WSR 11-10-014

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 25, 2011, 3:25 p.m., effective May 26, 2011]

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

Purpose: These rule revisions allow employees of school districts to share leave with employees of other school districts, educational service districts, state agencies, and institutions of higher education. In addition, the maximum number of days of shared leave that an employee is allowed to receive is raised from two hundred sixty-one to five hundred twenty-two days.

Citation of Existing Rules Affected by this Order: Amending WAC 392-126-075, 392-126-090, and 392-126-099.

Statutory Authority for Adoption: RCW 28A.400.280.

Adopted under notice filed as WSR 11-06-002 on February 16, 2011.

Changes Other than Editing from Proposed to Adopted Version: Received comments suggesting clarifying language that this is an optional adoption by school districts; incorporated into the language for WAC 392-126-101. Also received comments suggesting clarification that sharing leave between districts requires conversion of time donated into dollars sent, and then conversion of dollars received into leave time received.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 5, 2011.

Randy Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-126-032 Definition—Agency. As used in this chapter, "agency" means departments, offices, agencies, or institutions of state government, the legislature, and institutions of higher education.

AMENDATORY SECTION (Amending Order 98-11, filed 11/24/98, effective 12/25/98)

WAC 392-126-075 Eligibility. In the event a district implements a shared leave program, an employee shall be eligible to receive shared leave under the following conditions:

(1) The employee's job is one in which annual leave, sick leave, or personal holiday can be used and accrued.

(2) The employee is not eligible for time loss compensation under chapter 51.32 RCW.

(3) The employee has abided by district policies regarding the use of sick leave.

(4) The employee has exhausted, or will exhaust, his or her annual leave, sick leave and personal holiday.

(5) The condition has caused, or is likely to cause, the employee to go on leave without pay or terminate district employment.

(6) ((~~Leave sharing is limited to transfers from employees within the same employing district.~~)) Districts shall have the option of allowing their employees to share leave with:

(a) Employees of the same employing district, as outlined in WAC 392-126-099; or

(b) Employees of other districts or agencies, as outlined in WAC 392-126-101.

AMENDATORY SECTION (Amending Order 98-11, filed 11/24/98, effective 12/25/98)

WAC 392-126-090 Maximum amount. The district shall determine the amount of shared leave a ((~~leave~~)) recipient may receive and may only authorize an employee to use up to a maximum of ((~~two hundred sixty-one~~)) five hundred twenty-two days of shared leave during total district employment. All forms of paid leave available for use by the recipient must be used prior to using shared leave.

AMENDATORY SECTION (Amending Order 25, filed 8/21/90, effective 9/21/90)

WAC 392-126-099 Calculation of shared leave benefit—Proration. Shared leave between employees of the same district shall be calculated as follows:

(1) The leave recipient shall be paid his or her regular rate of pay; therefore, one hour of shared leave may cover more or less than one hour of the recipient's salary. The dollar value of the leave shall be converted from the donor to the recipient. The leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

(2) In the alternative the dollar value of the leave donated shall be ignored and the leave shall be calculated on a day donated and day received basis.

(3) Regardless of which basis is used to calculate and account for shared leave, in the event the district determines that unused shared leave should be returned to leave donors, the district shall develop a plan for prorated return of both annual and sick leave.

NEW SECTION

WAC 392-126-101 Shared leave benefits—Transfers between districts—Calculations of donated leave amounts. (1) Districts shall have the option, as a matter of board policy, of allowing their employees to share leave with employees of other districts or agencies, or to receive leave from employees of other districts or agencies.

(2) The leave recipient shall be paid his or her regular rate of pay; therefore, one hour of shared leave may cover more or less than one hour of the recipient's salary.

(3) Leave shared between districts and/or agencies shall be calculated in a format designated by the office of superintendent of public instruction. Donated shared leave shall be converted into the dollar equivalent. Received shared leave shall be converted from the dollar amount received into days to be paid. Shared leave shall be transferred between districts and/or agencies based on the dollar equivalent computed under this section.

(4) Leave received shall be coded as shared leave and shall be maintained separately from all other leave balances.

(5) In the event the district determines that unused shared leave should be returned to leave donors, the district shall develop a plan for prorated return of any unused leave.

WSR 11-10-015
PERMANENT RULES
EASTERN WASHINGTON UNIVERSITY

[Filed April 26, 2011, 7:56 a.m., effective May 27, 2011]

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

Purpose: As required by RCW 28B.10.590, Eastern Washington University proposes these rules to give students more choices for purchasing educational materials and to encourage faculty and staff to work closely with bookstores and publishers to implement the least costly option without sacrificing educational content and to provide maximum cost savings to students.

Citation of Existing Rules Affected by this Order: Amending chapter 172-132 WAC, Course materials.

Statutory Authority for Adoption: RCW 28B.10.590 and 28B.35.120(12).

Adopted under notice filed as WSR 11-05-091 on February 16, 2011.

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

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

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

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

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

Date Adopted: April 26, 2011.

Trent Lutey
University Policy Administrator

AMENDATORY SECTION (Amending WSR 09-06-062, filed 3/2/09, effective 4/2/09)

WAC 172-132-030 Cost savings for course materials. The Eastern Washington University Bookstore will:

(1) Provide students the option of purchasing materials that are unbundled whenever possible;

(2) Disclose to faculty and staff the costs to students of purchasing materials and disclose retail costs for course materials on a per course basis to faculty and staff and make this information publicly available;

(3) Disclose publicly how new editions vary from previous editions by providing the contact information for the publisher;

(a) When a new edition of a textbook is ordered by faculty, the bookstore will notify them of the retail cost change to the students if this information is available. The bookstore will also inquire if students may use the old edition if it is available.

(b) The bookstore will provide notice that this is a new edition, and whether or not the student may use the old edition.

(4) Disclose information to students on required course materials including but not limited to title, authors, edition, price, and International Standard Book Number (ISBN) at least four weeks before the start of the class for which the materials are required. The chief academic officer may waive this disclosure requirement on a case-by-case basis, if students may reasonably expect that nearly all information regarding course materials is available four weeks before the start of the class for which the materials are required. The disclosure requirement does not apply if the faculty member using the course materials is hired four weeks or less before the start of class; and,

((~~(4)~~)) (5) Promote and publicize book buy-back programs;

((~~(5) Encourage f~~)) Faculty and staff members will ((~~to~~)) consider the least costly practices in assigning course materials, such as adopting the least expensive edition available, adopting free, open textbooks when available, and working with college librarians to put together collections of free online web and library resources, when educational content is comparable as determined by the faculty ((~~and working closely with publishers and local bookstores to create bundles and packages if they deliver cost savings to students~~)).

WSR 11-10-019
PERMANENT RULES
OFFICE OF FINANCIAL MANAGEMENT
[Filed April 26, 2011, 10:28 a.m., effective May 27, 2011]

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

Purpose: To establish official pay dates for state officers and employees for calendar year 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 82-50-021.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 11-04-019 on January 24, 2011.

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

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

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

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

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

Date Adopted: April 19, 2010 [2011].

Roselyn Marcus
Director of Legal Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-011, filed 4/22/10, effective 5/23/10)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years ((~~2010 and~~)) 2011 and 2012:

((~~CALENDAR YEAR 2010~~	~~CALENDAR YEAR 2011~~
~~Monday, January 11, 2010~~	~~Monday, January 10, 2011~~
~~Monday, January 25, 2010~~	~~Tuesday, January 25, 2011~~
~~Wednesday, February 10, 2010~~	~~Thursday, February 10, 2011~~
~~Thursday, February 25, 2010~~	~~Friday, February 25, 2011~~
~~Wednesday, March 10, 2010~~	~~Thursday, March 10, 2011~~
~~Thursday, March 25, 2010~~	~~Friday, March 25, 2011~~
~~Friday, April 9, 2010~~	~~Monday, April 11, 2011~~
~~Monday, April 26, 2010~~	~~Monday, April 25, 2011~~
~~Monday, May 10, 2010~~	~~Tuesday, May 10, 2011~~
~~Tuesday, May 25, 2010~~	~~Wednesday, May 25, 2011~~
~~Thursday, June 10, 2010~~	~~Friday, June 10, 2011~~
~~Friday, June 25, 2010~~	~~Friday, June 24, 2011~~
~~Friday, July 9, 2010~~	~~Monday, July 11, 2011~~
~~Monday, July 26, 2010~~	~~Monday, July 25, 2011~~
~~Tuesday, August 10, 2010~~	~~Wednesday, August 10, 2011~~
~~Wednesday, August 25, 2010~~	~~Thursday, August 25, 2011~~
~~Friday, September 10, 2010~~	~~Friday, September 9, 2011~~
~~Friday, September 24, 2010~~	~~Monday, September 26, 2011~~
~~Friday, October 8, 2010~~	~~Friday, October 7, 2011~~
~~Monday, October 25, 2010~~	~~Tuesday, October 25, 2011~~
~~Wednesday, November 10, 2010~~	~~Thursday, November 10, 2011~~
~~Wednesday, November 24, 2010~~	~~Wednesday, November 23, 2011~~
~~Friday, December 10, 2010~~	~~Friday, December 9, 2011~~
~~Thursday, December 23, 2010~~	~~Friday, December 23, 2011~~))

CALENDAR YEAR 2011	CALENDAR YEAR 2012
Monday, January 10, 2011	Tuesday, January 10, 2012
Tuesday, January 25, 2011	Wednesday, January 25, 2012
Thursday, February 10, 2011	Friday, February 10, 2012
Friday, February 25, 2011	Friday, February 24, 2012
Thursday, March 10, 2011	Friday, March 9, 2012
Friday, March 25, 2011	Monday, March 26, 2012
Monday, April 11, 2011	Tuesday, April 10, 2012
Monday, April 25, 2011	Wednesday, April 25, 2012
Tuesday, May 10, 2011	Thursday, May 10, 2012
Wednesday, May 25, 2011	Friday, May 25, 2012
Friday, June 10, 2011	Monday, June 11, 2012
Friday, June 24, 2011	Monday, June 25, 2012
Monday, July 11, 2011	Tuesday, July 10, 2012
Monday, July 25, 2011	Wednesday, July 25, 2012
Wednesday, August 10, 2011	Friday, August 10, 2012
Thursday, August 25, 2011	Friday, August 24, 2012
Friday, September 9, 2011	Monday, September 10, 2012
Monday, September 26, 2011	Tuesday, September 25, 2012
Friday, October 7, 2011	Wednesday, October 10, 2012
Tuesday, October 25, 2011	Thursday, October 25, 2012
Thursday, November 10, 2011	Friday, November 9, 2012
Wednesday, November 23, 2011	Monday, November 26, 2012
Friday, December 9, 2011	Monday, December 10, 2012
Friday, December 23, 2011	Monday, December 24, 2012

WSR 11-10-046
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)
[Filed April 28, 2011, 1:55 p.m., effective May 29, 2011]

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

Purpose: The Washington state board of pharmacy (board) is repealing WAC 246-856-030 Delegation of authority to initiate investigations. This rule is not necessary because the board has statutory authority to delegate decisions to initiate investigations to a panel.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-856-030.

Statutory Authority for Adoption: RCW 18.130.050(1), 18.64.005(7).

Adopted under notice filed as WSR 10-21-121 on October 20, 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 1.

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

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

Date Adopted: April 28, 2011.

A. J. Linggi, Chair
Board of Pharmacy

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-856-030	Delegation of authority to initiate investigations.

WSR 11-10-049
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 11-78—Filed April 28, 2011, 4:12 p.m., effective May 29, 2011]

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

Purpose: This amendment deletes the requirement for a bald eagle management plan unless the bald eagle is listed as endangered or threatened in Washington state.

The bald eagle protection rule was established by the fish and wildlife commission in 1986 to ensure habitat protection for bald eagles. Currently, this rule requires agencies (e.g. department of natural resources, local governments) that issue permits for timber harvest, building, or land development to review a database of bald eagle nest and communal roost locations before issuing a permit. If a nest or communal roost is determined to be on the property proposed for development, then a bald eagle management plan between Washington department of fish and wildlife (WDFW) and the landowner is developed to help ensure minimal impact on bald eagles. In 2007, the bald eagle was removed from the federal endangered species list. Following the federal delisting, the state status for bald eagle was downlisted from endangered to sensitive in Washington.

The United States Fish and Wildlife Service (USFWS) has continuing authority and obligation to manage this species under the Bald and Golden Eagle Protection Act. Landowners who currently have a bald eagle management plan will need to review their activities with USFWS to determine if a federal permit is required; any landowners who need a new or revised permit will be referred directly to the USFWS.

Reasons Supporting Proposal: WDFW recognizes that bald eagle recovery has occurred and that for this reason emphasis on site-specific bald eagle habitat management should be reduced. The substantial reduction in bald eagle management efforts has been identified as an opportunity for wildlife and habitat programs to shift focus to more pressing issues.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-292.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 11-03-088 on January 19, 2011.

Changes Other than Editing from Proposed to Adopted Version: Changes from the text of the proposed rule and reasons for difference:

- Section 1.1 was changed to provide the rule's applicability:
  Rule Applicability
  1.1 The following rules are only applicable and enforceable when the bald eagle is listed under state law as threatened or endangered.
- The changes in the version of the rule filed with the CR-102 were dropped so that the original language remained in place.
- Sections were renumbered accordingly.

These changes were made to provide greater clarity to the rule.

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 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: April 8, 2011.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 01-283, filed 12/28/01, effective 1/28/02)

WAC 232-12-292 Bald eagle protection rules.

Rule applicability

1.1 The following rules are only applicable and enforceable when the bald eagle is listed under state law as threatened or endangered.

Purpose

((~~1.1~~)) 2.1 The purpose of these rules is to protect the habitat and thereby maintain the population of the bald eagle so that the species is not classified as threatened, endangered or sensitive in Washington state. This can best be accomplished by promoting cooperative efforts to manage for eagle habitat needs through a process which is sensitive to the landowner goals as well. The following rules are designed to promote such cooperative management.

Authority

((~~2.1~~)) 3.1 These rules are promulgated pursuant to RCW 77.12.655.

Definitions

((~~3.1~~)) 4.1 "Communal roost site" means all of the physical features surrounding trees used for night roosting that are important to the suitability of the roost for eagle use. These features include flight corridors, sources of disturbance, trees in which eagles spend the night, trees used for perching during arrival or departure and other trees or physical features, such as hills, ridges, or cliffs that provide wind protection.

((~~3.2~~)) 4.2 "Cultural activities" means activities conducted to foster the growth of agricultural plants and animals.

((~~3.3~~)) 4.3 "Department" means department of fish and wildlife.

((~~3.4~~)) 4.4 "Endangered" means a species which is seriously threatened with extirpation throughout all or a significant portion of its range within Washington.

((~~3.5~~)) 4.5 "Government entities" means all agencies of federal, state and local governments.

((~~3.6~~)) 4.6 "Landowner" means any individual, private, partnership, nonprofit, municipal, corporate, city, county, or state agency or entity which exercises control over a bald eagle habitat whether such control is based on legal or equitable title, or which manages or holds in trust land in Washington state.

((~~3.7~~)) 4.7 "Nest tree" means any tree that contains a bald eagle nest or has contained a nest.

((~~3.8~~)) 4.8 "Nest site" means all of the physical features surrounding bald eagle nests that are important to normal breeding behavior. These features include alternate and potential nest trees, perch trees, vegetative screening, foraging area, frequently used flight paths, and sources of disturbance. This site is also referred to as the territory defended by a breeding pair of eagles.

((~~3.9~~)) 4.9 "Perch tree" means a tree that is consistently used by eagles. It is often close to a nest or feeding site and is used for resting, hunting, consumption of prey, mating display and as a sentry post to defend the nest.

((~~3.10~~)) 4.10 "Predacides" means chemicals used to kill or control problem wildlife.

((~~3.11~~)) 4.11 "Region" means an ecological/geographic area that forms a unit with respect to eagles, e.g., Hood Canal, lower Columbia River, outer coast and south Puget Sound.

((~~3.12~~)) 4.12 "Sensitive" means any wildlife species native to the state of Washington that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats.

((~~3.13~~)) 4.13 "Site management plan" means a legal agreement between the department and the landowner for management of a bald eagle nest or roost site. This plan may be a list of conditions on a permit or a more detailed, site-specific plan.

((~~3.14~~)) 4.14 "Threatened" means a species that could become endangered within Washington without active management or removal of threats.

Applicability and operation

((~~4.1~~)) 5.1 The department shall make available to other governmental entities, interest groups, landowners and individuals information regarding the location and use pattern of eagle nests and communal roosts.

((~~4.2~~)) 5.2 The department shall itself and through cooperative efforts (such as memoranda of understandings pursuant to chapter 39.34 RCW) work with other government agencies and organizations to improve the data base for nest and communal roost site activity and productivity and to protect eagle habitats through site management plans.

((~~4.3~~)) 5.3 The department's goal shall be to identify, catalog and prioritize eagle nest or communal roost sites. The department shall notify permitting agencies of nesting or roost site locations.

((~~4.4~~)) 5.4 When a landowner applies for a permit for a land-use activity that involves land containing or adjacent to an eagle nest or communal roost site, the permitting agency shall notify the department.

If the department determines that the proposed activity would adversely impact eagle habitat, a site management plan shall be required. The department, a permitting agency, or wildlife biologist may work with the landowner to develop a plan. The department has final approval authority on all plans.

((~~4.5~~)) 5.5 It is recognized that normal on-going agricultural activities of land preparation, cultivating, planting, harvesting, other cultural activities, grazing and animal-rearing activities in existing facilities do not have significant adverse consequences for eagles and therefore do not require a site management plan. New building construction, conversion of lands from agriculture to other uses, application of predacides and aerial pesticide spraying, may, following a conference with the department, be subject to the site management planning process described in these rules.

((~~4.6~~)) 5.6 Emergency situations, such as insect infestation of crops, requires immediate action on the site management plan or special permission to address the impending crisis by the department.

Site management plan for bald eagle habitat protection

((~~5.1~~)) 6.1 The purpose of the site management plan is to provide for the protection of specific bald eagle habitat in such a way as to recognize the special characteristics of the site and the landowner's property rights, goals and pertinent options. To this end, every land owner shall have fair access to the process including available incentives and benefits. Any relevant factor may be considered, including, but not limited to, the following:

((~~5.1.1~~)) 6.1.1 The status of the eagle population in the region.

((~~5.1.2~~)) 6.1.2 The useful life of the nest or communal roost trees and condition of the surrounding forest; the topography; accessibility and visibility; and existing and alternative flight paths, perch trees, snags and potential alternative nest and communal roost trees.

((~~5.1.3~~)) 6.1.3 Eagle behavior and historical use patterns, available food sources, and vulnerability to disturbance.

((~~5.1.4~~)) 6.1.4 The surrounding land-use conditions, including degree of development and human use.

((~~5.1.5~~)) 6.1.5 Land ownership, landowner ability to manage, and flexibility of available landowner options.

((~~5.1.6~~)) 6.1.6 Appropriate and acceptable incentive mechanisms such as conservation easements, transfer or purchase of development rights, leases, mutual covenants, or land trade or purchase.

((~~5.1.7~~)) 6.1.7 Published recommendations for eagle habitat protection of other government entities such as the U.S. Fish and Wildlife Service.

((~~5.2~~)) 6.2 The site management plan may provide for

((~~5.2.1~~)) 6.2.1 Tailoring the timing, duration or physical extent of activities to minimize disturbance to the existing eagle habitat and, where appropriate, identifying and taking steps to encourage and create alternative eagle habitat; and

((~~5.2.2~~)) 6.2.2 Establishing a periodic review of the plan to monitor whether:

a) The plan requires amendment in response to changing eagle and landowner circumstances

b) The terms of the plan comply with applicable laws and regulations,

c) The parties to the plan are complying with its terms.

((~~5.3~~)) 6.3 The site management plan may also provide for implementing landowner incentive and compensation mechanisms through which the existing eagle habitat can be maintained or enhanced.

Guidelines for acquisition of bald eagle habitat

((~~6.1~~)) 7.1 Real property interests may be acquired and agreements entered into which could enhance protection of bald eagle habitat. These include fee simple acquisition, land trades, conservation easements, transfer or purchase of development rights, leases, and mutual covenants. Acquisition shall be dependent upon having a willing seller and a willing buyer. Whatever interest or method of protection is preferable will depend on the particular use and ownership characteristics of a site. In discussing conservation objectives with private or public landowners, the department shall explore with the landowner the variety of protection methods which may be appropriate and available.

((~~6.2~~)) 7.2 The following criteria and priorities shall be considered by the department when it is contemplating acquiring an interest in a bald eagle habitat.

((~~6.2.1~~)) 7.2.1 Site considerations:

a) Relative ecological quality, as compared to similar habitats

b) Ecological viability—the ability of the habitat and eagle use to persist over time

c) Defensibility—the existence of site conditions adequate to protect the eagle habitat from unnatural encroachments

d) Manageability—the ability to manage the site to maintain suitable eagle habitat

e) Proximity to food source

f) Proximity to other protected eagle habitat

g) Proximity to department land or other public land

h) Eagle population density and history of eagle use in the area

i) The natural diversity of native species, plant communities, aquatic types, and geologic features on the site.

((~~6.2.2~~)) 7.2.2 Other considerations

a) Ownership

b) Degree of threat

c) Availability of funding

d) Existence of willing donor or seller and prior agency interest

e) Cost

In general, priority shall be given to the most threatened high quality eagle habitats with associated natural values which require the least management.

Resolution of site management plan disputes

((~~7.1~~)) 8.1 The department and the landowner shall attempt to develop a mutually agreeable site management plan within 30 days of the original notice to the department.

((~~7.2~~)) 8.2 Should agreement not be reached, the landowner may request an informal settlement conference with the department.

((~~7.3~~)) 8.3 If the landowner chooses not to use the informal settlement conference process or if resolution is not reached, the department shall within 15 days provide a site management plan to the landowner.

((~~7.4~~)) 8.4 Upon issuance of a final site management plan, the landowner may initiate a formal appeal of the department's decision. The appeal shall be conducted according to the Administrative Procedure Act, chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC.

A request for an appeal shall be in writing and shall be received by the department during office hours within thirty days of the issuance of the final site management plan. Requests for appeal shall be mailed to Department of Fish and Wildlife, 600 Capitol Way N., Olympia, Washington 98501-1091, or hand delivered to 1111 Washington Street S.E., Wildlife Program, Fifth floor. If there is no timely request for an appeal, the site management plan shall be unappealable.

The written request for an appeal shall be plainly labeled as "request for formal appeal" and shall contain the following:

(a) The name, address, and phone number of the person requesting the appeal;
(b) The specific site management plan that the person contests;
(c) The date of the issuance of the site management plan;
(d) Specific relief requested; and
(e) The attorney's name, address, and phone number, if the person is represented by legal counsel.

The appeal may be conducted by the director, the director's designee, or by an administrative law judge (ALJ) appointed by the office of administrative hearings. If conducted by an ALJ, the ALJ shall issue an initial order pursuant to RCW 34.05.461. The director or the director's designee shall review the initial order and enter a final order as provided by RCW 34.05.464.

Penalties

((~~8.1~~)) 9.1 Failure of a landowner to comply with the processes set forth in these rules or with the provisions of a site management plan approved by the department constitutes a misdemeanor as set forth in RCW 77.15.130.

WSR 11-10-051
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed April 29, 2011, 10:43 a.m., effective May 30, 2011]

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

Purpose: To extend the expiration date of the current tariff for pilotage services in the Puget Sound pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 11-06-055 on March 1, 2011.

Changes Other than Editing from Proposed to Adopted Version: The proposed version reflected a range of dates from which to select a new expiration date for the current annual Puget Sound pilotage district tariff. The adopted date is December 31, 2011.

The board determined that the tariff currently in effect will extend through the end of this calendar year.

Subsequent tariffs will be effective on a calendar year basis beginning January 1, 2012.

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 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: April 29, 2011.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 10-24-085, filed 11/30/10, effective 12/31/10)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, 2010, through 2400 hours ((~~June 30~~)) December 31, 2011.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	

CLASSIFICATION	RATE
Per LOA rate schedule in this section.	
Boarding charge:	$48.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	$349.00
Radio Direction Finder Calibration	$349.00
Launching Vessels	$524.00
Trial Trips, 6 hours or less (minimum $984.00)	$164.00 per hour
Trial Trips, over 6 hours (two pilots)	$328.00 per hour
Shilshole Bay – Salmon Bay	$205.00
Salmon Bay – Lake Union	$159.00
Lake Union – Lake Washington (plus LOA zone from Webster Point)	$205.00
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	

Waterway and Bridge Charges:
Ships up to 90' beam:
A charge of $258.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of $123.00 per bridge.

Ships 90' beam and/or over:
A charge of $350.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of $244.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:
In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:
Applicable harbor shift rate to apply, plus $266.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is $266.00 for every hour or fraction thereof.

Sailing Delay:
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is $266.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:
When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of $266.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:
When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of $266.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in

addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of $0.0082 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of $0.0846 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be $0.1012 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - $15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x $2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge	$2,107.00
Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	$283.00 per hour
Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.	$283.00 per hour
Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.	$525.00
Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.	$499.00
Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.	$630.00

Training Surcharge:
On January 1, 2011, a surcharge of $15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:
The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	255	396	675	1,006	1,354	1,757
450 - 459	266	403	679	1,021	1,376	1,766
460 - 469	268	407	690	1,038	1,395	1,774
470 - 479	277	419	698	1,059	1,399	1,777
480 - 489	285	426	701	1,078	1,408	1,785
490 - 499	289	432	712	1,098	1,424	1,794
500 - 509	304	440	722	1,110	1,436	1,805
510 - 519	306	448	729	1,127	1,451	1,812
520 - 529	310	464	740	1,132	1,464	1,826
530 - 539	319	470	749	1,145	1,487	1,847
540 - 549	324	476	766	1,157	1,510	1,864
550 - 559	331	492	771	1,174	1,522	1,882
560 - 569	343	512	786	1,185	1,536	1,899
570 - 579	350	516	789	1,190	1,552	1,912
580 - 589	365	524	808	1,199	1,561	1,931
590 - 599	382	536	813	1,205	1,584	1,954
600 - 609	396	552	824	1,209	1,604	1,963
610 - 619	418	557	838	1,214	1,619	1,981
620 - 629	434	564	846	1,229	1,638	2,004
630 - 639	454	574	855	1,232	1,652	2,021
640 - 649	472	587	864	1,234	1,666	2,036
650 - 659	505	597	880	1,244	1,686	2,057
660 - 669	515	605	887	1,251	1,705	2,073
670 - 679	534	620	896	1,274	1,724	2,086
680 - 689	541	630	908	1,284	1,739	2,106
690 - 699	557	640	922	1,307	1,757	2,150
700 - 719	582	661	939	1,324	1,791	2,174
720 - 739	616	679	963	1,342	1,826	2,210
740 - 759	640	712	982	1,354	1,864	2,250
760 - 779	665	734	1,006	1,376	1,899	2,279
780 - 799	698	767	1,021	1,395	1,931	2,320
800 - 819	726	789	1,041	1,402	1,963	2,355
820 - 839	749	818	1,065	1,424	2,004	2,382
840 - 859	781	851	1,086	1,441	2,034	2,423
860 - 879	810	880	1,105	1,478	2,073	2,458
880 - 899	838	905	1,127	1,512	2,106	2,494
900 - 919	863	935	1,146	1,551	2,150	2,528
920 - 939	890	963	1,174	1,584	2,172	2,563
940 - 959	922	988	1,191	1,619	2,210	2,594
960 - 979	943	1,017	1,212	1,652	2,250	2,633

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
980 - 999	974	1,041	1,233	1,686	2,279	2,667
1000 - 1019	1,034	1,108	1,288	1,776	2,387	2,782
1020 - 1039	1,062	1,141	1,328	1,826	2,459	2,863
1040 - 1059	1,094	1,169	1,367	1,882	2,529	2,948
1060 - 1079	1,127	1,210	1,407	1,938	2,608	3,035
1080 - 1099	1,161	1,244	1,448	1,994	2,684	3,127
1100 - 1119	1,194	1,282	1,492	2,056	2,765	3,221
1120 - 1139	1,231	1,323	1,538	2,116	2,848	3,317
1140 - 1159	1,266	1,360	1,582	2,179	2,934	3,418
1160 - 1179	1,304	1,399	1,632	2,245	3,021	3,518
1180 - 1199	1,344	1,442	1,679	2,312	3,113	3,625
1200 - 1219	1,385	1,485	1,728	2,382	3,206	3,732
1220 - 1239	1,424	1,530	1,779	2,453	3,300	3,844
1240 - 1259	1,467	1,575	1,831	2,526	3,400	3,958
1260 - 1279	1,510	1,621	1,887	2,602	3,503	4,077
1280 - 1299	1,555	1,671	1,945	2,680	3,605	4,200
1300 - 1319	1,603	1,718	2,001	2,759	3,714	4,324
1320 - 1339	1,651	1,771	2,063	2,842	3,824	4,455
1340 - 1359	1,698	1,824	2,124	2,926	3,939	4,589
1360 - 1379	1,750	1,877	2,187	3,016	4,055	4,724
1380 - 1399	1,801	1,933	2,254	3,104	4,178	4,868
1400 - 1419	1,856	1,992	2,319	3,196	4,302	5,013
1420 - 1439	1,911	2,052	2,389	3,293	4,433	5,163
1440 - 1459	1,970	2,114	2,462	3,391	4,565	5,317
1460 - 1479	2,025	2,175	2,534	3,492	4,702	5,474
1480 - 1499	2,087	2,240	2,609	3,596	4,841	5,639
1500 & Over	2,150	2,308	2,686	3,706	4,985	5,807

WSR 11-10-052
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed April 29, 2011, 10:47 a.m., effective May 30, 2011]

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

Purpose: To extend the expiration date of the current tariff for pilotage services in the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 11-06-056 on March 1, 2011.

Changes Other than Editing from Proposed to Adopted Version: The proposed version reflected a range of dates from which to select a new expiration date for the current annual Grays Harbor pilotage district tariff. The adopted date is December 31, 2011.

The board determined that the tariff currently in effect will extend through the end of this calendar year.

Subsequent tariffs will be effective on a calendar year basis beginning January 1, 2012.

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.

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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 Mak-

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

Date Adopted: April 29, 2011.

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 10-13-084, filed 6/15/10, effective 8/1/10)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, 2010, through 2400 hours ((~~July 31~~)) December 31, 2011.

CLASSIFICATION	RATE
Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:	
Draft and Tonnage Charges:	
Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.	
Draft	$100.12 per meter or $30.51 per foot
Tonnage	$0.287 per net registered ton
Minimum Net Registered Tonnage	$1,004.00
Extra Vessel (in case of tow)	$562.00
Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged $5,562.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.	
Boarding Charge:	
Per each boarding/deboarding from a boat or helicopter	$1,030.00
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	$699.00
Delays per hour	$164.00
Cancellation charge (pilot only)	$274.00
Cancellation charge (boat or helicopter only)	$822.00
Two Pilots Required:	
When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of $699.00 and in addition, when a bridge is transited the bridge transit charge of $301.00 shall apply.	
Pension Charge:	
Charge per pilotage assignment, including cancellations	$271.00
Travel Allowance:	
Transportation charge per assignment	$100.00
Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid $931.00 for each day or fraction thereof, and the travel expense incurred.	
Bridge Transit:	
Charge for each bridge transited	$301.00
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	$833.00
Miscellaneous:	
The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.	

WSR 11-10-061
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed May 2, 2011, 10:29 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: ESHB 2876 (chapter 209, Laws of 2010) directs the dental quality assurance commission to adopt new rules for the management of chronic noncancer pain. The adopted rules include the mandatory elements for dosing criteria, guidance on specialty consultations, guidance on tracking clinical progress, and guidance on tracking opioid use. The adopted rules also describe practitioner consultation exemptions.

Statutory Authority for Adoption: RCW 18.32.785.

Other Authority: RCW 18.32.0365.

Adopted under notice filed as WSR 11-04-088 on February 2, 2011.

Changes Other than Editing from Proposed to Adopted Version: The adopted rules include the following changes from the proposed rules published as WSR 11-04-088:

- Definitions, WAC 246-817-910.
  - o The terms "episodic care," "morphine equivalent dose," and "multidisciplinary pain clinic" are added to the definitions.
  - o he terms "physical dependence," "psychological dependence," and "tolerance" are deleted as these terms are not used in the rules.
- Written agreement for treatment, WAC 246-817-930(4), "or multidisciplinary pain clinic" and "or pharmacy system" are added.
- Long-acting opioids, including methadone, WAC 246-817-940, in the third sentence, after "one-time," "(lifetime)" is added.
- Consultation: Recommendations and requirements, WAC 246-817-950(2), "threshold for adults" is added to clarify the morphine equivalent dose (MED) threshold is for adults. The word "oral" is also added to clarify that the threshold is based on an "oral" dose. Language regarding pediatric patients is also added at the end of the paragraph: "Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged."
- Pain management specialist, WAC 246-817-965 (1)(d)(iii) and (3)(d), language is added to clarify that the current practice may also be in a multidisciplinary pain clinic setting.

The adopted rules also include edits for grammar, punctuation, and formatting.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@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 14, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 0, Repealed 0.

Date Adopted: March 25, 2011.

Andrew A. Vorono, Chair
Dental Quality Assurance Commission

PAIN MANAGEMENT

NEW SECTION

WAC 246-817-901 Pain management—Intent. These rules govern the use of opioids in the treatment of patients for chronic noncancer pain.

NEW SECTION

WAC 246-817-905 Exclusions. The rules adopted under WAC 246-817-901 through 246-817-965 do not apply to:

(1) The provision of palliative, hospice, or other end-of-life care; or

(2) The management of acute pain caused by an injury or surgical procedure.

NEW SECTION

WAC 246-817-910 Definitions. The definitions in this section apply in WAC 246-817-901 through 246-817-965 unless the context clearly requires otherwise.

(1) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

(3) "Chronic noncancer pain" means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

(4) "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a practitioner other than the designated primary care practitio-

ner in the acute care setting, for example, urgent care or emergency department.

(6) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities.

(7) "Morphine equivalent dose" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(8) "Multidisciplinary pain clinic" means a clinic or office that provides comprehensive pain management and includes care provided by multiple available disciplines or treatment modalities, for example, medical care through physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, and physical therapy, occupational therapy, or other complementary therapies.

(9) "Palliative" means care that improves the quality of life of patients and their families facing life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

NEW SECTION

WAC 246-817-915 Patient evaluation. The dentist shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.

(1) The patient's health history shall include:

(a) Current and past treatments for pain;

(b) Comorbidities; and

(c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to the dentist.

(3) The initial patient evaluation shall include:

(a) Physical examination;

(b) The nature and intensity of the pain;

(c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

(viii) Repeated visits to emergency departments seeking opioids;

(ix) History of sleep apnea or other respiratory risk factors;

(x) Possible or current pregnancy; and

(xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the dentist; and

(f) The dentist's instructions to the patient.

NEW SECTION

WAC 246-817-920 Treatment plan. (1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the dentist should adjust drug therapy to the individual health needs of the patient. The dentist shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The dentist shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

NEW SECTION

WAC 246-817-925 Informed consent. The dentist shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

NEW SECTION

WAC 246-817-930 Written agreement for treatment. Chronic noncancer pain patients should receive all chronic pain management prescriptions from one dentist and one

pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing dentist shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:

(1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the dentist;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;

(3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);

(4) The requirement that all chronic pain management prescriptions are provided by a single prescriber or multidisciplinary pain clinic and dispensed by a single pharmacy or pharmacy system;

(5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;

(6) A written authorization for:

(a) The dentist to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and

(b) Other practitioners to report violations of the agreement back to the dentist.

(7) A written authorization that the dentist may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

(9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the dentist's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-817-935 Periodic review. The dentist shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving non-escalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the dentist shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the dentist's evaluation of progress towards treatment objectives.

(2) The dentist shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The dentist shall consider tapering, changing, or discontinuing treatment when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The dentist should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The dentist should periodically review any relevant information from a pharmacist provided to the dentist.

NEW SECTION

WAC 246-817-940 Long-acting opioids, including methadone. Long-acting opioids, including methadone, should only be prescribed by a dentist who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. Dentists prescribing long-acting opioids or methadone should have a one-time (lifetime) completion of at least four hours of continuing education relating to this topic.

NEW SECTION

WAC 246-817-945 Episodic care. (1) When evaluating patients for episodic care, such as emergency or urgent care, the dentist should review any available prescription monitoring program, emergency department-based information exchange, or other tracking system.

(2) Episodic care practitioners should avoid providing opioids for chronic pain management. However, if opioids are provided, the practitioner should limit the use of opioids for a chronic noncancer pain patient to the minimum amount necessary to control the pain until the patient can receive care from a primary care practitioner.

(3) Prescriptions for opioids written by an episodic care practitioner shall include indications for use or the International Classification of Diseases (ICD) code and shall be written to require photo identification of the person picking up the prescription in order to fill.

(4) If a patient has signed a written agreement for treatment and has provided a written authorization to release the agreement under WAC 246-817-930(6) to episodic care practitioners, then the episodic care practitioner should report known violations of the agreement back to the patient's treatment practitioner who provided the agreement for treatment.

NEW SECTION

WAC 246-817-950 Consultation—Recommendations and requirements. (1) The dentist shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention

should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold for adults is one hundred twenty milligrams morphine equivalent dose (MED) (oral). In the event a dentist prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED (orally) per day, a consultation with a pain management specialist as described in WAC 246-817-965 is required, unless the consultation is exempted under WAC 246-817-955 or 246-817-960. Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged.

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the dentist;

(iii) An electronic consultation between the pain management specialist and the dentist; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the dentist or a licensed health care practitioner designated by the dentist or the pain management specialist.

(b) A dentist shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the dentist, the dentist shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of WAC 246-817-901 through 246-817-965, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

NEW SECTION

WAC 246-817-955 Consultation—Exemptions for exigent and special circumstances. A dentist is not required to consult with a pain management specialist as described in WAC 246-817-965 when he or she has documented adherence to all standards of practice as defined in WAC 246-817-901 through 246-817-965 and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with expected return to or below their baseline dosage level;

(3) The dentist documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalent dose (MED) per day without first obtaining a consultation; or

(4) The dentist documents the patient's pain and function is stable and the patient is on a non-escalating dosage of opioids.

NEW SECTION

WAC 246-817-960 Consultation—Exemptions for the dentist. The dentist is exempt from the consultation requirement in WAC 246-817-950 if one or more of the following qualifications are met:

(1) The dentist is a pain management specialist as described in WAC 246-817-965; or

(2) The dentist has successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least two of these hours dedicated to long acting opioids, to include methadone; or

(3) The dentist is a pain management practitioner working in a multidisciplinary chronic pain treatment center, or a multidisciplinary academic research facility; or

(4) The dentist has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of his or her current practice is the direct provision of pain management care.

NEW SECTION

WAC 246-817-965 Pain management specialist. A pain management specialist shall meet one or more of the following qualifications:

(1) If a physician or osteopathic physician:

(a) Board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board; or

(c) Has a certification of added qualification in pain management by the AOA; or

(d) A minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(3) If an advanced registered nurse practitioner (ARNP):

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by a Washington state nursing care quality assurance commission-approved national professional association, pain association, or other credentialing entity;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(4) If a podiatric physician:

(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) A minimum of three years of clinical experience in a chronic pain management care setting; and

(c) Credentialed in pain management by a Washington state podiatric medical board-approved national professional association, pain association, or other credentialing entity; and

(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

WSR 11-10-062

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed May 2, 2011, 10:30 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: ESHB 2876 (chapter 209, Laws of 2010) directs the board of osteopathic medicine and surgery adopt new rules for management of chronic noncancer pain and repeal the existing rules. The adopted rules include the mandatory elements for dosing criteria, guidance on specialty consultations, guidance on tracking clinical progress, and guidance on tracking opioid use. The adopted rules also describe practitioner consultation exemptions.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-853-510, 246-853-520, 246-853-530, and 246-853-540.

Statutory Authority for Adoption: RCW 18.57.285, 18.57A.090, 18.57.005, 18.57A.020.

Adopted under notice filed as WSR 11-04-086 on February 1, 2011.

Changes Other than Editing from Proposed to Adopted Version: The adopted rules include the following changes from the proposed rules published as WSR 11-04-086:

- Pain management—Intent, WAC 246-854-240, language is added to clarify that these rules do not restrict the current scope of practice for the physician assistant or the working agreement between the physician assistant and the osteopathic physician, which may include pain management.
- Definitions, WAC 246-853-662 and 246-854-242.
  - The terms "episodic care," "morphine equivalent dose," and "multidisciplinary pain clinic" are added to the definitions.
  - The terms "physical dependence," "psychological dependence," and "tolerance" are deleted as these terms are not used in the rules.
- Written agreement for treatment, WAC 246-853-666(4) and 246-854-246(4), "or multidisciplinary pain clinic" and "or pharmacy system" are added.
- Long-acting opioids, including methadone, WAC 246-853-668 and 246-854-248, in the third sentence, after "one-time," "(lifetime)" is added.
- Consultation: Recommendations and requirements, WAC 246-853-670(2) and 246-854-250(2), the word "adult" is added to clarify the morphine equivalent dose (MED) threshold is for adults. The word "oral" is also added to clarify that the threshold is based on an "oral" dose. Language regarding pediatric patients is also added at the end of the paragraph: "Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged."
- Pain management specialist, WAC 246-853-673 (1)(d)(ii), language is added to clarify the cycle in which to complete the required continuing education is two years for physicians and three years for osteopathic physicians.
- Pain management specialist, WAC 246-853-673 (1)(d)(iii) and (3)(d), language is added to clarify that the current practice may also be in a multidisciplinary pain clinic setting.

The adopted rules also include edits for grammar, punctuation, and formatting.

A final cost-benefit analysis is available by contacting Erin Obenland, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4945, fax (360) 236-2901, e-mail erin.obenland@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 14, Amended 0, 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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 0, Repealed 4.

Date Adopted: March 18, 2011.

Blake T. Maresh
Executive Director

PAIN MANAGEMENT

NEW SECTION

WAC 246-853-660 Pain management—Intent. These rules govern the use of opioids in the treatment of patients for chronic noncancer pain.

NEW SECTION

WAC 246-853-661 Exclusions. The rules adopted under WAC 246-853-660 through 246-853-673 do not apply to:

(1) The provision of palliative, hospice, or other end-of-life care; or

(2) The management of acute pain caused by an injury or surgical procedure.

NEW SECTION

WAC 246-853-662 Definitions. The definitions in this section apply in WAC 246-853-600 through 246-853-673 unless the context clearly requires otherwise.

(1) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

(3) "Chronic noncancer pain" means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

(4) "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a provider other than the designated primary provider in the acute care setting, for example, urgent care or emergency department.

(6) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as free-standing hospice facilities, hospitals, nursing homes, or other long-term care facilities.

(7) "Morphine equivalent dose" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(8) "Multidisciplinary pain clinic" means a clinic or office that provides comprehensive pain management and may include care provided by multiple available disciplines or treatment modalities; for example, physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, physical therapy, occupational therapy, or other complementary therapies.

(9) "Palliative" means care that improves the quality of life of patients and their families facing life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

NEW SECTION

WAC 246-853-663 Patient evaluation. The osteopathic physician shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.

(1) The patient's health history shall include:

(a) Current and past treatments for pain;

(b) Comorbidities; and

(c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to the osteopathic physician.

(3) The initial patient evaluation shall include:

(a) Physical examination;

(b) The nature and intensity of the pain;

(c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

(viii) Repeated visits to emergency departments seeking opioids;

(ix) History of sleep apnea or other respiratory risk factors;

(x) Possible or current pregnancy; and

(xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the osteopathic physician; and

(f) The osteopathic physician's instructions to the patient.

NEW SECTION

WAC 246-853-664 Treatment plan. (1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the osteopathic physician should adjust drug therapy to the individual health needs of the patient. The osteopathic physician shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The osteopathic physician shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

NEW SECTION

WAC 246-853-665 Informed consent. The osteopathic physician shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

NEW SECTION

WAC 246-853-666 Written agreement for treatment. Chronic noncancer pain patients should receive all chronic pain management prescriptions from one osteopathic physician and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing osteopathic physician shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:

(1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the osteopathic physician;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;

(3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);

(4) The requirement that all chronic pain management prescriptions are provided by a single prescriber or multidisciplinary pain clinic and dispensed by a single pharmacy or pharmacy system;

(5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;

(6) A written authorization for:

(a) The osteopathic physician to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and

(b) Other practitioners to report violations of the agreement back to the osteopathic physician.

(7) A written authorization that the osteopathic physician may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

(9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the osteopathic physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-853-667 Periodic review. The osteopathic physician shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the osteopathic physician shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the osteopathic physician's evaluation of progress towards treatment objectives.

(2) The osteopathic physician shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The osteopathic physician shall consider tapering, changing, or discontinuing treatment when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The osteopathic physician should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The osteopathic physician should periodically review any relevant information from a pharmacist provided to the osteopathic physician.

NEW SECTION

WAC 246-853-668 Long-acting opioids, including methadone. Long-acting opioids, including methadone, should only be prescribed by an osteopathic physician who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. The osteopathic physician prescribing long-acting opioids or methadone should have a one-time (lifetime) completion of at least four hours of continuing education relating to this topic.

NEW SECTION

WAC 246-853-669 Episodic care. (1) When evaluating patients for episodic care, such as emergency or urgent care, the osteopathic physician should review any available prescription monitoring program, emergency department-based information exchange, or other tracking system.

(2) Episodic care practitioners should avoid providing opioids for chronic pain management. However, if opioids are provided, the osteopathic physician should limit the use of opioids for a chronic noncancer pain patient to the minimum amount necessary to control the pain until the patient can receive care from a primary care practitioner.

(3) Prescriptions for opioids written by an episodic care practitioner shall include indications for use or the International Classification of Diseases (ICD) code and shall be written to require photo identification of the person picking up the prescription in order to fill.

(4) If a patient has signed a written agreement for treatment and has provided a written authorization to release the agreement under WAC 246-853-666(6) to episodic care practitioners, then the episodic care practitioner should report known violations of the agreement back to the patient's treatment practitioner who provided the agreement for treatment.

NEW SECTION

WAC 246-853-670 Consultation—Recommendations and requirements. (1) The osteopathic physician shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold for adults is one hundred twenty milligrams morphine equivalent dose (MED) (oral). In the event an osteopathic physician prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED (orally) per day, a consultation with a pain management specialist as described in WAC 246-853-673 is required, unless the consultation is exempted under WAC 246-853-671 or 246-853-672. Great caution should be used when prescribing opioids to children with chronic noncancer pain, and appropriate referral to a specialist is encouraged.

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the osteopathic physician;

(iii) An electronic consultation between the pain management specialist and the osteopathic physician; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the osteopathic physician or a licensed health care practitioner designated by the osteopathic physician or the pain management specialist.

(b) An osteopathic physician shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the osteopathic physician, the osteopathic physician shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of WAC 246-853-660 through 246-853-673, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

NEW SECTION

WAC 246-853-671 Consultation—Exemptions for exigent and special circumstances. An osteopathic physician is not required to consult with a pain management specialist as described in WAC 246-853-673 when he or she has documented adherence to all standards of practice as defined

in WAC 246-853-660 through 246-854-673 and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule; or

(2) The patient requires treatment for acute pain which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with expected return to or below their baseline dosage level; or

(3) The osteopathic physician documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalent dose (MED) per day without first obtaining a consultation; or

(4) The osteopathic physician documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

NEW SECTION

WAC 246-853-672 Consultation—Exemptions for the osteopathic physician. The osteopathic physician is exempt from the consultation requirement in WAC 246-853-670 if one or more of the following qualifications are met:

(1) The osteopathic physician is a pain management specialist under WAC 246-853-673; or

(2) The osteopathic physician has successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least two of these hours dedicated to long acting opioids, to include methadone, or within the last three years a minimum of eighteen continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least three of these hours dedicated to long acting opioids, to include methadone; or

(3) The osteopathic physician is a pain management practitioner working in a multidisciplinary chronic pain treatment center, or a multidisciplinary academic research facility; or

(4) The osteopathic physician has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of his or her current practice is the direct provision of pain management care.

NEW SECTION

WAC 246-853-673 Pain management specialist. A pain management specialist shall meet one or more of the following qualifications:

(1) If a physician or osteopathic physician:

(a) Board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board; or

(c) Has a certification of added qualification in pain management by the AOA; or

(d) A minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years for a physician or three years for an osteopathic physician; and

(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(3) If an advanced registered nurse practitioner (ARNP):

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by a Washington state nursing care quality assurance commission-approved national professional association, pain association, or other credentialing entity;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(4) If a podiatric physician:

(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) A minimum of three years of clinical experience in a chronic pain management care setting; and

(c) Credentialed in pain management by a Washington state podiatric medical board-approved national professional association, pain association, or other credentialing entity; and

(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

PAIN MANAGEMENT

NEW SECTION

WAC 246-854-240 Pain management—Intent. These rules govern the use of opioids in the treatment of patients for chronic noncancer pain. Nothing in these rules in any way restricts the current scope of practice of osteopathic physician assistants as set forth in chapters 18.57 and 18.57A RCW and the working agreements between the osteopathic physician and the osteopathic physician assistant, which may include pain management.

NEW SECTION

WAC 246-854-241 Exclusions. The rules adopted under WAC 246-854-240 through 246-854-253 do not apply to:

(1) The provision of palliative, hospice, or other end-of-life care; or

(2) The management of acute pain caused by an injury or surgical procedure.

NEW SECTION

WAC 246-854-242 Definitions. The definitions in this section apply in WAC 246-854-240 through 246-854-253 unless the context clearly requires otherwise.

(1) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

(3) "Chronic noncancer pain" means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

(4) "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a provider other than the designated primary provider in the acute care setting, for example, urgent care or emergency department.

(6) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as free-standing hospice facilities, hospitals, nursing homes, or other long-term care facilities.

(7) "Morphine equivalent dose" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(8) "Multidisciplinary pain clinic" means a clinic or office that provides comprehensive pain management and may include care provided by multiple available disciplines or treatment modalities; for example, physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, physical therapy, occupational therapy, or other complementary therapies.

(9) "Palliative" means care that improves the quality of life of patients and their families facing life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

NEW SECTION

WAC 246-854-243 Patient evaluation. The osteopathic physician assistant shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.

(1) The patient's health history shall include:

(a) Current and past treatments for pain;

(b) Comorbidities; and

(c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to osteopathic physician assistant.

(3) The initial patient evaluation shall include:

(a) Physical examination;

(b) The nature and intensity of the pain;

(c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

(viii) Repeated visits to emergency departments seeking opioids;

(ix) History of sleep apnea or other respiratory risk factors;

(x) Possible or current pregnancy; and

(xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the osteopathic physician assistant; and

(f) The osteopathic physician assistant instructions to the patient.

NEW SECTION

WAC 246-854-244 Treatment plan. (1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the osteopathic physician assistant should adjust drug therapy to the individual health needs of the patient. The osteopathic physician assistant shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The osteopathic physician assistant shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

NEW SECTION

WAC 246-854-245 Informed consent. The osteopathic physician assistant shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

NEW SECTION

WAC 246-854-246 Written agreement for treatment. Chronic noncancer pain patients should receive all chronic pain management prescriptions from one osteopathic physician assistant and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing osteopathic physician assistant shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:

(1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the osteopathic physician assistant;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;

(3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);

(4) The requirement that all chronic pain management prescriptions are provided by a single prescriber or multidisciplinary pain clinic and dispensed by a single pharmacy or pharmacy system;

(5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;

(6) A written authorization for:

(a) The osteopathic physician assistant to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and

(b) Other practitioners to report violations of the agreement back to the osteopathic physician assistant;

(7) A written authorization that the osteopathic physician assistant may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

(9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the osteopathic physician assistant's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-854-247 Periodic review. The osteopathic physician assistant shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the osteopathic physician assistant shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the osteopathic physician assistant's evaluation of progress towards treatment objectives.

(2) The osteopathic physician assistant shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The osteopathic physician assistant shall consider tapering, changing, or discontinuing treatment when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The osteopathic physician assistant should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The osteopathic physician assistant should periodically review any relevant information from a pharmacist provided to the osteopathic physician assistant.

NEW SECTION

WAC 246-854-248 Long-acting opioids, including methadone. Long-acting opioids, including methadone, should only be prescribed by an osteopathic physician assistant who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. The osteopathic physician assistant prescribing long-acting opioids or methadone should have a one-time (lifetime) completion of at least four continuing education hours relating to this topic.

NEW SECTION

WAC 246-854-249 Episodic care. (1) When evaluating patients for episodic care, such as emergency or urgent care, the osteopathic physician assistant should review any available prescription monitoring program, emergency department-based information exchange, or other tracking system.

(2) Episodic care practitioners should avoid providing opioids for chronic pain management. However, if opioids are provided, the osteopathic physician assistant should limit the use of opioids for a chronic noncancer pain patient to the minimum amount necessary to control the pain until the patient can receive care from a primary care practitioner.

(3) Prescriptions for opioids written by an episodic care practitioner shall include indications for use or the International Classification of Diseases (ICD) code and shall be written to require photo identification of the person picking up the prescription in order to fill.

(4) If a patient has signed a written agreement for treatment and has provided a written authorization to release the agreement under WAC 246-854-246(6) to episodic care practitioners, then the episodic care practitioner should report known violations of the agreement back to the patient's treatment practitioner who provided the agreement for treatment.

NEW SECTION

WAC 246-854-250 Consultation—Recommendations and requirements. (1) The osteopathic physician assistant shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold for adults is one hundred twenty milligrams morphine equivalent dose (MED) (oral). In the event a practitioner prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED (orally) per day, a consultation with a pain management specialist as described in WAC 246-854-253 is required, unless the consultation is exempted under WAC 246-854-251 or 246-854-252. Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referral to a specialist is encouraged.

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the osteopathic physician assistant;

(iii) An electronic consultation between the pain management specialist and the osteopathic physician assistant; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the osteopathic physician assistant or a licensed health care practitioner designated by the osteopathic physician assistant or the pain management specialist.

(b) An osteopathic physician assistant shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the osteopathic physician assistant, the osteopathic physician assistant shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of WAC 246-854-240 through 246-854-253, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

NEW SECTION

WAC 246-854-251 Consultation—Exemptions for exigent and special circumstances. A physician assistant is not required to consult with a pain management specialist as described in WAC 246-854-253 when he or she has documented adherence to all standards of practice as defined in WAC 246-854-240 through 246-854-253 and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule; or

(2) The patient requires treatment for acute pain which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with expected return to or below their baseline dosage level; or

(3) The physician assistant documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalent dose (MED) per day without first obtaining a consultation; or

(4) The physician assistant documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

NEW SECTION

WAC 246-854-252 Consultation—Exemptions for the osteopathic physician assistant. The physician assistant is exempt from the consultation requirement in WAC 246-854-250 if one or more of the following qualifications are met:

(1) The sponsoring physician is a pain management specialist under WAC 246-854-253; or

(2) The sponsoring physician and the physician assistant have successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least two of these hours dedicated to long acting opioids, to include methadone, or within the last three years a minimum of eighteen continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least three of these hours dedicated to long acting opioids, to include methadone; or

(3) The physician assistant is a pain management practitioner working in a multidisciplinary chronic pain treatment center, or a multidisciplinary academic research facility.

NEW SECTION

WAC 246-854-253 Pain management specialist. A pain management specialist shall meet one or more of the following qualifications:

(1) If a physician or osteopathic physician:

(a) Board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board; or

(c) Has a certification of added qualification in pain management by the AOA; or

(d) If a physician, a minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years for a physician or three years for an osteopathic physician; and

(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or a multidisciplinary pain clinic.

(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(3) If an advanced registered nurse practitioner (ARNP):

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by a Washington state nursing care quality assurance commission-approved national professional association, pain association, or other credentialing entity;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(4) If a podiatric physician:

(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) A minimum of three years of clinical experience in a chronic pain management care setting; and

(c) Credentialed in pain management by a Washington state podiatric medical board-approved national professional association, pain association, or other credentialing entity; and

(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

WSR 11-10-063

PERMANENT RULES

DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed May 2, 2011, 10:40 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: ESHB 2876 (chapter 209, Laws of 2010) directs the podiatric medical board to adopt new rules for management of chronic noncancer pain and repeal the existing rules. The adopted rules include the mandatory elements for dosing criteria, guidance on specialty consultations, guidance on tracking clinical progress, and guidance on tracking opioid use. The adopted rules also describe practitioner consultation exemptions.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-922-510, 246-922-520, 246-922-530, and 246-922-540.

Statutory Authority for Adoption: RCW 18.22.240, 18.22.015(5).

Adopted under notice filed as WSR 11-05-035 on February 8, 2011.

Changes Other than Editing from Proposed to Adopted Version: The adopted rules include the following changes from the proposed rules published as WSR 11-05-035:

- Definitions, WAC 246-922-662.
  - The terms "episodic care," "morphine equivalent dose," and "multidisciplinary pain clinic" are added to the definitions.

- The terms "physical dependence," "psychological dependence," and "tolerance" are deleted as these terms are not used in the rules.

- Written agreement for treatment, WAC 246-922-666(4), "or multidisciplinary pain clinic" and "or pharmacy system" are added. In the first paragraph, first sentence, the words "podiatric physician" were deleted and the word "prescriber" inserted instead.
- Long-acting opioids, including methadone, WAC 246-922-668, in the third sentence, after "one-time," "(lifetime)" is added.
- Consultation: Recommendations and requirements, WAC 246-922-670(2), "threshold for adults" is added to clarify the morphine equivalent dose (MED) threshold is for adults. The word "oral" is also added to clarify that the threshold is based on an "oral" dose. Language regarding pediatric patients is also added at the end of the paragraph: "Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged."
- Pain management specialist, WAC 246-922-673 (1)(d), the criteria for physicians and osteopathic physicians are added to maintain consistent language with these professions' rules. WAC 246-922-673 (1)(d)(iii) and (3)(d), language is added to clarify that the current practice may also be in a multidisciplinary pain clinic setting. WAC 246-922-673 (4), the structure is reformatted to maintain consistency with the structure of subsections (1) through (3) for the other professions.

The adopted rules also include edits for grammar, punctuation, and formatting.

A final cost-benefit analysis is available by contacting Erin Obenland, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4945, fax (360) 236-2901, e-mail erin.obenland@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 14, Amended 0, 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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 0, Repealed 4.

Date Adopted: April 14, 2011.

Blake T. Maresh

Executive Director

PAIN MANAGEMENT

NEW SECTION

WAC 246-922-660 Pain management—Intent. These rules govern the use of opioids in the treatment of patients for chronic noncancer pain.

NEW SECTION

WAC 246-922-661 Exclusions. The rules adopted under WAC 246-922-660 through 246-922-673 do not apply to:

(1) The provision of palliative, hospice, or other end-of-life care; or

(2) The management of acute pain caused by an injury or surgical procedure.

NEW SECTION

WAC 246-922-662 Definitions. The definitions in this section apply in WAC 246-922-600 through 246-922-673 unless the context clearly requires otherwise.

(1) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

(3) "Chronic noncancer pain" means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

(4) "Comorbidity" means a preexisting or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a provider other than the designated primary provider in the acute care setting, for example, urgent care or emergency department.

(6) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities.

(7) "Morphine equivalent dose" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(8) "Multidisciplinary pain clinic" means a clinic or office that provides comprehensive pain management and includes care provided by multiple available disciplines or treatment modalities; for example, physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, physician therapy, occupational therapy, or other complementary therapies.

(9) "Palliative" means care that improves the quality of life of patients and their families facing life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

NEW SECTION

WAC 246-922-663 Patient evaluation. The podiatric physician shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.

(1) The patient's health history shall include:

(a) Current and past treatments for pain;

(b) Comorbidities; and

(c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to the podiatric physician.

(3) The initial patient evaluation shall include:

(a) Physical examination;

(b) The nature and intensity of the pain;

(c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

(viii) Repeated visits to emergency departments seeking opioids;

(ix) History of sleep apnea or other respiratory risk factors;

(x) Possible or current pregnancy; and

(xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the podiatric physician; and

(f) The podiatric physician's instructions to the patient.

NEW SECTION

WAC 246-922-664 Treatment plan. (1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the podiatric physician should adjust drug therapy to the individual health needs of the patient. The podiatric physician shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The podiatric physician shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

NEW SECTION

WAC 246-922-665 Informed consent. The podiatric physician shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

NEW SECTION

WAC 246-922-666 Written agreement for treatment. Chronic noncancer pain patients should receive all chronic pain management prescriptions from one prescriber and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing podiatric physician shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:

(1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the podiatric physician;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;

(3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);

(4) The requirement that all chronic pain management prescriptions are provided by a single prescriber or multidisciplinary pain clinic and dispensed by a single pharmacy or pharmacy system;

(5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;

(6) A written authorization for:

(a) The podiatric physician to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and

(b) Other practitioners to report violations of the agreement back to the podiatric physician;

(7) A written authorization that the podiatric physician may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

(9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the podiatric physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-922-667 Periodic review. The podiatric physician shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the podiatric physician shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the podiatric physician's evaluation of progress towards treatment objectives.

(2) The podiatric physician shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The podiatric physician shall consider tapering, changing, or discontinuing treatment when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The podiatric physician should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The podiatric physician should periodically review any relevant information from a pharmacist provided to the podiatric physician.

NEW SECTION

WAC 246-922-668 Long-acting opioids, including methadone. Long-acting opioids, including methadone, should only be prescribed by a podiatric physician who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. The podiatric physician prescribing long-acting opioids or methadone should have a one-time (lifetime) completion of at least four hours of continuing education relating to this topic.

NEW SECTION

WAC 246-922-669 Episodic care. (1) When evaluating patients for episodic care, such as emergency or urgent care, the podiatric physician should review any available prescription monitoring program, emergency department-based information exchange, or other tracking system.

(2) Episodic care practitioners should avoid providing opioids for chronic pain management. However, if opioids are provided, the podiatric physician should limit the use of opioids for a chronic noncancer pain patient to the minimum amount necessary to control the pain until the patient can receive care from a primary care practitioner.

(3) Prescriptions for opioids written by an episodic care practitioner shall include indications for use or the International Classification of Diseases (ICD) code and shall be written to require photo identification of the person picking up the prescription in order to fill.

(4) If a patient has signed a written agreement for treatment and has provided a written authorization to release the agreement under WAC 246-922-666(6) to episodic care practitioners, then the episodic care practitioner should report known violations of the agreement back to the patient's treatment practitioner who provided the agreement for treatment.

NEW SECTION

WAC 246-922-670 Consultation—Recommendations and requirements. (1) The podiatric physician shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold for adults is one hundred twenty milligrams morphine equivalent dose (MED) (oral). In the event a podiatric physician prescribes a

dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED (orally) per day, a consultation with a pain management specialist as described in WAC 246-922-673 is required, unless the consultation is exempted under WAC 246-922-671 or 246-922-672. Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referral to a specialist is encouraged.

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the podiatric physician;

(iii) An electronic consultation between the pain management specialist and the podiatric physician; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the podiatric physician or a licensed health care practitioner designated by the podiatric physician or the pain management specialist.

(b) A podiatric physician shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the podiatric physician, the podiatric physician shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of WAC 246-922-660 through 246-922-673, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

NEW SECTION

WAC 246-922-671 Consultation—Exemptions for exigent and special circumstances. A podiatric physician is not required to consult with a pain management specialist as described in WAC 246-922-673 when he or she has documented adherence to all standards of practice as defined in WAC 246-922-660 through 246-922-673 and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with expected return to or below their baseline dosage level;

(3) The podiatric physician documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalent dose (MED) per day without first obtaining a consultation; or

(4) The podiatric physician documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

NEW SECTION

WAC 246-922-672 Consultations—Exemptions for the podiatric physician. The podiatric physician is exempt from the consultation requirement in WAC 246-922-670 if one or more of the following qualifications are met:

(1) The podiatric physician is a pain management specialist under WAC 246-922-673; or

(2) The podiatric physician has successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least two of these hours dedicated to long acting opioids, to include methadone; or

(3) The podiatric physician is a pain management practitioner working in a multidisciplinary chronic pain treatment center, or a multidisciplinary academic research facility; or

(4) The podiatric physician has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of his or her current practice is the direct provision of pain management care.

NEW SECTION

WAC 246-922-673 Pain management specialist. A pain management specialist shall meet one or more of the following qualifications:

(1) If a physician or osteopathic physician:

(a) Board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board; or

(c) Has a certification of added qualification in pain management by the AOA; or

(d) A minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years for physicians or three years for osteopathic physicians; and

(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(3) If an advanced registered nurse practitioner (ARNP):

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in a specialty that includes a focus on chronic noncancer pain management by a Washington state nursing care quality assurance commission-approved

national professional association, pain association, or other credentialing entity;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management or is in a multidisciplinary pain clinic.

(4) If a podiatric physician:

(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) A minimum of three years of clinical experience in a chronic pain management care setting; and

(c) Credentialed in pain management by a Washington state podiatric medical board-approved national professional association, pain association, or other credentialing entity; and

(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

WSR 11-10-064
PERMANENT RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed May 2, 2011, 11:21 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: ESHB 2876 (chapter 209, Laws of 2010) directs the nursing care quality assurance commission to adopt rules for the management of chronic, noncancer pain. The rules include the mandatory elements for dosing criteria, guidance on specialty consultations, guidance on tracking clinical progress, and guidance on tracking opioid use. The rules also describe practitioner consultation requirements.

Statutory Authority for Adoption: RCW 18.79.400.

Adopted under notice filed as WSR 11-04-087 on February 1, 2011.

Changes Other than Editing from Proposed to Adopted Version: Nonsubstantive changes were made to make the rules consistent with the other boards and commission language. Changes included grammatical, typographical, and formatting.

A final cost-benefit analysis is available by contacting Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504, 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 14, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 0, Repealed 0.

Date Adopted: March 18, 2011.

Paula R. Meyer, MSN, RN
Executive Director

ADVANCED PRACTICE—PAIN MANAGEMENT

NEW SECTION

WAC 246-840-460 Pain management—Intent. These rules govern the use of opioids in the treatment of patients for chronic noncancer pain.

NEW SECTION

WAC 246-840-463 Exclusions. The rules adopted under WAC 246-840-460 through 246-840-493 do not apply to:

(1) The provision of palliative, hospice, or other end-of-life care; or

(2) The management of acute pain caused by an injury or surgical procedure.

NEW SECTION

WAC 246-840-465 Definitions. The definitions in this section apply in WAC 246-840-460 through 246-840-493 unless the context clearly requires otherwise.

(1) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. It is generally time-limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

(3) "Chronic noncancer pain" means a state in which noncancer pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years.

(4) "Comorbidity" means a pre-existing or coexisting physical or psychiatric disease or condition.

(5) "Episodic care" means medical care provided by a provider other than the designated primary provider in the

acute care setting, for example, urgent care or emergency department.

(6) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as free-standing hospice facilities, hospitals, nursing homes, or other long-term care facilities.

(7) "Morphine equivalent dose" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(8) "Multidisciplinary pain clinic" means a clinic or office that provides comprehensive pain management and may include care provided by multiple available disciplines, for example, physicians, osteopathic physicians, physician assistants, advanced registered nurse practitioners, physical therapists, occupational therapists, and other complementary therapies.

(9) "Palliative" means care that improves the quality of life of patients and their families facing life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

NEW SECTION

WAC 246-840-467 Patient evaluation. The advanced registered nurse practitioner shall obtain, evaluate, and document the patient's health history and physical examination in the health record prior to treating for chronic noncancer pain.

(1) The patient's health history shall include:

(a) Current and past treatments for pain;

(b) Comorbidities; and

(c) Any substance abuse.

(2) The patient's health history should include:

(a) A review of any available prescription monitoring program or emergency department-based information exchange; and

(b) Any relevant information from a pharmacist provided to advanced registered nurse practitioners.

(3) The initial patient evaluation shall include:

(a) Physical examination;

(b) The nature and intensity of the pain;

(c) The effect of the pain on physical and psychological function;

(d) Medications including indication(s), date, type, dosage, and quantity prescribed;

(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:

(i) History of addiction;

(ii) Abuse or aberrant behavior regarding opioid use;

(iii) Psychiatric conditions;

(iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;

(v) Poorly controlled depression or anxiety;

(vi) Evidence or risk of significant adverse events, including falls or fractures;

(vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;

(viii) Repeated visits to emergency departments seeking opioids;

(ix) History of sleep apnea or other respiratory risk factors;

(x) Possible or current pregnancy; and

(xi) History of allergies or intolerances.

(4) The initial patient evaluation should include:

(a) Any available diagnostic, therapeutic, and laboratory results; and

(b) Any available consultations.

(5) The health record shall be maintained in an accessible manner, readily available for review, and should include:

(a) The diagnosis, treatment plan, and objectives;

(b) Documentation of the presence of one or more recognized indications for the use of pain medication;

(c) Documentation of any medication prescribed;

(d) Results of periodic reviews;

(e) Any written agreements for treatment between the patient and the advanced registered nurse practitioner; and

(f) The advanced registered nurse practitioner's instructions to the patient.

NEW SECTION

WAC 246-840-470 Treatment plan. (1) The written treatment plan shall state the objectives that will be used to determine treatment success and shall include, at a minimum:

(a) Any change in pain relief;

(b) Any change in physical and psychosocial function; and

(c) Additional diagnostic evaluations or other planned treatments.

(2) After treatment begins the advanced registered nurse practitioner should adjust drug therapy to the individual health needs of the patient. Advanced registered nurse practitioners shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. Advanced registered nurse practitioners shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

NEW SECTION

WAC 246-840-473 Informed consent. The advanced registered nurse practitioner shall discuss the risks and benefits of treatment options with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without health care decision-making capacity.

NEW SECTION

WAC 246-840-475 Written agreement for treatment. Chronic noncancer pain patients should receive all chronic pain management prescriptions from one advanced registered nurse practitioner and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing advanced registered nurse practitioner shall use a written agreement for treatment with the patient outlining patient responsibilities. This written agreement for treatment shall include:

(1) The patient's agreement to provide biological samples for urine/serum medical level screening when requested by the advanced registered nurse practitioner;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;

(3) Reasons for which drug therapy may be discontinued (e.g., violation of agreement);

(4) The requirement that all chronic pain management prescriptions are provided by a single prescriber or multidisciplinary pain clinic and dispensed by a single pharmacy or pharmacy system;

(5) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;

(6) A written authorization for:

(a) The advanced registered nurse practitioner to release the agreement for treatment to local emergency departments, urgent care facilities, and pharmacies; and

(b) Other practitioners to report violations of the agreement back to the advanced registered nurse practitioner;

(7) A written authorization that the advanced registered nurse practitioner may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

(9) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

(10) Acknowledgment that if the patient violates the terms of the agreement, the violation and the advanced registered nurse practitioner's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-840-477 Periodic review. The advanced registered nurse practitioner shall periodically review the course of treatment for chronic noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving nonescalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(1) During the periodic review, the advanced registered nurse practitioner shall determine:

(a) Patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved or diminished using objective evidence, considering any available information from family members or other caregivers; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the advanced registered nurse practitioner's evaluation of progress towards treatment objectives.

(2) The advanced registered nurse practitioner shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The advanced registered nurse practitioner shall consider tapering, changing, or discontinuing treatment when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The advanced registered nurse practitioner should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The advanced registered nurse practitioner should periodically review any relevant information from a pharmacist provided to the advanced registered nurse practitioner.

NEW SECTION

WAC 246-840-480 Long-acting opioids, including methadone. Long-acting opioids, including methadone, should only be prescribed by an advanced registered nurse practitioner who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. An advanced registered nurse practitioner prescribing long-acting opioids or methadone should have a one-time (lifetime) completion of at least four hours of continuing education relating to this topic.

NEW SECTION

WAC 246-840-483 Episodic care. (1) When evaluating patients for episodic care, such as emergency or urgent care, the advanced registered nurse practitioner should review any available prescription monitoring program, emergency department-based information exchange, or other tracking system.

(2) Episodic care practitioners should avoid providing opioids for chronic pain management. However, if opioids are provided, the episodic care practitioner should limit the use of opioids for a chronic noncancer pain patient to the minimum amount necessary to control the pain until the patient can receive care from a primary care practitioner.

(3) Prescriptions for opioids written by an episodic care practitioner shall include indications for use or the International Classification of Disease (ICD) code and shall be writ-

ten to require photo identification of the person picking up the prescription in order to fill.

(4) If a patient has signed a written agreement for treatment and has provided a written authorization to release the agreement under WAC 246-840-475(6) to episodic care practitioners, then the episodic care practitioner should report known violations of the agreement back to the patient's treatment practitioner who provided the agreement for treatment.

NEW SECTION

WAC 246-840-485 Consultation—Recommendations and requirements. (1) The advanced registered nurse practitioner shall consider and document referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic noncancer pain patients who are under eighteen years of age, or who are at risk for medication misuse, abuse, or diversion. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold for adults is one hundred twenty milligrams morphine equivalent dose (MED)(oral). In the event an advanced registered nurse practitioner prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED (orally) per day, a consultation with a pain management specialist as described in WAC 246-840-493, is required, unless the consultation is exempted under WAC 246-840-487 or 246-840-490. Great caution should be used when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged.

(a) The mandatory consultation shall consist of at least one of the following:

(i) An office visit with the patient and the pain management specialist;

(ii) A telephone consultation between the pain management specialist and the advanced registered nurse practitioner;

(iii) An electronic consultation between the pain management specialist and the advanced registered nurse practitioner; or

(iv) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the advanced registered nurse practitioner or a licensed health care practitioner designated by the advanced registered nurse practitioner or the pain management specialist.

(b) An advanced registered nurse practitioner shall document each mandatory consultation with the pain management specialist. Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist. If the specialist provides a written record of the consultation to the advanced registered nurse practitioner, the advanced registered nurse practitioner shall maintain it as part of the patient record.

(3) Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist as defined in WAC 246-840-493, at any time. For the purposes of WAC 246-840-460 through 246-840-493, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

NEW SECTION

WAC 246-840-487 Consultation—Exemptions for exigent and special circumstances. An advanced registered nurse practitioner is not required to consult with a pain management specialist as described in WAC 246-840-493 when he or she has documented adherence to all standards of practice as defined in WAC 246-840-460 through 246-840-493 and when any one or more of the following conditions apply:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with expected return to or below their baseline dosage level;

(3) The advanced registered nurse practitioner documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalency dosage (MED) per day without first obtaining a consultation; or

(4) The advanced registered nurse practitioner documents the patient's pain and function is stable and the patient is on a nonescalating dosage of opioids.

NEW SECTION

WAC 246-840-490 Consultation—Exemptions for the advanced registered nurse practitioner. The advanced registered nurse practitioner is exempt from the consultation requirement in WAC 246-840-485 if one or more of the following qualifications are met:

(1) The advanced registered nurse practitioner is a pain management specialist under WAC 246-840-493;

(2) The advanced registered nurse practitioner has successfully completed, within the last two years, a minimum of twelve continuing education hours on chronic pain management approved by the profession's continuing education accrediting organization, with at least two of these hours dedicated to long acting opioids, to include methadone;

(3) The advanced registered nurse practitioner is a pain management practitioner working in a multidisciplinary chronic pain treatment center, or a multidisciplinary academic research facility; or

(4) The advanced registered nurse practitioner has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of his or her current practice is the direct provision of pain management care.

NEW SECTION

WAC 246-840-493 Pain management specialist. A pain management specialist shall meet one or more of the following qualifications:

(1) If a physician or osteopathic physician:

(a) Board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board; or

(c) Has a certification of added qualification in pain management by the AOA; or

(d) A minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and

(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(3) If an advanced registered nurse practitioner (ARNP):

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by a Washington state nursing care quality assurance commission-approved national professional association, pain association, or other credentialing entity;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(4) If a podiatric physician:

(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or

(b) A minimum of three years of clinical experience in a chronic pain management care setting; and

(c) Credentialed in pain management by a Washington state podiatric medical board, approved national professional association, pain association, or other credentialing entity; and

(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.

WSR 11-10-068
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)

[Filed May 2, 2011, 4:06 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: ESHB 2876 (chapter 209, Laws of 2010) directs the board of osteopathic medicine and surgery to adopt new rules for management of chronic noncancer pain and repeal the existing rules. The repealed rules include WAC 246-854-120, 246-854-130, 246-854-140, and 246-854-150 (osteopathic physician assistants).

Citation of Existing Rules Affected by this Order: Repealing WAC 246-854-120, 246-854-130, 246-854-140, and 246-854-150.

Statutory Authority for Adoption: RCW 18.57.285, 18.57A.090, 18.57.005, 18.57A.020.

Adopted under notice filed as WSR 11-04-086 on February 1, 2011.

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 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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 4.

Date Adopted: March 18, 2011.

Blake T. Maresh
Executive Director

WSR 11-10-074
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed May 3, 2011, 7:59 a.m., effective June 3, 2011]

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

Purpose: The proposed amendment to WAC 16-532-020 Hop board, will change the requirement for annual audits of the hop commission to a rate prescribed by the state auditor's office. An annual audit of the commission's records, books and accounts is overly burdensome and costly to the commission and not required by the state auditor. Revising the requirement would allow the commission to participate in

the state auditor's normal audit cycle schedule and provide consistency between RCW 15.65.490 and the hop marketing order.

Citation of Existing Rules Affected by this Order: Amending WAC 16-532-020.

Statutory Authority for Adoption: RCW 15.65.047, chapter 34.05 RCW.

Adopted under notice filed as WSR 11-05-032 on February 8, 2011.

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

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

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

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

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

Date Adopted: May 3, 2011.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 05-15-098, filed 7/15/05, effective 8/15/05)

WAC 16-532-020 Hop board. (1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of eight members. Seven members shall be affected producers elected as provided in this section. The director shall appoint one member of the board who is neither an affected producer nor a handler to represent the department and the public.

(b) For the purpose of nomination and election of producer members of the board, the affected area shall be the entire state of Washington.

(3) **Board membership qualifications.**

The affected producer members of the board shall be practical producers of hops and shall be citizens and residents of the state of Washington, over the age of twenty-five years, each of whom is and has been actually engaged in producing hops within the state of Washington for a period of five years and has during that time derived a substantial portion of his income therefrom and who is not engaged in business, directly or indirectly, as a handler or other dealer.

(4) **Term of office.**

(a) The term of office for members of the board shall be three years and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through seven and the member appointed by the director position eight.

(c) The term of office for the initial board members shall be as follows:

Positions one, two, three and ten - until June 30, 1967
Positions four, five and six - until June 30, 1966
Positions seven, eight and nine - until June 30, 1965

(d) Terms of office for the board members serving at the time of the 1992 amendment of this section shall be as follows:

Positions one, two, three and ten - until December 31, 1994
Positions four, five and six - until December 31, 1993
Positions seven, eight and nine - until December 31, 1992

(e) The term of office for the remaining producer board members serving at the time of the effective date of the 2005 amended marketing order shall be as follows:

Positions four, five, and six - until December 31, 2005
Positions one and two - until December 31, 2006
Positions three and seven - until December 31, 2007

(5) **Nomination and election of board members.** Each year the director shall call for a nomination meeting. Such meeting shall be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the major production area not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers according to the list maintained by the director pursuant to RCW 15.65.200 of the act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer may be nominated orally for membership on the board at such nomination meetings. Nominations may also be made within five days after any such meetings by written petition filed with the director signed by not less than five affected producers. At the inception of this order nominations may be made at the issuance hearing.

(6) **Election of board members.**

(a) Members of the board shall be elected by secret mail ballot within the month of November under the supervision of the director. Affected producer members of the board shall be elected by a majority of the votes cast by the affected producers. Each affected producer shall be entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the major production area not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the director in accordance with RCW 15.65.-200. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his

qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board member.

(7) **Vacancies prior to election.** In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member shall be reimbursed for actual subsistence and traveling expenses incurred through attendance at meetings or other board activities: Provided, That such expenses shall be authorized by resolution by unanimous approval of the board at a regular meeting.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order.

(f) To establish a "hop board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited ((~~at least annually~~)) subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) **Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.

WSR 11-10-080
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed May 3, 2011, 11:36 a.m., effective July 1, 2013]

Effective Date of Rule: July 1, 2013.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The state board of health anticipates restrictions imposed by the 2009 legislature on the implementation of new or amended school facility rules will continue through June 2013.

Purpose: This filing delays the effective date of new sections of chapter 246-366 WAC, Primary and secondary schools, and chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, by

two years because of anticipated state budget shortfalls in the 2011-2013 biennium and previous legislative direction. These rules provide minimum environmental health and safety standards for public schools.

New sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, were adopted by the state board of health on August 12, 2009. The board filed a rule-making order, WSR 10-01-174, on December 22, 2009, setting the effective date for the new rules as July 1, 2010. On March 10, 2010, the board voted to file an amended rule-making order to change the effective date of these new rules to July 1, 2011. The rule-making order was filed as WSR 10-12-018 on May 21, 2010. On April 13, 2011, the board again considered the need to match resources and capacity to be able to implement the rules as intended. The board voted on April 13 to file an amended rule-making order to delay the effective date of the new rules another two years to July 1, 2013.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 1, 2009.

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

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

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

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

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

Date Adopted: April 13, 2011.

Craig McLaughlin
Executive Director

WSR 11-10-086
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Special Commitment Center)

[Filed May 4, 2011, 8:50 a.m., effective June 4, 2011]

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

Purpose: The purpose of these rule changes is to clarify our business practices and expectations as they pertain to county government obtaining cost reimbursements from DSHS for legal and expert evaluation costs pursuant to civil commitment proceedings under chapter 71.09 RCW. These changes apply to matters within special commitment center's scope of operations under chapter 71.09 RCW and RCW 72.01.090 and are essential to implement ESB 6870 (containing costs for services to sexually violent predators), ESSB 6444 (2009-11 revised omnibus operating budget (2010 Supp.)), and Washington state supreme court decision No. 80570-9 re Detention of John L. Strand, filed October 8, 2009.

Additionally, the need to change chapter 388-885 WAC complies with the Governor's Executive Order 10-06 pertaining to rule making as the changes are necessary to manage budget shortfalls.

Citation of Existing Rules Affected by this Order: Amending WAC 388-885-005, 388-885-010, 388-885-013, 388-885-015, 388-885-025, 388-885-030, and 388-885-035.

Statutory Authority for Adoption: Chapter 71.09 RCW and RCW 72.01.090.

Other Authority: ESB 6870 (containing costs for services to sexually violent predators), ESSB 6444 (2009-11 revised omnibus operating budget (2010 Supp.)), and Washington state supreme court decision No. 80570-9 re Detention of John L. Strand, filed October 8, 2009.

Adopted under notice filed as WSR 11-07-105 on March 23, 2011.

Changes Other than Editing from Proposed to Adopted Version: Clarifications requested by the defense were made to WAC 388-885-005, 388-885-010 (5)(f), 388-885-013 (3)(a), (c) and (d), 388-885-016 (3), (4) and (5), and 388-885-013 (1), (2) and (3)(d).

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 1, 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 1, Amended 7, Repealed 0.

Date Adopted: May 2, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-005 Purpose. These rules establish the standards and procedures for reimbursing counties for the cost incurred during civil commitment trial, annual evaluation, and review processes and release procedures related to chapter 71.09 RCW and apply to reimbursement for defense and prosecution activities.

These rules further establish reasonable limitations on expert expenditures when the state fund an expert for the prosecution, or defense for persons found indigent subject to chapter 71.09 RCW.

The department's reimbursement to counties is limited to appropriated funds and is intended to minimize primary or direct costs to counties for proceedings and related to civil commitment of sexually violent predators.

Indirect costs and costs incurred in excess of or different from those allowed by the itemized schedule of reimbursements as described in WAC 388-885-035 are the responsibility of the county.

These rules are intended as a limitation on the department's duty to reimburse the county or vendor for services rendered in cases under chapter 71.09 RCW and do not seek to limit the courts' or parties' consideration of or application for other sources of funding.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-010 Definitions. (1) "Attorney cost" means the fully documented itemized hourly cost directly related to the violent sexual predator civil commitment process for:

(a) A single assigned prosecuting attorney;

(b) When the person is indigent, a single court-appointed attorney;

(c) Additional counsel, for the defense or prosecution, when additional defense counsel is approved by the trial judge for good cause; and

(d) Paralegal services and other costs, itemized based on a schedule of reimbursements as described in WAC 388-885-035.

(2) "Civil commitment process" as used in this chapter refers to the following distinct phases of chapter 71.09 RCW commitments and for a period encompassing the ninety days before the phases denominated in subsections (d) and (e) of this section.

(a) Investigation and preparation of an RCW 71.09.030 filing (by the prosecution only).

(b) Completion of a seventy-two hour probable cause hearing under RCW 71.09.040.

(c) Completion of an initial civil commitment trial under RCW 71.09.060.

(d) Completion of annual review proceedings under RCW 71.09.090 which commences with the filing of an annual review report under RCW 71.09.070 and ends with a waiver of a show cause hearing by the resident or completion of the show cause hearing.

(e) Completion of a post-commitment conditional or unconditional release trial under RCW 71.09.090.

(3) "Department" means the department of social and health services.

((~~(3)~~)) (4) "Deposition" means the legal fact finding interview of a person under force of subpoena or by agreement of the parties.

(5) "Evaluation(s)" means the different types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

(a) The "initial evaluation performed by the state" occurs under RCW 71.09.025 and happens before the person is detained at the SCC, usually occurring while the person is in prison, juvenile rehabilitation administration (JRA), a state mental hospital, a county jail, or in the community following commission of a recent overt act.

(b) The "initial evaluation performed by the defense" occurs under RCW 71.09.050 and occurs when authorized by the court.

(c) "Supplemental evaluations", as required by RCW 71.09.040, are performed for civil commitment trial purposes after a court finding of probable cause.

(d) "Post commitment evaluations", as required by RCW 71.09.070, 71.09.090, and 71.09.098, occur when the person qualifies for a conditional or unconditional release trial.

(e) "Partial evaluations performed by the defense" means an evaluation performed by the same evaluator less than twelve months after performing an initial evaluation or post commitment evaluation.

(f) Upon proper application to the court for appointment of counsel to aid in seeking conditional or unconditional release pursuant to RCW 71.09.090(2).

(6) "Evaluation by expert cost" is as described in WAC 388-885-013.

((~~(4)~~)) (7) "Incidental cost" means county-incurred efforts or costs that are not otherwise covered and are exclusively attributable and necessary to the trial of a person alleged to be a "sexually violent predator."

((~~(5)~~)) (8) "Investigative cost" means a cost incurred by a police agency or other investigative service in the course of investigating issues specific to:

(a) Filing or responding to a petition alleging a person is a "sexually violent predator;" or

(b) Testifying at a hearing to determine if a person is a "sexually violent predator."

((~~(6)~~)) (9) "Medical cost" means a county-incurred extraordinary medical expense beyond the routine services of a jail.

((~~(7)~~)) (10) "Secretary" means the secretary of the department of social and health services.

((~~(8)~~)) (11) "Transportation cost" means the cost a county incurs when transporting a person alleged to be, or having been found to be, a "sexually violent predator," to and from ((~~a sexual predator program facility~~)) his or her place of confinement.

((~~(9)~~)) (12) "Trial cost" means the costs a county incurs as the result of filing a petition for the civil commitment of a person alleged to be a "sexually violent predator" under chapter 71.09 RCW. This cost is limited to fees for:

(a) Judges;

(b) Court clerks;

(c) Bailiff services;

(d) Court reporter services;

(e) Transcript typing and preparation;

(f) Expert and nonexpert witnesses;

(g) ((~~Jury~~)) Juries; and

(h) Jail facilities.

(13) "Supporting expert cost" means the cost of a specific physical or specialty testing done by other experts at the request of the single expert for the state or defense if such testing is normally relied on by the professional community in conducting an evaluation.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-013 Limitations on reimbursement costs related to expert evaluations. (1) ((~~"Evaluation by expert cost" means a county-incurred itemized hourly service rate directly resulting from the completion of a comprehensive examination and/or a records review and other costs, itemized based on the schedule of reimbursements as described in WAC 388-885-035, by a single examiner selected and appointed by the court of a person who is indigent, when:~~

~~(a) Investigated for "sexually violent predator" probable cause;~~

~~(b) Alleged to be a "sexually violent predator" and who has had a petition filed; or~~

~~(c) Committed as a "sexually violent predator" and under review for release.~~

~~(2)~~)) "Expert evaluation cost" means the cost of a professional psychiatric and/or psychological evaluation of a person for purposes of assessing and/or rendering an opinion about whether such person meets the criteria for commitment, release, or conditional release in the civil commitment process under chapter 71.09 RCW. The department will pay for the cost of only a single professional at each stage of the civil commitment process for the prosecution. The department will pay the cost of a single professional at each stage of the civil commitment process for the defense. Whenever possible the same expert or professional previously used in an earlier stage of the process will be used for a subsequent stage of the civil commitment process.

(2) "Supporting expert cost" means the cost of a specific physical or specialty testing done by other experts at the request of the single expert for the state or defense if such testing is normally relied on by the professional community in conducting an evaluation and ordered by the court for good cause shown. Such costs are payable as incidental costs and are not included in the limitations imposed by WAC 388-885-035.

(3) The department will reimburse a county for costs related to the evaluation of an indigent person by an additional examiner only upon a finding by the superior court that such appointment is for good cause.

(a) The department shall be provided notice of any request and have an opportunity to respond in writing and to be heard at a hearing to determine good cause for expert funding in excess of amounts allowed in WAC 388-885-035. Such a notice and request shall not be shared with the prosecuting agency, nor shall the pleadings, contents and results of the hearing be shared with the prosecuting agency.

(b) If the respondent makes a claim of privilege regarding the information to be provided to support the finding of good cause the court may order that records supporting the determination of good cause be produced in camera for determination of the applicability of any claims of privilege and to decide the issue of good cause.

(c) Any claim of privilege made to the information covered herein is not waived by providing the documentation to DSHS. If a claim of privilege is made to documents to be provided to DSHS the defense may request a sealing order prior to providing the documents in order to maintain the privilege.

(d) Prior to any release of such documents or information to any other person, agency, or party, the department will notify the attorney of record for the respondent involved and provide a reasonable time for review and application for a court order preventing the proposed release.

(e) In making its finding of good cause the superior court shall consider and issue written findings on whether:

(((~~(a)~~))) (i) Any previous expert(s) appointed to assist the indigent person lack expertise to address a new area of concern;

(((~~(b)~~))) (ii) The request for an additional expert is being requested merely because the opinion of a prior expert was not favorable to respondent's position;

(((~~(c)~~))) (iii) The request is being ((~~interposed~~)) made for the purpose of delaying the proceeding; or

(((~~(d)~~))) (iv) The previously appointed expert is unavailable for testimony at trial.

(((~~(3)~~))) (4) The department will not reimburse a county for expert evaluation costs ((~~under the following circumstances~~)) if:

(a) ((~~Where~~)) The appointed expert lacks appropriate qualifications ((~~as provided for in~~)) under WAC 388-880-033; ((~~or~~))

(b) For any charges related to an expert's international travel ((~~by an expert~~)) to or from a destination outside of North America, including but not limited to, airfare, meals, hourly rates, and accommodations;

(c) For an updated evaluation where the prior evaluation is less than twelve months old; or

(d) Evaluator costs associated with mental health or sex offender treatment services rendered to person committed or detained under chapter 71.09 RCW.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-015 Limitation of funds. The department shall:

(1) Reimburse funds to a county when appropriated funds are available;

(2) Limit a county's reimbursement to costs of civil commitment ((~~trials or hearings~~)) proceedings as ((~~described under this chapter~~)) defined in WAC 388-885-010(2);

(3) Restrict a county's reimbursement to documented investigation, expert evaluation, attorney, transportation, trial, incidental, and medical costs;

(4) Not ((~~pay~~)) reimburse a county for a cost under the rules of this section when said cost is otherwise reimbursable under law;

(5) Pay a county's claim for a trial or hearing occurring during each biennium in the order in which the claim is received, until the department's biennial appropriation is expended.

NEW SECTION

WAC 388-885-016 Matters for which reimbursement is not available. The department will not reimburse under chapter 388-885 WAC for the costs of the following:

(1) Investigation or legal representation challenging the conditions of confinement at SCC.

(2) Investigation, legal representation, or reimbursement for the costs of making requests under the Public Records Act, chapter 42.56 RCW, and for the costs of records procured subject to the Public Records Act.

(3) Legal representation or advice provided regarding a grievance filed pursuant to SCC policy 204, unless provided as a part of SVP trial investigation and preparation under WAC 388-885-010 (2), (2)(d) and (2)(e).

(4) Legal representation or advice provided regarding a behavioral management report pursuant to SCC policy 235 or 238, unless provided as a part of SVP trial investigation and preparation under WAC 388-885-010 (2), (2)(d) and (2)(e).

(5) Investigation, legal representation, advice and associated costs regarding residents as defined in WAC 388-885-010 who have been criminally charged, unless provided as a part of SVP trial investigation and preparation under WAC 388-885-010 (2), (2)(d) and (2)(e).

(6) Depositions conducted without a subpoena or by agreement of counsel, unless authorized by the court.

(7) A new full evaluation of a resident when the evaluator has previously conducted a full evaluation of the same person within the past twelve months, unless authorized by the court.

(8) After the appeal of the initial commitment proceeding, the department will not reimburse for appeal costs, the department does not pay for the costs associated with the appeal of the order of commitment or an appeal resulting from any proceeding thereafter. These costs are reimbursed by the State Office of Public Defense.

(9) Costs associated with finding or developing a different less restrictive alternative other than what the department supports, unless authorized by the court for good cause.

(10) Any form of training for attorneys, expert witnesses, or other persons including continuing legal education or workshops.

(11) Legal representation during a period not covered as part of the civil commitment process as defined in WAC 388-885-010(2).

(12) For expert evaluation services performed by any party who does not qualify as a "professionally qualified person" WAC 388-880-010.

(13) For mental health or sex offender treatment provider services, treatment or consultation rendered to a resident at the total confinement facility or a secure community transition facility or other less restrictive alternative setting by anyone licensed under title 18 RCW unless approved in advance, in writing, by the SCC superintendent.

(14) For the presence of more than a single attorney at any evaluation or interview unless the presence of a second attorney is specifically authorized by order of the court.

(15) Standby attorneys for pro se litigants are compensated only in so far as allowed for specific activities set forth in the court order which appointed them and for reimbursement purposes, that appointment may only be for matters defined in WAC 388-885-010(2) "civil commitment process".

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-025 Billing procedure. (1) When a county requests the department reimburse a county's costs, the county shall:

(a) Make a claim using the state of Washington invoice voucher, Form A 19 1-A;

(b) Attach to the claim necessary documentation, support, and justification materials ((~~(the department may require use of an itemized invoice)~~));

(c) ((~~Report expenses billed by the hour in one quarter hour increments unless smaller increments are provided to the county by the vendor~~)) Comply with the department's required use of an auditable, itemized, detailed invoice billed in no more than a one-tenth of an hour increment. Records supporting the billed hours shall be maintained by attorneys, paralegals, investigators and experts for a period of five years after the service is rendered. Such documentation shall include what documents were created, if interviews were conducted, who was interviewed and how; ((~~and~~))

(d) ((~~Include the name of the person for whom the costs were incurred and the cause number when it exists~~)) In the event of a dispute over billed services, produce in camera the records supporting the billed hours to the court for determination of the applicability of any claims of privilege to the records and to decide the issue of payments if the claim of privilege is sustained; and

(e) Include in the invoice the name of the person by whom the costs were incurred and the cause number, when it exists, and identify at which state of the civil commitment process this service was rendered per WAC 388-885-010(2).

(2) The department may subject a county's claim documentation to periodic audit at the department's discretion.

(3) Only an authorized administrator, or the county administrator's designee, may submit to the department a request for a county's cost reimbursement.

(4) A county shall submit a reimbursement claim to the department within thirty days of receipt of itemized expenditures for services incurred to assure proper handling of the claim.

(5) When a county submits a reimbursement claim on a state invoice voucher (Form A-19 1-A) sent to the Special Commitment Center, Attn: Business Office, P.O. Box 88450, Steilacoom, WA 98388-0646.

(6) If the department's reimbursement appropriation becomes exhausted before the end of a biennium, a county may continue to make a claim for reimbursement. The department may use the reimbursement claim to justify a request for adequate department funding during future biennia.

(7) Claims for reimbursement of costs for all items as defined in WAC 388-885-010 or otherwise associated with the subject of this rule will not be accepted if the span of time between the time the services were rendered and the bill was submitted is greater than twelve months.

(8) When the reimbursement fee schedule in WAC 388-885-035 changes following legislative approval there is a transitional period where bills are being received for services rendered ((~~prior to~~)) before the approved increase to the reimbursement schedule rates, such as, bills received for services

rendered shall be paid based on the reimbursement schedule rate that existed at the time services were rendered, not the rate that exists at the time the bill is submitted to SCC.

(9) In submitting bills for reimbursement under this rule, the billing entity agrees to maintain records of their billed services and make those records available for auditing by ((~~DSHS~~)) the department, or other state auditing service, for a period of ((~~thirty-six~~)) sixty months following the submission of the bill.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-030 Exceptions. (1) The secretary may grant exceptions to the rules of this chapter. Exceptions ((~~granted by~~)) the secretary grants may not include exceptions to the biennial reimbursement rate schedule which is set by legislative mandate.

(2) ((~~Exceptions may be allowed~~)) The secretary may allow exceptions on a case-by-case basis for:

(a) Unanticipated expenditures;

(b) ((~~For a rate or cost increase~~)) Evaluation related cap relief, related to a single commitment proceeding deemed truly unique in nature; or

(c) For a new type or class of expenditure.

(3) ((~~A request for exception may only be made by~~)) Only a county administration or an entity of county government that has been independently elected, and not ((~~from~~)) a sub-agency ((~~of a county~~)) or contractor to a county may request an exception. A county seeking an exception from the secretary shall request the exception, in writing, to the secretary, through the chief financial officer of the special commitment center.

(4) The department shall deny a claim ((~~which~~)) that does not follow the rules of this chapter unless the secretary or secretary's designee granted an exception before the claim was filed.

AMENDATORY SECTION (Amending WSR 08-19-042, filed 9/11/08, effective 10/12/08)

WAC 388-885-035 Reimbursement rate schedule. When a county submits a reimbursement claim according to this chapter, the claim shall be only for costs incurred as defined in this chapter and for the rates provided in this schedule. This schedule of reimbursement rates is effective as of July 1, 2007.

(1) Attorney per hour rate of eighty-five dollars and sixty-five cents (travel and per diem per state schedule).

(2) Legal assistant/paralegal per hour rate of forty-six dollars (travel and per diem per state schedule).

(3) Investigator per hour rate of forty-six dollars (travel and per diem per state schedule).

(4) Expert service:

(a) Evaluation by expert ((~~actual cost (travel and per diem per state schedule)~~)), the reimbursement for an evaluation, including professional fees, travel, per diem, and all other costs, is capped at ten thousand dollars; and shall be reimbursed at an hourly reimbursement rate of not more than two hundred dollars per hour for evaluation activities including client interviews, document review, report preparations, pre-trial discovery activities (including additional document review, compelled interviews and declarations and consultation).

(b) Partial evaluations are capped at five thousand five hundred dollars and shall be reimbursed at an hourly reimbursement rate of not more than two hundred dollars per hour for evaluation activities including client interviews, document review, report preparations, pre-trial discovery activities (including additional document review, compelled interviews and declarations and consultation).

(c) Court testimony or depositions by the opposing party, is capped at an hourly reimbursement rate of two hundred fifty dollars per hour or fraction therof.

(d) Travel time related to court testimony or depositions by the opposing party, is capped at an hourly reimbursement rate of one hundred fifty dollars per hour or fraction thereof.

(e) Exclusive of testimony at trial or depositions, any expert services subsequent to or apart from the evaluation, in addition to the hourly rate caps, is capped at six thousand dollars.

(5) Judge per hour rate of forty-six dollars and five cents.

(6) Court clerk actual hourly salary.

(7) Bailiff actual hourly salary.

(8) Court reporter per hour rate of twenty dollars and seventy-one cents (transcript preparation per page rate of four dollars and thirteen cents).

(9) Expert witnesses' actual cost (travel and per diem per state schedule).

(10) Nonexpert witnesses' actual cost (travel and per diem per state schedule).

(11) ((~~Juror's~~)) Jurors actual compensation (travel and per diem per state schedule).

(12) Jail facilities' daily rate of thirty dollars.

(13) Incidentals - actual costs based on receipts.