

WSR 11-17-004
EXPEDITED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed August 3, 2011, 1:38 p.m.]

Title of Rule and Other Identifying Information: Technical edits to WAC 181-79A-140. Changes incorrect citation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO David Brenna, Professional Educator Standards Board, 600 Washington Street South, Room 400, Olympia, WA 98504, AND RECEIVED BY October 25, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Corrects citation.

Reasons Supporting Proposal: Technical clarification.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, 600 Washington Street South, Olympia, WA 98504, (360) 725-6238.

August 3, 2011

David Brenna

Legislative and

Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-08-028, filed 3/24/08, effective 4/24/08)

WAC 181-79A-140 Types of certificates. Six types of certificates shall be issued:

(1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC (~~(181-79A-220)~~) 181-79A-270, authorizes service as a classroom teacher.

(2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.

(3) First people's language/culture. The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service as defined under WAC 181-78A-700(8).

(4) Administrator.

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards

for service in the roles of superintendent or program administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:

(a) Conditional certificate.

(b) Substitute certificate.

(c) Emergency certificate.

(d) Emergency substitute certificate.

(e) Nonimmigrant alien exchange teacher.

(f) Intern substitute teacher certificate.

(g) Transitional certificate.

(h) Provisional alternative administrative certificate.

WSR 11-17-005
EXPEDITED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed August 3, 2011, 1:47 p.m.]

Title of Rule and Other Identifying Information: Removes language referring to a certificate no longer available. Clarifies what continuing certificates for speech and language pathologists require. Edits WAC 181-79A-223.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO David Brenna, Professional Educator Standards Board, 600 Washington Street South, Room 400, Olympia, WA 98504, AND RECEIVED BY October 25, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Language changes improving explanation of continuing certification for certain endorsements addressing health-type services.

Reasons Supporting Proposal: Technical clarification.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, 600 Washington Street South, Olympia, WA 98504, (360) 725-6238.

August 3, 2011

David Brenna

Legislative and

Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-08-045, filed 3/26/08, effective 4/26/08)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist. Candidates for school nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist certification shall apply directly to the professional education and certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except state approved college/university professional preparation program:

(1) School nurse.

(a) Initial.

(i) The candidate shall hold a valid license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate

shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed forty-five quarter hours (thirty semester hours) of postbaccalaureate course work in education, nursing, or other health sciences.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) School occupational therapist.

(a) Initial.

(i) The candidate shall hold a valid license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Occupational Therapy Association approved program in occupational therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed at least fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in occupational therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employ-

ment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) School physical therapist.

(a) Initial.

(i) The candidate shall hold a valid license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Physical Therapy Association accredited program in physical therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in physical therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(4) School speech-language pathologist or audiologist.

(a) Initial.

(i) The candidate shall have completed all course work (except special project or thesis) for a master's degree from a college or university program accredited by the American

Speech and Hearing Association (ASHA) with a major in speech pathology or audiology. Such program shall include satisfactory completion of a written comprehensive examination: Provided, That if any candidate has not completed a written comprehensive examination, the candidate may present verification from ASHA of a passing score on the National Teacher's Examination in speech pathology or audiology as a condition for certification.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall hold a master's degree with a major in speech pathology or audiology (~~with the exception of a candidate who holds a current and valid Washington state conditional certificate in speech/language pathology as of June 30, 2003~~).

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

WSR 11-17-106

EXPEDITED RULES

DEPARTMENT OF HEALTH

[Filed August 22, 2011, 3:34 p.m.]

Title of Rule and Other Identifying Information: WAC 246-810-010 Definitions and 246-810-016 Agencies or facil-

ities that can employ agency affiliated counselors. Adding federally recognized Indian tribes located in Washington state to the list of entites [entities] that can employ agency affiliated counselors.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leann Yount, Program Manager, Department of Health, Agency Affiliated Counselor Program, P.O. Box 47852, Olympia, WA 98504-7852, AND RECEIVED BY October 24, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1939 (chapter 86, Laws of 2011) amends the definition of agency to include federally recognized Indian tribes (tribe) located within Washington state. The rules implement the legislation and add tribes to the definitions for an agency. Agency affiliated counselor applicants who are employed by an Indian tribe will be able to qualify for the credential.

Reasons Supporting Proposal: Individuals who work for a tribe have been unable to qualify for the agency affiliated counselor credential because the tribes were not recognized as an agency. The rules implement the legislation and add the federally recognized tribes located in Washington state as an agency, which qualifies their employed applicants to receive the agency affiliated counselor credential. This rule qualifies for expedited rule making because it adopts without material change Washington state statute.

Statutory Authority for Adoption: RCW 18.19.050.

Statute Being Implemented: RCW 18.19.020.

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

Name of Proponent: Department of health, agency affiliated counselor program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leann Yount, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4856.

August 22, 2011

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 10-22-111, filed 11/2/10, effective 12/3/10)

WAC 246-810-010 Definitions. The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services; ((a))

(b) A federally recognized Indian tribe located within the state; or

(c) A county as listed in chapter 36.04 RCW.

(2) "Agency affiliated counselor" means a person registered under chapter 18.19 RCW, and this chapter, who is engaged in counseling and employed by an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

(4) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW. This may include:

(a) Helping the certified counselor focus on counseling practice objectives;

(b) Refining counseling modalities;

(c) Providing support to progress in difficult or sensitive cases;

(d) Expanding the available decision-making resources; and

(e) Assisting in discovering alternative approaches.

(7) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(8) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, hypnotherapists, and until July 1, 2010, registered counselors.

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

(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.

(11) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

(12) "Licensed healthcare practitioner" means a licensed practitioner under the following chapters:

(a) Physician licensed under chapter 18.71 RCW.

(b) Osteopathic physician licensed under chapter 18.57 RCW.

(c) Psychiatric registered nurse practitioner licensed under chapter 18.79 RCW.

(d) Naturopathic physician licensed under chapter 18.36A RCW.

(e) Psychologist licensed under chapter 18.83 RCW.

(f) Independent clinical social worker, marriage and family therapist, or advanced social worker licensed under chapter 18.225 RCW.

(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.

(14) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(15) "Recognized" means acknowledged or formally accepted by the secretary.

(16) "Recognized agency or facility" means an agency or facility that has requested and been recognized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

(17) "Secretary" means the secretary of the department of health or the secretary's designee.

(18) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

(19) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 10-22-111, filed 11/2/10, effective 12/3/10)

WAC 246-810-016 Agencies, facilities, federally recognized Indian tribes located within the state, or counties that can employ agency affiliated counselors. Agencies or facilities that may employ an agency affiliated counselor are:

(1) Washington state departments and agencies listed in the Agency, Commission & Organization Directory available on the state of Washington web site.

(2) Federally recognized Indian tribes located within the state.

(3) Counties as listed in chapter 36.04 RCW.

~~((3))~~ (4) Community and technical colleges governed by the Washington state board for community and technical colleges.

~~((4))~~ (5) Colleges and universities governed by the Washington state higher education coordinating board.

~~((5))~~ (6) Hospitals licensed under chapter 70.41 RCW.

~~((6))~~ (7) Home health care agencies, home care agencies, and hospice care agencies licensed under chapter 70.127 RCW.

~~((7))~~ (8) Agencies and facilities licensed or certified under chapters 71.05 or 71.24 RCW.

~~((8))~~ (9) Psychiatric hospitals, residential treatment facilities, hospitals, and alcohol and chemical dependency entities licensed under chapter 71.12 RCW.

~~((9))~~ (10) Other agencies or facilities recognized by the secretary as provided in WAC 246-810-017.

WSR 11-17-109
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 23, 2011, 8:32 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-19A WAC, Vocational rehabilitation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Keith Klinger, Policy and Education Coordinator, Department of Labor and Industries, P.O. Box 44329, Olympia, WA 98504-4329, AND RECEIVED BY October 24, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Language in existing rules concerning vocational rehabilitation services to injured workers must be changed for consistency with HB 1726 (chapter 291, Laws of 2011). The department is now required, under certain circumstances, to allow ten additional days for workers to select a vocational training option and for employers to develop a return to work offer. HB 1726 also clarifies the day the worker commences training plan development. The proposed rule making will update existing rule by referencing the additional time and the start of plan development contained in the new law.

Reasons Supporting Proposal: The provisions of HB 1726, which was effective July 22, 2011, that conflict with current rules.

Statutory Authority for Adoption: Chapter 51.32 RCW.

Statute Being Implemented: Chapter 51.32 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Keith Klinger, Tumwater, Washington, (360) 902-6362; Implementation: AnnaLisa Gellermann, Tumwater, Washington, (360) 902-6593; and Enforcement: Beth Dupre, Tumwater, Washington, (360) 902-4209.

August 23, 2011

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-030 What are the responsibilities of the parties? The attending health care provider, department, self-insured employer, employer, worker and vocational rehabilitation provider have the following responsibilities in assisting the worker to become employable at gainful employment:

(1) **Attending health care provider.** The attending health care provider must:

(a) Maintain open communication with the worker's assigned vocational rehabilitation provider and the referral source.

(b) Respond to any request for information which is necessary to evaluate a worker's:

(i) Ability to work;

(ii) Need for vocational services; and

(iii) Ability to participate in a vocational retraining plan.

(c) Do all that is possible to expedite the vocational rehabilitation process, including making an estimate of the physical or mental capacities that affect the worker's employability. If unable to provide an estimate, refer the worker for the appropriate consultation or evaluation.

(2) **Department.**

(a) **State fund claims.** For state fund claims, the department must:

(i) Obtain medical information required to initiate vocational rehabilitation services before a referral is made to a vocational rehabilitation provider.

(ii) Notify the chargeable employer(s), if any, at the time any referrals are made to a vocational rehabilitation provider.

(iii) Provide the vocational rehabilitation provider with access to all reports and any other relevant documentation generated during prior vocational rehabilitation services including plans that have been provided on any claim.

(iv) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(v) Notify all parties of the eligibility determination in writing. When the worker is eligible for plan development services, the notification letter must advise that the chargeable employer(s), if any, has fifteen calendar days from the date of the letter to make a valid return to work offer. However, should the employer attempt to make a valid return-to-work offer within the fifteen calendar days, the department may grant up to ten additional calendar days to modify the offer if it does not meet all of the requirements for approval.

(vi) Assign plan development services to the vocational rehabilitation provider that completed the assessment report unless the department decides the provider cannot complete the required report.

(vii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(viii) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification must advise the worker that he or she has fifteen calendar days from the date

of the notification letter to decline vocational services and elect option 2 benefits as defined in RCW 51.32.099. However, the department may approve an election submitted in writing within twenty-five days of the date the plan is approved or is determined valid following a dispute if the worker provides a written explanation of why he or she was unable to submit the election of option 2 benefits within fifteen days.

(b) **Self-insured claims.** For self-insured claims, the department must:

(i) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(ii) Notify all parties of the eligibility determination in writing.

When the worker is eligible for plan development services, the notification letter must advise the employer it has fifteen calendar days from the date of the letter to make a valid return to work offer; and

(iii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(iv) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification letter must advise the worker that he or she has fifteen calendar days from the date of the letter to elect option 2 benefits as defined in RCW 51.32.099. However, the department may approve an election submitted in writing within twenty-five days of the date the plan is approved or is determined valid following a dispute if the worker provides a written explanation of why he or she was unable to submit the election of option 2 benefits within fifteen days.

(3) **Employer.** The employer must:

(a) Assist the vocational rehabilitation provider in any way necessary to collect data regarding the worker's gainful employment at the time of the injury.

(b) Assist the vocational rehabilitation provider and attending health care provider to determine whether a job could be made available for employment of the worker.

(4) **Worker.** The worker must fully participate and cooperate in all aspects of their vocational services including determination of physical capacities, development of vocational goals, and implementation of the rehabilitation process. Examples include but are not limited to:

- Providing accurate and complete information regarding his or her work history and educational background.

- Attending all scheduled appointments.

- Cooperating with return to work efforts when it is determined return to work opportunities exist.

- Actively participating and cooperating in selecting a job goal when it is determined retraining is necessary.

(5) **Vocational rehabilitation provider.** In assisting the worker to become employable at gainful employment, the vocational rehabilitation provider must:

(a) Follow the priorities in RCW 51.32.095 and the requirements in this chapter.

(b) For state fund claims, immediately inform the department orally if the worker:

- (i) Returns to work;
- (ii) Is released for work without restrictions;
- (iii) Returns to work and is unsuccessful; or
- (iv) Fails to cooperate.

Note: Written notification and documentation must follow oral notification within two working days.

(c) Identify all vocational rehabilitation counselors and interns who provided services in each reporting period.

(d) Provide copies of reports and attachments submitted to the referral source to the employer (if different than the referral source) and the worker or the worker's representative when requested.

(e) Prior to a determination of eligibility, work with the employer, if necessary, to develop job analyses for work the employer is offering or has available and provide other assistance necessary to facilitate return to work with the employer.

(f) When providing plan development services, the vocational rehabilitation provider should, whenever possible and appropriate, focus on identifying goals and occupations that are considered high demand in the workforce. High demand occupations, as determined by the employment security department, means the number of job openings in the labor market for the occupation or with the required skill set exceeds the supply of qualified workers.

(g) Should the employer choose to make a valid return to work offer within fifteen calendar days of the date of the notification letter approving plan development services, the vocational rehabilitation provider may provide assistance necessary to facilitate return to work with the employer. The department may approve up to an additional ten days for an employer to modify a job offer if it does not meet all of the requirements. When this occurs, the vocational rehabilitation provider may assist the employer in making the necessary modifications.

AMENDATORY SECTION (Amending WSR 10-07-054, filed 3/12/10, effective 4/12/10)

WAC 296-19A-600 How does an eligible injured worker elect vocational option 2 benefits? Within fifteen days of the approval of a retraining plan (~~(by the department)~~) or determination that a disputed plan is valid, the worker submits to the department or self-insurer the retraining plan option form indicating they select option 2 and choose not to participate in their retraining plan. However, the department may approve an option 2 selection submitted within twenty-five calendar days if the worker provides a written explanation establishing that he or she was unable to submit his or her election within fifteen calendar days. This election means the worker's claim will be closed, and the worker will receive the vocational option 2 award and access to the option 2 training funds.

WSR 11-17-110
EXPEDITED RULES
DEPARTMENT OF LICENSING

[Filed August 23, 2011, 9:24 a.m.]

Title of Rule and Other Identifying Information:
Amending WAC 308-56A-460 to raise the market value threshold for reporting total loss vehicles to the department of licensing. Also updates statutory references reflecting the recodification of Title 46 RCW.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ben T. Shomshor, Department of Licensing, P.O. Box 2957, Olympia, WA 98507-2957, e-mail bshomshor@dol.wa.gov, AND RECEIVED BY October 25, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: According to RCW 46.12.005 and 46.12.600 - if, for any year beginning with 2002, the Consumer Price Index (CPI) for All Urban Consumers, compiled by the Bureau of Labor Statistics, United States Department of Labor, or its successor, for the West Region, in the expenditure category "used cars and trucks," shows an increase in the annual average for that year compared to that of the year immediately prior, the department shall, by rule, increase the then market value threshold amount by the same percentage as the percentage increase of the annual average, with the increase of the market value threshold amount to be effective on July 1 of the year immediately after the year with the increase of the annual average. The CPI showed an increase this previous year and the market value threshold amount was increased from \$6790 to \$7660. For this reason, WAC 308-56A-460 needs to be changed (and should have been changed effective July 1, 2011) to reflect this increase in the market value threshold amount. This rule-making process seeks to make permanent the emergency rule adopted under WSR 11-17-082.

Reasons Supporting Proposal: Compliance with statute.
Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.12.600.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Debra K. Then, Highways-Licenses Building, Olympia, Washington, (360) 902-4094; Implementation and Enforcement: Jennifer Dana, Highways-Licenses Building, Olympia, Washington, (360) 902-3673.

August 22, 2011

Ben T. Shomshor

Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-19-045, filed 9/13/10, effective 10/14/10)

WAC 308-56A-460 Destroyed or wrecked vehicle—Reporting—Rebuilt. (1) **What are total loss, destroyed, salvage, and wrecked vehicles?** For the purposes of this section:

(a) A total loss vehicle is one whose destruction has been reported to the department as described in RCW ((46.12.070)) 46.12.600 by an insurer (insurance companies and self-insurers as described in RCW 46.29.630);

(b) A destroyed vehicle is one whose destruction has been reported to the department as described in RCW ((46.12.070)) 46.12.600 by the vehicle's owner;

(c) A salvage vehicle as defined in RCW ((46.12.005)) 46.04.514;

Note: When used in this section, the terms "destroyed" and "destroyed vehicle" include total loss, destroyed, and salvage vehicles.

(d) A wrecked vehicle as defined in RCW 46.80.010(6).

Note: A vehicle may be considered destroyed or wrecked when the evidence of ownership is a salvage certificate/title, insurance company bill of sale, or wrecker bill of sale from any jurisdiction, or when the evidence of ownership indicates the vehicle may be a destroyed vehicle not reported to the department.

(2) **How are vehicles reported to the department as total loss, destroyed, salvage, or wrecked?**

(a) Insurers may report total loss vehicles to the department:

(i) Electronically through the department's on-line reporting system. Insurers must destroy ownership documents for a vehicle reported this way; or

(ii) By submitting the certificate of ((ownership)) title or affidavit in lieu of title indicating the vehicle is "DESTROYED"; or

(iii) By submitting a completed total loss claim settlement form (TD 420-074).

Note: Reports of total loss vehicles must include the insurer's name, address, and the date of loss.

(b) Registered or legal owners report a vehicle as destroyed by submitting the certificate of ((ownership)) title or affidavit in lieu of title indicating the vehicle is "DESTROYED," and must include the registered owner's name, address, and date of loss.

(c) Licensed wreckers report wrecked vehicles as required in RCW 46.80.090.

(d) For vehicles six through twenty years old a statement whether or not the vehicle meets the market value threshold amount as defined in RCW ((46.12.005)) 46.12.600 is also required.

(3) **What is the current market value threshold amount?** The current market value threshold amount is ((six thousand seven hundred ninety dollars)) seven thousand six hundred sixty dollars.

(4) **How is the market value threshold amount determined?** Using the current market value threshold amount described in RCW ((46.12.005)) 46.12.600 each year the department will add the increased value if the increase is equal to or greater than fifty dollars.

(5) **What if the "market value threshold amount" is not provided as required?** If the market value threshold amount is not provided when required, the department would treat the report of destruction as if the market value threshold as described in RCW ((46.12.005)) 46.12.600 has been met. The certificate of ((ownership)) title will be branded according to WAC 308-56A-530.

(6) **What documentation is required to obtain a certificate of ((ownership)) title after a vehicle is destroyed?** After a vehicle has been reported destroyed or wrecked and is rebuilt, you must submit the following documentation to the department in order to obtain a new certificate of ((ownership)) title:

(a) Application for certificate of ((ownership)) title as described in RCW ((46.12.030)) 46.12.530;

(b) Certificate of vehicle inspection as described in WAC 308-56A-150;

(c) Bill of sale from the insurer, owner, or wrecker who reported the vehicle's destruction to the department.

(i) Bills of sale from insurers must include a representative's signature and title of office;

(ii) Bills of sale from insurers and wreckers do not need to be notarized;

(iii) Bills of sale from owners shown on department records must be notarized or certified;

(iv) A bill of sale is not required when owners shown on department records retain a destroyed vehicle and apply for a new certificate of ownership;

(v) Releases of interest from lien holder(s) or proof of payment such as a canceled check bearing a notation that it has been paid by the bank on which it was drawn or a notarized statement on a receipt from the legal owner that the debt is satisfied are required when the vehicle is retained by the registered owner(s).

(d) Odometer disclosure statement, if applicable.

(7) **What is required of a Washington licensed vehicle dealer prior to selling a destroyed or wrecked vehicle?** Except as permitted by RCW 46.70.101 (1)(b)(viii), before a dealer may sell a destroyed or wrecked vehicle under their Washington vehicle dealer license, the dealer must:

(a) Rebuild the vehicle to standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles; and

(b) Obtain a vehicle inspection by the Washington state patrol; and

(c) Apply for and receive a certificate of ownership for the vehicle, issued in the name of the vehicle dealer.

(8) **Once a destroyed or wrecked vehicle is rebuilt, do the license plates remain with the vehicle?** Whether or not the license plates remain with the vehicle depends on the circumstance:

(a) Standard issue license plates may remain with a destroyed vehicle unless they are severely damaged or the vehicle was issued a department temporary permit described in WAC 308-56A-140;

(b) Replacement license plates are required for wrecked vehicles since Washington licensed wreckers are required by WAC 308-63-070 to remove them;

(c) Special license plates may remain with or be transferred to a destroyed or wrecked vehicle;

(d) Applicants may retain the current license plate number as provided for in RCW ((46.16.233)) 46.16A.200, unless the vehicle was issued a department temporary permit as described in WAC 308-56A-140.

(9) **Will the certificate of ownership or registration certificate indicate "WA REBUILT"?** Salvage or wrecked vehicles meeting the criteria described in WAC 308-56A-530 will be branded "WA REBUILT."

WSR 11-17-126
EXPEDITED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-18—Filed August 24, 2011,
7:30 a.m.]

Title of Rule and Other Identifying Information: Utilization review of expedited and concurrent review determinations for insurance coverage of health care (WAC 284-43-410).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Meg L. Jones, Office of the Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, AND RECEIVED BY October 25, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment changes WAC 284-43-410 (6)(b) by removing the distinction between urgent care review requests that occur before and after July 1, 2011. As a result, any carrier review that falls under WAC 284-43-410 must occur within forty-eight hours.

WAC 284-43-410 (6)(c), the requirement for reducing oral notification of an urgent care review to writing within three days would be changed to seventy-two hours. As a result, for some reviews, carriers will have a slightly shorter "regular business hour" time frame to reduce the determination to writing.

Reasons Supporting Proposal: The proposed changes incorporate the federal standards for carrier determinations and notice promulgated pursuant to P.L. 111-148 (2010, as amended) and regulations issued on June 24, 2011, amending 45 C.F.R. Part 147.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.530.

Statute Being Implemented: RCW 48.43.530.

Rule is necessary because of federal law, P.L. 111-148 (2010, as amended) and interim final rules; 45 C.F.R. 147 (2011).

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 20548, Olympia, WA, (360) 725-7170; Implementation: Beth Berendt, 5000 Capitol Way South, Tumwater, WA, (360) 725-7117; and Enforcement: Carol Sureau, 5000 Capitol Way South, Tumwater, WA, (360) 725-7050.

August 24, 2011
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2009-19, filed 11/10/10, effective 12/11/10)

WAC 284-43-410 Utilization review—Generally. (1) These definitions apply to this section:

(a) "Concurrent care review request" means any request for an extension of a previously authorized inpatient stay or a previously authorized ongoing outpatient service, e.g., physical therapy, home health, etc.

(b) "Immediate review request" means any request for approval of an intervention, care or treatment where passage of time without treatment would, in the judgment of the provider, result in an imminent emergency room visit or hospital admission and deterioration of the patient's health status. Examples of situations that do not qualify under an immediate review request include, but are not limited to, situations where:

(i) The requested service was prescheduled, was not an emergency when scheduled, and there has been no change in the patient's condition;

(ii) The requested service is experimental or in a clinical trial;

(iii) The request is for the convenience of the patient's schedule or physician's schedule; and

(iv) The results of the requested service are not likely to lead to an immediate change in the patient's treatment.

(c) "Nonurgent preservice review request" means any request for approval of care or treatment where the request is made in advance of the patient obtaining medical care or services and is not an urgent care request.

(d) "PostsERVICE review request" means any request for approval of care or treatment that has already been received by the patient.

(e) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function, or, in the opinion of a physician with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each carrier must maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Carriers must make clinical review criteria available upon request to participating providers. A carrier need not use medical evi-

dence or standards in its utilization review of religious non-medical treatment or religious nonmedical nursing care.

(3) The utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter and must have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(4) Each carrier when conducting utilization review must:

(a) Accept information from any reasonably reliable source that will assist in the certification process;

(b) Collect only the information necessary to certify the admission, procedure or treatment, length of stay, or frequency or duration of services;

(c) Not routinely require providers or facilities to numerically code diagnoses or procedures to be considered for certification, but may request such codes, if available;

(d) Not routinely request copies of medical records on all patients reviewed;

(e) Require only the section(s) of the medical record during prospective review or concurrent review necessary in that specific case to certify medical necessity or appropriateness of the admission or extension of stay, frequency or duration of service;

(f) For prospective and concurrent review, base review determinations solely on the medical information obtained by the carrier at the time of the review determination;

(g) For retrospective review, base review determinations solely on the medical information available to the attending physician or order provider at the time the health service was provided;

(h) Not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered unless the prior authorization was based upon a material misrepresentation by the provider;

(i) Not retrospectively deny coverage or payment for care based upon standards or protocols not communicated to the provider or facility within a sufficient time period for the provider or facility to modify care in accordance with such standard or protocol; and

(j) Reverse its certification determination only when information provided to the carrier is materially different from that which was reasonably available at the time of the original determination.

(5) Each carrier must reimburse reasonable costs of medical record duplication for reviews.

(6) Each carrier must have written procedures to assure that reviews and second opinions are conducted in a timely manner.

(a) Review time frames must be appropriate to the severity of the patient condition and the urgency of the need for treatment, as documented in the review request.

(b) If the review request from the provider is not accompanied by all necessary information, the carrier must tell the provider what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for

providing information, the time frames for carrier review determination and notification must be no less favorable than federal Department of Labor standards, as follows:

(i) For immediate request situations, within one business day when the lack of treatment may result in an emergency visit or emergency admission;

(ii) For concurrent review requests that are also urgent care review requests, as soon as possible, taking into account the medical exigencies, and no later than twenty-four hours, provided that the request is made at least twenty-four hours prior to the expiration of previously approved period of time or number of treatments;

(iii) For urgent care review requests (~~(received before July 1, 2011,)~~) within forty-eight hours;

(iv) (~~(For urgent care review requests received on or after July 1, 2011, within twenty four hours;~~

~~(+))~~) For nonurgent preservice review requests, including nonurgent concurrent review requests, within five calendar days; or

~~((+))~~ (v) For postservice review requests, within thirty calendar days.

(c) Notification of the determination must be provided as follows:

(i) Information about whether a request was approved or denied must be made available to the attending physician, ordering provider, facility, and covered person. Carriers must at a minimum make the information available on their web site or from their call center.

(ii) Whenever there is an adverse determination the carrier must notify the ordering provider or facility and the covered person. The carrier must inform the parties in advance whether it will provide notification by phone, mail, fax, or other means. For an adverse determination involving an urgent care review request, the carrier may initially provide notice by phone, provided that a written or electronic notification meeting United States Department of Labor standards is furnished within (~~(three days))~~ seventy-two hours of the oral notification.

(d) As appropriate to the type of request, notification must include the number of extended days, the next anticipated review point, the new total number of days or services approved, and the date of admission or onset of services.

(e) The frequency of reviews for the extension of initial determinations must be based on the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.

(7) No carrier may penalize or threaten a provider or facility with a reduction in future payment or termination of participating provider or participating facility status because the provider or facility disputes the carrier's determination with respect to coverage or payment for health care service.