of the college community.

~~((12))~~ (15) Theft from college premises and/or property; theft of property of a member of the college community on college premises; or possession of property stolen from college premises and/or a member of the college community while on college premises.

~~((13))~~ (16) Causing or attempting to cause physical damage to property owned, controlled or operated by the college or to property owned, controlled or operated by another person while said property is located on college facilities.

~~((14))~~ (17) Failure to comply with the direction of college employees acting in the legitimate performance of their duties.

~~((15))~~ (18) Refusal to provide positive identification and evidence of student enrollment to any college employee in the lawful discharge of said employee's duties.

~~((16))~~ (19) Possession, transportation or storage of any firearm(s), explosives, dangerous chemicals or other weapons, devices or substances which can be used to inflict bodily harm or to damage real or personal property. Weapons may include, but are not limited to, all firearms, pellet guns, sling-shots, martial arts devices, switchblade knives and clubs. This does not apply to commissioned police officers as prescribed by law.

~~((17))~~ (20) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

~~((18))~~ (21) Computer violations which include, but are not limited to:

(a) Gaining access, without authorization, to a computer system or network, or electronic data owned, used by, or affiliated with Grays Harbor College;

(b) Unauthorized use of another individual's account, identification or password;

(c) Use of computer facilities to interfere with the work of another student, faculty member, college employee or computer network operations;

(d) Use of computer facilities and/or resources to send or solicit obscene, abusive, bothersome, threatening or harassing messages;

(e) Use of college e-mail accounts to intentionally disseminate viruses, destructive, malicious or invasive programs;

(f) Use of college computers or systems for other than educational purposes;

(g) Use of college computer equipment to participate in illegal or unauthorized activities;

(h) Use of computing facilities and resources in violation of copyright laws;

(i) Violating any of the computer use policies in effect on campus.

~~((19))~~ (22) Sexual harassment as defined in Section IB12 of another student or employee.

~~((20))~~ (23) Any repeated intentional conduct directed at another student or employee that has the purpose or effect of creating a hostile, intimidating or disruptive learning or working environment. (This may include intentional, repeated, unwelcome attempts to contact a student or employee.)

~~((21))~~ (24) Hazing in any form as described in RCW 28B.10.900.

~~((22))~~ (25) The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular trade, skill, craft or profession for which the student is taking courses or is pursuing as their educational goal.

~~((23) Malicious)~~ (26) Harassment that involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical or sensory disability.

~~((24))~~ (27) Harassment, (including physical, verbal, graphic, written or electronic conduct) that is sufficiently severe, persistent or pervasive so as to threaten or limit the ability of a reasonable individual to work, study or participate in the activities of the college.

(28) Entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official.

(29) Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.

~~((25))~~ (30) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory to any act prohibited by this code may be considered to be same as completed violations.

(31) Retaliating against witnesses or accusers of prohibited conduct.

(32) Students who participate in any college sponsored or sanctioned international study program shall observe the following:

(a) The laws of the host country;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program in another county;

(d) The GHC standards of conduct for students.

(33) Violation of federal, state or local law in college facilities or at college-sponsored or supervised activities.

~~((26))~~ (34) Violation of other published college policies, rules or regulations.

AMENDATORY SECTION (Amending WSR 98-09-012, filed 4/6/98, effective 5/7/98)

WAC 132B-120-055 Trespass. The president or vice-president of student services or his or her designee(s) shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain on any college property or facility. Such power and authority may be exercised to halt any event or activity which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any person remaining on or reentering college property after receiving notice that his/her license or privilege to be on that property has been revoked shall be subject to arrest for criminal trespass under the provisions of chapter 9A.52 RCW.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-065 Student rights. The following rights are endorsed by the college for each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed rights of free inquiry, expression and peaceful assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b), available space in the class, and meeting any required prerequisites.

(c) Students have the right to a learning environment which is free from unlawful discrimination and sexual harassment.

(d) Students are protected from academic evaluation which is arbitrary, prejudiced or capricious(~~(, and)~~). Students are responsible for meeting the standards of academic performance established by each of their instructors.

(2) Nondiscrimination. Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status.

(3) Due process. Students have the right of due process. No disciplinary action may be imposed without notice to the accused of the nature of the charges. A student accused of violating the code of conduct is entitled to procedural due process as set forth in the code.

(4) Campus speakers/invited guests. Recognized student organizations shall have the right to invite outside speakers and guests to (~~(speak on)~~) campus subject to the availability of campus facilities, funding and compliance with college procedures. Student organizations are responsible for the conduct of their invited guests on or in college facilities and at functions sponsored by the college or recognized student organization.

(5) Right to assembly. Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies:

- (a) Are conducted in an orderly manner;
- (b) Do not unreasonably interfere with vehicular or pedestrian traffic;
- (c) Do not unreasonably interfere with classes, scheduled meetings or ceremonies or regular functions of the college;
- (d) Do not cause destruction or damage to college property;
- (e) Are in compliance with procedures established in Administrative Procedure 516.03.

(6) Distribution of materials. Handbills, leaflets, newspapers and similarly related materials may be distributed free of charge by any student or students, or by members of recognized student organizations, or by college employees on or in college facilities at locations specifically designated by the vice-president for student services; and are in compliance with procedures established in Administrative Procedure 516.03 provided such distribution does not interfere with the ingress or egress of persons or interfere with the free flow of vehicular or pedestrian traffic.

Such handbills, leaflets, newspaper and related matter must bear identification as to the publishing agency and distributing organization or individual.

All nonstudents shall register with the vice-president for student services prior to the distribution of any handbill, leaflet, newspaper or related matter. Such distribution must not interfere with the free flow of vehicular or pedestrian traffic.

Any person or persons who violate any provisions of this rule relating to the distribution of materials will be subject to disciplinary action.

(7) Commercial activities. College facilities (~~(with)~~) may not be used for commercial solicitation, advertising or promotional activities except when such activities clearly serve educational objectives, including but not limited to display of books of interest to the academic community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives

and are conducted under the sponsorship or at the request of the college, or the (~~(office of the associated students of the college)~~) student government (ASGHC); provided that such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic.

(8) Fund-raising. Students and student organizations have the right to engage in fund-raising activities subject to the approval of the vice-president for student services.

(9) Grievances. Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated grievance procedures.

AMENDATORY SECTION (Amending WSR 98-09-012, filed 4/6/98, effective 5/7/98)

WAC 132B-120-075 Student responsibilities. Students who choose to attend Grays Harbor College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment rich in the high quality resources needed by students to attain their educational goals. In return, the college desires that each student assume responsibility to:

- (1) Participate actively in the learning process, both in and out of the classroom;
- (2) Seek timely assistance in meeting educational goals;
- (3) Attend all class sessions;
- (4) Prepare adequately to participate fully in class activities;
- (5) Participate actively in the academic advising system;
- (6) Develop skills required for learning, e.g., basic skills, time management, and study skills;
- (7) Assume final (~~(authority)~~) responsibility for the selection of appropriate educational goals;
- (8) Select courses appropriate and required for meeting chosen educational goals;
- (9) Make appropriate use of services;
- (10) Contribute towards improving the college;
- (11) Become knowledgeable of and adhere to the college's policies, practices and procedures;
- (12) Abide by the standards set forth in the code of conduct.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-130 Sanctions. Sanctions for violations of college regulations or conduct may be imposed independent of any action taken by civil authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

More than one sanction may be (~~(recommended)~~) imposed for any single violation as appropriate. Sanctions may include, but are not limited to:

- (1) Disciplinary warning. Constitutes oral or written notice of violation of college rules and regulations.
- (2) (~~(Reprimand. Formal action after censuring a student for violation of college rules or regulations for failure to satisfy the college's expectations regarding conduct. Reprimands are made in writing to the student by the disciplinary~~)

official. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one or more serious disciplinary actions described below.

~~(3))~~ (3) Disciplinary probation. Formal action placing conditions upon the student's continued attendance. Notice will be made in writing, specifying the period of probation and the conditions of the probation. ~~((Disciplinary probation warns the student that any further misconduct will automatically raise the question of dismissal from the college. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.~~

~~(4))~~ (4) As a condition of probation, the college may specify that it will impose more severe disciplinary sanctions against the student if the student is found to have violated any standards of conduct for students during the probationary period.

(3) Restitution. Compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement.

~~((5))~~ (4) Discretionary sanctions. These may include but are not limited to: Work assignments, service to college or community, class/workshop attendance or other discretionary assignments such as educational interventions intended as learning experiences.

~~((6))~~ (5) Assessment. The student may be required to have an assessment (at the student's expense), such as alcohol/drug or anger management by a certified professional, which includes a recommended treatment and assessment of ability to successfully participate in college.

(6) Education. The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's conduct such as anger management or counseling.

(7) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Support may be withdrawn for use of information technology resources, funding, college facility use and rental and involvement in organizational activities.

(8) Loss of privileges. Loss of specific college privileges for a specified period of time. These may include but are not limited to student activities, athletic events, drama or music performances, or club participation.

~~((7))~~ (9) No contact. Restriction from entering specific college areas and/or all forms of contact with certain person(s).

~~((8))~~ (10) No trespass. A student may be prohibited from entering upon or remaining upon college facilities and premises.

(11) Revocation of admission or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.

(12) Summary suspension:

(a) Temporary dismissal from the college for a period of time during which an investigation and/or formal disciplinary procedures are pending. Summary suspension is predicated

upon a reasonable belief that the student presents an imminent danger to college property, to other students, to employees of the college or is of significant disruption to the educational process.

(b) During the period of summary suspension, the student may enter the college premises only to meet with the vice-president for student services or a designee; to deliver a written appeal; to attend a hearing; or otherwise with special permission from the vice-president for student services.

(c) At the end of the summary suspension period, the student shall be reinstated to prior status subject to any other disciplinary sanctions that may have been imposed. (See WAC 132B-120-130.)

~~((9))~~ (13) Suspension. Temporary dismissal from the college and termination of student status. A student suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied access to all or any part of college facilities.

~~((10))~~ (10) Deferred suspension. Notice of suspension from the college contingent on meeting condition(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

~~((11))~~ (14) Expulsion. Permanent termination of student status from college.

Refund of fees for the quarter in which disciplinary action is taken shall be in accord with the college's refund policy. Fees paid in advance for subsequent quarters will be refunded.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-135 Summary suspension procedures. (1) Suspension may be imposed, if the vice-president for student services ~~((deems summary suspension appropriate, she/he shall give the student))~~ or his/her designee(s) has cause to believe that any student:

(a) Has committed a felony or violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the GHC community; or

(c) If the student poses an ongoing threat of disruption of, or interference with, the operations of the college, that student may be summarily suspended.

(2) Notice. Any student who has been summarily suspended shall be served with written notice or verbal notice of the summary suspension. If such notice is made in writing, it shall be provided by certified mail and first class mail delivered to the student's last known address.

(3) The oral or written notice ((ef)) to the student shall include the reasons for summary suspension, duration of the summary suspension, and ((ef)) any possible additional disciplinary or corrective action that may be taken. The notification shall indicate that the student must appear before the vice-president of student services for a summary suspension hearing at a time specified in the notice. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice-president for student services shall set a

date for informal hearing of the summary suspension as soon as practicable.

~~((2))~~ ~~The presiding officer for the informal hearing shall be an administrator designated by the president other than the administrator who initially imposed the summary suspension (normally, the vice-president for student services) and will be accompanied by the president of the associated students of Grays Harbor College or designee.)~~ (4) The student shall be given the opportunity to present written and/or oral evidence. The issue before the ~~((presiding officer))~~ vice-president for student services shall be whether reasonable cause exists to support and to continue the summary suspension.

~~((3))~~ (5) The ~~((presiding officer))~~ vice-president for student services shall issue a written decision within two days of the informal hearing.

~~((4))~~ (6) If a student who has been summarily suspended fails to appear for a summary suspension hearing, the vice-president for student services may order the suspension to remain in place pending the final disposition of the disciplinary process as provided in this section.

(7) The student may request a de novo review of the informal hearing decision before the student conduct committee. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

~~((5))~~ (8) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed one day per episode. Any such summary action may be appealed to the vice-president for student services for an informal hearing.

NEW SECTION

WAC 132B-120-155 Appeals of initial disciplinary action. Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice-president for student services within seven calendar days of the college's giving notice of the disciplinary action.

Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice-president for student services, or in his/her absence, the vice-president for instruction or designee.

Disciplinary action by the vice-president for student services may be appealed to, and shall be reviewed by, the student conduct committee.

Disciplinary action by the student conduct committee may be appealed to and shall be reviewed by the college president or his/her designee.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-170 Student conduct committee. The student conduct committee, convened for that purpose, will hear, (de novo means that the matter will be considered anew as if it had not been heard before and as if no decision had been previously rendered), and make recommendations on all

disciplinary cases referred to it by the appropriate authority or appealed to it by student(s). The committee will be composed of the following persons:

(1) A member appointed by the president of the college who shall serve as chair;

(2) Two members of the faculty, appointed by the president of the faculty association;

(3) Two representatives from the student ~~((council))~~ body, appointed by the student ~~((body))~~ government (ASGHC) president.

None of the above-named persons shall sit on any case in which he/she has a complaint or witness, in which he/she has a direct or personal interest, or in which he/she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the disciplinary committee as a whole.

In hearings before the committee, an assistant attorney general may be requested to assist the committee.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-180 Student conduct committee procedures. The student has a right to a fair and impartial hearing before the committee on any charge of misconduct resulting in disciplinary action other than warning or reprimand.

The committee chair shall establish general rules of procedures for conducting hearings. All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as fairness to all parties involved permits.

(1) The committee shall issue written notice of the date, time and place of the hearing, and the charges against the student consistent with RCW 34.05.434. This notice of hearing shall be provided no later than seven days prior to the date of the hearing. The notice may be amended at any time prior to the hearing, but if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date if so requested in writing by the student.

(2) ~~((The student may be represented by counsel and/or accompanied by an advisor of his/her choice, who is not, however, an employee of the college.))~~ The vice-president for student services shall present evidence to the committee supporting the charges against the student. The vice-president for student services and the student (at his/her own expenses) have the right to be assisted by an advisor of their choice. The vice-president for student services and the student are responsible for presenting their own information. Advisors are not permitted to address the board or participate directly in the hearing. An advisor may communicate only with the person he or she is advising. The board chair may call recesses to facilitate this communication. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.

(3) If the student elects to choose and pay a duly licensed attorney admitted to practice in the state of Washington as ~~((counsel))~~ the student's advisor, notice thereof must be tendered by the student to the vice-president for student services at least five calendar days prior to the hearing.

~~((3))~~ (4) The vice-president for student services, the student and the committee chair may arrange for witnesses to present pertinent information to the committee. Witnesses may provide written statements in lieu of their attendance at the hearing. The student is responsible for informing his/her witnesses of the time and place of the hearing. Witnesses provide information to, and answer questions from, the committee. To preserve the educational tone of the hearing and to avoid an adversarial environment, students may be required to direct questions to the chair, rather than to the witness directly. Questions concerning whether potential information may be received are resolved by the chair.

(5) Formal rules of process, procedure and technical rules of evidence, such as are applied in criminal or civil court, are not used in board proceedings. The student or his/her representative shall be entitled to hear and examine the evidence against him/her and be informed of the identity of its sources; the student shall be entitled to present evidence in his/her own behalf and to question witnesses testifying against him/her as to factual matters subject to the conditions outlined above. The committee shall request the administration to provide the student a list of witnesses who will appear, and a description of any documentary or other physical evidence that will be presented at the hearing. The student shall have all authority which is possessed by the college to obtain information subject to FERPA regulations or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing.

~~((4))~~ (6) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining whether the student is guilty of the misconduct charged but the student's past record of conduct may be taken into account in formulating the committee's recommendation.

~~((5) Hearings conducted by the committee will be held in closed session, the only exception being when the student involved invites particular persons or requests an open hearing. If at any time during the conduct of the hearing, invited guests are disruptive of the proceedings, the chair of the committee may exclude such persons from the hearing room.~~

~~(6) The vice-president of student services or designee shall make the first presentation and present witnesses. The student may then make a presentation and present witnesses. Either side may offer a rebuttal.~~

~~(7) The chairperson may receive sworn written statements in lieu of oral testimony at the hearing.)~~ (7) Hearings are conducted in private. Admission of any persons other than the vice-president for student services, the student, and their respective advisors is at the discretion of the committee chair.

(8) Questions related to the order of the proceedings are determined by the committee chair.

(9) The chairperson shall admit matters into evidence that reasonable persons would accept as having value in the conduct of their affairs. Unduly repetitive or irrelevant evidence may be excluded.

~~((8))~~ (10) Failure on the part of the student(s) to appear or cooperate in the proceedings may result in default in accordance with RCW 34.05.440. ~~((However, it may not preclude the committee from making its findings of fact, reaching con-~~

~~clusions and imposing sanctions.))~~ The information in support of the complaint is presented and considered in the absence of the accused student. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties.

~~((9))~~ (11) The committee chair may accommodate concerns for the personal safety, well-being, or fears of confrontation during the hearing by providing separate facilities or by permitting participation by telephone, audio tape, written statement or other means.

(12) The committee may decide to uphold or modify sanctions in accordance with WAC 132B-120-130.

~~((10) An adequate summary of the proceedings will be kept. At a minimum, such summary would include a tape recording of testimony. During the hearing, such record will be available to the student conduct committee, the student and student's attorney and any other college official designated by the chairperson for inspection and copying in the office of the chairperson during regular business hours.)~~ (13) There shall be a single verbatim record, such as a tape recording or transcript, of the information gathering portion of student conduct board hearings. Committee deliberations are not recorded. The record is the property of the college. Following the conclusion of the conduct proceeding, access to records of the case and hearing file will be kept in the office of the vice-president for student services and limited to those designated by the college president. The accused student may make arrangements with the vice-president to purchase a copy of the record.

~~((11))~~ (14) The burden of proof that guides the committee's decision is the preponderance of evidence, i.e., whether it is more likely than not that the accused student violated the standards of conduct for students.

(15) The student will be provided with a copy of the findings of fact and with the conclusions of the committee within ten calendar days from the final hearing date. If the college is not in session, this period may be extended for a reasonable period of time.

~~((12) Appeal of the committee's decision. The student will also be advised of his/her right to present within seven calendar days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.~~

(13) If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president of the college or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the official who initiated the proceedings, the student and the committee chair. ~~The decision of the president is final.)~~

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-190 Appeal(s) of the committee's decision. ~~((Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice president for student services within seven calendar days of the college's giving notice of the disciplinary action.~~

~~Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice president for student services, or in his/her absence, the vice president for instruction or designee.~~

~~Disciplinary action may be appealed to, and shall be reviewed by, the student conduct committee.~~

~~Disciplinary action by the student conduct committee may be appealed to and shall be reviewed by the college president or his/her designee.)) The student will be advised of his/her right to present within seven calendar days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.~~

~~If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president of the college or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the official who initiated the proceedings, the student and the committee chair. The decision of the president is final.~~

AMENDATORY SECTION (Amending WSR 98-09-012, filed 4/6/98, effective 5/7/98)

WAC 132B-120-210 Hazing sanctions. Any student found to have violated RCW 28B.10.900 et seq. related to hazing, by virtue of a criminal conviction or by final decision of the college president or designee, shall, in lieu of or in addition to any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to ~~((student-funded))~~ state-funded grants, scholarships, or awards of a period of time determined by the college.

In addition, any organization or association found to have knowingly permitted hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

WAC 132B-120-220 Student complaint, grievance ((procedure)) and grade appeal processes. The purpose of these procedures is to provide guidelines which enable a stu-

dent to express and resolve misunderstandings, complaints, or grievances in a fair and equitable manner. Students have the right to receive clear information and fair application of college policies, standards, rules and requirements and are responsible for complying with them in their relationships with college personnel. This grievance procedure emphasizes an informal resolution which promotes constructive dialogue and understanding.

(1) ~~((Student))~~ The complaint(s) process. A complaint is any expression of dissatisfaction with the performance of a college employee ~~(, policy or procedure. Students who have a complaint shall use the following procedure:~~

Step 1. If the complaint is about the action of a college employee, the college employee and student shall make a good faith effort to resolve the grievance on a one-to-one basis. If the complaint is about a policy or procedure, it should be discussed with the employee most closely responsible for the policy or procedure)) or with the implementation of policy and procedure. The goal is to informally resolve the complaint with the employee most closely responsible for the policy, procedure or action. The college employee and student shall make a good faith effort to resolve the issue on a one-to-one basis. (If the complaint is about a grade, follow the grade appeal process below.) Both parties should openly discuss the concern, attempt to understand the other's perspective, explore alternatives and attempt to arrive at a satisfactory resolution.

~~((Step 2. If the student determines that the complaint cannot be resolved to his/her satisfaction with the employee concerned, he/she should contact one of the following people:~~

- ~~(a) The vice president for instruction for complaints regarding an instructional employee, policy or procedure; or~~
- ~~(b) The vice president for student services regarding any other employee, policy or procedure.~~

~~The student may be referred to other appropriate personnel for resolution.~~

Step 3. The vice president will discuss with the student his/her concerns including options available to resolve the concern. The student may be requested to indicate in writing the nature of the grievance specifying as accurately as possible all details. Following discussion and the gathering of any further information, the vice president, within twenty working days, will issue a decision to resolve the complaint and report his/her findings to all involved parties. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

~~Step 4. If the meeting with the vice president does not resolve the complaint to the student's satisfaction, he/she may appeal to the president of the college. The president may amend, modify, reverse or accept the recommendation of the vice president. The decision of the president shall be final.~~

(2) Records. The vice president shall keep all written statements or transcripts associated with the complaint as part of the files. The files will be destroyed after six years from the initiation of the complaint.

(3) Time limits on filing a complaint. The student must file a complaint within one academic quarter of the event which caused the grievance to be filed. The vice president may suspend this rule under exceptional circumstances such

as extended illness, or leave of a party to the complaint. No complaints will be considered after two academic quarters of the occurrence of the source of the grievance. When either party to the complaint is no longer present at the college and does not expect to return, the vice-president will give the absent party reasonable opportunity to reply to the complaint before making a decision.) The college recognizes that in some cases a student will be unwilling or unable to speak directly with the employee. In such cases, the student may proceed to step one of the grievance process.

In general, a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern.

For assistance in identifying the appropriate person a student should contact, the office of the vice-president for student services is available to assist in that determination.

The following are guidelines for determining who a student should contact with a complaint regarding:

Academic/instruction: Faculty/dean/vice-president instruction;

Accommodations: Coordinator of disability support services/vice-president student services;

Bookstore: Bookstore manager/vice-president administrative services;

Problem student conduct: Vice-president for student services;

Discrimination/harassment: Vice-president student services/human resources;

Facilities: Director of campus operations/vice-president for administrative services;

Financial aid: Director of financial aid/vice-president for student services;

Other: Vice-president for student services office for most appropriate contact.

(2) The grievance process. A grievance is a formal procedure instituted when a complaint is not resolved through the informal complaint process. It involves taking the concern to a person other than the employee involved such as a supervisor, dean or vice-president. For assistance in identifying the specific person a student should contact the vice-president for student services office. The following procedures shall be used when a student initiates the grievance process.

(a) A discussion with the dean/vice-president or supervisor who shall attempt to resolve the matter promptly and fairly. The student may be asked to express the grievance in writing. Written grievances should include an explanation of what has happened, the nature of the student's concern, what the student and/or others have done about it to date and what resolution the student seeks.

(b) The supervisor will investigate and may:

(i) Render an immediate decision;

(ii) Ask the staff members for a written response;

(iii) Request a meeting of one or both parties individually or together; and/or

(iv) Request supporting materials prior to rendering a decision. In the case of a written grievance, the supervisor will provide a written decision within fifteen instructional days of receipt of the written grievance. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(c) If the student feels a satisfactory resolution was not achieved in step two, he/she may appeal to the president of the college within five instructional days of receipt of the written decision. The president may amend, modify, reverse or accept the recommendation of the vice-president. The decision of the president shall be final.

In general a student wishing to express a complaint should do so no later than three weeks from the time the student became aware of the concern. In any event, with the exception of discrimination and harassment, informal complaints and formal grievances must be filed within one academic quarter of the inciting event. Timely initiation of a complaint rests with the student.

The appropriate vice-president may suspend this rule under exceptional circumstances such as extended illness or leave of a party to the complaint. When either party to the complaint is no longer present at the college and does not expect to return, the vice-president will give the absent party reasonable opportunity to reply to the complaint before making a decision.

(3) The grade appeal process.

(a) Before a student can file a formal or written grade appeal, he or she should try to resolve the issue directly with the instructor. Grade appeals should occur within one quarter of issuance of the grade. In any event, appeals will not be considered beyond one year of the grade report.

(b) If direct discussion with the faculty does not resolve the grade dispute to the student's satisfaction the student, within ten instructional days after meeting with the faculty, shall take the matter to the vice-president for instruction. The student shall express the appeal in writing. The written appeal should include the course and instructor involved, an explanation of why the student believes the grade received is unfair or unwarranted, what steps the student has taken with the faculty member to resolve the issue, and what resolution the student seeks.

(c) The vice-president for instruction will attempt to investigate the appeal and will:

(i) Review the course syllabus;

(ii) Meet with the course instructor; and

(iii) May request and review other supporting documentation prior to rendering a decision.

Within ten instructional days of receiving the written appeal, the vice-president of instruction will provide a written decision. If an investigation requires more time, the deadline may be extended to a mutually agreed future date.

(d) If the student feels satisfactory resolution was not achieved in step three, he/she may, within five instructional days of receipt of the written decision, notify the vice-president for instruction to request a hearing before the academic review committee. The committee will be chaired by the vice-president for student services or designee.

(i) If anyone on the academic review committee perceives a conflict of interest, they will recuse themselves from the committee for the duration of the appeal. Students are to be given an opportunity to talk with the committee chairperson regarding any concerns about committee membership.

(ii) As soon as possible, the academic review committee (with a minimum attendance of six individuals) will meet with the student, instructor, the vice-president of instruction

and relevant parties to hear the points at issue in the appeal. The committee will provide its written decision to all parties within five instructional days following the hearing. The decision is final and may not be reviewed further.

(4) Grievances excluded. The student grievance procedure described in this section is not intended to cover complaints of discrimination or sexual harassment. The college has separate, specific procedures for such complaints. See the vice-president for student services for information on those specific procedures.

A student may not use the provisions of these sections as the basis for filing a grievance based on the outcome of summary or other disciplinary proceedings described in earlier sections of this student rights and responsibilities code or for resolution of specific categories of student complaints where other procedures are required.

Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community college education or the board of trustees of Community College District No. 2 shall not be grievable matters.

(5) Records. The appropriate supervisor shall keep all written statements or transcripts as follows:

(a) Complaints for one year from the initial complaint;

(b) Grievances for six years from the initial complaint;

(c) Grade appeals for five years following the last quarter attended by the student. At that time, the files shall be destroyed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132B-120-080 Classroom conduct.

WSR 10-17-032

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 09-09—Filed August 9, 2010, 2:21 p.m., effective September 9, 2010]

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

Purpose: Ecology is revising chapter 173-50 WAC, Accreditation of environmental laboratories, in order to raise lab accreditation fees to cover program costs. Also, due to a budget reduction in the accreditation program, we needed to change some business practices in the rule that will reduce the costs of overseeing accredited labs. This includes decreasing the frequency of on-site audits at nondrinking water labs. To help offset the cost of the fee increase to accredited labs, we are reducing the number of required proficiency testing studies for labs who perform consistently well on such studies. There are also housekeeping amendments and clarification of the grounds for revoking or suspending accreditation.

Citation of Existing Rules Affected by this Order: Repealing WAC 173-50-160 and 173-50-180; and amending WAC 173-50-020, 173-50-030, 173-50-040, 173-50-050,

173-50-060, 173-50-063, 173-50-067, 173-50-070, 173-50-080, 173-50-090, 173-50-100, 173-50-110, 173-50-120, 173-50-130, 173-50-140, 173-50-150, 173-50-170, 173-50-190, 173-50-210, and 173-50-220.

Statutory Authority for Adoption: RCW 43.21A.230 allows ecology to accredit environmental laboratories and to assess fees to cover the department's costs. The state department of health (DOH) has delegated to ecology in a memorandum of understanding its RCW 43.20.050 authority to certify drinking water laboratories. In section 301 of ESHB 1244, the 2009 legislature gave ecology authority to raise fees for lab accreditation.

Adopted under notice filed as WSR 10-07-163 on March 24, 2010.

Changes Other than Editing from Proposed to Adopted Version: We added two definitions and amended another. We added failure to meet requirements for proficiency testing (PT) as a reason for revoking or suspending accreditation. We removed the option of annual fee adjustments based on the implicit price deflator since that figure no longer exists. We added the conditions under which we waive accreditation fees. In response to comments on the high cost of PT samples, we reduced the requirement for participation in PT studies for laboratories with a history of satisfactory PT results.

WAC 173-50-040 Definitions.

We added the following definitions:

- "Accreditation year" - the one-year period as stated on the certificate of accreditation.
- "Principal laboratory" - a laboratory designated by the Washington department of health to support the drinking water certification program.

These are terms added to the rule in response to comments from affected parties.

We changed the following definition:

"Procedural manual" - ~~until October 1, 2010, the Department of Ecology Procedural Manual for the Environmental Laboratory Accreditation Program dated November 2002, and beginning October 1, 2010, the Department of Ecology Procedural Manual for the Environmental Laboratory Accreditation Program dated September 2010.~~

We plan to complete the revision of the procedural manual by the rule effective date.

WAC 173-50-060 Responsibilities of environmental laboratories.

We changed the third bullet:

- Submit an initial set of ~~acceptable~~ satisfactory PT ~~((sample analysis))~~ sample results (WAC 173-50-070); and

This change aligns the terminology related to changes in proficiency testing requirements.

WAC 173-50-070 ((Performance audit.)) Proficiency testing (PT).

We added the second sentence:

(2) ~~((Drinking water))~~ Accredited laboratories must analyze a minimum of one PT sample per applicable microbiol-

ogy parameter per year and two PT samples for applicable chemistry parameters per year. For chemistry parameters, after an accredited laboratory submits two satisfactory PT sample results and no unsatisfactory results in an accreditation year, the laboratory is required to submit only one satisfactory PT sample result in subsequent accreditation years. This applies as long as there are no intervening unsatisfactory PTs.

This change was made in response to comments received by interested parties.

WAC 173-50-130 Requirements for maintaining accreditation status.

We added the parenthetical phrase:

(1) Accreditation is granted for a one-year period (the accreditation year) and expires one year after the effective date of accreditation.

This reiterates our definition of "accreditation year" added to WAC 173-50-040.

WAC 173-50-150 Revoking or suspending accreditation.

We added an additional condition to subsection (3):

Reports two consecutive unsatisfactory PT sample results.

This was added to further clarify and align with our changes to WAC 173-50-070.

WAC 173-50-170 Third-party accreditation.

We changed this bullet:

- ~~A complete set of the most recent, satisfactory ((PT)) proficiency test~~ results for the applicable parameters.

This was added to further clarify and align with our changes to WAC 173-50-070.

WAC 173-50-190 Fee structure.

We deleted this sentence:

~~((11)) (9) Dollar amounts listed in Table 1 and subsections ((6)) (4), (7), and (8)((, (9), and (10))) of this section may be adjusted every year based on inflation as indicated by the Implicit Price Deflator for State and Local Government Services as published by the economic and revenue forecast council.~~

This was done because the implicit price deflator no longer exists.

We added this new subsection:

(10) Accreditation fees are waived for laboratories operated by the Washington state departments of ecology and health. Accreditation fees are also waived for drinking water parameters certified by EPA Region 10 at designated principal laboratories.

This was added to clarify our existing practice for fee waivers.

A final cost-benefit analysis is available by contacting Stewart Lombard, Department of Ecology, P.O. Box 488, Manchester, WA 98353-0488, phone (360) 895-6148, fax (360) 895-6180, e-mail stew.lombard@ecy.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; and 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 19, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 2.

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: August 9, 2010.

Ted Sturdevant
Director
by Polly Zehm

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-020 Scope. (1) The Washington state environmental laboratory accreditation program (WA ELAP) applies to laboratories which conduct tests for or prepare analytical data for submittal to any entity requiring the use of an accredited laboratory. This includes laboratories that analyze drinking water. ~~((This rule also describes how the department of ecology participates in the National Environmental Laboratory Accreditation Program (NELAP) as an accrediting authority once the department is certified by the National Environmental Laboratory Accreditation Conference (NELAC).))~~

(2) Accreditation in itself does not authorize use of a specific method for any specific program or project. If such authorization is not granted in documentation governing a program or project within which samples are being analyzed, authorization should be obtained from the laboratory's data user.

(3) Accreditation does not guarantee validity of analytical data submitted by the accredited laboratory but rather assures that the laboratory has demonstrated its capability to reliably generate and report the analytical data (WAC 173-50-040, definition of "accreditation").

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-030 Objectives. Objectives of the ~~((accreditation program))~~ WA ELAP are to:

- Assure accredited laboratories have a demonstrated capability to accurately and defensibly analyze environmental samples;
- Assist environmental laboratories in improving their quality assurance/quality control procedures; and
- Foster cooperation between the state departments of ecology and health, local agencies, other users of environmental data, and operators of environmental laboratories.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-040 Definitions. Definitions in this section apply throughout this chapter, unless context clearly indicates otherwise.

"Accreditation" - the formal recognition by the department that an environmental laboratory is capable of producing accurate and defensible analytical data. This recognition is signified by issuance of a written certificate accompanied by a scope of accreditation indicating the parameters for which the laboratory is accredited.

- The term "accredit" as used in this chapter is intended to have the same meaning as the term "certify" as used in RCW 43.21A.230.

- Any laboratory accredited under this chapter shall be deemed to have been certified under RCW 43.21A.230.

- The department does not, by accrediting any laboratory pursuant to these rules, vouch for or warrant the accuracy of any particular work done or report issued by that laboratory.

"Accreditation year" - the one-year period as stated on the certificate of accreditation.

"Accuracy" - the degree to which an analytical result corresponds to the true or accepted value for the sample being tested. Accuracy is affected by bias and precision.

"Analyte" - the constituent or property of a sample measured using an analytical method.

"Analytical data" - the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, radiochemical, or other scientific determination.

"Analytical method" - a written procedure for acquiring analytical data.

"Department" - the state of Washington department of ecology when the term is not followed by another state designation.

"Drinking water certification manual" - the Environmental Protection Agency *Manual for the Certification of Laboratories Analyzing Drinking Water*, ((4th)) 5th Edition, ((March 1997)) January 2005.

"Ecology accrediting authority" - the supervisor of the lab accreditation unit of the environmental assessment program of the department of ecology.

"Environmental laboratory" or "laboratory" - a facility:

- Under the ownership and technical management of a single entity in a single geographical ((state)) location;

- Where scientific ((examinations)) determinations are performed on samples taken from the environment, including drinking water samples; and

- Where data is submitted to the department of ecology, department of health, or other entity requiring the use of an accredited laboratory under provisions of a regulation, permit, or contractual agreement.

"Lab accreditation unit" - the lab accreditation unit of the ((environmental assessment program of the)) department of ecology.

~~("Mandatory analytical method" - a recognized written procedure for acquiring analytical data which is required by law or a regulatory agency of the federal, state, or local government.)~~

~~"Matrix" ((means)) - the ((substance from which a)) material to be analyzed ((is extracted)), including, but not limited to, ground or surface water, wastewater, drinking water, air, solid waste, soil, tissue, nuclear waste, and hazardous waste. For the purposes of establishing a fee structure (WAC 173-50-190(4)), matrices are grouped as follows:~~

- Nonpotable water;
- Drinking water;
- Solid and chemical materials; and
- Air and emissions.

~~((NELAP accreditations may include other matrices as designated in the NELAC standards.~~

~~"NELAC" - the National Environmental Laboratory Accreditation Conference, a voluntary association of state and federal agencies.~~

~~"NELAC standards" - the standards for laboratory accreditation published by NELAC, September 5, 2001.~~

~~"NELAP" - the National Environmental Laboratory Accreditation Program governed by NELAC.)~~ **"On-site audit"** - an on-site inspection and evaluation of laboratory facilities, equipment, records and staff.

"Out-of-state laboratory" - a laboratory that is not located in the state of Washington.

"Parameter" - ~~((a single determination or sampling procedure, or group of related determinations or sampling procedures using a specific written method))~~ the combination of one or more analytes determined by a specific analytical method. Examples of parameters include:

- The analyte alkalinity by method SM 2320 B;
- The analyte zinc by method EPA 200.7;
- The set of analytes called volatile organic compounds (VOCs) by method EPA 8260; and
- The analyte Total Coli/Ecoli-count by method SM 9222 B/9221 F.

"Principal laboratory" - a laboratory designated by the Washington department of health to support the drinking water certification program.

"Procedural manual" - the *Department of Ecology's Procedural Manual for the Environmental Laboratory Accreditation Program* dated ((November 2002)) September 2010.

"Proficiency testing (PT)" - evaluation of the results from the analysis of samples, the true values of which are known to the supplier of the samples but unknown to the laboratory conducting the analyses. PT samples are provided by a source external to the environmental laboratory.

~~("Quality control" - activities designed to assure analytical data produced by an environmental laboratory meet data quality objectives for accuracy and defensibility. Those activities may include routine application of statistically based procedures to evaluate and control the accuracy of analytical results.)~~

"Quality assurance (QA)" - activities intended to assure that a quality control program is effective. A QA program is a totally integrated program for assuring reliability of measurement data.

"Quality assurance (QA) manual" - a written record intended to assure the reliability of measurement data. A QA manual documents policies, organization, objectives, and

specific QC and QA activities. Volume and scope of QA manuals vary with complexity of the laboratory mission.

~~("Recognized analytical method" — a documented analytical procedure developed through collaborative studies by organizations or groups recognized by the users of the laboratory's analytical data.)~~ "Quality control (QC)" - the routine application of statistically based procedures to evaluate and control the accuracy of analytical results.

"Regulatory program" - a program administered by a federal, state, or other regulatory agency.

~~("On-site assessment" — an on-site inspection of laboratory capabilities.~~

~~"Primary NELAP accreditation" — granting of NELAP accreditation by the ecology accrediting authority after having determined through direct evaluation that the laboratory is in conformance with the NELAC standards.)~~

~~("Secondary NELAP) Third-party accreditation" - recognition by the ecology accrediting authority of ((a NELAP) accreditation ((that was)) granted by another ((NELAP) accrediting authority.~~

"WA ELAP" - Washington state environmental laboratory accreditation program.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-050 Responsibilities of the department.

(1) The department maintains a procedural manual describing specifics of the accreditation process. As a minimum, the procedural manual describes the procedures for:

- Submitting an application and fee;
- Preparing a quality assurance manual;
- Performing proficiency testing;
- Conducting on-site ((assessments)) audits;
- Accrediting out-of-state laboratories;
- ((Issuing)) Granting, denying, suspending, and revoking accreditation; and
- Notifying laboratories and authorized government officials of accreditation actions.

The department will make the procedural manual available to all interested persons.

(2) Department personnel assigned to assess the capability of drinking water laboratories participating in the ~~((environmental laboratory accreditation program))~~ WA ELAP must meet the experience, education, and training requirements established in the ~~((Environmental Protection Agency))~~ drinking water certification manual.

~~((3) When granting NELAP accreditations, the ecology accrediting authority is responsible for those actions designated in applicable chapters of the NELAC standards. If a NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies for laboratories seeking NELAP accreditation.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-060 Responsibilities of environmental laboratories. When applying for initial accreditation (see WAC 173-50-130 for maintaining an existing accreditation), managers of environmental laboratories must:

- Submit an application (WAC 173-50-063) and required fees (WAC 173-50-190) to the department fiscal officer;
- Submit a copy of the laboratory's quality assurance manual (WAC 173-50-067);
- Submit an initial set of ~~((acceptable))~~ satisfactory PT sample ~~((analysis))~~ results (WAC 173-50-070); and
- Undergo an on-site ~~((assessment))~~ audit (WAC 173-50-080).

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-063 Application. (1) Through the application, laboratory managers:

- Request accreditation for specific parameters;
- Calculate fees due to the department; and
- Provide evidence that sufficient personnel and equipment are available to successfully perform analytical methods as specified in the application.

(2) Through review of the application submitted by the applicant laboratory, the lab accreditation unit determines if:

- Requested parameters are eligible for accreditation;
- The fee calculated by the applicant laboratory is correct; and
- Personnel and equipment are adequate to support successful performance of requested parameters.

(3) Following the review, the lab accreditation unit advises the applicant laboratory of any required changes.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-067 Quality assurance manual. (1) The lab accreditation unit reviews and approves the laboratory's QA manual prior to the initial on-site ~~((assessment))~~ audit. The QA manual submitted concurrently with the application must be in detail and scope commensurate with the size and mission of the laboratory. Guidelines for contents of the QA manual are in the procedural manual.

(2) The QA manual must address QA and QC requirements of applicable regulatory programs. For drinking water laboratories, such requirements are found in the drinking water certification manual.

~~((3) For laboratories applying for primary NELAP accreditation, QA requirements, including the conduct of specific QC tests, are those designated in the NELAC standards. If a NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies for laboratories seeking NELAP accreditation.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-070 ((Performance audit.)) Proficiency testing (PT). (1) The lab accreditation unit advises applying laboratories of specific requirements for participation in proficiency ~~((tests. Such tests are completed))~~ testing (PT) studies for applicable parameters ~~((no more frequently than twice annually. Current))~~. Proficiency tests conducted under the provisions of other recognized programs may be used to satisfy ~~((the accreditation program proficiency testing))~~ these

requirements. The lab accreditation unit determines the sufficiency of such ~~((audits))~~ proficiency tests.

(2) ~~((Drinking water))~~ Accredited laboratories must analyze a minimum of one PT sample per applicable microbiology parameter per year and two PT samples for applicable chemistry parameters per year. For chemistry parameters, after an accredited laboratory submits two satisfactory PT sample results and no unsatisfactory results in an accreditation year, the laboratory is required to submit only one satisfactory PT sample result in subsequent accreditation years. This applies as long as there are no intervening unsatisfactory PT sample results.

(3) The lab accreditation unit may require the laboratory to submit raw data along with the report of analysis of PT samples.

(4) The lab accreditation unit may waive proficiency tests for certain parameters if PT samples are not readily available or for other valid reasons.

(5) Applying laboratories are responsible for obtaining PT samples from vendors ~~((certified by the National Institute of Standards and Technology (NIST) or otherwise))~~ approved by the lab accreditation unit. No fee shall be charged to the department for the purchase or analysis of PT samples.

~~((6))~~ ~~For laboratories applying for NELAP accreditation, proficiency testing requirements are those designated in the NELAC standards. If the NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies for laboratories seeking NELAP accreditation.~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-080 On-site ~~((assessment))~~ audit. The laboratory must undergo ~~((a system))~~ an on-site audit by the department to assess critical elements and areas of recommended practices. The laboratory must assist/accommodate department of ecology personnel during on-site ~~((assessments))~~ audits as required.

(1) **Critical elements for accreditation.** Elements of an environmental laboratory's operations which are critical to the consistent generation of accurate and defensible data are critical elements for accreditation. Critical elements are subject ~~((of))~~ to intense scrutiny throughout the accreditation process. The ecology accrediting authority may deny, revoke, or suspend accreditation for deficiencies in critical elements. Functional areas including critical elements are:

(a) **Analytical methods.** The on-site ~~((assessment))~~ audit seeks to determine if documentation of ~~((mandatory or recognized))~~ analytical methods:

- Are present at the laboratory;
- Readily available to analysts; and
- Being implemented. If the laboratory is using a locally-developed method, the on-site ~~((assessment))~~ audit may include an evaluation of the adequacy of that method.

(b) **Equipment and supplies.** The on-site ~~((assessment))~~ audit seeks to determine if sufficient equipment and supplies as required by analytical methods are:

- Available;

- Being adequately maintained; and
- In a condition to allow successful performance of applicable analytical procedures.

To gain and maintain accreditation, laboratories must demonstrate that equipment and supply requirements of applicable regulatory programs are being met.

(c) **QA and QC records.** The on-site ~~((assessment))~~ audit includes a review of QA and QC records for programs/projects within which the laboratory is generating analytical data for submission to the data user.

(d) **Sample management.** The on-site ~~((assessment))~~ audit includes a review of applicable procedures for receipt, preservation, transportation, and storage of samples. The laboratory is responsible only for those elements of sample management over which it has direct control. To gain and maintain accreditation, laboratories must demonstrate that sample management requirements of applicable regulatory programs are being met.

(e) **Data management.** The on-site ~~((assessment))~~ audit includes a review of activities necessary to assure accurate management of laboratory data including:

- Raw data;
- Calculations; and
- Transcription, computer data entry, reports of analytical results.

To gain and maintain accreditation, laboratories must demonstrate that data management requirements of applicable regulatory programs are being met.

(2) **Recommended practices.** Recommended practices are those elements of laboratory operations which might affect efficiency, safety, and other administrative functions, but do not normally affect quality of analytical data. Normally these practices would not be the basis for denial or revocation of accreditation status. Functional areas within which recommended practices may be noted are:

(a) **Personnel.** The department seeks to determine if managerial, supervisory, and technical personnel have adequate training and experience to allow satisfactory completion of analytical procedures and compilation of reliable, accurate data. Minimum recommended education and experience criteria for laboratory personnel are specified in the ~~((program))~~ procedural manual.

(b) **Facilities.** The department seeks to determine if laboratory facilities allow efficient generation of reliable, accurate data in a safe environment.

(c) **Safety.** The department may refer serious safety deficiencies to appropriate state or federal agencies.

~~((3))~~ ~~**NELAC requirements.** For laboratories applying for NELAP accreditation, on-site assessment requirements are those designated in the NELAC standards. If the NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies.~~

~~((4))~~ **Drinking water laboratory requirements.** For laboratories applying for accreditation of drinking water parameters, on-site ~~((assessment))~~ audit requirements are those designated in the drinking water certification manual. If such a standard is more stringent than the corresponding standard in this chapter, the drinking water certification manual applies.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-090 Evaluation and issuance of certificate. (1) After preliminary requirements (WAC 173-50-060 through 173-50-080) have been met, the lab accreditation unit submits a report to the affected laboratory concerning the results of the overall accreditation process. The report may:

- List((s)) findings;
- ((Assesses)) Assess the importance of each finding; and
- Make((s)) recommendations concerning actions necessary to assure resolution of problems.

(2) After completing the accreditation review, the ecology accrediting authority decides whether accreditation should be granted.

(a) If accreditation is warranted, the department issues a certificate and accompanying scope of accreditation. The certificate remains the property of the department and must be surrendered to the department upon revocation or voluntary termination of accreditation status.

(b) If accreditation is not warranted, the department issues a report specifying areas of deficiency and steps necessary to upgrade the laboratory to accredited status. In such cases, the laboratory must provide documentation that the specified deficiencies have been corrected. Based on such documentation the ecology accrediting authority decides whether to grant or deny accreditation.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-100 Interim accreditation. ((+)) If ((for valid reasons resulting from a deficiency in)) the department ((and not)) is unable to complete the accreditation process through no fault of the laboratory, the ecology accrediting authority may grant interim accreditation ((may be granted)). To be considered for interim accreditation, the laboratory must:

- Submit an application and applicable fees;
- Successfully complete applicable proficiency tests; and
- Submit a QA manual that meets the requirements of

WAC 173-050-067.

The lab accreditation unit may also require the laboratory to submit an analytical data package as evidence of analytical capability.

((2) For NELAP accreditation, the only valid reason for granting interim accreditation is the delay of an on-site assessment for reasons beyond the control of the laboratory.))

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-110 Provisional accreditation. (1) The ecology accrediting authority may grant provisional accreditation to laboratories which can consistently produce valid analytical data but have deficiencies requiring corrective action. When the laboratory has corrected such deficiencies, it must provide evidence of correction to the lab accreditation unit, or request a follow-up on-site ((assessment)) audit, as appropriate. If the lab accreditation unit determines the defi-

ciencies have been corrected, the ecology accrediting authority awards full accreditation as in WAC 173-50-090.

(2) The ecology accrediting authority may renew a provisional accreditation for a subsequent accreditation period if laboratory management has demonstrated that all reasonable measures to correct deficiencies have been exhausted.

(3) For drinking water laboratories, specific conditions warranting provisional accreditation and specific actions required of the laboratory when provisional accreditation is granted are found in the drinking water certification manual.

((4) Provisional accreditation does not apply to NELAP accreditations.))

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-120 Accreditation categories. (1) Environmental laboratories are accredited within one or more of the matrix groups defined in WAC 173-50-040. ((Additionally)) Within each matrix group, accreditation is granted within the following broad categories:

- General chemistry ((General));
- ((Chemistry II)) Trace metals((+));
- Organics I ((Gas Chromatography (GC) and High Pressure Liquid Chromatography (HPLC) Methods));
- Organics II ((Gas Chromatography/Mass Spectrometry (GC/MS) Methods)) (Category II methods use mass spectrometer detectors);
- ((Radioactivity));
- Microbiology;
- Radiochemistry;
- Bioassay((Toxicity));
- Immunoassay; and
- Physical.

Within these categories, laboratories are specifically accredited for well-defined parameters, such as, but not limited to, those suggested in the procedural manual, using specific((-recognized)) analytical methods or sampling techniques chosen by the applying laboratory.

(2) The scope of accreditation accompanying the accreditation certificate indicates the parameters for which the laboratory is accredited, and any applicable qualifications, such as interim or provisional accreditation.

(3) ((For laboratories granted NELAP accreditation.)) The scope of accreditation also indicates the matrix groups within which each parameter applies. Those matrix groups may include, but are not limited to:

- Nonpotable water;
- Drinking water;
- Solid and chemical materials;
- ((Biological tissue)); and
- Air and emissions.

((For laboratories granted NELAP accreditation, the scope of accreditation may also indicate the technology, such as gas chromatography/electron capture detection (GC/ECD) or inductively coupled plasma/mass spectrometry (ICP/MS), associated with each parameter.))

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-130 Requirements for maintaining accreditation status. (1) Accreditation is granted for a one-year period (the accreditation year) and expires one year after the effective date of accreditation. ~~((Except for NELAP accreditation which is limited to one year, exceptions to the one year accreditation may be made for documented cause. In such cases, accreditation may be granted for a period up to two years.))~~

(2) Renewal requires the laboratory to submit:

- An application and appropriate fees;
- An update of the laboratory's ~~((quality assurance))~~ QA manual if applicable; ~~((and))~~
- Evidence of accreditation by a third party when appropriate; and
- Successful completion of proficiency testing requirements.

(3) For laboratories accredited for drinking water parameters, on-site ((assessments)) audits are required at periods not to exceed three years from the previous on-site ((assessment)) audit. ((For documented cause, on-site assessments may be extended up to four years from the previous assessment, except for laboratories accredited to analyze drinking water and NELAP accredited laboratories.))

(4) For laboratories not accredited for drinking water parameters, the schedule of on-site audits will be determined by the ecology accrediting authority.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-140 Denying accreditation. (1) The ecology accrediting authority may deny accreditation if the applicant laboratory:

- Fails to comply with standards for critical elements of the on-site ~~((assessment))~~ audit;
- Misrepresents itself to the department;
- Fails to disclose pertinent information in the application;
- Falsifies reports of analysis including ~~((PT))~~ proficiency testing results;
- Engages in unethical or fraudulent practices concerning generation of analytical data;
- Is deficient in its ability to provide accurate and defensible analytical data; or
- Fails to render applicable fees.

(2) A laboratory may be denied accreditation for a specific parameter for unsatisfactory ~~((analysis of that parameter in))~~ proficiency ((tests)) testing results.

(3) Laboratories denied accreditation may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, laboratories denied accreditation may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

~~((4) Reasons for denial of NELAP accreditation are as specified in the NELAC standards.))~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-150 Revoking or suspending accreditation. (1) Revocation of accreditation is the withdrawal of a previously granted accreditation. Revocation may involve the entire laboratory or one or more individual parameters.

(2) Suspension of accreditation is for a specified period ~~((not to exceed six months))~~ during which the affected laboratory corrects deficiencies that led to the suspension. Suspension may involve the entire laboratory, or one or more individual parameters.

~~((2))~~ (3) The ecology accrediting authority may suspend or revoke accreditation if the accredited laboratory:

- Fails to comply with standards for critical elements of an on-site ~~((assessment))~~ audit;
- Violates a state rule relative to the analytical procedures for which it is accredited;
- Misrepresents itself to the department;
- Falsifies reports of analysis including ~~((PT))~~ proficiency testing results;
- Engages in unethical or fraudulent practices concerning generation of analytical data;
- Is deficient in its ability to provide accurate and defensible analytical data; ~~((or))~~
- Refuses to permit entry for enforcement purposes (WAC 173-50-210);
- Fails to render applicable fees;
- Fails to maintain third-party accreditation; or
- Reports two consecutive unsatisfactory PT sample results.

~~((3))~~ (4) A laboratory having had its accreditation suspended or revoked may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, a laboratory having had its accreditation revoked may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

~~((4) Reasons for revocation or suspension of NELAP accreditation are as specified in the NELAC standards.))~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-170 Third-party accreditation. (1) The department may recognize accreditation (or certification, registration, licensure, approval) of a laboratory by a third party when the accreditation process is determined to be equivalent to that described in this chapter.

(2) Laboratories applying for recognition of a third party's accreditation submit:

- An application and associated fee (WAC 173-50-190(7));
- A copy of the third party's certificate;
- A copy of the third party's scope of accreditation;
- A copy of the third party's most recent on-site ~~((assessment))~~ audit report;
- A copy of the laboratory's corrective action report relative to the on-site ~~((assessment))~~ audit, if applicable; and
- ~~((A complete set of the most))~~ Recent ((PT)), satisfactory proficiency test results for the applicable parameters.

(3) In consideration of a request to recognize a third party's accreditation as the basis for accreditation by the ecology accrediting authority, the lab accreditation unit reviews the application and supporting documentation to assure compliance with minimum accreditation requirements as stated in this chapter. If the review is favorable, a certificate and scope of accreditation are granted as in WAC 173-50-090.

(4) Laboratories granted third-party accreditation must notify the laboratory accreditation unit immediately of changes in the status of their third-party accreditation.

(5) Washington laboratories accredited or applying for accreditation in recognition of a third party's accreditation must notify the lab accreditation unit of on-site ((assessments)) audits scheduled by the third party and allow a department observer to attend such on-site ((assessments)) audits.

~~((5) Primary NELAP accreditation cannot be granted in recognition of the accreditation by a third party.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-190 Fee structure. (1) Fees in this chapter are in U.S. dollars and are established to cover costs of administering the ((accreditation program)) WA ELAP. Fees shall be assessed for each parameter or method within each matrix, except as noted in subsection (3) of this section. The fee per parameter or method for each category, and the maximum fee per category ((for each matrix)) where applicable, are identified in Table 1.

(2) Examples of parameters or methods for each category are published in the procedural manual. Accreditation may be requested for parameters in addition to those listed in the procedural manual.

(3) When a fee is assessed ((only once)) for a ((given)) specific drinking water parameter ((even though that specific)) or method, the laboratory may be accredited for the same parameter ((may be accredited under more than one matrix)) or method in nonpotable water without paying an additional fee.

TABLE 1 - FEE SCHEDULE

((MATRIX	CATEGORY	FEE/ PARAMETER	MAX FEE PER CATEGORY
Nonpotable Water	Chemistry I (General)	\$65	\$1150
	Chemistry II (Trace Metals)	\$65	\$975
	Organics I (GC/HPLC)	\$115	\$975
	Organics II (GC/MS)	\$345	\$1035
	Radioactivity	\$145	\$1380
	Microbiology	\$175	\$520
	Bioassay/Toxicity	\$230	\$1435
	Immunoassay	\$65	\$390
	Physical	\$65	\$260
	Drinking Water	Chemistry I (General)	\$60
Chemistry II		\$60	\$720

TABLE 1 - FEE SCHEDULE

((MATRIX	CATEGORY	FEE/ PARAMETER	MAX FEE PER CATEGORY	
	Organics I (GC/HPLC)	\$155	\$615	
	Organics II (GC/MS)	\$155	\$155	
	Microbiology	\$155	\$460	
Solid and Chemical Materials	Chemistry I (General)	\$65	\$1150	
	Chemistry II (Trace Metals)	\$65	\$975	
	Organics I (GC/HPLC)	\$115	\$975	
	Organics II (GC/MS)	\$345	\$1035	
	Radioactivity	\$145	\$1380	
	Microbiology	\$175	\$520	
	Immunoassay	\$65	\$390	
	Physical	\$65	\$260	
	Air and Emissions	Chemistry I (General)	\$65	\$1150
		Chemistry II (Trace Metals)	\$65	\$975
Organics I (GC/HPLC)		\$115	\$975	
Organics II (GC/MS)		\$345	\$1035	

CATEGORY	FEE PER PARAMETER	FEE PER METHOD	MAX FEE PER CATEGORY
General Chemistry	\$80	=	\$1,600
Trace Metals	=	\$400	=
Organics I	=	\$200	=
Organics II	=	\$500	=
Microbiology	\$200	=	=
Radiochemistry	\$250	=	=
Bioassay	\$300	=	\$3,000
Immunoassay	\$80	=	=
Physical	\$80	=	=

(4) The minimum fee for accreditation, either direct or through recognition of a third-party accreditation, is three hundred dollars.

(5) In addition to paying the fee indicated in Table 1, out-of-state laboratories must pay for the actual cost of travel associated with on-site ((assessments)) audits. The department invoices the laboratory for such costs after completion of the on-site ((assessment)) audit.

~~((5))~~ (6) The laboratory must pay applicable fees before:

- Its quality assurance manual is reviewed by the department;
- The on-site ((assessment)) audit is conducted if applicable; and
- Interim, provisional, or full accreditation is granted.

~~((6)) (7)~~ The fee for recognition of a third party accreditation (WAC 173-50-170)~~((, other than NELAP accreditation (WAC 173-50-190(9))), is three hundred forty five dollars.~~

~~(7) The fee for recognition of a laboratory under a reciprocity agreement (WAC 173-50-160) is three hundred forty five dollars, or as specified in the reciprocity agreement, but not less than three hundred forty five dollars.~~

~~(8) The fee for recognition of accreditation by a NELAP accrediting authority for laboratories in Washington is three hundred forty five dollars. For out-of-state laboratories, the fee for recognition of accreditation by a NELAP accrediting authority is the fee indicated in Table 1.~~

~~(9) For drinking water laboratories, the base fee to defray the extra cost incurred by the department because of the need to coordinate directly with two regulatory agencies is one hundred fifteen dollars.~~

~~(10)) is three-fourths (75%) of the fee indicated in Table 1.~~

~~(8) If a laboratory withdraws from the accreditation process after the application has been processed, but before accreditation is granted, the fee is ((nonrefundable)) refundable, less an amount up to ((an amount of two)) three hundred ((thirty)) dollars as reimbursement for costs of processing the application. If a laboratory withdraws from the accreditation process after the on-site ((assessment)) audit has been completed, the department may retain the entire fee including reimbursement of travel costs if applicable.~~

~~((11) Dollar amounts listed in Table 1 and subsections (6), (7), (8), (9), and (10) of this section may be adjusted every year based on inflation as indicated by the Implicit Price Deflator for State and Local Government Services as published by the economic and revenue forecast council.)~~

~~(9) Dollar amounts listed in Table 1 and subsections ((6), (7),) (4) and (8)((, (9), and (10))) of this section may be decreased at any time the department determines they are higher than needed to meet accreditation program requirements. The department notifies affected parties of any fee adjustment at least thirty days prior to the effective date of the adjusted fee.~~

(10) Accreditation fees are waived for laboratories operated by the Washington state departments of ecology and health. Accreditation fees are also waived for drinking water parameters certified by EPA Region 10 at designated principal laboratories.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-210 Enforcement. (1) For the purpose of conducting on-site ~~((assessments or otherwise enforcing))~~ audits or inspections to ensure compliance with this chapter, the department may, during regular business hours, enter ~~((any))~~ business premises in which analytical data pertaining to accreditation under the provisions of this chapter are generated or stored.

(2) Refusal to permit entry for such purposes ~~((shall))~~ may result in denial~~((;))~~ or revocation~~((, or suspension))~~ of accreditation ~~((or registration status)).~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-220 Assistance to laboratories. Laboratories scheduled to undergo an on-site ~~((assessment))~~ audit may request a training session be conducted by department staff in conjunction with that ~~((assessment))~~ audit. Accredited laboratories may also request on-site assistance at times other than the on-site ~~((assessment))~~ audit. Whether requested as part of the on-site ~~((assessment))~~ audit or otherwise, the department will provide such assistance to the extent allowed by staff resources available at the time.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-50-160	Reciprocity.
WAC 173-50-180	Exemptions.

WSR 10-17-059 PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 12, 2010, 2:51 p.m., effective September 12, 2010]

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

Purpose: To be in compliance with Federal U.S. Code Title 5 Part 1 Chapter 5—552a. We are required to amend WAC 392-300-025 to reflect that the office of superintendent of public instruction shall not disclose any record by any means of communication to any person except pursuant to a written request by, or with prior consent of, the individual to whom the record pertains.

Citation of Existing Rules Affected by this Order: Amending WAC 392-300-025 and 392-300-035.

Statutory Authority for Adoption: RCW 28A.400.303.

Adopted under notice filed as WSR 10-13-019 on June 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 392-300 [2], 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: July 27, 2010.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending Order 96-12, filed 8/19/96, effective 9/19/96)

WAC 392-300-025 Access to record check information by district employee or applicant. All district employees and applicants shall have access to record check information about them maintained by the superintendent of public instruction or designee. ~~((Any record of arrest and prosecution (RAP sheet) received from the Washington state patrol or the Federal Bureau of Investigation shall be sent promptly by the superintendent of public instruction to the district employee or applicant undergoing the record check.))~~ Any additional information collected by the superintendent of public instruction or designee as a result of the investigation of any data shall be available for inspection and copying by the district employee or applicant to whom it pertains during normal office hours in the office where the information is located. Information that is gathered as part of an ongoing investigation, ~~((excluding RAP sheets.))~~ shall not be released to the district employee or applicant until the investigation is completed.

AMENDATORY SECTION (Amending WSR 09-02-024, filed 12/30/08, effective 1/30/09)

WAC 392-300-035 Requests for record check information. In accordance with the requirements of RCW 42.56.100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, record check information is obtainable by district employees or applicants to whom it pertains when they comply with the following procedures:

((A)) The request shall be made in writing. The district employee or applicant shall complete, sign and return the request for Background Check Results form located at <http://www.k12.wa.us/profpractices/fingerprint>. The written request shall be presented to the fingerprint records office of the superintendent of public instruction during customary office hours or may be mailed or faxed to the office. The request shall include the following information:

- (1) The name of the person requesting the record;
- (2) The time of day and the calendar date on which the request was made;
- (3) The nature of the request;
- (4) Height, weight and date of birth of individual fingerprinted; and
- (5) Social Security number of individual fingerprinted (optional).

WSR 10-17-061

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2010, 9:05 a.m., effective September 15, 2010]

Effective Date of Rule: September 15, 2010.

Purpose: We are proposing to add "adoptive parent" to the definition of parent-in-law to coincide with the definition

of "parent" found in WAC 357-01-227 which includes adoptive parent.

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-228.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 10-14-122 on July 7, 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 1, Repealed 0.

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

Date Adopted: August 12, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-01-228 Parent-in-law. A biological or adoptive parent of an employee's spouse or an employee's registered domestic partner or an individual who stood *in loco parentis* to an employee's spouse or to an employee's registered domestic partner when the employee's spouse or the employee's registered domestic partner was a child. A person who had day-to-day responsibilities to care for and financially support the employee's spouse or the employee's registered domestic partner when he or she was a child is considered to have stood *in loco parentis* to the employee's spouse or to the employee's registered domestic partner.

WSR 10-17-062

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2010, 9:07 a.m., effective September 15, 2010]

Effective Date of Rule: September 15, 2010.

Purpose: To clarify that if an employee is hired at the maximum step of a pay range the periodic increment date (PID) will not be set. If the employee later receives a new appointment the PID will be set at that time based on the new appointment (either six or twelve months out depending on where the employee is placed in the new pay range).

Citation of Existing Rules Affected by this Order: Amending WAC 357-28-055.

Statutory Authority for Adoption: RCW 41.06.150.

Adopted under notice filed as WSR 10-14-126 on July 7, 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 1, Repealed 0.

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

Date Adopted: August 12, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-11-048, filed 5/11/06, effective 6/12/06)

WAC 357-28-055 How is the periodic increment date determined for a general government employee? (1) For a general government employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005 is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005 whose base salary is set above the minimum but below the maximum of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at the maximum of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 and 357-28-075; or

(b) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-345.

WSR 10-17-063

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed August 13, 2010, 9:08 a.m., effective September 15, 2010]

Effective Date of Rule: September 15, 2010.

Purpose: This is a housekeeping change due to the passage of ESSB 6724 which addresses the shared leave program.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-600.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 10-14-123 on July 7, 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 1, Repealed 0.

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

Date Adopted: August 12, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 07-11-095, filed 5/16/07, effective 7/1/07)

WAC 357-31-600 Is there a limit to the amount of sick leave a participating employee may withdraw from a sick leave pool? A participating employee may not withdraw more than ~~((two hundred sixty one))~~ five hundred twenty-two days from a sick leave pool for the entire duration of state employment. The ~~((two hundred sixty one))~~ five hundred twenty-two days includes any days an employee has received under the Washington shared leave program. One day equals eight hours of leave.

WSR 10-17-069

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 13, 2010, 3:24 p.m., effective September 13, 2010]

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

Purpose: WAC 458-20-279 (Rule 279) Clean alternative fuel vehicles and high gas mileage vehicles, explains the retail sales and use tax exemptions available for clean alternative fuel vehicles and high gas mileage vehicles. The department is amending Rule 279 to recognize the following legislation:

- ESSB 6170 (chapter 469, Laws of 2009) - this legislation repealed the sales and use tax exemptions for high mileage hybrid vehicles. The legislation exempted the sale of high mileage hybrid vehicles from the 0.3% additional motor vehicles sales tax

imposed by RCW 82.08.020(3) until January 1, 2011.

- SSB 6712 (chapter 11, Laws of 2010) - this legislation extended the sales and use tax exemptions vehicles using clean alternative fuels to include qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles, which were modified after their initial purchase with an EPA certified conversion to be exclusively powered by a clean alternative fuel.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-279 Clean alternative fuel vehicles and high gas mileage vehicles.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.60 [82.01.060].

Adopted under notice filed as WSR 10-04-099 on February 3, 2010.

Changes Other than Editing from Proposed to Adopted Version: The department made the following changes to the proposed rule to recognize SSB 6712 (chapter 11, Laws of 2010).

Subsection (2), this subsection identifies the exemption periods for clean alternative fuel vehicle and high gas mileage vehicle exemptions. The following changes were made:

- The expiration date of the clean alternative fuel vehicles exemptions was changed from December 31, 2010, to July 1, 2015.
- Two new subsections, (2)(a)(ii) and (iii), were added to recognize the exemption and exemption periods provided for certain qualifying used vehicles (which are exclusively powered by clean alternative fuel).

Subsection (3), this subsection provides definitions of terms used in the rule. A new subsection (3)(j) was added to provide the statutory definition of "qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles."

Subsection (5), this subsection previously explained that the exemptions do not apply to purchases of used vehicles.

- This subsection has been changed to recognize that exemptions are available for certain "qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles."
- The example in subsection (5)(a) has been changed so that it does not conflict with provisions of SSB 6712.

Subsection (6), this subsection addresses the application of the exemptions to a vehicle that has been converted from being exclusively powered by gasoline or diesel. Language has been added to recognize that certain "qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles" will qualify for exemption.

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 1, Repealed 0.

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

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

Date Adopted: August 13, 2010.

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-051, filed 12/31/08, effective 1/31/09)

WAC 458-20-279 Clean alternative fuel vehicles and high gas mileage vehicles. (1) **Introduction.** ~~((For the period January 1, 2009, through December 31, 2010, RCW 82.08.809 and 82.12.809 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel. For the same period, RCW 82.08.813 and 82.12.813 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.)) This section provides ((additional)) information about the requirements for the ((exemptions provided by RCW 82.08.809, 82.08.813, 82.12.809, and 82.12.813)) retail sales and use tax exemptions provided for clean alternative fuel vehicles by RCW 82.08.809 and 82.12.809, respectively, and the exemption from the 0.3 percent retail sales tax on retail sales of motor vehicles provided for high gas mileage vehicles by RCW 82.08.020(7) ("the exemptions").~~

(2) **Exemption periods.** The exemption periods provided for clean alternative fuel vehicles and high gas mileage vehicles differ.

(a) Clean alternative fuel vehicles.

(i) New vehicles. The exemptions provided for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel apply to purchases made from January 1, 2009, through July 1, 2015.

(ii) Used vehicles. The exemptions provided for qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles, which were modified after their initial purchase, with an EPA certified conversion to be exclusively powered by a clean alternative fuel apply to purchases made from July 12, 2010, through July 1, 2015.

(iii) Use of previously exempt vehicles on or after July 1, 2015. Use tax does not apply to the use, on or after July 1, 2015, of a vehicle if:

- The person used the vehicle in this state before July 1, 2015; and
- The use prior to July 1, 2015, was exempt from use tax as described in (a)(i) or (ii) of this subsection.

(b) High gas mileage vehicles. The exemptions provided for new passenger cars, light duty trucks, and medium duty passenger vehicles that utilize hybrid technology and have a United States Environmental Protection Agency estimated highway gasoline mileage rating of at least forty miles per gallon apply as follows:

(i) January 1, 2009, through July 31, 2009. The exemptions apply to all retail sales and use taxes.

(ii) August 1, 2009, through December 31, 2010. The exemption is limited to the 0.3 percent retail sales tax imposed by RCW 82.08.020(3) on retail sales of motor vehicles.

(3) Definitions. The following definitions apply throughout this section:

(a) "Clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology. See RCW 82.08.809(3) and 82.12.809(2).

(b) "Gross vehicle weight rating" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle. See WAC 173-423-040(4).

(c) "Hybrid technology" means propulsion units powered by both electricity and gasoline. See RCW 82.08.813(3) and 82.12.813(2).

(d) "Light duty truck" is any vehicle certified to the standards in Title 13, CCR, section 1961 (a)(1) rated at eight thousand five hundred pounds gross vehicle weight or less, and any other motor vehicle rated at six thousand pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use. See WAC 173-423-040(8).

(e) "Medium duty passenger vehicle" is any medium duty vehicle with a gross vehicle weight rating of less than ten thousand pounds that is designed primarily for the transportation of persons. The medium duty passenger vehicle definition does not include any vehicle which:

(i) Is an "incomplete truck," i.e., is a truck that does not have the primary load carrying device or container attached; or

(ii) Has a seating capacity of more than twelve persons; or

(iii) Is designed for more than nine persons in seating rearward of the driver's seat; or

(iv) Is equipped with an open cargo area of seventy-two inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition. See WAC 173-423-040(9).

(f) "Medium duty vehicle" is a vehicle with a gross vehicle weight rating of eight thousand five hundred one to fourteen thousand pounds. See WAC 173-423-100(2).

(g) "Model year" is the manufacturer's annual production period which includes January 1 of a calendar year. If the manufacturer has no annual production period, "model year" is the calendar year. In the case of any vehicle manufactured

in two or more stages, the time of manufacture shall be the date of completion of the chassis. See WAC 173-423-040(10).

(h) "New motor vehicle" is any motor vehicle that:

~~((+))~~ • Is self-propelled;

~~((+))~~ • Is required to be registered and titled under Title 46 RCW;

~~((+))~~ • Has not been previously titled to a retail purchaser or lessee; and

~~((+))~~ • Is not a vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof. See RCW 46.70.011 and 46.04.660.

The model year of the vehicle is not determinative of whether it meets the definition of "new motor vehicle."

(i) "Passenger car" means every motor vehicle except motorcycles and motor-driven cycles designed primarily for transportation of persons and having a design capacity of twelve persons or less. See WAC 173-423-040(13) and RCW 46.04.382.

(j) "Qualifying used passenger cars, light duty trucks, and medium duty passenger vehicles" means vehicles that:

• Are part of a fleet of at least five vehicles, all owned by the same person;

• Have an odometer reading of less than thirty thousand miles;

• Are less than two years past their original date of manufacture; and

• Are being sold for the first time after modification.

~~((+))~~ **(4) New passenger cars, light duty trucks, and medium duty passenger vehicles.** In order to qualify for the exemptions, the vehicle must meet the definition of "passenger car," "light duty truck," or "medium duty passenger vehicle" in addition to meeting the definition of "new motor vehicle."

(5) Purchases of previously owned clean alternative fuel or high gas mileage vehicles. The exemptions do not apply to purchases of used vehicles ~~((- even if they are exclusively powered by clean alternative fuel or utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon. The exemptions only apply to new clean alternative fuel or new high gas mileage vehicles purchased between January 1, 2009, and December 31, 2010))~~ unless they are qualifying used passenger cars, light duty vehicles, or medium passenger vehicles, which were modified after their initial purchase, with an EPA certified conversion to be exclusively powered by clean alternative fuel.

(a) **Example 1.** Mike purchases a *used* ~~((2007))~~ 2009 model year hybrid vehicle from a dealer or private party in ~~((2009))~~ July 2011. The purchase would not qualify for the exemptions. The exemption ~~((s))~~ for vehicles using hybrid technology only ~~((apply))~~ applies to new vehicles.

(b) **Example 2.** Nicole purchases a *new* 2008 model year hybrid vehicle in July 2009 from a dealer. This purchase would be exempt (assuming it meets the other requirements).

A new vehicle could be any model year as long as it has not been previously titled to a retail purchaser or lessee.

~~((4))~~ **(c) Example 3.** Joe purchases a new 2009 model year hybrid vehicle on August 5, 2009, from a dealer. This purchase is not exempt from all retail sales taxes but, assuming it meets the other requirements, is exempt from the 0.3 percent retail sales tax on retail sales of motor vehicles.

(6) Conversions. For purposes of this section, a conversion refers to the alteration of an otherwise nonqualifying vehicle exclusively powered by gasoline or diesel into a qualifying vehicle that either:

(a) Is exclusively powered by clean alternative fuel; or

(b) Utilizes hybrid technology and has a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(i) Purchases of converted vehicles. The purchase of a new vehicle, or a used vehicle satisfying the requirements described in subsection (2)(a)(ii) of this section, that is converted prior to or as part of the retail sale to the purchaser and that otherwise satisfies the requirements of the exemptions will qualify for the exemptions. If the conversion is performed after the retail sale, the purchase of the vehicle will not qualify for the exemptions.

(ii) Purchases of the service of converting vehicles. While the purchase of a new vehicle converted by the seller prior to or as part of the retail sale to the purchaser qualifies for the exemptions as described in subsection ~~((4))~~ **(6)(a)** of this section, the purchase of the service of converting a vehicle does not qualify for the exemptions. However, if the seller hires a third party to convert the vehicle, it can give the third party a resale certificate (WAC 458-20-102A) for work completed before January 1, 2010, or a reseller permit (WAC 458-20-102) for work completed on or after January 1, 2010. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(A) Example 1. Tom wants to purchase a new nonqualifying vehicle from Dealer but have it converted as a part of the purchase transaction. Dealer hires John's Shop to convert the vehicle for Tom, and Tom purchases the converted vehicle from Dealer. Tom's purchase of the converted vehicle qualifies for the exemptions.

(B) Example 2. Tom purchases a new nonqualifying vehicle from Dealer. Tom then hires John's Shop to convert the vehicle. The purchase of the nonqualifying vehicle does not qualify for the exemptions, even if Dealer delivers the vehicle directly to John's Shop on Tom's behalf for conversion.

~~((5))~~ **(7) Use tax.** The use of a qualifying vehicle by the original title holder is exempt from use tax if the vehicle is purchased ~~((between January 1, 2009, and December 31, 2010))~~ during the applicable exemption period specified in subsection (2) of this section.

(a) Example 1. Will, a Washington resident, purchases a new qualifying clean alternative fuel vehicle in Oregon from Dealer on February 1, 2009, and returns to Washington in the vehicle on February 2, 2009. Will's use of the vehicle in Washington is exempt from use tax.

(b) Example 2. Oliver, an Oregon resident, purchases a new qualifying hybrid vehicle from Dealer in Oregon on

April 1, 2009. Oliver moves to Washington on May 15, 2009. Oliver's use of the vehicle in Washington is exempt from use tax. Note: In the absence of the exemptions discussed in this section, Oliver's purchase would be subject to use tax since his first use of the vehicle in Washington occurred within 90 days of his acquisition and use of the vehicle in another state. See RCW 82.12.0251.

~~((6))~~ **(8) Extended warranties and maintenance agreements.** The sale of an extended warranty or maintenance agreement is subject to retail sales tax even though the vehicle itself may qualify for the exemptions. See WAC 458-20-257.

~~((7))~~ **(9) Replacement parts and/or repair services.** The sale of replacement parts or repair services is subject to retail sales tax even though the vehicle itself may have qualified for the exemptions. Only the purchase and use of a qualifying vehicle is exempt from retail sales and use ~~((tax))~~ taxes.

~~((8))~~ **(10) Accessories.** A qualifying vehicle includes all accessories installed or sold as part of the sale of the vehicle.

(a) Example 1. A dealership installs a ski rack and applies pinstriping on an otherwise qualifying vehicle on January 5, 2009, before a customer purchases the vehicle. Any separate, itemized charges for the accessories listed on the vehicle sales invoice are exempt from retail sales tax.

(b) Example 2. On January 5, 2009, a customer purchases an otherwise qualifying vehicle, and as a condition of the purchase requires that the seller install stereo speakers and apply paint sealant. The seller does not have the accessories in stock, but the customer takes delivery of the vehicle. The customer then brings the vehicle back to the seller, and the accessories are installed and applied on January 12, 2009. Any separate, itemized charges for the accessories listed on the vehicle sales invoice are exempt from retail sales tax.

~~((9))~~ **(11) Leases.** A vehicle is exempt from retail sales and use taxes on a lease if the other requirements are met. If the vehicle is new, registered, and titled in the lessee's name ~~((between January 1, 2009, and December 31, 2010))~~ during the applicable exemption period specified in subsection (2) of this section, the retail sales tax exemption will apply only to amounts due ~~((between January 1, 2009, and December 31, 2010))~~ during the exemption period. See also WAC 458-20-103 and 458-20-235.

(a) Example 1. Alex leases a new hybrid vehicle that he registers and titles on December 8, 2008. None of his lease payments will qualify for the exemptions because the vehicle was registered and titled prior to January 1, 2009.

(b) Example 2. Beth leases a new ~~((hybrid))~~ clean alternative fuel vehicle that she registers and titles on December 8, 2010. Assuming that the other requirements of the exemptions are met, any amounts due under the lease before January 1, 2011, are exempt from retail sales tax.

~~((10))~~ **(12) Payments made prior to January 1, 2009.** Any payment made toward the purchase of an otherwise qualifying vehicle prior to the effective date of the exemptions, January 1, 2009, qualifies for the exemptions if:

(a) The vehicle sold is titled and registered on or after January 1, 2009, but before the applicable exemption expires; and

(b) The purchaser takes possession of the vehicle on or after January 1, 2009, but before the applicable exemption expires. See WAC 458-20-103, 458-20-197, and 458-20-235.

Example. Greg makes a down payment toward the purchase of a new qualifying hybrid vehicle on November 7, 2008, but does not actually take possession of the vehicle at the dealership lot until January 2, 2009. The vehicle is titled and registered on January 9, 2009. The purchase of the vehicle is exempt from all retail sales ~~((tax))~~ taxes.

~~((11))~~ **(13) Payments made prior to ~~((January 1, 2011))~~ the expiration date of the applicable exemption.** Any payment made toward the purchase of an otherwise qualifying vehicle prior to the expiration date of the ~~((exemptions, January 1, 2011,))~~ applicable exemption does not qualify for the exemption~~((s))~~ if:

(a) The vehicle sold is titled or registered on or after ~~((January 1, 2011,))~~ the expiration date of the exemption; or ~~((#))~~

(b) The purchaser takes possession of the vehicle on or after ~~((January 1, 2011))~~ the expiration date of the exemption. See WAC 458-20-103, 458-20-197, and 458-20-235.

Example. Craig makes a down payment toward the purchase of a new qualifying clean alternative fuel vehicle on November 7, 2010, but does not actually take possession of the vehicle at the dealership lot until January 2, 2011. The vehicle is titled and registered on January 11, 2011. The purchase of the vehicle is subject to retail sales tax and the 0.3 percent retail sales tax imposed by RCW 82.08.020(3) on retail sales of motor vehicles.

WSR 10-17-070

PERMANENT RULES

HORSE RACING COMMISSION

[Filed August 13, 2010, 4:31 p.m., effective September 13, 2010]

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

Purpose: To address how the stewards deal with multiple disqualifications when placing horses and common ownership uncoupled entries involved in disqualifications.

Citation of Existing Rules Affected by this Order: Amending WAC 260-52-040.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 10-13-106 on June 18, 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 1, Repealed 0; Pilot Rule Mak-

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

Date Adopted: August 13, 2010.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 10-07-050, filed 3/11/10, effective 4/11/10)

WAC 260-52-040 Post to finish. (1) All horses must be ridden out in every race. A jockey may not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money. A jockey must always give his/her best effort during a race. Each horse must be ridden to win. No jockey may cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(2) If a jockey strikes or touches another jockey or another jockey's horse or equipment, his/her mount may be disqualified.

(3) When clear in a race a horse may be ridden to any part of the course. If any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, the horse may be disqualified.

(4) A horse may not interfere with another horse and thereby cause the other horse to lose ground or position, or cause the other horse to break stride. When this interference occurs in the part of the race where the other horse loses the opportunity to place where it might reasonably be expected to finish, the stewards may disqualify the interfering horse.

(5) If the stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible.

(6) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane and interferes, impedes, or intimidates another horse, it may be considered a foul and may result in the disqualification of the offending horse.

(7) When a horse is disqualified, the stewards may place the offending horse behind the horse(s) it interfered with, place it last, or declare it unplaced and ineligible for any purse money and/or time trial qualification. In the case of multiple disqualifications, under no circumstance may a horse regain its finishing ~~((position once it has been disqualified))~~ place in front of a horse that it interfered with.

(8) If a horse is disqualified, any horses ~~((it is coupled with))~~ that it shares a common ownership with may also be disqualified, if in the opinion of the stewards, the foul was intentional.

(9) When a horse is disqualified in a time trial race, for the purposes of qualifying only, it must receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and remain eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(10) In time trials, horses must qualify on the basis of time and order of finish. Times are determined by the official timer. If the automatic timer malfunctions, averages of a minimum of three hand times must be used for that individual race. In the instance of horses competing in the same race receiving identical times, order of finish must determine

qualifiers. In the event two or more horses receive identical times for the final qualifying position, a draw by lot conducted by the stewards will determine the final qualifying positions.

(11) If a horse that qualified for the finals should be unable to enter due to racing soundness or scratched for any other reason other than a positive test or rule violation, the owner will receive last place purse money. If more than one horse is scratched from the final, then those purse moneys will be added together and distributed equally among those owners.

(12) If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the time trials are declared official, but prior to entry for the final or consolation, the nonqualifier with the next fastest time must replace the disqualified horse. If a qualifier is disqualified after entry for the final or consolation for any reason other than unsoundness, illness or death, the purse will be redistributed among the remaining qualifiers.

(13) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer or other person will be considered prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify any horse involved, and summarily suspend the individual in possession of the device.

WSR 10-17-071

PERMANENT RULES

HORSE RACING COMMISSION

[Filed August 13, 2010, 4:32 p.m., effective September 13, 2010]

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

Purpose: To allow the commission to adjust the interval between which fingerprints are required based on current need.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-100.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 10-11-082 on May 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 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 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: August 13, 2010.

Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-05-087, filed 2/15/08, effective 3/17/08)

WAC 260-36-100 Fingerprints. Every person applying for a license must furnish the commission his or her fingerprints upon making an initial application for a license (~~and at least once every three years thereafter~~). Following the initial application, each person must then submit fingerprints at an interval determined by the commission. However, the commission, executive secretary, stewards, or security investigators, in their discretion, may require fingerprints from any applicant or licensee at any time. If an applicant fails to furnish fingerprints, the stewards may suspend the license or deny, and/or assess a fine.

WSR 10-17-080

PERMANENT RULES

HIGHER EDUCATION COORDINATING BOARD

[Filed August 16, 2010, 10:14 a.m., effective September 16, 2010]

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

Purpose: Rules are needed to clarify the college bound statute.

Statutory Authority for Adoption: RCW 28B.76.670.

Adopted under notice filed as WSR 10-07-166 on March 24, 2010.

Changes Other than Editing from Proposed to Adopted Version: The proposed rules were presented at the hearings where input was gathered. Changes were made to elaborate and clarify the final rules and definitions concerning applicant eligibility, receipt of scholarship, and formation of an appeals process.

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 10, 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: July 15, 2010.

Beth Ahlstrom
Program Associate

Chapter 250-84 WAC

COLLEGE BOUND SCHOLARSHIP RULES

NEW SECTION

WAC 250-84-010 Purpose. The college bound scholarship as authorized by chapter 28B.118 RCW is designed to inspire and encourage Washington middle school students from low-income families to dream big. The early commitment of state funding for tuition may alleviate the financial barriers preventing students from considering college as a future possibility.

NEW SECTION

WAC 250-84-020 Definitions. "Board" means higher education coordinating board.

"C average" means a 2.0 grade point average on a 4.0 scale.

"FAFSA" means Free Application for Federal Student Aid.

"High school graduation" means students must graduate from a public high school, private high school approved under chapter 28A.195 RCW, having met requirements to earn a high school diploma as defined in WAC 180-51-061 or 180-51-066, whichever is applicable.

"Legal guardian" means the person appointed by the court to take legal action on behalf of and be responsible for a minor.

"Median family income" means the median income for Washington state, adjusted by family size and reported annually in the federal register and used that year for the administration of the state need grant program.

"OSPI" means office of superintendent of public instruction.

"Tuition and fees" means tuition, building, operating, service and activity fees as are used for purposes of determining the state need grant award.

NEW SECTION

WAC 250-84-030 Eligible applicant. (1) Washington students in 2007-08 and thereafter may apply who are:

(a) Enrolled in the seventh and eighth grade in a public or private school as approved by chapter 28A.195 RCW or home school as defined by chapter 28A.200 RCW; and

(b) Meet the income eligibility as defined in subsection (2) of this section.

Eligible students enrolled in eighth grade in 2007-08 were granted a one-time extension to sign the pledge during the 2008-2009 school year as ninth graders.

(2) Seventh or eighth grade students are eligible to apply if one of these requirements are met:

(a) Family income falls within the monthly or annual standards set by the U.S. Department of Agriculture (USDA) for eligibility for participation in the free or reduced price lunch program (FRPL); or

(b) Student participates in the free or reduced price lunch program; or

(c) Family receives TANF benefits; or

(d) Student is a foster youth.

To determine eligibility in unusual circumstances, or for assistance in defining household size, foster youth status, and other criteria, the board will refer students and families to the district or school staff who oversee FRPL, and will refer to the USDA FRPL guidelines.

If a student qualifies in the application year, the information is not required to be updated throughout the middle and high school years. However, income will be verified using the FAFSA upon college enrollment. See WAC 250-84-060, eligibility for receipt of scholarship.

(3) Eligible applications are considered complete when the signed pledge has been received by the board.

(a) A student must sign a pledge during seventh or eighth grade that commits them to:

(i) Graduate from high school with at least a C average.

(ii) No felony convictions.

(b) The section of the application that indicates eligibility must be completed.

(c) The pledge must be signed by a parent or legal guardian to attest the information is true and accurate.

(d) The signature page for the electronic application, or the signed paper application, must be received by the board.

(e) The deadline for the application is June 30th of the student's eighth grade year.

(i) Electronic applications must be received by June 30th and paper applications must be postmarked by June 30th.

(ii) Missing information for applications received on or before June 30th will be accepted until the student enters the ninth grade year.

Exceptions to the deadline will be made on a case-by-case basis by the board based on extenuating circumstances.

NEW SECTION

WAC 250-84-040 Program promotion to eligible students. The role of the board, OSPI and school districts related to notification to students, families, and school personnel about the college bound scholarship is defined under chapter 28B.118 RCW.

(1) The board shall develop and distribute to all schools with students enrolled in seventh or eighth grade, an application pledge form that can be completed and returned electronically or by mail by the student or the school to the board.

The board will provide K-12 partners, professional associations, and college access programs with program information annually.

(2) The role of OSPI is to notify elementary, middle, and junior high schools about the college bound scholarship program using methods in place for communicating with schools and school districts.

OSPI will encourage schools and districts to target communications to eligible students to the greatest extent possible. Methods may include, but are not limited to, personalized letters, integrating the application into student conferences, or holding sign-up events.

(3) The role of each school district is to notify students, parents, teachers, counselors, and principals about the Washington college bound scholarship program through existing channels.

Notification methods may include, but are not limited to, regular school district and building communications, on-line scholarship bulletins and announcements, notices posted on school walls and bulletin boards, information available in each counselor's office, and school or district scholarship information sessions.

NEW SECTION

WAC 250-84-050 Tracking of scholars. The statute requires the board and OSPI to develop tracking procedures to ensure continued eligibility and to determine compliance for awarding of college bound scholarships (RCW 28B.118.020 and 28B.118.040).

- (1) The board shall:
 - (a) Develop and implement a student application, selection, and notification process for scholarships.
 - (b) Collect authorization to release information from the student and parent(s)/legal guardian(s).
 - (c) Develop a web-based application tool and paper application annually.
 - (d) Notify applicants of missing information in a timely manner.
 - (e) Notify applicants of their status of complete application in a timely manner.
 - (f) Treat applications confidentially and hold in a secure environment.
 - (g) Provide complete applicants information regarding disbursement of the scholarship and contact information for the board.
 - (h) Require applicants to update their address and other contact information with the board.
- (2) OSPI will work with the board to develop student tracking procedures.

The board and OSPI will share data regarding the progress of college bound scholarship students such as current school, grade level, grade point average, and expected graduation date on at least an annual basis through high school graduation, following agency protocols for data exchange and security.

 - (3) The board will track complete applicants and monitor progress toward graduation to determine compliance for awarding of scholarships.
 - (4) The board will share data and authorized student information from the application for program sign-up efforts and to provide support services to scholars who have already applied.
 - (a) The board will share information with schools and approved college access providers who will provide services to college bound scholarship students to support their academic success, if the proper release of information has been provided by the student and parent(s)/legal guardian(s).
 - (b) Aggregate data will be provided periodically and as requested to schools, districts, and partners to improve sign-up efforts.

NEW SECTION

WAC 250-84-060 Eligibility for receipt of college bound scholarships. To be eligible to receive the annual scholarship disbursement, college bound scholarship stu-

dents who have met the requirements outlined in WAC 250-84-030, must:

- (1) Graduate from a Washington high school with at least a C average or receive home-based instruction under chapter 28A.200 RCW.
- (2) File a FAFSA (see priority consideration under WAC 250-84-070(1)).
- (3) Be accepted to an institution participating in the state need grant program within the state of Washington (requirements outlined in WAC 250-20-013).
- (4) Enroll no later than the fall term (as defined by the institution) one academic year following high school graduation.

For example, students graduating by August 2012 have until fall 2013 to begin using the scholarship.

 - (a) Students who graduate early will be assumed to follow the time frame of their senior year cohort. However, if they enroll early, the four-year scholarship will need to be used within five years of their initial enrollment date.
 - (b) Scholarships will not be disbursed prior to fall 2012.
 - (c) Students will be considered to have enrolled upon earning credit(s) for the term or receiving the first scholarship disbursement, whichever comes first.
 - (5) Have an annual family income at or below sixty-five percent of the state's median family income as determined by the income reported on the FAFSA and verified by the institution the student is attending. See subsection (6)(d) of this section.

(6) Receive the college bound scholarship for no more than four academic years within a five-year period.

(a) The four-year scholarship may be used during any terms within the five-year period, even if enrollment is not continuous.

(b) The scholarship must be used within five academic years of August of the high school graduation year.

For example, students who graduate from high school in 2011-12 must begin college enrollment by fall 2013, and have through spring of 2017 to receive the scholarship.

(c) The total college bound award is limited to twelve quarters, eight semesters or equivalent, prorated for part-time enrollment within the five-year period.

(d) If students do not meet the income requirement in subsection (5) of this section in any year within the five-year period, they may still receive the scholarship for any year(s) they do meet the income requirement. Receipt of the four-year scholarship does not have to be continuous.

(7) Comply with the other eligibility criteria to receive the college bound scholarship as outlined for the state need grant program in WAC 250-20-011 including, but not limited to, requirements related to residency, undergraduate student status, academic program eligibility including the theology prohibition, enrollment level, satisfactory academic progress, and repayments.

The requirements for state need grant that do NOT apply to college bound scholarships are the equivalent of five-year limitation for state need grant under WAC 250-20-011(6) since the college bound scholarship is a four-year award.

NEW SECTION

WAC 250-84-070 Scholarship award. (1) The college bound scholarship is intended to combine with the state need grant program to ensure eligible students have the opportunity to receive sufficient state financial aid to meet the cost of full tuition, plus five hundred dollars for books each year. The award is intended to replace unmet need, loans, and at the student's discretion, work-study.

(2) The value of each college bound scholarship shall be determined by the board annually based on the amount of tuition and fees at public colleges and universities (as used for state need grant purposes) plus five hundred dollars, less the amount of state need grant the student qualifies for based on the student's MFI, and less any other state aid awarded.

(a) In order to receive the maximum state need grant for which the student qualifies, the student must meet the financial aid priority consideration deadline for the institution the student plans to attend.

(b) College bound scholarship awards will be prorated for part-time attendance as outlined in WAC 250-20-041 (4)(b).

Sector college bound scholarship award amounts (such as public research, regional and two-year, and private career and private four-year) shall follow base award amounts determined for the state need grant program.

NEW SECTION

WAC 250-84-080 Appeals. Appeals regarding application eligibility under WAC 250-84-030 should be directed to the board. Appeals regarding scholarship eligibility and awards under WAC 250-84-060 and 250-84-070 shall follow the process outlined under WAC 250-20-071 for state need grant purposes.

NEW SECTION

WAC 250-84-090 Grant disbursement to institutions. (1) Cash requests and reimbursements will follow procedures similar to state need grant.

(2) A student-by-student reconciliation will be completed each term and filed with the board at the end of each academic year.

(3) Recalculations as a result of awards in excess of tuition charges shall follow the tolerance outlined in state need grant rules or guidance.

NEW SECTION

WAC 250-84-100 Program administration and audits. (1) The staff of the board under the direction of the executive director will manage the administrative functions relative to college bound scholarship.

(2) The board will review institutional administrative compliance as outlined in WAC 250-20-061.

Any student who has obtained a college bound scholarship through means of willfully false statement or failure to reveal any material fact affecting eligibility will be subject to applicable civil or criminal penalties and repayment.

WSR 10-17-088
PERMANENT RULES
GAMBLING COMMISSION

[Order 670—Filed August 16, 2010, 3:02 p.m., effective September 16, 2010]

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

Purpose: This rule amendment is needed to reflect a legislative change made in 2007 when RCW 9.46.070 was changed to authorize the director to temporarily issue or suspend amusement game, manufacturer, distributor, service supplier, and individual licenses subject to the final approval by the commission.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-080.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 10-11-088 on May 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 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 1, Repealed 0.

Date Adopted: August 16, 2010.

Susan Arland
 Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-080 License approval process. (1) The director may issue a temporary license on completion of the licensing investigation for licenses issued under RCW 9.46.070 ~~((1) and (2))~~.

(2) The commissioners take action on applications at a public meeting. These actions may include license approval, holding an application over to a future meeting, or returning an application to staff for further investigation.

WSR 10-17-089
PERMANENT RULES
GAMBLING COMMISSION

[Order 671—Filed August 16, 2010, 4:21 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The Great American Gaming Corporation's request to allow house-banked card room operators offering progressive jackpot card games to reduce a reserve or second-

ary jackpot to seed a different progressive jackpot game without recognizing this amount as gross receipts was approved.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-695.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Adopted under notice filed as WSR 10-12-092 on June 1, 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 0, Repealed 0.

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

Date Adopted: August 16, 2010.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-695 Adjusting progressive jackpot amounts. House-banked card game licensees must not reduce the amount of a progressive jackpot prize accrued or displayed except for the following reasons:

(1) To reduce the jackpot and the advertised amount by the amount won; or

(2) To correct an amount displayed incorrectly because of malfunctioning equipment; or

(3) To correct the display when the amount displayed is greater than the predetermined maximum prize limit; or

(4) To reduce a reserve or secondary jackpot as long as they record the funds removed as gross receipts and properly documented that in their records; or

(5) To reduce a reserve or secondary jackpot to recover seed money that was not taken from gross receipts, if they properly document those funds in their records; or

(6) To reduce the jackpot by the dollar amount they paid for merchandise they award as prizes.

(7) To reduce a reserve or secondary jackpot to immediately seed a different progressive jackpot if the licensee properly documents this transfer in their records.

WSR 10-17-095
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medicaid Purchasing Administration)

[Filed August 17, 2010, 10:28 a.m., effective September 17, 2010]

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

Purpose: The rules update, clarify, and maintain consistency in sections in chapter 388-550 WAC that pertain to the disproportionate share hospital (DSH) programs.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-5000, 388-550-5200, 388-550-5210, and 388-550-5220.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, and 74.09.730(2).

Adopted under notice filed as WSR 10-13-148 on June 23, 2010.

A final cost-benefit analysis is available by contacting Sandy Stith, P.O. Box 45500, Olympia, WA 98504-5500, phone (360) 725-1949, fax (360) 753-9152, e-mail Sandy.Stith@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 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 4, Repealed 0.

Date Adopted: August 13, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-5000 Payment method—Low income disproportionate share hospital (LIDSH). (1) ~~((A hospital that is not a peer group E hospital but serves the department's clients is eligible for a low income disproportionate share hospital (LIDSH) payment adjustment if the hospital meets the requirements of WAC 388-550-4900(5)))~~ The department makes low income disproportionate share hospital (LIDSH) payments to qualifying hospitals through the disproportionate share hospital (DSH) program.

(2) ~~((Hospitals considered eligible under the criteria in subsection (1) of this section receive LIDSH payments))~~ To qualify for an LIDSH payment, a hospital must:

(a) Not be a hospital eligible for public disproportionate share (PHDSH) payments (see WAC 388-550-5400);

(b) Not be designated as an "institution for mental diseases (IMD)" as defined in WAC 388-550-2600 (2)(d);

(c) Meet the criteria in WAC 388-550-4900 (4) and (5);

(d) Be an in-state hospital. A hospital located out-of-state or in a designated bordering city is not eligible to receive LIDSH payments; and

(e) Meet at least one of the following requirements. The hospital must:

(i) Have a medicaid inpatient utilization rate (MIPUR) as defined in WAC 388-550-4900 (3)(h) at least one standard deviation above the mean medicaid inpatient utilization rate of in-state hospitals that receive medicaid payments; or

(ii) Have a low income utilization rate (LIUR) as defined in WAC 388-550-4900 (3)(g) that exceeds twenty-five percent.

(3) The department pays hospitals qualifying for LIDSH payments from a legislatively appropriated pool. The ~~((total))~~ maximum amount of LIDSH payments ~~((amounts equal))~~ in any state fiscal year (SFY) is the funding set by the state's appropriations act for LIDSH. The amount that the state appropriates for LIDSH may vary from year to year.

~~((3))~~ (4) The department determines LIDSH payments to each LIDSH eligible hospital using ~~((three factors))~~ the following factors from the specific hospital's base year as defined in WAC 388-550-4900 (3)(a):

(a) The hospital's medicaid inpatient utilization rate (MIPUR) ~~((:))~~ (see WAC 388-550-4900 for how the department calculates the MIPUR).

(b) The hospital's medicaid case mix index (CMI) ~~((as determined by the department; and))~~. The department calculates the CMI by:

(i) Using the DRG weight for each of the hospital's paid inpatient claims assigned in the year the claim was paid;

(ii) Summing the DRG weights; and

(iii) Dividing this total by the number of claims.

The CMI the department uses for LIDSH calculations is not the same as the CMI the department uses in other hospital rate calculations.

(c) The number of the hospital's Title XIX medicaid discharges ~~((for the applicable hospital fiscal year))~~. The department includes in this number only the discharges pertaining to Washington state medicaid clients.

~~((4))~~ (5) The department calculates the LIDSH payment to an eligible hospital as follows.

(a) The department:

~~((a))~~ (i) Divides the hospital's MIPUR by the average MIPUR of all LIDSH-eligible hospitals; then

~~((b))~~ (ii) Multiplies the result derived in ~~((subsection))~~ (a) of this section by the ~~((hospital's most recent DRG payment method medicaid case mix index))~~ CMI (see (4)(b) of this section), and then by the ~~((hospital's base year Title XIX))~~ discharges (see (4)(c) of this section); then

~~((c))~~ (iii) Converts the product to a percentage of the sum of all such products for individual hospitals; and

~~((d))~~ (iv) Multiplies this percentage by the legislatively appropriated amount for LIDSH.

~~((5))~~ For DSH program purposes, a hospital's medicaid CMI is the average diagnosis related group (DRG) weight for all of the hospital's medicaid DRG paid claims during the state fiscal year used as the base year for the DSH application. It is possible that the CMI the department uses for DSH

calculations will not be the same as the CMI the department uses in other hospital rate calculations;))

(b) If a hospital's calculated LIDSH payment is greater than the hospital-specific DSH cap, the payment to the hospital is limited to the hospital-specific DSH cap, and the department:

(i) Subtracts the LIDSH payment calculated for the hospital to determine the remaining LIDSH appropriation to distribute to the other qualifying hospitals; and

(ii) Proportionately distributes the remaining LIDSH appropriation in accordance with the factors in (a) of this subsection.

(6) ~~((After each))~~ A hospital receiving LIDSH payments must comply with a department request for uninsured logs (uninsured logs are documentation of payments, charges, and other information for uninsured patients) to verify its hospital-specific DSH cap.

(7) The department will not make changes in the LIDSH payment distribution after the applicable ~~((state fiscal year))~~ SFY has ended~~((, the department will not make changes to the LIDSH payment distribution that has resulted from calculations identified in subsection (4) of this section))~~. The department ~~((will))~~ recalculates the LIDSH payment distribution only when the applicable ~~((state fiscal year))~~ SFY has not yet ended at the time the alleged need for an LIDSH adjustment is identified, and if the department considers the recalculation necessary and appropriate under its regulations.

~~((7))~~ (8) Consistent with the provisions of subsection ~~((6))~~ (7) of this section, the department applies any adjustments to the DSH payment distribution required by legislative, administrative, or other state action, to other DSH programs in accordance with the provisions of WAC 388-550-4900 (13) through (16).

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-5200 Payment method—Small rural disproportionate share hospital (SRDSH). (1) The department makes small rural disproportionate share hospital (SRDSH) payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an SRDSH payment, a hospital must:

(a) Not be ~~((a peer group E hospital))~~ participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 388-550-4650;

(b) Not be designated as an "institution for mental diseases (IMD)" as defined in WAC 388-550-2600 (2)(d);

(c) Meet the criteria in WAC 388-550-4900 (4) and (5);

~~((e))~~ (d) Have fewer than seventy-five acute ~~((licensed))~~ beds; ~~((and))~~

~~((f))~~ (e) Be an in-state hospital. A hospital located out-of-state or in a designated bordering city is not eligible to receive SRDSH payments; and

(f) Be located in a city or town with a nonstudent population of no more than seventeen thousand eight hundred six in calendar year 2008, as determined by population data reported by the Washington state office of financial management population of cities, towns, and counties used for the allocation of state revenues. This nonstudent population is

used for state fiscal year (SFY) 2010, which began July 1, 2009. For each subsequent SFY, the nonstudent population is increased by two percent.

~~((2) In addition, for the SRDSH program to be implemented for state fiscal year (SFY) 2008, which begins on July 1, 2007, the city or town must have a nonstudent population of no more than seventeen thousand one hundred fifteen in calendar year 2006, as determined by the Washington state office of financial management estimate.~~

~~For each subsequent SFY, the nonstudent population ceiling is increased cumulatively by two percent.)~~

(3) The department pays hospitals qualifying for SRDSH payments from a legislatively appropriated pool. The department determines each hospital's individual SRDSH payment from the total dollars in the pool using percentages established as follows:

(a) At the time the SRDSH payment is to be made, the department calculates each hospital's profitability margin based on the hospital's base year data and audited financial statements.

(b) The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) The department:

(i) Identifies the medicaid payment amounts made by the department to the individual hospital during the SFY two years prior to the current SFY for which DSH application is being made. These medicaid payment amounts are based on historical data considered to be complete; then

(ii) Multiplies the total medicaid payment amount determined in subsection (i) by the individual hospital's assigned profit factor (1.1 or 1.0) to identify a revised medicaid payment amount; and

(iii) Divides the revised medicaid payment amount for the individual hospital by the sum of the revised medicaid payment amounts for all qualifying hospitals during the same period.

(4) The department's SRDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured patients for that hospital unless an exception is required by federal statute or regulation.

(5) The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-5210 Payment method—Small rural indigent assistance disproportionate share hospital (SRI-ADSH) ((program)). (1) The department makes small rural indigent assistance disproportionate share hospital (SRI-ADSH) program payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an SRIADSH payment, a hospital must:

(a) Not be ~~((a peer group E hospital))~~ participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 388-550-4650;

(b) Not be designated as an "institution for mental diseases (IMD)" as defined in WAC 388-550-2600 (2)(d);

(c) Meet the criteria in WAC 388-550-4900 (4) and (5);

~~((e))~~ (d) Have fewer than seventy-five acute ~~((licensed))~~ beds; ~~((and))~~

~~((d))~~ (e) Be an in-state hospital that provided charity services to clients during the base year. A hospital located out-of-state or in a designated bordering city is not eligible to receive SRIADSH payments; and

~~((e))~~ (f) Be located in a city or town with a nonstudent population of no more than seventeen thousand ~~((one hundred fifteen))~~ eight hundred six in calendar year ~~((2006))~~ 2008, as determined by the Washington State office of financial management ~~((estimate))~~ population of cities, towns, and counties used for the allocation of state revenues. This ~~((estimated))~~ nonstudent population ~~((ceiling))~~ is used for SFY ~~((2008))~~ 2010, which begins July 1, ~~((2007))~~ 2009. For each subsequent SFY, the nonstudent population ceiling is increased ~~((cumulatively))~~ by two percent.

(3) The department pays hospitals qualifying for SRI-ADSH payments from a legislatively appropriated pool. The department determines each hospital's individual SRIADSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the SRIADSH payment is to be made, the department calculates each hospital's profitability margin based on the hospital's base year data and audited financial statements.

(b) The department determines the average profitability margin for all hospitals qualifying for SRIADSH.

(c) Any qualifying hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other qualifying hospitals receive a profit factor of 1.0.

(d) The department:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of revised costs by dividing its revised cost amount by the sum of the revised charity cost amounts for all qualifying hospitals during the same period.

(4) The department's SRIADSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured indigent patients for that hospital unless an exception is required by federal statute or regulation. The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-5220 Payment method—Nonrural indigent assistance disproportionate share hospital (NRI-ADSH). (1) The department makes nonrural indigent assistance disproportionate share hospital (NRIADSH) payments to qualifying nonrural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an NRIADSH payment, a hospital must:

(a) Not be ~~((a peer group E hospital))~~ participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 388-550-4650;

(b) Not be designated as an "institution of mental diseases (IMD)" as defined in WAC 388-550-2600 (2)(d);

(c) Meet the criteria in WAC 388-550-4900 (4) and (5);

~~((e))~~ (d) Be a hospital that does not qualify as a small rural hospital as defined in WAC 388-550-4900 (3)~~((m))~~ (n); and

~~((e))~~ (e) Be an in-state or designated bordering city hospital that provided charity services to clients during the base year. For DSH purposes, the department considers as nonrural any hospital located in a designated bordering city.

(3) The department pays hospitals qualifying for NRI-ADSH payments from a legislatively appropriated pool. The department determines each hospital's individual NRIADSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the NRIADSH payment is to be made, the department calculates each hospital's profitability margin based on the hospital's base year data and audited financial statements.

(b) The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) The department:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of the NRI-ADSH revised costs by dividing the hospital's revised cost amount by the total revised charity costs for all qualifying hospitals during the same period.

(4) The department's NRIADSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured indigent patients for the hospital unless an exception is required by federal statute or regulation. The department reallocates dollars as defined in the state plan.

WSR 10-17-101
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed August 17, 2010, 11:44 a.m., effective September 17, 2010]

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

Purpose: The community services division amends WAC 388-476-0005 Social Security number requirements, to better align with federal requirements under C.F.R. 273.6. The amended rule will allow a Basic Food household to provide proof of a newborn Social Security number at the next recertification or within six months following the month the baby was born, whichever is later.

Citation of Existing Rules Affected by this Order: Amending WAC 388-476-0005.

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

Other Authority: Title 7, 273.6 C.F.R.

Adopted under notice filed as WSR 10-13-127 on June 22, 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 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 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: August 5, 2010.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-20-061, filed 9/26/03, effective 10/27/03)

WAC 388-476-0005 Social Security number requirements. (1) With certain exceptions, each person who applies for or receives cash, medical or food assistance benefits must provide to the department a Social Security number (SSN), or numbers if more than one has been issued. For SSN requirements for immigrants, see WAC 388-424-0009.

(2) If the person is unable to provide the SSN, either because it is not known or has not been issued, the person must:

(a) Apply for the SSN;

(b) Provide proof that the SSN has been applied for; and

(c) Provide the SSN when it is received.

(3) Assistance will not be delayed, denied or terminated pending the issuance of an SSN by the Social Security Administration. However, a person who does not comply with these requirements is not eligible for assistance.

(4) For cash, medical, and food assistance benefits, a person cannot be disqualified from receiving benefits for refusing to apply for or supply an SSN based on religious grounds.

(5) For food assistance programs:

(a) A person can receive benefits for the month of application and the following month if the person attempted to apply for the SSN and made every effort to provide the needed information to the Social Security Administration.

(b) ~~((A newborn may receive benefits for up to six months from the date of birth if the household is unable to provide proof of application for an SSN at the time of birth))~~
If a person is unable to provide proof of application for a SSN for a newborn:

(i) The newborn can receive Basic Food with the household while effort is being made to get the SSN.

(ii) For the newborn to continue receiving Basic Food benefits: the household must provide proof of application for SSN or the SSN for the newborn, at the next recertification, or within six months following the month the baby is born, whichever is later.

(6) For medical programs, a newborn as described in WAC 388-505-0210(1) is eligible for categorically needy (CN) medical without meeting the SSN requirement until the baby's first birthday.

(7) There is no SSN requirement for the following programs:

- (a) The consolidated emergency assistance program;
- (b) The refugee cash and medical assistance program;
- (c) The alien emergency medical program;
- (d) The state-funded pregnant woman program; and
- (e) Detoxification services.

WSR 10-17-103
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed August 17, 2010, 11:48 a.m., effective August 19, 2010]

Effective Date of Rule: August 19, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rules become permanent effective August 19, 2010, which is less than thirty-one days after filing. RCW 34.05.380 (3)(c) states that a rule may become effective on a subsequent earlier date if the action is necessary because of imminent peril to the public health, safety, or welfare. The current emergency rule (WSR 10-09-112) that allows the department to exclude \$25 federal weekly supplement as income in determining eligibility and benefits for cash programs expires August 19, 2010. Without this rule, the department will have to count these payments as income for cash programs decreasing the amount of cash assistance the department provides to individuals who have lost their jobs during this economic crisis. This will result in less income for families which was not the intent of the federal economic stimulus.

In addition, RCW 34.05.380 [(3)](a) states that a rule may become effective on a subsequent earlier date if the

action is required by state or federal constitution, a statute [statute] or court order. On November 6, 2009, the president signed the Worker, Homeownership, and Business Assistance Act of 2009. Section 8 of the act requires that the \$25 federal supplemental unemployment compensation benefit be excluded as income or a resource when determining eligibility and benefits for the supplemental nutrition assistance program (SNAP). SNAP is administered under the Washington Basic Food program in Washington. As federal regulations require these funds to be excluded for medicaid and SNAP, the department will exclude the payments for cash in order to provide consistent treatment of the payment across program lines.

Purpose: The department is amending WAC 388-450-0015 to exclude the federal \$25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009 for cash programs. This will increase the aid the department provides to individuals who have lost their jobs during the economic downturn as intended by the federal economic stimulus. When effective, this permanent filing will supersede emergency rules filed as WSR 10-09-112 and 10-02-038.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: Worker, Homeownership, and Business Assistance Act of 2009.

Adopted under notice filed as WSR 10-12-108 on June 2, 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 1, Repealed 0.

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

Date Adopted: August 5, 2010

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-15-085 [and 09-16-095], filed 7/14/09 [and 8/4/09], effective 11/15/09)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

~~((e))~~ (f) Energy assistance payments;

~~((f))~~ (g) Educational assistance we do not count under WAC 388-450-0035;

~~((g))~~ (h) Native American benefits and payments we do not count under WAC 388-450-0040;

~~((h))~~ (i) Income from employment and training programs we do not count under WAC 388-450-0045;

~~((i))~~ (j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

~~((j))~~ (k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

~~((k))~~ (l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

~~((l))~~ (m) Payments we are directly told to exclude as income under state or federal law.

~~((m))~~ (n) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

~~((n))~~ (o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

~~((o))~~ (p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 10-17-107

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed August 17, 2010, 2:08 p.m., effective September 17, 2010]

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

Purpose: WAC 246-840-581, 246-840-582 and 246-840-583, the rules allow and define the nursing care quality assurance commission's ability to resolve complaints of a less serious nature through an early remediation program. The nurse and employer can agree to an action plan involving training and monitoring. The investigation is abbreviated.

Statutory Authority for Adoption: RCW 18.79.110 and 18.130.050.

Adopted under notice filed as WSR 10-08-091 on April 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Words were changed to future tense for sentences that referred to empowerment and authorization to be consistent with statutory construction. Unnecessary modifiers were stricken. The word "complaint" was changed to "allegation" in WAC 246-840-581. All other changes were editing.

A final cost-benefit analysis is available by contacting Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4712, fax (360) 236-4738, e-mail terry.west@doh.wa.gov.

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

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

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

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

Date Adopted: May 14, 2010.

Paula R. Meyer, MSN, RN
Executive Director

NEW SECTION

WAC 246-840-581 Early remediation program purpose. WAC 246-840-582 and 246-840-583 establish the early remediation program and its eligibility criteria and procedures. The intent of this program is to effectively and efficiently protect patients by resolving allegations of practice deficiencies of a less serious nature through a plan of remedial education, training, and supervision. Such allegations may not include substance abuse or drug diversions. The nursing care quality assurance commission may resolve allegations of practice deficiencies through early remediation during an investigation.

NEW SECTION

WAC 246-840-582 Early remediation program definitions. The definitions in this section apply throughout WAC 246-840-581 and 246-840-583 unless the context clearly requires otherwise.

(1) "Action plan" means a documented agreement between the nurse named in the complaint(s) and the commission listing remedial steps to be taken by the nurse to resolve the identified practice deficiencies. Action plans may require remedial education, on-the-job training, and follow-up monitoring of the nurse's clinical practice by the current employer or other practice monitor.

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

(3) "Complaint" means a documented report of a possible violation of the Uniform Disciplinary Act which the commission shall assess and may subsequently authorize an investigation.

(4) "Early remediation program" means a process in which a complaint alleging practice deficiencies is resolved through an action plan without initiating disciplinary procedures.

(5) "Practice deficiencies" include, but are not limited to:

- (a) Substandard nursing practice;
- (b) Failure to properly conduct a patient assessment, document treatment, or administer medications; and
- (c) Failure to comply with scope of practice requirements or delegation laws and regulations.

(d) Practice deficiencies do not include drug diversion, patient abuse, fraud, theft, deceit or other willful misconduct, or conduct resulting in more than minor patient harm.

NEW SECTION

WAC 246-840-583 Early remediation program criteria. (1) In any complaint where the commission identifies practice deficiencies, the commission may resolve the matter through the early remediation program.

(2) The commission shall use the following criteria to determine eligibility for early remediation:

(a) The identified practice deficiencies could be corrected by remedial education, on-the-job training and practice monitoring within six months or less, and patient protection does not require significant long-term practice limits;

(b) The nurse is willing and able to participate in the early remediation program;

(c) The nurse's current employer agrees to participate in the action plan;

(d) The nurse has no current charges or disciplinary history of unprofessional conduct and has not previously participated in an action plan; and

(e) The degree of patient harm suffered as a result of the nurse's substandard practice is minor, if any.

(3) The commission shall use the following process to implement the early remediation program:

(a) After a preliminary investigation identifies the practice deficiencies the commission will apply criteria in subsection (2)(a) through (e) of this section to determine eligibility for early remediation;

(b) If all of the criteria are met, and if the commission determines the nurse is eligible for participation in the early remediation program the commission shall propose an action plan to the nurse and employer.

(c) If the nurse complies with the agreed action plan, the commission may consider the nurse's completion of the action plan as grounds to close the matter without further action.

(d) The commission shall evaluate whether the practice deficiencies have been corrected and are unlikely to recur; and

(e) The commission may decide to conduct a full investigation and consider disciplinary action if additional facts become known or circumstances change such that the nurse is no longer eligible based on the criteria in subsection (2)(a) through (e) of this section.

WSR 10-17-120**PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed August 18, 2010, 9:39 a.m., effective September 18, 2010]

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

Purpose: Chapter 246-320 WAC, the rules reflect updated hospital construction requirements by adopting most of the 2010 edition of the Guidelines for Design and Construction of Health Care Facilities as published by the American Society for Healthcare Engineering of the American Hospital Association. WAC 246-320-600 outlines amendments to the 2010 guidelines that either exclude nonapplicable sections or make minor alterations to the requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 246-320-500, 246-320-505, and 246-320-600.

Statutory Authority for Adoption: Chapter 70.41 RCW.

Adopted under notice filed as WSR 10-11-117 on May 18, 2010.

A final cost-benefit analysis is available by contacting John Hilger, 310 Israel Road S.E., Tumwater, WA 98501-7852, phone (360) 236-2929, fax (360) 236-2901, e-mail john.hilger@doh.wa.gov.

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

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

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

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

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

Date Adopted: August 18, 2010.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

WAC 246-320-500 Applicability of WAC 246-320-500 through 246-320-600. The purpose of construction regulations is to provide for a safe and effective patient care environment. These rules are not retroactive and are intended to be applied as outlined below.

(1) These regulations apply to hospitals including:

- (a) New buildings to be licensed as a hospital;
- (b) Conversion of an existing building or portion of an existing building for use as a hospital;
- (c) Additions to an existing hospital;
- (d) Alterations to an existing hospital; and
- (e) Buildings or portions of buildings licensed as a hospital and used for hospital services;
- (f) Excluding nonpatient care buildings used exclusively for administration functions.

(2) The requirements of chapter 246-320 WAC in effect at the time the application and fee are submitted to the department, and project number is assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction.

Facilities constructed and intended for use under this chapter shall comply with:

(a) The following chapters of the ((2006)) 2010 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American ((Institute of Architects, 1735 New York Avenue, N.W., Washington D.C. 20006)) Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606, as amended in WAC 246-320-600:

- ~~((i)) 1.1 Introduction~~
- ~~(ii) 1.2 Environment of Care~~
- ~~(iii) 1.3 Site~~
- ~~(iv) 1.4 Equipment~~
- ~~(v) 1.5 Planning, Design and Construction~~
- ~~(vi) 1.6 Common Requirements~~
- ~~(vii) 2.1 General Hospital~~
- ~~(viii) 2.2 Small Inpatient Primary Care Hospitals~~
- ~~(ix) 2.3 Psychiatric Hospital~~
- ~~(x) 2.4 Rehabilitation Facilities~~
- ~~(xi) 3.1 Outpatient Facilities~~
- ~~(xii) 3.2 Primary Care Outpatient Centers~~
- ~~(xiii) 3.3 Small Primary (Neighborhood) Outpatient Facilities~~
- ~~(xiv) 3.4 Freestanding Outpatient Diagnostic and Treatment Facilities~~
- ~~(xv) 3.5 Freestanding Urgent Care Facilities~~
- ~~(xvi) 3.6 Freestanding Birthing Centers~~
- ~~(xvii) 3.7 Outpatient Surgical Facilities~~
- ~~(xviii) 3.8 Office Surgical Facilities~~
- ~~(xix) 3.9 Gastrointestinal Endoscopy Facilities~~
- ~~(xx) 3.10 Renal Dialysis Centers~~
- ~~(xxi) 3.11 Psychiatric Outpatient Centers~~
- ~~(xxii) 3.12 Mobile, Transportable, and Relocatable Units~~

~~((xxiii) 4.2 Hospice Facility))~~

- ~~(i) 1.1 Introduction~~
- ~~(ii) 1.2 Planning, Design, Construction, and Commissioning~~
- ~~(iii) 1.3 Site~~
- ~~(iv) 1.4 Equipment~~
- ~~(v) 2.1 Common Elements for Hospitals~~
- ~~(vi) 2.2 Specific Requirements for General Hospitals~~
- ~~(vii) 2.4 Specific Requirements for Critical Access Hospitals (Reserved)~~
- ~~(viii) 2.5 Specific Requirements for Psychiatric Hospitals~~
- ~~(ix) 2.6 Specific Requirements for Rehabilitation Hospitals and Other Facilities~~
- ~~(x) 3.1 Common Elements for Outpatient Facilities~~
- ~~(xi) 3.2 Specific Requirements for Primary Care Outpatient Centers~~
- ~~(xii) 3.3 Specific Requirements for Small Primary Care (Neighborhood) Outpatient Facilities~~
- ~~(xiii) 3.4 Specific Requirements for Freestanding Outpatient Diagnostic and Treatment Facilities~~
- ~~(xiv) 3.6 Specific Requirements for Freestanding Cancer Treatment Facilities~~
- ~~(xv) 3.7 Specific Requirements for Outpatient Surgical Facilities~~
- ~~(xvi) 3.8 Specific Requirements for Office Surgical Facilities~~
- ~~(xvii) 3.9 Specific Requirements for Gastrointestinal Endoscopy Facilities~~
- ~~(xviii) 3.10 Specific Requirements for Renal Dialysis Centers~~
- ~~(xix) 3.11 Specific Requirements for Psychiatric Outpatient Centers~~
- ~~(xx) 3.12 Specific Requirements for Outpatient Rehabilitation Facilities~~
- ~~(xxi) 4.3 Specific Requirements for Hospice Facilities~~
- ~~(xxii) 5.1 Mobile, Transportable, and Relocatable Units~~
- ~~(xxiii) 5.2 Freestanding Birth Centers~~
- ~~(xxiv) Part 6: Ventilation of Health Care Facilities~~
- ~~(b) The National Fire Protection Association, Life Safety Code, NFPA 101, 2000.~~
- ~~(c) The State Building Code as adopted by the state building code council under the authority of chapter 19.27 RCW.~~
- ~~(d) Accepted procedure and practice in cross-contamination control, Pacific Northwest Edition, 6th Edition, December 1995, American Waterworks Association.~~

AMENDATORY SECTION (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

WAC 246-320-505 Design, construction review, and approval of plans. (1) Drawings and specifications for new construction, excluding minor alterations, must be prepared by or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW ((~~must~~)) may be used for the various branches of work where appropriate. The services of a registered engineer may be used in lieu of the services of an architect if work involves engineering only.

(2) A hospital will meet the following requirements:

(a) Request and attend a presubmission conference for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than fifty percent complete.

(b) Submit construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes.

(c) The construction documents must include:

(i) A written program containing, but not limited to the following:

(A) Information concerning services to be provided and operational methods to be used;

(B) An interim life safety measures plan to ensure the health and safety of occupants during construction and installation of finishes.

(C) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors;

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided; and

(iii) Floor plan of the existing building showing the alterations and additions, and indicating location of any service or support areas; and

(iv) Required paths of exit serving the alterations or additions.

(d) The hospital will respond in writing when the department requests additional or corrected construction documents;

(e) Notify the department in writing when construction has commenced;

(f) Provide the department with a signed form acknowledging the risks if starting construction before the plan review has been completed. The acknowledgment of risks form shall be signed by the:

(i) Architect; and

(ii) Hospital CEO, COO or designee; and

(iii) Hospital facilities director.

(g) Submit to the department for review any addenda or modifications to the construction documents;

(h) Assure construction is completed in compliance with the final "department approved" documents. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. Where differences in interpretations occur, the hospital will follow the most stringent requirement.

(i) The hospital will allow any necessary inspections for the verification of compliance with the construction document, addenda, and modifications.

(j) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.

(3) The hospital will not begin construction or use any new or remodeled areas until:

(a) The infection control risk assessment has been approved by the department;

(b) The interim life safety plan has been approved by the department;

(c) An acknowledgment of risk form has been submitted to the department as required by subsection (2)(f) of this section;

(d) The department has approved construction documents or granted authorization to begin construction; and

(e) The local jurisdictions have issued a building permit, when applicable or given approval to occupy.

(4) The department will issue an "authorization to begin construction" when subsection (3)(a), (b), and (c) are approved and the presubmission conference is concluded.

AMENDATORY SECTION (Amending WSR 08-14-023, filed 6/20/08, effective 7/21/08)

WAC 246-320-600 Washington state amendments.

This section contains the Washington state amendments to the ((2006)) 2010 edition of the *Guidelines for Design and Construction of Health Care Facilities* as published by the American ((Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006)) Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606. Subsections with an asterisk (*) preceding a paragraph number indicates that explanatory or educational material can be found in an appendix item located in the 2010 Guidelines.

~~((CHAPTER 1.2 ENVIRONMENT OF CARE~~

~~2.1.3.4 This section is not adopted.~~

~~CHAPTER 1.3 SITE~~

~~2.2 Availability of Transportation~~

~~This section is not adopted.~~

~~3.3 Parking~~

~~This section is not adopted.~~

~~CHAPTER 1.4 EQUIPMENT~~

~~A1.3.1 Design should consider the placement of cables from portable equipment so that personnel circulation and safety are maintained.~~

~~CHAPTER 1.5 PLANNING, DESIGN AND CONSTRUCTION~~

~~2.1 General~~

~~2.1.1 ICRA Panel~~

~~The ICRA shall be conducted by a panel with expertise in the areas affected by the project; at a minimum this would include infection control, epidemiology and facility representation.~~

~~CHAPTER 1.6 COMMON REQUIREMENTS~~

~~2.1.1 General~~

~~Unless otherwise specified herein, all plumbing systems shall be designed and installed in accordance with the plumbing code as adopted by the state building code council.~~

~~2.1.3.2 Handwashing Stations~~

General handwashing stations used by medical and nursing staff, patients, and food handlers shall be trimmed with valves that can be operated without hands. Single-lever or wrist blade devices shall be permitted. Blade handles used for this purpose shall be at least 4 inches (10.2 centimeters) in length.

2.2.2 HVAC Air Distribution

2.2.2.1 HVAC Ductwork

(2) Humidifiers.

(a) If humidifiers are located within a ventilation system upstream of the final filters, they shall be at least 15 feet (4.57 meters) upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential for condensation inside the duct.

(d) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(e) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(f) Steam humidifiers shall be used. Reservoir type water spray or evaporative pan humidifiers shall not be used.

A2.2.2.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.

CHAPTER 2.1 GENERAL HOSPITALS

1.2.2 Swing Beds

When the concept of swing beds is part of the functional program, care shall be taken to include requirements for all intended categories. Nursing homes and long-term care units must be distinct and separate from swing beds.

A1.2.2 Swing Beds

Every bed must be able to provide both acute care and skilled nursing care. The concept is that the patient would not have to be moved, rather their status would change from "acute" to "swing bed" status.

2.2.1 Toilet Rooms

2.2.1.3 Toilet room doors shall swing outward or be double-acting. Where local requirements permit, surface-mounted sliding doors may be used, provided adequate provisions are made for acoustical and visual privacy.

2.3.5 Nourishment Area

2.3.5.1 A nourishment area shall have a sink, work counter, refrigerator, storage cabinets, and equipment for hot and cold nourishment between scheduled meals. This area shall include space for trays and dishes used for nonscheduled meal service. This function may be combined with a clean utility without duplication of sinks and work counters.

2.3.10 Housekeeping Room

2.3.10.1 Housekeeping rooms shall be directly accessible from the unit or floor they serve and may serve more than one nursing unit on a floor. Housekeeping and soiled rooms may be combined.

3.1.1.1 Capacity

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

3.1.1.5 Handwashing Stations. These shall be provided to serve each patient room.

(1) A handwashing station shall be provided in the toilet room.

(2) Or, in private rooms, a handwashing station shall be provided in the patient room provided alcohol-based hand sanitizers are provided in the toilet room. The handwashing station shall be located outside the patient's cubicle curtain and convenient to staff entering and leaving the room.

(3) A hand-sanitation station in patient rooms utilizing waterless cleaners shall be permitted in renovations of existing facilities where existing conditions prohibit an additional handwashing station.

3.1.2 Patient/Family Centered Care Rooms

This section is not adopted.

3.1.5 Support Areas for Medical/Surgical Nursing Units

3.1.5.5 Handwashing Stations

(1) Handwashing stations or waterless cleansing stations shall be conveniently accessible to the nurse station, medication station, and nourishment station. "Convenient" is defined as not requiring staff to access more than two spaces separated by a door.

(2) One handwashing station may serve several areas if convenient to each.

4.3.1 Labor Rooms

4.3.1.1 General

(2) Access. Labor rooms shall have controlled access with doors.

5.1.3 Definitive Emergency Care

5.1.3.7(5) Decontamination Area

(a) Location. In new construction, a decontamination room shall be provided with an outside entry door as far as practical from the closest other entrance. The internal door of this room shall open into a corridor of the emergency department, swing into the room and be lockable against ingress from the corridor.

(b) Space requirements. The room shall provide a minimum of 80 square feet (7.43 square meters) clear floor area.

(c) Facility requirements.

(i) The room shall be equipped with two hand-held shower heads with temperature controls.

(ii) Portable or hard-piped oxygen shall be provided. Portable suction shall also be available.

(d) Construction requirements. The room shall have all smooth, nonporous, scrubable, nonabsorptive, nonperforated surfaces. Fixtures shall be acid-resistant. The floor of the decontamination room shall be self-levelling to a height of 6 inches (15.24 centimeters).

(e) This section does not preclude decontamination capability at other locations or entrances immediately adjacent to the emergency department.

5.3.3 Pre- and Postoperative Holding Areas

5.3.3.2 Post-anesthetic Care Units (PACUs)

(4) Facility requirements. Each PACU shall contain a medication station; handwashing stations; nurse station with charting facilities; clinical sink; provisions for bedpan clean-

ing; and storage space for stretchers, supplies, and equipment.

(a) Handwashing station(s). At least one handwashing station with hands-free or wrist blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(b) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.

5.3.5 Support Areas for the Surgical Suite

5.3.5.4 Scrub Facilities. Two scrub positions shall be provided near the entrance to each operating room.

5.9.3 Examination Room

This section is not adopted.

6.1. Pharmacy

Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services. The most current edition of USP 797 at the time of the application will be used for plan review service.

8.2.2.3 Doors

(2) Door Size.

(a) General. Where used in these Guidelines, door width and height shall be the nominal dimension of the door leaf, ignoring projections of frame and stops. Note: While these standards are intended for access by patients and patient equipment, size of office furniture, etc., shall also be considered.

(b) Inpatient bedrooms.

(i) New construction. The minimum door size for inpatient bedrooms in new work areas shall be 4 feet (1.22 meters) wide and 7 feet (2.13 meters) high to provide clearance for movement of beds and other equipment.

(ii) Renovation. Existing doors of not less than 2 feet 10 inches (86.36 centimeters) wide may be considered for acceptance where function is not adversely affected and replacement is impractical.

(c) Rooms for stretchers/wheelchairs. Doors to other rooms used for stretchers (including hospital wheeled-bed stretchers) and/or wheelchairs shall have a minimum width of 2 feet 10 inches (86.36 centimeters).

10.1.2 Plumbing and Other Piping Systems

10.1.2.5 Drainage Systems

(1) Piping.

(a) Drain lines from sinks used for acid waste disposal shall be made of acid resistant material.

(b) Drain lines serving some types of automatic blood-cell counters shall be of carefully selected material that will eliminate potential for undesirable chemical reactions (and/or explosions) between sodium azide wastes and copper, lead, brass, solder, etc.

(c) Reasonable effort shall be made to avoid installing drainage piping within the ceiling or exposed in operating and delivery rooms, nurseries, food preparation centers, food serving facilities, food storage areas, central services, electronic data processing areas, electric closets, and other sensitive areas. Where exposed overhead drain piping in these areas is unavoidable, special provision shall be made to protect the space below from leakage, condensation or dust particles.

10.2.1 General

10.2.1.1 Mechanical System Design

(2) Air-handling systems.

(a) These shall be designed with an economizer cycle where appropriate to use outside air. (Use of mechanically circulated air does not reduce need for filtration.)

(b) VAV systems. The energy-saving potential of variable air volume systems is recognized and the standards herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air-handling system with a common pressure dependent return system.

(c) Noncentral air-handling systems (i.e., individual room units used for heating and cooling purposes, such as fan-coil units, heat pump units, etc.). These units may be used as recirculating units only. All outdoor air requirements shall be met by a separate central air-handling system with proper filtration, as noted in Table 2.1-3.

10.2.1.2 Ventilation and Space Conditioning Requirements. All rooms and areas used for patient care shall have provisions for ventilation.

(2) Air change rates. Air supply and exhaust in rooms for which no minimum total air change rate is noted may vary down to zero in response to room load. For rooms listed in Table 2.1-2, where VAV systems are used, minimum total air change shall be within limits noted, the minimum required by the Washington State Ventilation and Indoor Air Quality Code (chapter 51-13 WAC).

(3) Temperature. Space temperature shall be as indicated in Table 2.1-2.

10.2.4 HVAC Air Distribution

10.2.4.3 Exhaust Systems

(1) General.

(a) Exhaust systems may be combined.

(b) Local exhaust systems shall be used whenever possible in place of dilution ventilation to reduce exposure to hazardous gases, vapors, fumes, or mists.

(c) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable.

(d) Airborne infection isolation rooms shall not be served by exhaust systems incorporating a heat wheel.

10.2.5 HVAC Filters

10.2.5.2 Filter Bed Location. Where two filter beds are required, filter bed no. 1 shall be located upstream of the air conditioning equipment and filter bed no. 2 shall be downstream of the last component of any central air-handling unit and plenum/duct liner except: Steam injection-type humidifiers; terminal heating coils; and mixed boxes and acoustical traps that have special covering over the lining. Terminal cooling coils and linings are permitted downstream of filter bed no. 2 with additional filtration downstream of coil meeting requirements of filter bed no. 2.

10.2.5.5 Filter Manometers. A manometer shall be installed across each filter bed having a required efficiency of 75 percent or more, including hoods requiring HEPA filters. Manometers may be omitted at HEPA-filtered ceiling diffusers if pressure-independent terminal units provide the opera-

for a means to verify the actual airflow to the HEPA-filtered diffusers in each room. Provisions shall be made to allow access for field testing. A recognized air flow measuring device would be acceptable, in lieu of terminal units.

Table 2.1-2 Ventilation Requirements for Areas Affecting Patient Care in Hospitals and Outpatient Facilities

Footnote 8 The ranges listed are the minimum and maximum limits where control is specifically needed. The maximum and minimum limits are not intended to be independent of a space's associated temperature. See figure 2.1-1 for a graphic representation of the indicated changes on a psychometric chart. Shaded area is acceptable range.

CHAPTER 2.2 SMALL INPATIENT PRIMARY CARE HOSPITALS

1.3.2 Parking

This section not adopted.

CHAPTER 2.3 PSYCHIATRIC HOSPITALS

1.6.1 Parking

This section is not adopted.

CHAPTER 3.1 OUTPATIENT FACILITIES

1.7.2 Parking

This section is not adopted.

7.1.2 Plumbing and Other Piping Systems

7.1.2.1 General Piping and Valves

(3) To prevent food contamination, no plumbing lines shall be exposed overhead or on walls where possible accumulation of dust or soil may create a cleaning problem or where leaks would create a potential for food contamination.

CHAPTER 3.2 PRIMARY CARE OUTPATIENT CENTERS

1.3.1 Parking

This section is not being adopted.

CHAPTER 3.3 SMALL PRIMARY (NEIGHBORHOOD) OUTPATIENT FACILITIES

1.3.2 Parking

This section is not adopted.

CHAPTER 3.5 FREESTANDING URGENT CARE FACILITIES

1.2.2 Parking

This section is not adopted.

CHAPTER 3.6 FREESTANDING BIRTHING CENTERS

1.2.1 Parking

This section is not adopted.

CHAPTER 3.7 OUTPATIENT SURGICAL FACILITIES

1.6.1 Parking

This section is not adopted.

CHAPTER 3.9 GASTROINTESTINAL ENDOSCOPY FACILITIES

1.6.1 Parking

This section is not adopted.

CHAPTER 3.11 PSYCHIATRIC OUTPATIENT CENTERS

1.3.1 Parking

This section is not adopted.))

CHAPTER 1.1 INTRODUCTION

1.1-5.5 Referenced Codes and Standards

Washington State Building Code (<http://www.sbcc.wa.gov/>)

CHAPTER 1.2 PLANNING, DESIGN, AND IMPLEMENTATION PROCESS

1.2-6.1.4 Design Criteria for Room Noise Levels

(1) Room noise levels shall not exceed the sound level ranges shown for the chosen rating system in Table 1.2-2

(Minimum-Maximum Design Criteria for Noise in Interior Spaces).

CHAPTER 2.1 COMMON ELEMENTS FOR HOSPITALS

2.1-2.6.7 Nourishment Area or Room

2.1-2.1.6.7.5 Nourishment function may be combined with a clean utility without duplication of sinks and work counters.

2.1-2.6.12 Environmental Services Room

2.1-2.6.12.3 Environmental services and soiled rooms may be combined.

2.1-7.2.3 Surfaces

2.1-7.2.3.2 Flooring

2.1-7.2.3.2(14) The floors and wall bases of kitchens, soiled workrooms, and other areas subject to frequent wet cleaning shall be either seamless flooring with integral coved base, sealed ceramic tile with ceramic tile base, or equivalent.

***2.1-8.2.1 General**

Basic HVAC system requirements are defined in Part 6 of this document, ANSI/ASHRAE/ASHE Standard 170-2008: *Ventilation of Health Care Facilities*. This section of the Guidelines includes additional requirements.

***2.1-8.2.1 General**

***2.1-8.2.1.1 Mechanical system design**

(f) VAV systems. The energy-saving potential of variable-air-volume systems is recognized, and the requirements herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air-handling system with a common pressure dependent return system.

***2.1-8.2.1.1 Mechanical system design**

(2) Air-handling systems with unitary equipment that serves only one room. These units shall be permitted for use as recirculating units only. All outdoor air shall be provided by a separate air-handling system with proper filtration, as noted in 2.1-8.2.5.1 (Filter efficiencies).

(a) Recirculating room HVAC units themselves shall have a MERV 6 (or higher) filter in Filter Bank 1 and are not required to have Filter Bank 2. For more information see AIA (2006).

(b) Recirculating room units shall be allowed in General Laboratory rooms and Sterilizer Equipment rooms provided at least 6 air changes are provided by the air handling system and adequate total cooling capacity is provided.

2.1-8.2.2 HVAC Requirements for Specific Locations

2.1-8.2.2.7 Emergency and radiology waiting areas

When these areas are not enclosed, the exhaust air change rate shall be based on the general volume of the space designated for patients waiting for treatment.

2.1-8.2.4 HVAC Air Distribution

2.1-8.2.4.2 HVAC ductwork

***(2) Humidifiers**

(a) If humidifiers are located upstream of the final filters, they shall be at least twice the rated distance for full moisture absorption upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(d) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(e) Steam humidifiers shall be used. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

Appendix Language:

A2.1-8.2.4.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.

2.1-8.3.7 Call Systems

2.1-8.3.7.3 Bath Stations

Appendix Language:

A2.1-8.3.7.3 Where new construction or renovation work is undertaken, hospitals should make every effort to install assistance systems in all public and staff toilets.

2.1-8.4.3 Plumbing Fixtures

2.1-8.4.3.1 General

(1) Materials. The material used for plumbing fixtures shall be nonabsorptive and acid-resistant.

(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:

(a) avoid contaminating utensils and the contents of carafes, etc.

(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.

Appendix Language:

A2.1-8.4.3.2 Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.

2.1-8.4.3.6 Scrub sinks. Freestanding scrub sinks and lavatories used for scrubbing in procedure rooms shall be trimmed with foot, knee, or electronic sensor controls; single-lever wrist blades are not permitted.

CHAPTER 2.2 SPECIFIC REQUIREMENTS FOR GENERAL HOSPITALS

2.2-2.2 Medical/Surgical Nursing Unit

2.2-2.2.2 Patient Room

2.2-2.2.2.1 Capacity

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

*2.2-2.2.2.5 Hand-washing stations

(1) Location

(a) A hand-washing station shall be provided in every toilet room serving more than one patient. Alcohol-based hand sanitizers shall be provided where sinks are not required.

(b) A hand-washing station shall be provided in the patient room in addition to that in the toilet room.

(i) This hand-washing station shall be convenient for use by health care personnel and others entering and leaving the room.

(ii) When multi-patient rooms are permitted, this station shall be located outside the patients' cubicle curtains.

2.2-2.2.6 Support Areas for Medical/Surgical Nursing Units

2.2-2.2.6.5 Hand-washing stations. For design requirements, see 2.1-2.6.5.

(1) Hand-washing stations shall be conveniently accessible to the medication station and nourishment area. "Convenient" is defined as not requiring staff to access more than two spaces separated by a door.

(2) If it is convenient to each area, one hand-washing station shall be permitted to serve several areas.

2.2-3.2 Freestanding Emergency Care Facility

2.2-3.2.1 General

2.2-3.2.1.1 Definition

(1) "Freestanding emergency care facility" shall mean an extension of an existing hospital emergency department that is physically separate from (i.e., not located on the same campus as) the main hospital emergency department and that is intended to provide comprehensive emergency service.

(2) A freestanding emergency care facility that does not provide 24-hour-a-day, seven-day-a-week operation or that is not capable of providing basic services as defined for hospital emergency departments shall not be classified as a freestanding emergency care facility and shall be described under other portions of this document. Any facility advertising itself to the public as an emergency department or facility shall meet the requirements of Section 2.2-3.2.

2.2-3.2.1.2 Application. Except as noted in the following sections, the requirements for freestanding emergency service shall be the same as for hospital emergency service as described in Section 2.2-3.1 (Emergency Service).

2.2-3.2.2 Facility Requirements

This section is not adopted

2.2-3.3.3 Pre- and Postoperative Patient Care Areas

*2.2-3.3.3.3 Post-anesthetic care unit (PACU)

(4) Each PACU shall contain the following:

(a) A medication station.

(b) Hand-washing stations. At least one hand-washing station with hands-free or wrist-blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(c) Nurse station with charting facilities.

(d) Clinical sink.

(e) Provisions for bedpan cleaning.

(f) Storage space for stretchers, supplies, and equipment.

(g) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.

2.2-4.2 Pharmacy Service

2.2-4.2.1 General: Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services.

CHAPTER 3.1 OUTPATIENT FACILITIES

***3.1-3.2.2 General Purpose Examination/Observation Room**

3.1-3.2.2.2 Space requirements

(3) Existing general purpose examination rooms under review for addition to a hospital license shall be no less than 80 gross square feet and provide a minimum 2'-6" clearance around the examination table.

3.1-4.1.2 Laboratory Testing/Work Area

3.1-4.1.2.2 Work counters

(2) Work counters shall be sufficient to meet equipment specifications and lab technician needs and have the following:

- (a) Sinks.
- (b) Communications service.
- (c) Electrical service.

3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance

3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance (for ambulatory surgery facilities only). This shall be at grade level, sheltered from inclement weather, and accessible to the disabled.

A3.1-6.1.1 Accessibility requirements for all facility types can be found in 1.1-4.1

3.1-7.1 Building Codes and Standards

3.1-7.1.1.2

This Section is not adopted.

3.1-7.1.1.3

This section is not adopted.

3.1-7.1.3 Provision for Disasters

3.1-7.1.3.1 Earthquakes

Seismic force resistance of new construction for outpatient facilities shall comply with Section 1.2-6.5 (Provisions for Disasters). Where the outpatient facility is part of an existing building, that facility shall comply with applicable local codes.

3.1-7.2.2 Architectural Details

3.1-7.2.2.1 Corridor width

(1) Public corridors shall have a minimum width of 5 feet (1.52 meters). Staff-only corridors shall be permitted to be 3 feet 8 inches (1.12 meters) wide unless greater width is required by NFPA 101 (occupant load calculations). Existing clinics that do not use gurneys shall meet the requirements of NFPA 101 for appropriate occupancy type.

3.1-8.2.4 HVAC Air Distribution

3.1-8.2.4.1 Return air systems. For patient care areas where invasive applications or procedures are performed and rooms containing materials used in these applications and procedures, return air shall be via ducted systems.

3.1-8.4.3 Plumbing Fixtures

3.1-8.4.3.1 General

(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:

(a) avoid contaminating utensils and the contents of carafes, etc.

(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.

Appendix Language:

A3.1-8.4.3 Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.

CHAPTER 3.2 SPECIFIC REQUIREMENTS FOR PRIMARY CARE OUTPATIENT CENTERS

3.2-1.3 Site

3.2-1.3.1 Parking

This section is not adopted.

CHAPTER 3.3 SPECIFIC REQUIREMENTS FOR SMALL PRIMARY CARE (NEIGHBORHOOD) OUTPATIENT FACILITIES

3.3-1.3 Site

3.3-1.3.2 Parking

This section is not adopted.

CHAPTER 3.7 SPECIFIC REQUIREMENTS FOR OUTPATIENT SURGICAL FACILITIES

3.7-1.3 Site

3.7-1.3.2 Parking

This section is not adopted.

CHAPTER 3.11 SPECIFIC REQUIREMENTS FOR PSYCHIATRIC OUTPATIENT CENTERS

3.11-1.3 Site

3.11-1.3.1 Parking

This section is not adopted.

CHAPTER 5.1 MOBILE, TRANSPORTABLE, AND RELOCATABLE UNITS

5.1-1.1 Application

5.1-1.1.1 Unit Types

This section applies to mobile, transportable, and modular structures as defined below. These units can increase public access to needed services.

Mobile mammography units do not require review by the Department of Health, Construction Review Services.

Appendix Language:

A5.1-1.1.1 The facility providing services, including mobile mammography, should review these requirements in consideration of the service offering and the delivery of care model.

5.1-7.2 Architectural Details and Surfaces for Unit Construction

5.1-7.2.2 Surfaces

If the mobile unit is permanently installed, finishes shall comply with the requirements in this section.

5.1-7.2.2.1 Interior finish materials

(1) Interior finish materials shall meet the requirements of NFPA 101.

5.1-8.6 Safety and Security Systems

5.1-8.6.1 Fire Alarm System

Fire alarm notification shall be provided to the facility while the unit is on site.

5.1-8.6.1.2 Each mobile unit shall provide fire alarm notification by one of the following methods:

(1) Via an auto-dialer connected to the unit's smoke detectors.

(2) An audible device located on the outside of the unit.

(3) Connection to the building fire alarm system.

Part 6

ANSI/ASHRAE/ASHE Standard 170-2008: Ventilation of Health Care Facilities

Table 7-1 - Design Parameters

<u>Function of Space</u>	<u>RH (k), %</u>
<u>Class B and C operating rooms (m)(n)(o)</u>	<u>max 60</u>
<u>Operating/surgical cystoscopy (m)(n)(o)</u>	<u>max 60</u>
<u>Delivery room (Caesarean) (m)(n)(o)</u>	<u>max 60</u>
<u>Treatment room (p)</u>	<u>max 60</u>
<u>Trauma room (crisis or shock) (c)</u>	<u>max 60</u>
<u>Laser eye room</u>	<u>max 60</u>
<u>Class A Operating/Procedure room (o)(d)</u>	<u>max 60</u>
<u>Endoscopy</u>	<u>max 60</u>