WSR 12-21-008
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed October 5, 2012, 10:05 a.m., effective November 5, 2012]

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

Purpose: To implement certain bills enacted by the 2012 legislature and signed by the governor:

- Regarding raising the cutoff of eligibility for working connections child care subsidies from one hundred seventy-five percent of the federal poverty level, to two hundred percent of the federal poverty level.
- Regarding increasing the authorization period for working connections child care from six months to twelve months.

To make technical corrections and streamline language regarding child support and the Basic Food employment and training (BFET) program.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0005, 170-290-0012, 170-290-0031, 170-290-0045, 170-290-0060, 170-290-0075, 170-290-0082, 170-290-0200, 170-290-0205, 170-290-0225, and 170-290-0230.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Adopted under notice filed as WSR 12-17-157 on August 22, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 0.

Date Adopted: October 5, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0005 Eligibility. (1) **Parents.** To be eligible for WCCC, the person applying for benefits must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Nephew or niece;

(vi) Aunt;

(vii) Uncle;

(viii) Grandparent;

(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below ((~~one~~)) two hundred ((~~seventy-five~~)) percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than ((~~one~~)) two hundred ((~~seventy-five~~)) percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) Live in Washington state, and be:

(i) Less than age thirteen; or

(ii) Less than age nineteen, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits; or

(b) The consumer reapplies for benefits.

(2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances under WAC 170-290-0031.

(3) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) A current WorkFirst IRP for consumers receiving TANF;

(b) Employer name, address, and phone number;

(c) State business registration and license, if self-employed;

(d) Work, school, or training schedule (when requesting child care for non-TANF activities);

(e) Hourly wage or salary;

(f) Either the:

(i) Gross income for the last three months;

(ii) Federal income tax return for the preceding calendar year; or

(iii) DSHS employment verification form;

(g) Monthly unearned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;

(h) If the other parent is in the household, the same information for them;

(i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(j) ((~~Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;~~

~~(k)~~)) Name and phone number of the licensed child care provider; and

(((~~(l)~~))) (k) For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed providers' valid Social Security card; and

(iv) All other information required by WAC 170-290-0135.

(6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

(8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0031 Notification of changes. When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify DSHS, within five days, of any change in providers;

(2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;

(3) Notify DSHS within ten days of any significant change ((~~in~~)) related to the consumer's copayment or eligibility, including:

(a) The number of child care hours the consumer needs (more or less hours);

(b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The consumer's household size such as any family member moving in or out of his or her home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of the consumer's in-home/relative provider;

(f) The consumer's home address and telephone number; and

(g) The consumer's legal obligation to pay child support;

(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and

(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

(a) Determine the consumer's family size (under WAC 170-290-0015); and

(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$50
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding $50
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) Effective February 1, 2011, through February 28, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$60
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding $60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) ((~~On or after~~)) Effective March 1, 2011, through June 30, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$65
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding $65
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(5) On or after July 1, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding $65.
(d) Above 200% of the FPG, a consumer is not eligible for WCCC benefits.	

(6) DSHS does not prorate the copayment when a consumer uses care for part of a month.

((~~(6)~~)) (7) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0082 Eligibility period. (1) ((~~**Six-month eligibility.**~~

~~(a)~~)) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for ((~~six~~)) twelve months before having to redetermine his or her income eligibility((~~, except as provided in subsection (2) of this section~~)). The ((~~six-month~~)) twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

((~~(b)~~)) (2) A consumer's eligibility may be for less than ((~~six~~)) twelve months if:

((~~(i)~~)) (a) Requested by the consumer; or

((~~(ii)~~)) (b) A TANF consumer's individual responsibility plan indicates child care is needed for less than ((~~six~~)) twelve months.

((~~(c)~~)) (3) A consumer's eligibility may end sooner than ((~~six~~)) twelve months if:

((~~(i)~~)) (a) The consumer no longer wishes to participate in WCCC; or

((~~(ii)~~)) (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

((~~(2) **Twelve-month eligibility.**~~

~~(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.~~

~~(b) A consumer's eligibility may be for less than twelve months if:~~

~~(i) Requested by the consumer; or~~

~~(ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.~~

~~(c) The consumer's eligibility may end sooner than twelve months if:~~

~~(i) The consumer no longer wishes to participate in WCCC; or~~

~~(ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.~~

~~(d)~~)) (4) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

((~~(e)~~)) (5) The twelve-month eligibility period begins:

(((~~(i)(A)~~))) (a) When benefits begin under WAC 170-290-0095; or

(((~~(B)~~))) (b) Upon reapplication under WAC 170-290-0109(4)((~~; and~~

~~(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.~~

~~(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.~~

~~(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.~~

~~(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research and data center, or both, to measure the child's educational progress from preschool through grade twelve~~)).

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	$28.53	$23.99	$22.67	$21.34
	Half-Day	$14.28	$12.00	$11.34	$10.67
Spokane County	Full-Day	$29.18	$24.54	$23.19	$21.83
	Half-Day	$14.61	$12.28	$11.61	$10.91
Region 2	Full-Day	$28.81	$24.05	$22.30	$19.73
	Half-Day	$14.41	$12.03	$11.15	$9.88
Region 3	Full-Day	$38.13	$31.79	$27.46	$26.67
	Half-Day	$19.07	$15.89	$13.73	$13.34
Region 4	Full-Day	$44.38	$37.06	$31.09	$28.00
	Half-Day	$22.63	$18.54	$15.55	$14.00
Region 5	Full-Day	$32.54	$28.00	$24.65	$21.88
	Half-Day	$16.26	$14.00	$12.32	$10.95
Region 6	Full-Day	$31.99	$27.46	$23.99	$23.46
	Half-Day	$16.01	$13.73	$12.00	$11.74

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five ((~~to~~)) through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - ((~~11~~)) 12 yrs)
Region 1	Full-Day	$24.29	$24.29	$21.12	$21.12	$18.78
	Half-Day	$12.14	$12.14	$10.56	$10.56	$9.39
Spokane County	Full-Day	$24.84	$24.84	$21.60	$21.60	$19.21
	Half-Day	$12.42	$12.42	$10.80	$10.80	$9.60
Region 2	Full-Day	$25.65	$25.65	$22.30	$19.95	$19.95
	Half-Day	$12.82	$12.82	$11.15	$9.97	$9.97
Region 3	Full-Day	$34.03	$34.03	$29.33	$25.81	$23.46
	Half-Day	$17.02	$17.02	$14.67	$12.91	$11.74
Region 4	Full-Day	$40.04	$40.04	$34.81	$29.33	$28.16
	Half-Day	$20.03	$20.03	$17.42	$14.67	$14.08
Region 5	Full-Day	$26.99	$26.99	$23.46	$22.30	$19.95
	Half-Day	$13.50	$13.50	$11.74	$11.15	$9.97
Region 6	Full-Day	$26.99	$26.99	$23.46	$23.46	$22.30
	Half-Day	$13.50	$13.50	$11.74	$11.74	$11.15

(2) The family home child care WAC ((~~170-296-0020~~)) 170-296A-0010 and ((~~170-296-1350~~)) 170-296A-5550 allows providers to care for children from birth up to and including the day before their ((~~twelfth~~)) thirteenth birthday. ((~~The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on their license. If the provider has an exception to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.~~))

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five ((~~to eleven~~)) through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps. (1) In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	$7.30	$6.14	$5.80	$5.45
	Half-Day	$3.65	$3.07	$2.90	$2.73
Region 2	Full-Day	$7.36	$6.15	$5.70	$5.05
	Half-Day	$3.68	$3.08	$2.85	$2.52
Region 3	Full-Day	$9.75	$8.13	$7.02	$6.82
	Half-Day	$4.88	$4.06	$3.51	$3.41
Region 4	Full-Day	$11.35	$9.48	$7.95	$7.16
	Half-Day	$5.67	$4.74	$3.98	$3.58
Region 5	Full-Day	$8.32	$7.16	$6.30	$5.59
	Half-Day	$4.16	$3.58	$3.15	$2.80
Region 6	Full-Day	$8.18	$7.02	$6.14	$6.00
	Half-Day	$4.09	$3.51	$3.07	$3.00

(i) Centers in Clark County are paid Region 3 rates;

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed $15.89 per hour; or

(c) **Level 3.** A rate that exceeds $15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

(a) Be at least eighteen years of age; and

(b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

(a) Is thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five ((~~to~~)) through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers. (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - ((~~11~~)) 12 yrs)
Region 1	Full-Day	$6.00	$5.40	$5.40	$4.80
	Half-Day	$3.00	$2.70	$2.70	$2.40
Region 2	Full-Day	$6.00	$5.70	$5.10	$5.10
	Half-Day	$3.00	$2.85	$2.55	$2.55
Region 3	Full-Day	$8.70	$7.50	$6.60	$6.00
	Half-Day	$4.35	$3.75	$3.30	$3.00
Region 4	Full-Day	$9.00	$8.90	$7.50	$7.20
	Half-Day	$4.50	$4.45	$3.75	$3.60
Region 5	Full-Day	$6.60	$6.00	$5.70	$5.10
	Half-Day	$3.30	$3.00	$2.85	$2.55
Region 6	Full-Day	$6.60	$6.00	$6.00	$5.70
	Half-Day	$3.30	$3.00	$3.00	$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed $15.89 per hour; or

(c) **Level 3.** A rate that exceeds $15.89 per hour.

(2) If the provider has an exception to care for a child who:

(a) Is ((~~twelve~~)) thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five ((~~to eleven~~)) through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

(a) Be at least eighteen years old; and

(b) Meet the requirements for being an assistant under chapter ((~~170-296~~)) 170-296A WAC and maintain daily

records of one-on-one care provided, to include the name of the employee providing the care.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0045 Approved activities for consumers not participating in WorkFirst. This section applies to applicants and consumers of WCCC who do not participate in WorkFirst activities:

(1) **General requirements for employment ((~~or~~)), self-employment, or Basic Food employment and training (BF E&T) program.** He or she may be eligible for WCCC benefits for up to a maximum of sixteen hours per day, including travel, study, and sleep time before or after a night shift, when he or she is:

(a) Employed under WAC 170-290-0003; ((~~or~~))

(b) Self-employed under WAC 170-290-0003; or

(c) Participating in the BF E&T program under chapter 388-444 WAC.

(2) **Special requirements for education ((~~and training~~)).**

(a) An applicant or consumer who is under twenty-two years of age may be eligible for WCCC benefits for high school (HS) or general educational development (GED) program without a minimum number of employment hours.

(b) An applicant or consumer who is twenty-two years of age or older:

(i) May be eligible to receive the benefits under this subsection only once during his or her lifetime. In order to qualify for the general education and training benefits under this subsection, he or she must work either:

(A) Twenty or more hours per week of unsubsidized employment; or

(B) Sixteen or more hours per week in a paid federal or state work study program;

(ii) Is limited to up to twenty-four consecutive months of WCCC benefits for participation in:

(A) Adult basic education (ABE);

(B) English as a second language (ESL); or

(C) High school/general educational development (GED) completion; ((~~or~~

~~(D) Food stamp employment and training program under chapter 388-444 WAC;~~)) and

(iii) Is limited to up to thirty-six consecutive months of WCCC benefits for participation in vocational education (Voc Ed). The vocational education program must lead to a degree or certificate in a specific occupation and be offered by the following accredited entities only:

(A) Public and private technical college or school;

(B) Community college; or

(C) Tribal college.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0060 Countable income. DSHS counts income as money an applicant or consumer earns or receives from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) The following child support payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support((~~;~~

~~(c) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply~~)).

(3) Supplemental security income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation;

(8) Other types of income not listed in WAC 170-290-0070;

(9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;

(10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable;

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

WSR 12-21-009
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed October 5, 2012, 10:29 a.m., effective November 5, 2012]

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

Purpose: The department proposed to amend chapter 16-86 WAC to change the official mature RB-51 Brucella vaccination dosage from 0.25cc to a full dose of the RB-51 Brucella vaccine. The department proposed to clarify and simplify the definitions within WAC 16-86-005 and add a weight limit to the definition of virgin bull. The department also proposed to add a new section outlining the trichomoniasis requirements for bulls presented for sale at a public livestock market.

Citation of Existing Rules Affected by this Order: Amending chapter 16-86 WAC.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-16-096 on August 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 1, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

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

Date Adopted: October 5, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 10-20-093, filed 9/30/10, effective 10/31/10)

WAC 16-86-005 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States Department of Agriculture (USDA) Veterinary Services to participate in state-federal cooperative programs.

"Adult vaccination tattoo" means a tattoo in the right ear with the letters RAV followed by the last digit of the year in which the vaccination was administered with RB-51 *Brucella* vaccine. An example is RAV2 for an adult vaccinated in 2012.

"Breed registry tattoo" means individual registry tattoos issued by breed associations.

"Brucellosis vaccine" means only those *Brucella abortus* products that are approved by and produced under license of the USDA for injection into cattle to enhance their resistance to brucellosis.

"Calfhood vaccination tattoo" means a tattoo in the right ear consisting of an R, the United States registered V-shield, and the last digit of the year in which the animal was vaccinated with RB-51 *Brucella* vaccine. An example is RV-shield2 for a calf vaccinated in 2012.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Herd plan" means a written management agreement between the animal owner and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner, in which each participant agrees to undertake actions specified in the herd plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd and to work toward eradicating the disease in the infected herd.

"Official calfhood vaccinate" means female cattle between four and twelve months of age that are vaccinated with brucellosis vaccine at a calfhood dose (2cc subcutaneously) and officially individually identified.

"Official individual identification" means identifying an animal or group of animals using USDA-approved or WSDA-approved devices or methods ((~~approved by the director,~~)) including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director. If a radio frequency identification device is used for identification, the device must be placed in the left ear. The official tattoo must be placed in the middle third of the right ear.

"Official Washington ((~~mature~~)) adult vaccinate" means female cattle over the age of twelve months that ((~~are native to~~)) have resided in Washington state((~~, or originate from other class free states or countries to be determined on a case-by-case investigation by the director,~~)) for ninety days or more and are vaccinated with a ((~~reduced~~)) dose of brucellosis vaccine (((~~0.25cc~~)) 2cc subcutaneously) under directions issued by the director.

"Premises" means a location ((~~or physical address~~)) where livestock are kept.

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA" means the United States Department of Agriculture.

((~~"Vaccination tattoo" means a tattoo in the right ear bearing the United States registered shield and V preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which the animal was vaccinated with strain 19 *Brucella* vaccine. For strain RB-51 calfhood vaccination, an R precedes the shield and V. In the case of strain RB-51 mature vaccination, an M precedes the shield and V. For strain RB-51 vaccinates, the last number of the tattoo corresponds to the last digit of the year in which vaccine was administered.~~))

"Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age ((~~that is~~)), as determined by dentition inspection by an accredited veterinarian. Virgin bulls must be certified by the owner or the owner's designee with a signed statement as having had no breeding contact with female cattle.

AMENDATORY SECTION (Amending WSR 08-01-094, filed 12/17/07, effective 1/17/08)

WAC 16-86-025 Official brucellosis vaccination. (1) An official vaccination report of all brucellosis vaccinations must be made to the department within thirty days of vaccination by the accredited veterinarian who performed the vaccination. The vaccination report must be made on an approved report form (USDA form number VS 4-26) issued

by the department for the purpose of individually identifying the cattle and recording official brucellosis vaccinations.

(a) All vaccinations must be performed by a licensed accredited veterinarian or federal or state employed veterinarian and are not official until they are reported to the department.

(b) Veterinarians must record all vaccinations in a ledger that records the owner of the animal, ((~~tag~~)) official individual identification numbers, and the date of vaccination. These records must be maintained for seven years.

(2) Official calfhood vaccinates must be:

(a) Vaccinated with 2cc subcutaneous RB-51 *Brucella* vaccine; and

(b) Permanently identified ((~~by~~)) with official individual vaccination ((~~eartag (orange tag); and~~

~~(b) Vaccinated with 2cc subcutaneous RB-51 *Brucella* vaccine and permanently identified as vaccinates by a vaccination tattoo in the right ear. For strain RB-51 calfhood vaccination, the tattoo consists of an R, the United States registered V-shield, and the last digit of the year of vaccination~~)) identification and calfhood vaccination tattoo.

(3) Official ((~~mature~~)) adult vaccinates (((~~over twelve months of age~~))) must not be pregnant and must have prevaccination blood samples for brucellosis submitted on USDA form number VS4-33 to the office of the state veterinarian. An official ((~~mature~~)) adult vaccinate must be:

(a) Vaccinated with ((~~0.25cc~~)) 2cc subcutaneous RB-51 *Brucella* vaccine;

(b) Permanently identified ((~~by an~~)) with individual official ((~~USDA~~)) identification (((~~silver tag) and a USDA brucellosis vaccination tag (orange tag)~~))); and

(c) Permanently identified as a vaccinate by ((~~a~~)) an adult vaccination tattoo in the right ear. ((~~For strain RB-51 mature vaccination, the tattoo consists of an M, the United States registered V-shield, and the last digit of the year of vaccination.~~))

NEW SECTION

WAC 16-86-114 Trichomoniasis testing at public livestock markets. (1) Bulls presented at a public livestock market that are less than eight hundred pounds and judged to be less than twelve months of age by the market veterinarian using dentition inspection are exempt from trichomoniasis testing.

(2) Bulls presented at a public livestock market that are less than eight hundred pounds and determined to be more than twelve months of age by the market veterinarian using dentition inspection must be tested for trichomoniasis, or be castrated prior to leaving the market, or be sent to a category 2 restricted holding facility as defined in WAC 16-30-035, or be delivered directly to a USDA-inspected slaughter facility.

WSR 12-21-013
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed October 5, 2012, 3:45 p.m., effective November 5, 2012]

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

Purpose: The department proposed to amend chapter 16-610 WAC to reinstate livestock inspection fees for dairy calves delivered to a United States Department of Agriculture (USDA) inspected slaughter facility.

Citation of Existing Rules Affected by this Order: Amending WAC 16-610-065.

Statutory Authority for Adoption: Chapter 16.57 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-16-097 on August 1, 2012.

Changes Other than Editing from Proposed to Adopted Version: The department proposed to amend chapter 16-610 WAC to align with SHB 1538 that was signed by the governor in 2011 supporting animal disease traceability. Proposed changes included:

- Modifying the livestock inspection exemption for private sales of unbranded, female, dairy breed cattle involving fifteen head or less. This modification would limit the inspection exemption to only producers with a valid Washington state department of agriculture milk producers license;
- Requiring milk producers to develop, implement, and financially support an electronic transaction reporting system within eighteen months of the rule making effective date;
- Requiring a certificate of permit and bill of sale to accompany any cattle presented for an inspection that are in the possession of the buyer;
- Exempting unbranded dairy breed bull calves or free martins from inspection requirements when criteria are met; and
- Reinstating livestock inspection fees for dairy calves delivered to a USDA inspected slaughter facility.

The department is only adopting the reinstatement of livestock inspection fees for dairy calves delivered to a USDA inspected slaughter facility.

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: October 5, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-065 Livestock identification fees. All livestock identification inspection fees charged by the director are specified in statute under RCW 16.57.220 but are reproduced in this section for ease of reference.

For purposes of this section, the time and mileage fee means seventeen dollars per hour and the current mileage rate set by the office of financial management.

Certificate	Fees:
Inspection Certificate - Cattle	(1) The livestock inspection fee for cattle is **$1.60** per head or the time and mileage fee, whichever is greater, except: The fee for livestock inspection for cattle is **$1.10** per head or the time and mileage fee, whichever is greater, when cattle are identified with a valid brand recorded to the owner of the cattle in Washington. The time and mileage fee may be waived for private treaty transactions of ten head or less of cattle bearing the seller's Washington recorded brand and special sales of 4-H, FFA, and junior/youth groups. The time and milage waiver: (a) Will be limited to twelve waivers within a calendar year; and (b) Does not apply to multiple sales to the same buyer within a thirty-day period.
	(2) The livestock inspection fee for cattle is **$4.00** per head for cattle delivered to a USDA inspected slaughter facility with a daily capacity of no more than five hundred head of cattle.
	(3) No inspection fee is charged for a calf that is inspected prior to moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington state-recorded brand.
	(((~~(4) No inspection fee is charged for a dairy calf less than thirty days old that is delivered to a USDA inspected slaughter facility.~~)))
Inspection Certificate - Horse	(((~~(5)~~))) (4) The livestock inspection fee for horses is **$3.50** per head or the time and mileage rate, whichever is greater, except:
Inspection Certificate - Groups of thirty or more horses	(((~~(6)~~))) (5) The livestock inspection fee for groups of thirty or more horses is **$2.00** per head or the time and mileage fee, whichever is greater, if: (a) The horses are owned by one individual; and (b) The inspection is performed on one date and at one location; and (c) Only one certificate is issued.
Inspection Certificate - Minimum fee	(((~~(7)~~))) (6) The minimum fee for a livestock inspection is **$5.00.** The minimum fee does not apply to livestock consigned to and inspected at a public livestock market, special sale, or a cattle processing plant.
Annual individual identification certificate for individual animals	(((~~(8)~~))) (7)(a) The livestock inspection fee for an annual individual identification certificate for cattle and horses is **$20.00** per head or the time and mileage fee, whichever is greater. (b) The livestock inspection fee for an annual individual identification certificate for groups of thirty or more horses or cattle is **$5.00** per head or the time and mileage fee, whichever is greater, if: (i) The horses or cattle are owned by one individual; (ii) The inspection is performed on one date and at one location; and (iii) Only one certificate is issued.
Lifetime individual identification certificate	(((~~(9)~~))) (8) A livestock inspection fee for a lifetime individual identification certificate for horses and cattle is **$60.00** per head or the time and mileage fee, whichever is greater.

WSR 12-21-019
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-03—Filed October 8, 2012, 10:54 a.m., effective November 8, 2012]

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

Purpose: Explain the standards applied by the commissioner when reviewing a plan's coverage standards for its prescription drug benefit, and requiring specific disclosures to enrollees about how to request substitution of formulary medications and about formulary changes.

Statutory Authority for Adoption: RCW 48.02.060, 48.02.062, 48.18.140, 48.43.525, 48.44.050, 48.44.440(2), 48.44.460(2), 48.46.200, 48.46.510.

Adopted under notice filed as WSR 12-14-116 on July 5, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-43-816 does not include a reference to the formulary in the initial paragraph. It also includes a new subsection (3), clarifying the generic first standard set forth in the section by noting that patient tolerance or response to medication is a specific basis that may require access to a nonformulary medication. The subsection (3) in the proposed rule is not subsection (4) in the final rule. WAC 284-43-817(1) was changed based on comments, to encompass all types of alternative products, not just generic products.

WAC 284-43-817(5) was added, at the request of carriers, to confirm the fact that the substitution process itself is not a grievance or appeal process.

WAC 284-43-819(2) no longer contains the phrase "and must not contribute to the carrier's underwriting gain for the plan" in the last sentence. WAC 284-43-819(3) now clarifies that carriers may include underwriting gain in their product pricing, but that substitution based on this section may not result in additional gain beyond the original pricing.

WAC 284-43-825 (1)(b) was edited for clarity regarding the expectation for notice, and establishes a specific, more limited class of enrollees to whom the carrier must provide notice of a formulary change.

WAC 284-43-850 now contains language identical to that in the Affordable Care Act. The language provides clarity about the applicability of network requirements, and the list of services or items for which coverage may be denied. The definition of life-threatening condition from the Affordable Care Act is included.

A final cost-benefit analysis is available by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7170, fax (360) 586-3109, e-mail rules-coordinator@oic.wa.gov.

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

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

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

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

Date Adopted: October 4, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-816 General prescription drug benefit requirements. A health carrier must not offer, renew, or issue a health benefit plan providing a prescription drug benefit, which the commissioner determines results or can reasonably be expected to result in an unreasonable restriction on the treatment of patients. A carrier may restrict prescription drug coverage based on contract or plan terms and conditions that otherwise limit coverage, such as a preexisting condition waiting period, or medical necessity.

(1) A carrier must ensure that a prescription drug benefit covers Federal Drug Administration approved prescribed drugs, medications or drug therapies that are the sole prescription drug available for a covered medical condition.

(2) A prescription drug benefit that only covers generic drugs constitutes an unreasonable restriction on the treatment of patients.

(3) A prescription drug benefit or formulary must not exclude coverage for a nonformulary drug or medication if the only formulary drug available for an enrollee's covered condition is one that the enrollee cannot tolerate or that is not clinically efficacious for the enrollee.

(4) Nothing in this chapter is intended to limit or deter the use of "Dispense as Written" prescriptions, subject to the terms and conditions of the health plan.

NEW SECTION

WAC 284-43-817 Prescription drug benefit design. (1) A carrier may design its prescription drug benefit to include cost control measures, including requiring preferred drug substitution in a given therapeutic class, if the restriction is for a less expensive, equally therapeutic alternative product available to treat the condition.

(2) A carrier may include elements in its prescription drug benefit design that, where clinically feasible, create incentives for the use of generic drugs. Examples of permitted incentives include, but are not limited to, refusal to pay for higher cost drugs until it can be shown that a lower cost drug or medication is not effective (also known as step therapy protocols or fail-first policies), establishing a preferred brand and nonpreferred brand formulary, or otherwise limiting the benefit to the use of a generic drug in lieu of brand name drugs, subject to a substitution process as set forth in subsection (3) of this section.

(3) A carrier must establish a process that a provider and enrollee may use to request a substitution for a covered prescribed therapy, drug or medication.

(a) The process must not unreasonably restrict an enrollee's access to nonformulary or alternate medications for refractory conditions. Used in this context, "refractory" means "not responsive to treatment."

(b) A carrier's substitution process must not result in delay in treating an enrollee's emergency fill or urgent care needs, or expedited requests for authorization. Subject to the terms and conditions of the policy that otherwise limit or exclude coverage, the carrier must permit substitution of a covered generic drug or formulary drug if:

(i) An enrollee does not tolerate the covered generic or formulary drug; or

(ii) An enrollee's provider determines that the covered generic or formulary drug is not therapeutically efficacious for an enrollee. A carrier may require the provider to submit specific clinical documentation as part of the substitution request; or

(iii) The provider determines that a dosage is required for clinically efficacious treatment that differs from a carrier's formulary dosage limitation for the covered drug. A carrier may require the provider to submit specific clinical documentation as part of the substitution request and must review that documentation prior to making a decision.

(4) A carrier may include a preauthorization requirement for its prescription drug benefit and its substitution process, based on accepted peer reviewed clinical studies, Federal Drug Administration black box warnings, the fact that the drug is available over-the-counter, objective and relevant clinical information about the enrollee's condition, specific medical necessity criteria, patient safety, or other criteria that meet an accepted, medically applicable standard of care.

(a) Neither the substitution process criteria nor the type or volume of documentation required to support a substitution request may be unreasonably burdensome to the enrollee or their provider.

(b) The substitution process must be administered consistently, and include a documented consultation with the prescribing provider prior to denial of a substitution request.

(5) Use of a carrier's substitution process is not a grievance or appeal pursuant to RCW 48.43.530 and 48.43.535. Denial of a substitution request is an adverse benefit determination, and an enrollee, their representative provider or facility, or representative may request review of that decision using the carrier's appeal or adverse benefit determination review process.

NEW SECTION

WAC 284-43-818 Formulary changes. A carrier is not required to use a formulary as part of its prescription drug benefit design. If a formulary is used, a carrier must, at a minimum, comply with these requirements when a formulary change occurs.

(1) In addition to the requirements set forth in WAC 284-30-450, a carrier must not exclude or remove a medication from its formulary if the medication is the sole prescription medication option available to treat a disease or condition for which the health benefit plan, policy or agreement otherwise provides coverage, unless the medication or drug is removed because the drug or medication becomes available over-the-counter, is proven to be medically inefficacious, or for documented medical risk to patient health.

(2) If a drug is removed from a carrier's formulary for a reason other than withdrawal of the drug from the market, availability of the drug over-the-counter, or the issue of black box warnings by the Federal Drug Administration, a carrier must continue to cover a drug that is removed from the carrier's formulary for the time period required for an enrollee who is taking the medication at the time of the formulary change to use a carrier's substitution process to request continuation of coverage for the removed medication, and receive a decision through that process, unless patient safety requires swifter replacement.

(3) Formularies posted on a carrier or a carrier's contracted pharmacy benefit manager web site must be current. Unless the removal is done on an immediate or emergency basis or because a generic equivalent becomes available without prior notice, formulary changes must be posted thirty days before the effective date of the change. In the case of an emergency removal, the change must be posted as soon as practicable, without unreasonable delay.

NEW SECTION

WAC 284-43-819 Cost-sharing for prescription drugs. (1) A carrier and health plan unreasonably restrict the treatment of patients if an ancillary charge, in addition to the plan's normal copayment or coinsurance requirements, is imposed for a drug that is covered because of one of the circumstances set forth in either WAC 284-43-817 or 284-43-818. An ancillary charge means any payment required by a carrier that is in addition to or excess of cost-sharing explained in the policy or contract form as approved by the commissioner. Cost-sharing means amounts paid directly to a provider or pharmacy by an enrollee for services received under the health benefit plan, and includes copayment, coinsurance, or deductible amounts.

(2) When an enrollee requests a brand name drug from the formulary in lieu of a therapeutically equivalent generic drug or a drug from a higher tier within a tiered formulary, and there is not a documented clinical basis for the substitution, a carrier may require the enrollee to pay for the difference in price between the drug that the formulary would have required, and the covered drug, in addition to the copayment. This charge must reflect the actual cost difference.

(3) When a carrier approves a substitution drug, whether or not the drug is in the carrier's formulary, the enrollee's cost-sharing for the substitution drug must be adjusted to reflect any discount agreements or other pricing adjustments for the drug that are available to a carrier. Any charge to the enrollee for a substitution drug must not increase the carrier's underwriting gain for the plan beyond the gain contribution calculated for the original formulary drug that is replaced by the substitution.

(4) If a carrier uses a tiered formulary in its prescription drug benefit design, and a substitute drug that is in the formulary is required based on one of the circumstances in either WAC 284-43-817 or 284-43-818, the enrollee's cost sharing may be based on the tier in which the carrier has placed the substitute drug.

NEW SECTION

WAC 284-43-825 Prescription drug benefit disclosures. (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit:

(a) A clear statement explaining that the health benefit plan, policy or agreement may cover brand name drugs or medication under the circumstances set forth in WAC 284-43-817 or 284-43-818, including, if a formulary is part of the benefit design, brand name drugs or other medication not in the formulary.

(b) A clear explanation of the substitution process that the enrollee or their provider must use to seek coverage of a prescription drug or medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, at a minimum a carrier must ensure that prior notice of the change will be provided as soon as is practicable, to enrollees who filled a prescription for the drug within the prior three months.

(a) Provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, either electronic mail notice, or written notice by first class mail at the last known address of the enrollee, are acceptable methods of notice.

(b) If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its web site or at another location that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

NEW SECTION

WAC 284-43-840 Anticancer medication. A carrier and health plan must cover prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on at least a comparable basis to the plan's coverage for the delivery of cancer chemotherapy medications administered in a clinical or medical setting.

(1) A carrier may not impose dollar limits, copayments, deductibles or coinsurance requirements on coverage for orally administered anticancer drugs or chemotherapy that are less favorable to an insured or enrollee than the dollar limits, copayments, deductibles or coinsurance requirements that apply to coverage for anticancer medication or chemotherapy that is administered intravenously or by injection.

(2) A carrier may not reclassify an anticancer medication or increase an enrollee's out-of-pocket costs as a method of compliance with the requirements of this section.

NEW SECTION

WAC 284-43-850 Clinical trials. A carrier must not restrict coverage of routine patient costs for enrollees who participate in a clinical trial. "Routine costs" means items and services delivered to the enrollee that are consistent with and typically covered by the plan or coverage for an enrollee who is not enrolled in a clinical trial. A carrier may continue to apply its limitations and requirements related to use of network services.

(1) A carrier may require enrollees to meet the eligibility requirements of the clinical trial according to the trial protocol. While not required to impose such a condition, a carrier may refuse coverage under this section if the enrollee does not provide medical and scientific information establishing that the individual's participation in such trial would be appropriate based on the individual meeting the eligibility requirements for the clinical trial, unless the enrollee is referred to the clinical trial by a health care provider participating in the carrier's network.

(2) This includes the cost of prescription medication used for the direct clinical management of the enrollee, unless the trial is for the investigation of the prescription medication or the medication is typically provided by the research sponsors free of charge for any enrollee in the trial.

(3) The requirement does not apply to:

(a) A service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis;

(b) For items and services provided solely to satisfy data collection and analysis needs;

(c) Items and services that are not used in the direct clinical management of the enrollee; or

(d) The investigational item, device, or service itself.

(4) Clinical trial means a phase I, phase II, phase III, or phase IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition, funded or approved by:

(a) One of the National Institutes of Health (NIH);

(b) An NIH cooperative group or center which is a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group including, but not limited to, the NCI Clinical Cooperative Group and the NCI Community Clinical Oncology Program;

(c) The federal Departments of Veterans Affairs or Defense;

(d) An institutional review board of an institution in this state that has a multiple project assurance contract approval by the Office of Protection for the Research Risks of the NIH; and

(e) A qualified research entity that meets the criteria for NIH Center Support Grant eligibility.

"Life threatening condition" means any disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

WSR 12-21-036
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed October 10, 2012, 1:02 p.m., effective November 10, 2012]

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

Purpose: The department, with assistance from the office of the attorney general, is amending rules that define limitations on maximum benefits and contributions, and compliance with Internal Revenue Code (IRC) rollover rules. These changes codify existing practices and are necessary to ensure the department's continued compliance with IRS requirements for plan qualification.

Citation of Existing Rules Affected by this Order: Amending WAC 415-02-740 and 415-02-751.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 12-18-073 on September 5, 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 2, 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: October 9, 2012.

Steve Hill
Director

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? (1) **Basic Internal Revenue Code (IRC) section 415 limitations.** Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under IRC section 415. This rule applies retroactively beginning on January 1, 2009, except as otherwise stated.

(2) **Definitions.** As used in this section:

(a) "IRC section 415(b) limit" refers to the limitation on benefits established by IRC section 415(b);

(b) "IRC section 415(c) limit" refers to the limitation on annual additions established by IRC section 415(c); and

(c) Limitation year is the calendar year.

(3) **Basic IRC section 415(b) limitation.** Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415 (b)(1)(A), subject to the applicable adjustments in IRC section 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from this plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(4) **Annual benefit definition.** For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to the after-tax employee contributions (except pursuant to IRC section 415(n)) and to all rollover contributions as defined in IRC section 415 (b)(2)(A). The "benefit attributable" shall be determined in accordance with treasury regulations.

(5) **Adjustments to basic IRC section 415(b) limitation for form of benefit.** If the benefit under this plan is other than a straight life annuity with no ancillary benefit, then the benefit shall be adjusted so that it is the equivalent of the straight life annuity, using factors prescribed in treasury regulations.

If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the IRC section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415 (b)-1 (c)(2)(ii)) that takes into account the additional benefits under the form of benefits as follows:

(a) For a benefit paid in a form to which IRC section 417 (e)(3) does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(b) For a benefit paid in a form to which IRC section 417 (e)(3) applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of

(or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1 (d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417 (e)-1 (d)(3) (the thirty-year treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)); and

(A) For years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation section 1.417 (e)-1 (d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05; or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(6) **Benefits not taken into account for IRC section 415(b) limit.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity; and

(c) Any other benefit not required under IRC section 415 (b)(2) and treasury regulations thereunder to be taken into account for purposes of the limitation of IRC section 415 (b)(1).

(7) **Other adjustments in IRC section 415(b) limitation.**

(a) In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

(b) In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in (a) of this subsection shall not apply.

(c) The reductions provided for in (a) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(8) **Less than ten years of ((~~service~~)) participation adjustment for IRC section 415(b) limitation.** The maximum retirement benefits payable to any member who has completed less than ten years of ((~~service~~)) participation shall be the amount determined under subsection (((~~(1)~~))) (3) of this section multiplied by a fraction, the numerator of which is the ((~~number of the~~)) member's years of ((~~service~~)) participation and the denominator of which is ten.

(a) The reduction provided by this subsection cannot reduce the maximum benefit below ten percent.

(b) The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(c) For purposes of this subsection, a member's "years of participation" equal the amount of service credit used in the computation of the member's retirement allowance, except as follows. Service credit purchased pursuant to RCW 41.26.199 (LEOFF Plan 1), RCW 41.26.432 (LEOFF Plan 2), RCW 41.32.066 (TRS), RCW 41.35.183 (SERS), RCW 41.37.265 (PSERS), RCW 41.40.034 (PERS), and RCW 43.43.233 (WSPRS) is **not** included in a member's "years of participation."

(9) **Effect of cost-of-living adjustment (COLA) without a lump sum component on IRC section 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

(a) A member's applicable IRC section 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic COLAs;

(b) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for COLA increases until such time as the benefit plus the accumulated increases are less than the IRC section 415(b) limit; and

(c) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic COLA increases, shall be tested under the then applicable IRC section 415(b) limit including any adjustment to the IRC section 415 (b)(1)(A) dollar limit under IRC section 415(d), and the treasury regulations thereunder.

(10) **Effect of COLA with a lump sum component on IRC section 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration COLA

increases as required by IRC section 415(b) and applicable treasury regulations.

(11) **IRC section 415(c) limit.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars, as adjusted pursuant to IRC section 415(d), or one hundred percent of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the IRC section 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation; provided; however, that member contributions picked up under IRC section 414(h) shall not be treated as compensation.

(c) Unless another definition of compensation that is permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051 (a)(3), and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401 (a)(2)).

(i) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC sections 125(a), 402 (e)(3), 402 (h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132 (f)(4).

(ii) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

(A) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(B) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

Any payments not described in (c)(ii) of this subsection are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of IRC section 414 (u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(iii) Back pay, within the meaning of Treasury Regulation section 1.415 (c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(iv) Beginning January 1, 2009, to the extent required by IRC sections 3401(h) and ((~~414 (u)(2)~~)) 414 (u)(12), an individual receiving a differential wage payment (as defined in section 3401 (h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(v) An employee who is in qualified military service (within the meaning of IRC section 414 (u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(A) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

(B) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(vi) If the annual additions for any member for a plan year exceed the limitation under IRC section 415(c), the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(vii) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection shall not exceed the annual limit under IRC section 401 (a)(17).

(12) **Service purchases under IRC section 415(n).** Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:

(a) The requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(b) The requirements of IRC section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(c) For purposes of applying this subsection, the plan will not fail to meet the reduced limit under IRC section 415 (b)(2)(C) solely by reason of this subsection and will not fail to meet the percentage limitation under IRC section 415 (c)(1)(B) solely by reason of this subsection.

(d) For purposes of this subsection the term "permissive service credit" means service credit:

(i) Recognized by the plan for purposes of calculating a member's benefit under the plan;

(ii) Which such member has not received under the plan; and

(iii) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding (d)(ii) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(e) The plan will fail to meet the requirements of this section if:

(i) More than five years of nonqualified service credit are taken into account for purposes of this subsection; or

(ii) Any nonqualified service credit is taken into account under this subsection before the member has at least five years of participation under the plan.

(f) For purposes of (e) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(i) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC section 415 (k)(3));

(ii) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in (f)(i) of this subsection) of an education organization described in IRC section 170 (b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) Service as an employee of an association of employees who are described in (f)(i) of this subsection; or

(iv) Military service, other than qualified military service under section 414(u), recognized by the plan.

(g) In the case of service described in (f)(i), (ii), or (iii) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(h) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC section 403 (b)(13)(A) or 457 (e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(i) The limitations of (e) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(ii) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(i) For an eligible member, the limitation of IRC section 415 (c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (12)(i), an eligible member is an individual who first became a member in the plan before January 1, 1998.

(13) **Modification of contributions for IRC sections 415(c) and 415(n) purposes.** Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

(a) If the law allows, the department may establish either a lump sum or a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC sections 415(c) or 415(n).

(b) If payment pursuant to (a) of this subsection will not avoid a contribution in excess of the limits imposed by IRC sections 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(14) **Repayments of cash outs.** Any repayment of contributions, including interest thereon, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the state or a local government within the state shall not be taken into account for purposes of IRC section 415, in accordance with applicable treasury regulations.

(15) **Participation in other qualified plans: Aggregation of limits.**

(a) The IRC section 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC section 414(j) maintained by the member's employer shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(b) The IRC section 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC section 414(i) maintained by the member's employer shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(16) **Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's defined ben-

efit component under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans; and next, by reducing the member's defined contribution component benefit under any defined benefit plans; and next by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided; however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

(17) **Technical and Miscellaneous Revenue Act of 1988 (TAMRA) election.** This subsection applies only to those plans for which it has been approved by the IRS. This subsection applies retroactively beginning on January 1, 1990, only to participants who first became participants in the system before January 1, 1990. For purposes of this subsection, these participants are referred to as "qualified participants." For a qualified participant, the 415(b) limit shall not be less than the accrued benefit of the participant under the plan determined without regard to any amendment of the plan made after October 14, 1987.

(18) **Ten thousand dollar limit; less than ten years of service.** Notwithstanding anything in this section to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated, provided, however, that if the member has completed less than ten years of service with the employer, the limit under this section shall be a reduced limit equal to ten thousand dollars multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten, and such that the fraction so calculated may not be less than one-tenth.

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-751 How does the department comply with Internal Revenue Code rollover rules? (1) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401 (a)(31) of the federal Internal Revenue Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the distributee with the following exceptions:

(a) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under section 401 (a)(9) of the Internal Revenue Code;

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than two hundred dollars during the year.

Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408 (a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(3) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the Internal Revenue Code;

(b) An individual retirement annuity described in section 408(b) of the Internal Revenue Code;

(c) An annuity plan described in section 403(a) of the Internal Revenue Code;

(d) A qualified trust described in section 401(a) of the Internal Revenue Code;

(e) Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code;

(f) Effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into such 457(b) plan from this plan; or

(g) Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(4) "Distributee" means an employee or former employee. It also includes the employee's or former

employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401 (a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

WSR 12-21-048
PERMANENT RULES
GAMBLING COMMISSION

[Order 680—Filed October 12, 2012, 11:58 a.m., effective January 1, 2013]

Effective Date of Rule: January 1, 2013.

Purpose: The Recreational Gaming Association requested a rule change to increase Texas Hold'em wager limits from $40 to $100. This proposal came after an eighteen month pilot study by the commission which increased wager limits from $40 to $100 for Texas Hold'em poker. The pilot program began October 2010 and ended May 2012; however, the higher limits are in place until December 31, 2012, or until the commission takes action. Because the pilot study is over, the petition also includes a repealer for WAC 230-15-189. The commission filed the petition for further discussion at their August 2012, meeting, discussed it further in September and adopted the petition at their October 2012, commission meeting.

Reasons Supporting Proposal: See above.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-15-189; and amending WAC 230-15-135.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Adopted under notice filed as WSR 12-17-092 on August 16, 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 1, Repealed 1.

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

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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 1.

Date Adopted: October 12, 2012.

Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending Order 658, filed 10/9/09, effective 11/9/09)

WAC 230-15-135 Wagering limits for nonhouse-banked card games. Card room licensees must not exceed these wagering limits:

(1) **Poker -**

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed forty dollars; however, class F and house-banked card game licensees may offer a single wager not to exceed one hundred dollars for the game of Texas Hold'em;

(2) **Games based on achieving a specific number of points -** Each point must not exceed five cents in value;

(3) **Ante -** No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan) -** The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-15-189	House-banked and Class F card game licensee pilot program on wagering limits for Texas Hold'em poker.

WSR 12-21-050
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed October 12, 2012, 1:24 p.m., effective November 12, 2012]

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

Purpose:

- Correct the concentration of bleach and water solution for sanitizing and disinfecting.
- Make corrections to the requirements under notifiable conditions.

- Clarify requirements for cleaning, sanitizing, and disinfecting.
- Correct typographical errors.
- Readopt a rule related to emergency exit windows that was inadvertently left out of the small business economic impact statement.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296A-0010, 170-296A-2325, 170-296A-3200, 170-296A-3210, 170-296A-3750, 170-296A-3875, 170-296A-3925, 170-296A-4325, 170-296A-4650, 170-296A-4950, 170-296A-5175, 170-296A-7075, 170-296A-7225, 170-296A-7250, 170-296A-7375, 170-296A-7700 and 170-296A-7750; and readopting WAC 170-296A-4550.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW.

Adopted under notice filed as WSR 12-11-129 on May 23, 2012.

Changes Other than Editing from Proposed to Adopted Version: **WAC 170-296A-0010 Definitions,** under the definition of disinfect or disinfecting added the statement "allowed to stand wet for at least two minutes."

Under the definition of sanitize or sanitizing added the statement "allowed to stand wet for at least two minutes."

Under the definition of nonprescription medication (a) removed "and aspirin" and (e) removed "teething pain reducers."

WAC 170-296A-2325 Reporting notifiable conditions to the health department, added (3) A person excluded from the family home by the health department or local health officer on the basis of such a diagnosis may not return to the family home until approved to do so by the local health officer.

WAC 170-296A-3200 Health plan, deleted "A person excluded from the family home by the health department on the basis of such a diagnosis may not return to the family home until approved to do so by the health department."

WAC 170-296A-3925 Cleaning, sanitizing, and disinfecting table, subsection (2)(a) added the statement "allowed to stand wet for at least two minutes."

Subsection (3)(a)(i) added the statement "allowed to stand wet for at least two minutes."

WAC 170-296A-7375, added to subsection (1)(b) the statement "as provided in WAC 170-296A-0010."

Added to subsection (4) the statement "as provided in WAC 170-296A-0010."

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 17, 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 17, Repealed 0.

Date Adopted: October 12, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

"Accessible to children" means areas of the facility and materials that the children can easily get to on their own.

"Agency" as used in this chapter, has the same meaning as in RCW 43.215.010 (1) ((~~and (1)~~))(c).

"Available" means accessible and ready for use or service.

"Bathroom" means any room containing a built-in flush-type toilet.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Child" means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse or neglect" has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

"Child care" means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

"Clean" or **"cleaning"** means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

"Confidential" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Denial of a license" means an action by the department to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

"Department" or **"DEL"** means the Washington state department of early learning.

"Developmentally appropriate" means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" or **"disinfecting"** means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of ((~~appropriate concentration~~)) one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

"DOH" means the Washington state department of health.

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

"Enforcement action" means a department issued:

(a) Denial, suspension, revocation or modification of a license;

(b) Probationary license;

(c) Civil monetary penalty (fine); or

(d) Disqualification from having unsupervised access to children in care.

"Family home child care" means a facility licensed by the department where child care is provided for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.215.010 (1)(c).

"Family living quarters" means a licensee's or license applicant's residence and other spaces or buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care.

"Fine" has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

"Inaccessible to children" means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

"Infant" means a child age birth through eleven months of age.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

"Licensor" means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

"MERIT" means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

"Modification of a license" means department action to change the conditions identified on a current license.

"Nonexpiring full license" or **"nonexpiring license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296A-1450.

"Nonprescription medication" means any of the following:

(a) Nonaspirin ((~~and aspirin~~)) fever reducers or pain relievers;

(b) Nonnarcotic cough suppressants;

(c) Cold or flu medications;

(d) Antihistamines or decongestants;

(e) ((~~Teething pain reducers;~~

~~(f)~~)) Vitamins;

(((~~(g)~~))) (f) Ointments or lotions specially intended to relieve itching;

(((~~(h)~~))) (g) Diaper ointments and talc free powders specially used in the diaper area of children;

(((~~(i)~~))) (h) Sun screen;

(((~~(j)~~))) (i) Hand sanitizer gels; or

(((~~(k)~~))) (j) Hand wipes with alcohol.

"One year of experience" means at least twelve months of early learning experience as demonstrated by a resume and references:

(a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or

(b) As a Washington state:

(i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or

(ii) Family home child care licensee or qualified primary staff person.

"Overnight care" means child care provided for a child anytime between the hours of eight o'clock at night and six o'clock in the morning that includes a sleep period for the child.

"Personal needs" means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. "Personal needs" does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Physical restraint" means the practice of rendering a child helpless or keeping a child in captivity.

"Poison" for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

"Preschool age child" means a child age thirty months through five years of age who is not attending kindergarten or elementary school.

"Primary staff person" means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

"RCW" means Revised Code of Washington.

"Revocation" or **"revoke"** means the formal action by the department to close a child care business and take the license due to the licensee's failure to comply with chapter 43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of ((~~appropriate concentration~~)) three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

"School age child" means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"Screen time" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"Sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play." "Sleeping equipment" does not include any car seat or infant swing.

"Staff" unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

"STARS" means the state training and registry system.

"Suspension of a license" means a formal department action to stop a license pending a department decision regarding further enforcement action.

"Toddler" means a child age twelve months through twenty-nine months of age.

"Unlicensed space" means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

"Unsupervised access" has the same meaning as "unsupervised access" in WAC 170-06-0020.

"WAC" means the Washington Administrative Code.

"Weapons" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2325 Reporting notifiable condition to health department. ((~~The~~)) (1) In the event a licensee ((~~must report a~~)), staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as defined in chapter 246-101 WAC, the licensee must report the diagnosis to the local health jurisdiction or the state department of health.

(2) Contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

(3) A person excluded from the family home by the health department or local health officer on the basis of such a diagnosis may not return to the family home until approved to do so by the local health officer.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

(1) Communicable disease procedures and exclusion of ill persons under WAC 170-296A-3210;

(2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;

(3) Medication management under WAC 170-296A-3315 through 170-296A-3550;

(4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;

(5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;

(6) Caring for children with special health needs under WAC 170-296A-0050;

(7) Cleaning, sanitizing, and disinfecting procedures;

(8) A bloodborne pathogens plan under WAC 170-296A-1850; and

(9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3210 Communicable disease procedure. When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with any of the following communicable diseases:

Disease:	**Also known as:**
Chickenpox	Varicella
Conjunctivitis (bacterial)	Pink eye
Diphtheria	
E. coli infection	
Giardiasis	
Hepatitis A virus	

Disease:	Also known as:
Invasive haemophilus influenza disease (except otitis media)	
Measles	
Meningitis (bacterial)	Meningococcal meningitis
Mumps	
Pertussis	Whooping cough
Rubella	German measles
Salmonellosis	Salmonella or "food poisoning"
Shigellosis	Shigella
Tuberculosis (active)	TB

(1) The licensee must, within twenty-four hours notify:

(a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox((~~,~~)) or conjunctivitis((~~, or invasive haemophilus influenza~~));

(b) The department; and

(c) Parents or guardians of each of the children in care.

(2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.

(3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with communicable disease as described in subsection (1) of this section or any of the following:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

(i) Earache;

(ii) Headache;

(iii) Sore throat;

(iv) Rash; or

(v) Fatigue that prevents the individual from participating in regular activities.

(b) Vomiting that occurs two or more times in a twenty-four hour period;

(c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;

(d) Rash not associated with heat, diapering, or an allergic reaction; or

(e) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3750 Mats, cots and other sleeping equipment. (1) The licensee must provide mats, cots, or other approved sleeping equipment that are made of material that can be cleaned and sanitized as provided in WAC 170-296A-0010.

(2) Mats, cots, or other sleeping equipment must be in good repair, not torn or with holes or repaired with tape.

(3) A sleeping mat must be at least one inch thick.

(4) Mats, cots, or other sleeping equipment must be cleaned, sanitized, and air dried:

(a) At least once a week or as needed if used by one child; or

(b) Between each use if used by different children.

(5)(((~~(a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water;~~

~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~

~~(6)~~)) When in use, mats, cots, or other sleeping equipment must be arranged to allow the licensee or staff to access the children.

(((~~(7)~~)) (6) Mats, cots, and other sleeping equipment must be stored so that the sleeping surfaces are not touching each other, unless they are cleaned and sanitized after each use.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3875 Cleaning and sanitizing toys. (((~~(1)~~))) The licensee must clean and sanitize toys as provided in WAC 170-296A-0010:

(((~~(a)~~))) (1) Before a child plays with a toy that has come into contact with another child's mouth or bodily fluids;

(((~~(b)~~))) (2) After being contaminated with bodily fluids or visibly soiled; or

(((~~(c)~~))) (3) Not less than weekly when the toys have been used by the children.

(((~~(2)(a) If a bleach solution is used to sanitize, the solution must be three-quarter teaspoon of bleach to one quart of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces, used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and rinsed if required by the product instructions.~~))

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3925 Cleaning, sanitizing, and disinfecting table. (1) The following table describes the minimum frequency for cleaning, sanitizing, or disinfecting items in the licensed space.

CLEANING, SANITIZING, AND DISINFECTING TABLE				
		"X" means CLEAN	And SANITIZE or DISINFECT	FREQUENCY
(((~~(1)~~))) (a)	Kitchen countertops/tabletops, floors, doorknobs, and cabinet handles.	X	Sanitize (see subsection (3) of this section)	Daily or more often when soiled.
(((~~(2)~~))) (b)	Food preparation/surfaces.	X	Sanitize (see subsection (3) of this section)	Before/after contact with food activity; between preparation of raw and cooked foods.
(((~~(3)~~))) (c)	Carpets and large area rugs/small rugs.	X		(((~~(a)~~))) (i) Vacuum daily. (((~~(b)~~))) (ii) Installed carpet - Clean yearly or more often when soiled using a carpet shampoo machine, steam cleaner, or dry carpet cleaner. (((~~(c)~~))) (iii) Small rugs - Shake outdoors or vacuum daily. Launder weekly or more often when soiled.
		X	Sanitize (see subsection (3) of this section)	(((~~(d)~~))) (iv) Removable rugs - May be used in the bathroom. They must be easily removable and able to be washed when needed. Launder and sanitize weekly or more often when soiled.
(((~~(4)~~))) (d)	Utensils, surfaces/toys that go in the mouth or have been in contact with other body fluids.	X	Sanitize (see subsection (3) of this section)	After each child's use; may use disposable, one-time utensils.
(((~~(5)~~))) (e)	Toys that are not contaminated with body fluids and machine-washable cloth toys. Dress-up clothes (not worn on the head or come into contact with the head while dressing). Combs/hairbrushes, (none of these items should be shared among children).	X	Sanitize (see subsection (3) of this section)	Weekly or more often when visibly soiled.
(((~~(6)~~))) (f)	Bedding, blankets, sleeping bags, individual sheets, pillowcases (if used).	X	Sanitize (see subsection (3) of this section)	Weekly or more often when soiled. Items that are put in the washing machine must be cleaned by using laundry detergent and sanitized by temperature (hot or warm water cycle) or chlorine bleach.
(((~~(7)~~))) (g)	Wash cloths or single use towels.	X	Sanitize (see subsection (3) of this section)	After each use.
(((~~(8)~~))) (h)	Hats and helmets.	X		After each child's use or use disposable hats that only one child wears.
(((~~(9)~~))) (i)	Cribs and crib mattresses.	X	Sanitize (see subsection (3) of this section)	Weekly, before use by different child, and more often whenever soiled or wet.
(((~~(10)~~))) (j)	Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.	X	Disinfect (see subsection (2) of this section)	Daily or more often when soiled.
(((~~(11)~~))) (k)	Toilet seats, toilet training rings, toilet handles, doorknobs or cubicle handles, floors.	X	Disinfect (see subsection (2) of this section)	Daily or immediately if visibly soiled.
(((~~(12)~~))) (l)	Toilet bowls.	X	Disinfect (see subsection (2) of this section)	Daily or more often as needed (e.g., child vomits or has explosive diarrhea, etc.).
(((~~(13)~~))) (m)	Changing tables, potty chairs (use of potty chairs in child care is discouraged because of high risk of contamination).	X	Disinfect (see subsection (2) of this section)	After each child's use.
(((~~(14)~~))) (n)	Waste receptacles.	X		Daily or more often as needed.

(2) "Disinfect" or "disinfecting" means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

(3) "Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4325 Stairs. (1) If there are stairs in the licensed space, the licensee must:

(a) Keep the stairway well lit;

(b) Keep the stairway free of clutter; and

(c) Have a handrail not higher than ((~~thirty~~)) thirty-eight inches high or sturdy slats on one side of the stairs.

(2) The licensee must provide a pressure gate, safety gate, or a door to keep the stairs inaccessible to infants and toddlers when not in use.

(3) Openings between slats or on pressure gates or safety gates must not be larger than three and one-half inches wide.

READOPTED SECTION (Readopting WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4550 Emergency exit windows. (1) Any window used as an emergency exit window must:

(a) Remain unlocked during operating hours, except a manufacturer-installed latch may be latched;

(b) Be designed to open from the inside of the room without the use of keys, tools or special knowledge; and

(c) Be easy to open to the full open position.

(2) An emergency exit window must be at least five point seven square feet of opened area, except emergency exit windows on the ground floor may be five square feet of opened area. When open, the window opening must be at least:

(a) Twenty inches wide; and

(b) Twenty-four inches tall.

(3) An emergency exit window must have an interior sill height of forty-four inches or less above the interior floor. If the interior sill height is more than forty-four inches above the interior floor, a sturdy platform (which may be a table or other device) may be used to make the distance forty-four inches or less to the interior window sill. The platform must be in place below the window sill at all times during operating hours.

(4) An emergency exit window must have a place to land outside that is forty-eight inches or less below the window which may be either:

(a) The ground; or

(b) A deck, landing or platform constructed to meet current building codes.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4650 Bathroom floors. (1) Floors in a bathroom or toileting area must have a washable surface and be resistant to moisture. The floor must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often if needed.

((~~(a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions, including but not limited to quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~))

(2) Removable rugs may be used in the bathroom. The rugs must be laundered and sanitized as provided in WAC 170-296A-0010 at least weekly or more often if needed.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4950 Rails on platforms, decks, and stairs. (1) Platforms or decks (not including play equipment) used at any time for child care activities with a drop zone of more than eighteen inches must have guardrails in any area where there are no steps.

(2) Outdoor stairs with four or more steps must have slats (balusters) or a hand rail not higher than ((~~thirty~~)) thirty-eight inches high on at least one side. Openings between the slats must be no wider than three and one-half inches. This requirement does not apply to outdoor play equipment with stairs.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-5175 Wading pools—Defined—Supervision. (1) A wading pool:

(a) Is an enclosed pool with water depth of two feet or less measured without children in the pool; and

(b) Can be emptied and moved.

(2) When a wading pool on the premises is intended for use by the children, the licensee must:

(a) Directly supervise or have a primary staff person directly supervise the children;

(b) Obtain written permission from each child's parent or guardian to allow the child to use a wading pool;

(c) Maintain staff-to-child ratios when children are in a wading pool;

(d) Keep infants or toddlers in the wading pool within reach of the licensee or staff;

(e) Use a door alarm or bell to warn staff that children are entering the outdoor area when pool water could be accessed, or keep the wading pool empty when not in use;

(f) Empty the pool daily; and

(g) Clean and disinfect the pool as provided in WAC 170-296A-0010 daily or immediately if the pool is soiled with urine, feces, vomit, or blood((:

~~(i) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(ii) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry~~)).

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7075 Infant and toddler sleeping or napping equipment. (1) The licensee must:

(a) Provide and use a single level crib, toddler bed, playpen or other sleeping equipment for each infant or toddler in care that is safe and not subject to tipping. The equipment must be of a design approved for infants or toddlers by the U.S. Consumer Product Safety Commission (see WAC 170-296A-7085 regarding approved cribs)((.));

(b) Provide sleeping or napping equipment with clean, firm, and snug-fitting mattresses that do not have tears or holes or is repaired with tape((.));

(c) Provide mattresses covered with waterproof material that is easily cleaned and sanitized((:

~~(i) If a bleach solution is used to sanitize, the solution must be three-quarters teaspoon of chlorine bleach to one quart of cool water.~~

~~(ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~)) as provided in WAC 170-296A-0010;

(d) Arrange sleeping equipment to allow staff access to children;

(e) Remove sleeping children from car seats, swings or similar equipment; and

(f) Consult with a child's parent or guardian before the child is transitioned from infant sleeping equipment to other approved sleeping equipment.

(2) Children able to climb out of their sleeping equipment must be transitioned to an alternate sleeping surface.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7225 High chairs. (1) If the licensee uses high chairs in the child care, each high chair must:

(a) Have a base that is wider than the seat;

(b) Have a safety device that prevents the child from climbing or sliding down the chair;

(c) Be free of cracks and tears; and

(d) Have a washable surface.

(2) When a child is seated in a high chair, the chair's safety device must be used to secure the child.

(3) The licensee or staff must clean and sanitize high chairs as provided in WAC 170-296A-0010 after each use.

((~~(a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water.~~

~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~))

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7250 Diapering and toileting. (1) The licensee must provide a diaper changing area that is separate from any area where food is stored, prepared or served.

(2) The diaper changing area must:

(a) Have a sink with hot and cold running water close to the diaper changing area. The sink must not be used for food preparation and clean up;

(b) Have a sturdy surface or mat that is:

(i) Not torn or repaired with tape;

(ii) Easily cleanable;

(iii) Waterproof; and

(iv) Large enough to prevent the area underneath from being contaminated with bodily fluids.

(3) The diapering area must be cleaned and disinfected as provided in WAC 170-296A-0010 between each use.

((~~(a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water.~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~))

(4) A nonabsorbent, disposable covering that is discarded after each use may be used on the diaper changing mat.

(5) The diaper changing surface must be free of all other items not used in diapering the child.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7375 Potty chairs or modified toilet seats. (1) When potty chairs are used, the licensee or staff must immediately after each use:

(a) Empty the potty chair into the toilet; and

(b) Clean and disinfect the potty chair as provided in WAC 170-296A-0010.

(2) The floor under the potty chairs must be made of a material that is resistant to moisture.

(3) When a modified toilet seat is used, it must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often when soiled.

(4)(((~~(a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water;~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~

~~(5)~~)) If a sink or basin is used to clean a potty chair or modified toilet seat, the sink or basin must be cleaned and disinfected afterwards as provided in WAC 170-296A-0010.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7700 Washing dishes. The licensee or staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher, using the sanitizing cycle if available; or

(2) Handwashing method, by ((~~emersion~~)) immersion in hot soapy water, rinse, sanitize as provided in WAC 170-296A-0010 and air dry((~~:~~

~~(a) If a bleach solution is used to sanitize, the solution must be three-quarters teaspoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry~~)).

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7750 Food preparation area. (1) The licensee or staff must clean and sanitize food preparation and eating surfaces as provided in WAC 170-296A-0010 before and after use. The licensee's food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor area made of a material that is resistant to moisture.

(2) The licensee must not allow pets in the food preparation area while food is being prepared or served.

(3) The licensee may use the kitchen for other child care activities provided there is continual supervision of the children.

(((~~(4)(a) If a bleach solution is used to sanitize surfaces, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~))

WSR 12-21-053
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Financial Services Administration)

[Filed October 15, 2012, 9:30 a.m., effective December 25, 2012]

Effective Date of Rule: December 25, 2012.

Purpose: The department is amending sections of chapter 388-06 WAC and adding a new section related [to] division of developmental disabilities long-term care fingerprint check requirements and one hundred twenty day provisional hire. Revisions are necessary to implement Initiative 1163, passed by the voters on November 8, 2011, and ESHB 2314, signed into law on March 29, 2012. ESHB 2314 amends Initiative 1163 and chapters 74.39A, 18.20, and 43.20A RCW to require fingerprint-based background checks for long-term care workers beginning January 7, 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-06-0020, 388-06-0110, 388-06-0130, 388-06-0150, 388-06-0525, and 388-06-0540.

Statutory Authority for Adoption: RCW 43.43.832 and 74.39A.056 as amended by ESHB 2314 and Initiative 1163.

Adopted under notice filed as WSR 12-17-131 on August 21, 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 1, Amended 5, 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 1, Amended 5, Repealed 0.

Date Adopted: October 15, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter? The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to chil-

dren and individuals with a developmental disability. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" and **"youth"** are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect; or

(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility.

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

"Community residential service businesses" include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.

"DCFS" means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

"DDD" means the division of developmental disabilities, department of social and health services (DSHS).

"DLR" means the division of licensed resources that is a division within children's administration, the department of social and health services.

"Department" means the department of social and health services (DSHS).

"I" and **"you"** refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"JRA" means the juvenile rehabilitation administration, department of social and health services.

"Licensor" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

"Individual provider" as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Spousal abuse" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"Unsupervised" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"Unsupervised access" means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

"We" refers to the department, including licensors and social workers.

"WSP" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) ((~~Per RCW 74.39A.055, the department requires state and federal background checks on all long-term care workers for the elderly or persons with disabilities hired or contracted after January 1, 2012.~~

~~(a) This does not include long-term care workers qualified and contracted or hired on or before December 31, 2011. Parents are not exempt from the long-term care background check requirements~~)) As described in WAC 388-06-0115, the division of developmental disabilities requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who is qualified by DDD to have unsupervised access to individuals with developmental disabilities.

(3) Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks. For individual providers and home care agency providers refer to WAC 388-71-0500 through 388-71-05909. For adult family homes refer to chapter 388-76 WAC, adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, assisted living licensing rules.

(4) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

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

NEW SECTION

WAC 388-06-0115 What are the division of developmental disabilities background check requirements? (1) Per RCW 74.39A.056, long-term care workers undergoing a background check for initial hire or initial contract will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in WAC 388-06-0115 (a) and (b). Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016 community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(ii) Individuals who have lived outside of Washington state within the past three years consecutive will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016 community residential service businesses as defined above will be screened as described in WAC 388-06-0115(1).

(2) The division of developmental disabilities requires rechecks for all DDD contracted providers and their employees at least every three years or more frequently if required by program rule. Rechecks will be conducted as follows:

(a) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(b) Individuals who have lived outside of Washington state within the past three consecutive years will be screened through a state name and date of birth check and a national fingerprint-based background check.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability? (1) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children or individuals with a developmental disability that are processed by the children's administration after the effective date of this chapter.

(2) For the division of developmental disabilities these regulations apply to ((~~any of the following that may involve unsupervised access to children and individuals with a developmental disability:~~

~~(a)~~)) initial contracts((~~, licenses or certifications~~)) and renewals as required by the applicable DDD background check renewal schedule and program regulations((~~; and~~

~~(b) Any contract, license or certification renewal when there was a lapse of one day or more following expiration~~)).

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0150 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.
(d) Department of health.
(e) Civil adjudication proceedings.
(f) Applicant's self-disclosure.
(g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three consecutive years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(5) The division of developmental disabilities requires fingerprint-based background checks ((~~for all long-term care workers as defined in RCW 74.39A.009(16) hired or contracted on or after January 1, 2012~~)) as described in WAC 388-06-0115. These background checks ((~~must~~)) include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire? (1) Individuals are eligible for the one hundred twenty-day provisional hire immediately, except as provided under subsection (2) of this section and WAC 388-06-0540. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

(2) Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

(1) An initial license;

(2) An initial contract; ((~~or~~))

(3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671 (a)(20)); or

(4) Any other individual listed in the assisted living facility or adult family home license application, such as an adult family home entity representative or resident manager, or an assisted living facility administrator.

WSR 12-21-054

PERMANENT RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 15, 2012, 9:50 a.m., effective December 14, 2012]

Effective Date of Rule: December 14, 2012.

Purpose: To make necessary changes in the retrospective rating rules following passage of EHB 2123 (chapter 37, Laws of 2011), specifically Part 1, Creating the Washington stay-at-work program, and Part 3, Claim resolution structured settlement agreements; and ESHB 1725 (chapter 290, Laws of 2011), section 3, concerning retrospective rating employers who pay for direct care providers for their injured workers.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-17B-820; and amending WAC 296-17B-010, 296-17B-500, 296-17B-520, 296-17B-530, 296-17B-720, 296-17B-810, 296-17B-830, and 296-17B-840.

Statutory Authority for Adoption: RCW 51.18.010 (retrospective rating) and 51.04.020(1) (general authority).

Adopted under notice filed as WSR 12-17-120 on August 21, 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 8, Repealed 1.

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 8, Repealed 1.

Date Adopted: October 15, 2012.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-010 Introduction and overview. Retrospective rating (retro) is a voluntary financial incentive program offered by the department of labor and industries to encourage improvements in workplace safety.

Chapter 296-17 WAC defines the standard method for determining the price of workers' compensation insurance for employers insured with the state fund. All employers insured with the state fund must pay the accident fund, medical aid fund, and supplemental pension fund premiums established in that chapter.

Employers who participate in retrospective rating bind themselves to the rules of the retrospective rating program found in this chapter. Under these sections, a participant's ultimate cost of workers' compensation insurance will be different than under chapter 296-17 WAC.

Employers participate in retrospective rating because it creates an opportunity to earn refunds of premiums they are required to pay under chapter 296-17 WAC. However, participation involves risk: Participants not successful in controlling losses can be assessed additional premiums.

Employers control losses by preventing workplace illnesses and injuries, and helping injured workers return to work.

Employers that participate in retro can enroll either individually or as members of a sponsored group. Enrollment is for a one-year coverage period, but it is possible for employers to join a sponsored group after the group's one-year coverage period has begun, at the beginning of a calendar quarter.

After a coverage period is over, the department evaluates premiums and claims losses and determines retro premiums according to these rules. If a retro group's or an individually enrolled employer's retro premiums are less than the standard premiums paid initially, that firm or group will receive a refund. If the retro premiums are more than the standard premiums initially paid, the firm or group will be assessed the additional amount. Calculation of retrospective premiums is defined further in this chapter. The department goes through this annual adjustment process three times for each coverage period.

The department will repeat the studies that resulted in the hazard group assignments and changes to retrospective plan tables that are shown in WAC 296-17-901, 296-17B-300, 296-17B-560, 296-17B-830, and 296-17B-910 through 296-17B-990. The repeated studies will determine whether the results are consistent with the expectation of improved fairness in the distribution of the retrospective rating refunds among participants. These repeated studies will be done by ((~~March 1, 2012~~)) April 1, 2014.

The department will evaluate and if necessary update the tables beginning at WAC 296-17B-910 every five years.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-500 Determining your standard premiums. Employers are required to pay accident fund, medical aid((,)) stay-at-work and supplemental pension fund premiums according to chapter 296-17 WAC. ((~~Partial payments of premiums are applied first to the liability to the supplemental pension fund, then to the medical aid fund, and finally then to the accident fund.~~)) Standard premiums are the premiums an employer pays to the accident and medical aid funds under chapter 296-17 WAC for employment during the coverage period, and do not include either stay-at-work or supplemental pension fund premiums.

For an employer enrolled in a group after the start of a group's coverage period, we will only consider the employer's standard premiums for the calendar quarters for which the employer was enrolled.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-520 Determining your losses. We determine your losses at the time of an adjustment.

To determine your losses, we first determine the case incurred losses for your claims. To these, we apply discounted loss development((~~, discount~~)) and expected loss ratio factors and your single loss occurrence limit to determine your losses incurred for each claim, as explained in these rules. The sum of your losses incurred will be your loss incurred, unless your maximum or minimum loss ratios apply.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-530 Determining case incurred losses. If a claim is closed, we will use the actual losses for the claim as defined in WAC 296-17-870(1). If the claim is open, we will use either the case reserve amounts or the actual losses, whichever are higher.

Where not in conflict with these rules, we will use the rules for valuing claims for experience rating found in WAC 296-17-870 (1), (5) through (7), and (10) through (12).

Employer reimbursements from the Washington stay-at-work program will not be included in the case incurred costs of claims.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-720 Prohibited conduct. (1) Employers and group sponsors must not engage in claims suppression as defined in RCW 51.28.010(4).

(2) Employers and group sponsors must not pay medical service providers for medical services related to an industrial injury or occupational disease. Payment of monthly direct fees made on behalf of employees to qualifying direct primary care service providers as permitted by RCW 48.150.-050 does not disqualify an employer or group sponsor from participation in the retrospective rating program.

(3) Unless disclosed to the member at the time of enrollment, group sponsors must not require members to pay dues, fees, or continue membership in the retrospective rating program beyond the last date of the coverage year in order to receive their share of refunds, if any.

If we determine that you have violated any of these provisions, we will remove you from retrospective rating effective the date we notify you, and permanently bar you from further participation in the retrospective rating program. You will remain liable for any additional premium assessments related to your participation prior to your removal, but you will forfeit any right to refunds for adjustments calculated after your removal.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-810 Discounted loss development factors. At the time of adjustment, our actuaries determine discounted loss development factors by claim type. Loss development factors account for the fact that claims ultimately cost the state fund more than they have cost the state fund to date, and more than they are estimated to cost the state fund at any particular point in time.

Discounting accounts for the fact that benefits are not paid at once, but rather are paid over a period of time. Discounts vary for different types of claims based on when benefits tend to be paid.

Separate discounted loss development factors will be calculated by fund and also by enrollment period at the time of each annual retrospective rating adjustment.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-830 Expected loss ratio factors. The expected loss ratio factor is a factor applied to case incurred loss amounts of claims and discounted loss development factors ((~~and discount factor~~)) so that the ratio of discounted developed loss to standard premiums for the entire state fund used in the actuarial calculations equals the expected loss ratios. By doing this, loss ratios will not be expected to change simply because the department changed the rates for one fund significantly more than the rates for another fund. The expected loss ratios are:

Accident Fund	81.2%
Medical Aid Fund	88.0%

Separate factors will be calculated by fund and also by enrollment period at the time of each annual retrospective rating adjustment.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-840 Claim types. The following claim types are considered when calculating the discounted loss development factors ((~~and discount factors~~)):

(1) Fatality;

(2) Total permanent disability pension claim;

(3) Structured settlement claim with ongoing, lifetime payments;

(4) Structured settlement claim with fixed, periodic payments;

(5) Structured settlement claim with one-time, lump sum payments;

(6) Permanent partial disability claim;

(((~~4~~))) (7) Time-loss claim;

(((~~5~~))) (8) Miscellaneous accident fund claim;

(((~~6~~))) (9) Medical only claim.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17B-820	Discount factors.

WSR 12-21-057
PERMANENT RULES
LIQUOR CONTROL BOARD

[Filed October 15, 2012, 11:03 a.m., effective November 15, 2012]

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

Purpose: The new laws created with the passing of Initiative 1183 require clarification on the $150 million assessment due to the Washington state liquor control board by persons holding a spirits distributor license on or before March 31, 2013.

Statutory Authority for Adoption: RCW 66.24.055, 66.08.030.

Adopted under notice filed as WSR 12-17-086 on August 15, 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 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: October 10, 2012.

Sharon Foster
Chairman

NEW SECTION

WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders. (1) RCW 66.24.055 requires that all persons holding a spirits distributor license on or before March 31, 2013, must have collectively paid a total of one hundred fifty million dollars in spirits distributor license fees by March 31, 2013. If the spirits distributor license fees collected by March 31, 2013, total less than one hundred fifty million dollars, the

board is required to assess those persons holding a spirits distributor license on or before March 31, 2013, in order to collect a total of one hundred fifty million dollars. The board will calculate the additional amount owed by each spirits distributor licensee as follows:

(a) The amount of additional fees owed will be calculated using the total spirits sales made by each spirits distributor licensee during calendar year 2012. If a spirits distributor licensee had no spirits sales during calendar year 2012, no additional fees will be due;

(b) Each licensee will be assessed and required to pay their proportionate share of the remaining liability between one hundred fifty million dollars and actual collections. The proportionate share of fees due will be calculated by dividing the total dollar amount of sales made by each spirits distributor licensee by the total spirits sales made by all spirits distributor licensees combined. If the total amount of payments exceeds one hundred fifty million dollars, each licensee will be credited a proportionate amount of the overpayment to their future license issuance fee obligations.

(2) The board will notify all spirits distributor licensees no later than April 30, 2013, of the amount they are required to pay in additional license fees. Spirits distributor licensees must pay the additional license fees to the board by May 31, 2013.

(3) The board may suspend or revoke any spirits distributor license if the required additional license fees are not paid by May 31, 2013. If suspended, the suspension will remain in effect until the additional license fees are paid.

(4) The board may also initiate collection proceedings for any amount of additional fees not paid to the board by May 31, 2013.

WSR 12-21-061
PERMANENT RULES
BELLINGHAM TECHNICAL COLLEGE

[Filed October 17, 2012, 1:22 p.m., effective November 17, 2012]

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

Purpose: To update wording to address first amendment activities and processes on the Bellingham Technical College campus by students, staff and visitors.

Citation of Existing Rules Affected by this Order: Amending chapters 495B-120 and 495B-140 WAC.

Statutory Authority for Adoption: RCW 28B.50.130.

Adopted under notice filed as WSR 12-15-048 on July 16, 2012, and WSR 12-20-027 on September 26, 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 XX, Repealed 0.

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

Date Adopted: October 17, 2012.

Patricia L. McKeown
President

AMENDATORY SECTION (Amending WSR 11-04-016, filed 1/21/11, effective 2/21/11)

WAC 495B-120-010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Board" means the board of trustees of Bellingham Technical College.

(2) "College" means Bellingham Technical College.

(3) "Alcohol" or "alcoholic beverages" means the definition of liquor as contained within RCW 66.04.010 as now law or hereinafter amended.

(4) "Drugs" means a narcotic drug as defined in RCW 69.50.101, a controlled substance as defined in RCW 69.50.-201 through 69.50.212, or a legend drug as defined in RCW 69.41.010.

(5) "College facilities" ((~~means the real property controlled or operated by the college and includes all buildings and appurtenances affixed thereon or attached thereto~~)) includes all buildings, structures, grounds, office space and parking lots.

(6) "President" means the chief executive officer of the college appointed by the board of trustees.

(7) "Disciplinary officials" means the disciplinary committee as denominated in WAC 495B-120-170, the vice-president of student services, the vice-president of instruction, and the president.

(8) "Student" means a person who is enrolled at the college.

(9) "Disciplinary action" means the reprimand, disciplinary warning, probation, summary suspension, deferred suspension, suspension, or expulsion of a student under WAC 495B-120-120 for the violation of a rule adopted in this chapter.

AMENDATORY SECTION (Amending WSR 11-04-016, filed 1/21/11, effective 2/21/11)

WAC 495B-120-060 Free movement on campus. The president is authorized to prohibit the entry of or to withdraw the privileges of any person or group of persons to enter onto or remain upon any portion of the college campus if he/she deems that an individual or a group of individuals disrupts the ingress or egress of others from the college facilities. The president may act through the vice-president of student services or any other person he/she may designate.

There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping outside, sleeping in vehicles, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

AMENDATORY SECTION (Amending WSR 11-04-016, filed 1/21/11, effective 2/21/11)

WAC 495B-120-090 Campus speakers. (1) Student organizations officially recognized by the college may invite speakers to the campus to address their own membership and other interested students and faculty if suitable space is available and there is no interference with the regularly scheduled program of the college. Although properly allowed by the college, the appearance of such speakers on the campus implies neither approval nor disapproval of them or their viewpoints. In case of speakers who are candidates for political office, equal opportunities shall be available to opposing candidates if desired by them. Speakers are subject to the normal considerations for law and order and to the specific limitations imposed by the state constitution regarding religious worship, exercise, or instruction on state property.

(2) In order to ensure an atmosphere of open exchange and to ensure that the educational objectives of the college are not obscured, the president, in a case attended by strong emotional feeling, may prescribe conditions for the conduct of the meeting including, but not limited to, the time, the manner, and the place for the conduct of such a meeting. Likewise, the president may require permission for comments and questions from the floor and/or may encourage the appearance of one or more additional speakers at a meeting or at a subsequent meeting so that other points of view may be expressed.

(3) ((~~A free speech area may be designated by the college president and can be reserved by student groups and student organizations through the office of the vice-president of student services.~~)) The college has designated an area as the sole limited public forum area for first amendment activities on campus. This area is identified in the college facilities use policy and may change from time to time as decided by the college president.

NEW SECTION

WAC 495B-140-005 Definitions. (1) College groups shall mean individuals, or combination of individuals, who are currently enrolled students or current employees of Bellingham Technical College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(2) College facilities include all buildings, structures, grounds, office space, and parking lots.

(3) "Limited public forum areas" means those areas of each campus that the college has chosen to open as places for expressive activities protected by the first amendment, subject to reasonable time, place, or manner restrictions. This area is identified in the college facilities use policy and may change from time to time as decided by the college president.

(4) Noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellingham Technical College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

(5) "Expressive activity" includes, but is not limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective or viewpoints.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-010 Use of college facilities. Bellingham Technical College ((~~serves Whatcom County by providing continued educational opportunity for its citizens~~)) is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. In keeping with this general purpose, the college believes that facilities should be available for a variety of uses which are of benefit to the general public if such general uses do not interfere with the educational mission of the college. However, a state agency is under no obligation to make its public facilities available to the community for private purposes.

The purpose of the time, place, and manner restrictions set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-020 Limitation of use to college activities. (1) When allocating use of college facilities, the highest priority is always given to activities specifically related to the college's mission. No arrangements will be made that may interfere with or operate to the detriment of, the college's own teaching, research, or public service programs. In particular, college buildings, properties, and facilities, including those assigned to student programs, are used primarily for:

(a) The regularly established teaching, research, or public service activities of the college and its departments;

(b) Cultural, educational, or recreational activities of the students, faculty, or staff;

(c) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests, when arranged under the sponsorship of the college or its departments.

(d) Public events of a cultural or professional nature brought to the campus at the request of college departments

or committees and presented with their active sponsorship and active participation;

(e) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies or civic or community organizations whose activities are of widespread public service and of a character appropriate to the college.

(2) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the college community. The appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration, or the board of trustees, implicitly or explicitly, of the speaker's views.

(3) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ((~~insure~~)) ensure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Arrangements by both organizations and individuals must be made through the designated administrative officer. Allocation of space shall be made in accordance with college rules and on the basis of time, space, priority of request and the demonstrated needs of the applicant.

(4) The college may restrict an individual's or a group's use of college facilities if that person or group has, in the past, physically abused college facilities. Monetary charges may be imposed for damage or for any unusual costs for the use of facilities. The individual, group or organization requesting space will be required to state in advance the general purpose of any meeting.

NEW SECTION

WAC 495B-140-035 Additional requirements for noncollege groups. (1) College buildings and rooms may be rented by noncollege groups in accordance with the college's facilities policy. Noncollege groups may otherwise use college facilities as identified in this policy.

(2) Noncollege groups that seek to use the campus limited forums to engage in first amendment activities shall provide notice to the campus public safety department no later than forty-eight hours prior to the event along with the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the event (hereinafter "the sponsoring organization");

(b) The name, address, and telephone number of a contact person for the sponsoring organization;

(c) The date, time, and requested location of event;

(d) The nature and purpose of the event;

(e) The estimated number of people expected to participate in the event;

(f) Noncollege groups must have received a confirmation of the receipt of their notice.

(3) Noncollege group events shall not last longer than five hours from beginning to end.

(4) The college president or designee is authorized to make exceptions to the policies limiting use in the case of noncollege group events and/or activities.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-040 General policies limiting use. (1) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities or forums.

(2) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use may be intermittent only.

(3) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and rules.

(4) Activities of a political or commercial nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.

(5) These rules shall apply to ((~~recognized student~~)) college and noncollege groups using college facilities.

(6) ((~~Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful may be distributed only in designated areas on the campus where, and at times when, such distribution will not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or the board of trustees.~~

~~(7)~~)) Use of audio amplifying equipment such as bullhorns, microphones, or loud speakers is not permitted ((~~only~~)). Exceptions can be made by college administration in locations and at times which will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.

(((~~(8)~~))) (7) No person or group may use or enter onto college facilities having in their possession firearms or weapons, except as prescribed by law.

(((~~(9)~~))) (8) The right of peaceful dissent within the college community will be preserved. The college retains the right to take steps to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.

(((~~(10) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However,~~)) (9) Interference with free passage of vehicles, cyclists, pedestrians, or other traffic through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property

exceeds permissible limits and is not permitted. The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees of the college.

(((~~(11) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities),~~)) (10) Groups must obey ((~~or~~)) and comply with directions of the designated ((~~administrative officer~~)) college administrator or individual in charge of the meeting.

(((~~(12)~~))) (11) If a college facility abuts a public area or street, and if ((~~student~~)) group activity, although on public property, unreasonably interferes with ingress and egress to college buildings, or creates a disruption for the neighbors bordering the college, the college may choose to impose its own sanctions although remedies might also be available through local law enforcement agencies.

(12) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(13) College groups are asked to obtain authorization from the designated administrator no later than twenty-four hours in advance of an event.

(14) College group events shall not last longer than eight hours from beginning to end. Noncollege group events shall not last longer than five hours from beginning to end.

(15) The college has designated an area as the sole limited public forum area for first amendment activities on campus. This area is identified in the college facilities use policy and may change from time to time as decided by the college president.

(16) All sites must be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for extraordinary costs including, but not limited to, clean-up, security, or for the repair or replacement of damaged property.

(17) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups.

(18) Subject to the regulations of this policy, both college and noncollege groups may use the campus limited forums for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m. throughout the year except during the following days of the year:

(a) The first week and the final exam week of each term;

(b) Advising day;

(c) Kickoff and convocation weeks, or in other words, the two weeks immediately preceding each quarter;

(d) Campus events.

(19) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping outside, sleeping in vehicles, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(20) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(21) The event must also be conducted in accordance with any other applicable college policies and regulations, college, local ordinances, and state or federal laws.

(22) The college president or designee is authorized to make exceptions to the policies limiting use in the case of college sponsored events and/or instructional activities.

NEW SECTION

WAC 495B-140-045 Distribution of materials. Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups and as authorized by the college. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or the board of trustees.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-060 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his or her designee, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW.

(2) Students who violate proscriptions within these regulations (chapter 495B-140 WAC) will be disciplined in accordance with the campus code of conduct (chapter 495B-120 WAC).

(3) Faculty and staff who violate proscriptions within these regulations (chapter 495B-140 WAC) will be disciplined in accordance with established college policies.

(4) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with these rules.

(5) Persons or groups who violate the law, a college policy or rule may have their license or privilege to be on school property revoked and be ordered to withdraw from and refrain from entering upon any college property. Remaining on or reentering college property after one's license or privilege to be on college property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

(6) There shall be no overnight camping on college facilities or grounds, including off-campus facilities owned or leased by the college. Camping is defined to include sleep-

ing, sleeping in a vehicle, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for the purpose of personal habitation. However, the college president or designee is authorized to make exceptions in the case of college sponsored events and/or instructional activities.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-090 Basis of fee assessment. (1) The basis for establishing and charging use fees reflects the college's assessment of the present market, the cost of operations, and an evaluation of the intended purpose and its relationship to the purposes of this college. The board of trustees has determined that groups or organizations affiliated with the college should be permitted access to facilities at the lowest charge on the fee schedule which may include complimentary use. A current fee schedule is available to interested persons from the business office.

(2) The college does not wish to compete with private enterprise. Therefore, the college reserves the right to deny applications for facility use when the administration and/or the board of trustees feel((s)) a commercial facility should be patronized. At no time will facility use be granted for a commercial activity at a rental rate, or upon terms, less than the full and fair rental value of premises used.

NEW SECTION

WAC 495B-140-105 Posting of a bond and hold harmless statement. When using college facilities and grounds, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any injuries, loss, or damage.

WSR 12-21-063
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed October 17, 2012, 2:19 p.m., effective November 17, 2012]

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

Purpose: The proposed rules will ensure that the fees being charged for services provided by the grain warehouse audit program are in correlation to the fees charged and amount of time needed to render service and ensure cost recovery for the program.

Citation of Existing Rules Affected by this Order: Amending WAC 16-237-195.

Statutory Authority for Adoption: RCW 15.17.050 and 3ESHB 2127, chapter 7, Laws of 2012.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-17-147 on August 22, 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 1, Repealed 0.

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

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

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

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

Date Adopted: October 17, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 05-07-080, filed 3/15/05, effective 4/15/05)

WAC 16-237-195 Fees for warehouse audit and related services. The following fees apply to the following services:

(1) For year-end inventories requested by a warehouse operator, the department charges ((~~the following:~~

~~A fee of:~~		~~If requested:~~
~~(a)~~	~~10% of the warehouse license fee~~	~~By July 30th of each year~~
~~(b)~~	~~15% of the warehouse license fee~~	~~After July 30 of each year~~))

twenty percent of the warehouse license fee with a minimum fee of four hundred dollars.

(2)(a) The hourly rate for all other services performed by the warehouse audit program at the request of warehouse operators, grain dealers and/or other government agencies is $((~~33.00~~)) 56.00 per hour.

(b) These services include, but are not limited to, technical assisted audits of records and inventory, observation of sampling of commodities, collection of samples for the Karnal Bunt Survey, and remeasurement of commodities and storage bins.

(3) In addition to the hourly rate established in subsection (2)(a) of this section, the department assesses appropriate charges for overtime, mileage, meals, and lodging expenses incurred by department personnel when providing the types of services identified in subsection (2)(b) of this section.

WSR 12-21-064
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed October 17, 2012, 2:33 p.m., effective November 17, 2012]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Federal Regulation US Grain Standards Act Regulations §800.70 requires that all grain inspection rules be reasonable and nondiscriminatory and therefore must be approved by the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration prior to the rules becoming effective.

Purpose: Amend chapter 16-240 WAC to remove a tonnage discount structure that provides an unfair fee advantage; increase the grain inspection program fees for service to recover the department's actual costs of providing inspection services to maintain the program; provide funding to restore and maintain the six-months minimum operating fund balance; and create a new discount structure that provides a benefit to all customers paying for services in the event that an excess amount of fees are collected by the department.

Citation of Existing Rules Affected by this Order: Amending WAC 16-240-010, 16-240-020, 16-240-032, 16-240-036, 16-240-038, 16-240-042, 16-240-046, 16-240-054, 16-240-060, 16-240-070, 16-240-080, and 16-240-090.

Statutory Authority for Adoption: RCW 15.17.050 and 3ESHB 2127, chapter 7, Laws of 2012.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-17-159 on August 22, 2012.

Changes Other than Editing from Proposed to Adopted Version: Deleted phrase to be consistent with text and intent of WAC 16-240-054:

WAC 16-240-036 Permanent staffing requests. An applicant may request the department to establish permanent staffing on shifts as shown below:

(1) Requests for permanent staffing of day, night, swing, or graveyard shifts must be made in writing at least seven business days prior to the ((~~beginning of the month for which the~~)) shift(s) that are requested.

Clarified sentence to be consistent with text and intent of:

WAC 16-240-043 Minimum operating fund discount.

(2) … ~~No discount will be available in any month where the discount amount would be in excess of the total fees charged.~~

(2) … No discount will be available in excess of the total fees charged in any month.

Restored explanatory notes where inadvertently deleted:

WAC 16-240-070 Fees for services under the United States
Grain Standards Act.

USGSA Table 1

- The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee.
- During vessel loading, assessments for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be assessed at the per unit rates included in this fee schedule.

Deleted orphan reference numbers:

WAC 16-240-070 Fees for services under the United States
Grain Standards Act.

USGSA Table 2
per truck or container ((~~1~~))
per railcar ((~~1, 2~~))
per railcar ((~~1, 2~~))
per railcar ((~~1, 2~~))

USGSA Table 4
per inspection ((~~1, 2~~))
per inspection ((~~1, 2~~))
per factor ((~~2~~))

Deleted orphan reference numbers:

WAC 16-240-080 Fees for services under the Agricultural
Marketing Act of 1946.

AMA Table 1
per metric ton ((~~1, 2~~))
per metric ton ((~~1, 3, 4~~))
per truck or container ((~~1, 2~~))
per factor ((~~1~~))

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 1, Amended 12, 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: October 17, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-010 Definitions. "Department" means the Washington state department of agriculture.

"Fee" means any charge made by the department for:

(1) Inspecting and handling any commodity; or

(2) Any service related to weighing or storing grains or commodities.

"GIPSA, FGIS" means the Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service.

"Metric ton" means two thousand two hundred four and six-tenths pounds.

"Minimum operating fund balance" means six months of grain inspection program operating expenses.

"Official commercial inspection services" means a contractual agreement between the applicant and the department for services specified by the applicant that will be provided at an applicant's facility.

"Revenue minimum" means the amount of revenue that must be collected by the department to offset expenses. In order to act as an official inspection agency under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, the program must collect revenue to offset expenses. The grain inspection program is supported entirely by the fees it generates from the services it provides as required by RCW 22.09.790. The circumstances under which charges occur to collect the revenue minimum are stated in WAC 16-240-038.

"Service point" means the Washington state department of agriculture offices and surrounding service areas authorized by the Federal Grain Inspection Service to provide sampling, inspecting, weighing, and certification services.

"USDA" means the United States Department of Agriculture.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-020 Washington state grain and commodity service points. The offices located in the following cities are service points for providing sampling, inspecting, weighing, and certification services.

(1) Service points:

(a) Colfax.

(b) Kalama.

(c) Longview.

(d) Olympia.

((~~(d)~~)) (e) Pasco.

((~~(e)~~)) (f) Seattle.

((~~(f)~~)) (g) Spokane.

((~~(g)~~)) (h) Tacoma.

((~~(h)~~)) (i) Vancouver.

(2) Aberdeen has been delegated to Washington state as a service point by the Federal Grain Inspection Service. Services for Aberdeen are as follows:

(a) Services for Aberdeen may be requested through the Tacoma grain inspection office.

(b) Travel time and mileage will be assessed from Tacoma to Aberdeen for all services requested at Aberdeen until a permanent staff is established.

(3) Inspection points may be added or deleted within the department's delegated and designated service area.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-032 Grades and standards adopted by Washington state. Washington state adopts the following grades and standards:

(1) The grades and standards established by the United States Department of Agriculture from August 1, 1984, ((~~to the present~~)) and as subsequently amended, that apply to all grains and commodities regulated by this chapter.

(2) The procedures to sample, grade, test and weigh grains and commodities, established by the regulations and instructions under the United States Grain Standards Act and the Agricultural Marketing Act of 1946, and as subsequently amended.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-036 Permanent staffing requests. An applicant may request the department to establish permanent staffing on shifts as shown below:

(1) Requests for permanent staffing of day, night, swing, or graveyard shifts must be made in writing at least seven business days prior to the ((~~beginning of the month for which the~~)) shift(s) that are requested.

(a) Requests for permanent staffing of any night, swing or graveyard shift will be deemed to include a request for permanent staffing of the day shift.

(b) The requested shift(s) will be established if the department has an adequate number of trained personnel.

(c) Confirmation of staffing requirements must be received by the inspection office by 2:00 p.m. each day Monday through Friday, for the next service day, and by 2:00 p.m. of the last business day before a Saturday, Sunday, or holiday (see WAC 16-240-034).

(d) Failure to meet the notification requirement may result in denial of service.

(2) When the department is able to staff the permanent night, swing, or graveyard shift(s) requested by the applicant, the overtime rate established under WAC 16-240-048 will be waived for the requested shift(s).

(3) Once established, permanent shifts will continue ((~~for a minimum of one calendar month~~)) until canceled by the requesting party or canceled by the department for good cause.

(a) ((~~The request for a permanent shift will remain in effect until canceled.~~

~~(b)~~)) Cancellation requests must be received, in writing, giving at least fifteen business ((~~days prior to the end of the month~~)) days' notice.

((~~(c)~~)) (b) Applicants will be assessed for any shifts established at their request until the cancellation notice period has expired.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-038 Revenue minimum fee process. The circumstances under which the department may assess additional charges ((~~occur~~)) to ((~~collect~~)) meet the revenue minimum are as follows:

(1) When the volume of work at the established fees does not generate revenue ((~~equivalent~~)) at least equal to the straight time hourly rate per hour, per employee, a sufficient additional amount, calculated by using the straight time hourly rate ((~~will be assessed~~)) per hour, per employee, will be added to the established fee amount to meet the revenue minimum.

(2) ((**Daily**)) Work volume averaging at export locations will be determined as follows:

(a) When the ((**daily**)) weekly volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, according to the staffing needs at the facility, the department ((charges a)) may charge an additional fee ((to recover expenses)), as described in subsection (1) of this section. The weekly volume will be based on the applicable shift from Monday through the following Monday.

(b) ((The straight time hourly rate will be assessed per hour, per employee.

(c))) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under ((daily)) weekly averaging.

(((3) **Monthly** averaging at export locations:

(a) When the applicant has requested the department to establish one or more permanent shifts, the applicant may request, in writing, that the revenue minimum required for staffing at the location be determined based on the completed invoices for the calendar month, instead of paying the fees for daily volumes of work.

(b) When the **monthly** volume of work at the established fees does not generate revenue equivalent to the straight time hourly rate per hour, per employee, including applicable supervisory and clerical employee hours, the department charges a fee to recover expenses.

(c) The straight time hourly rate will be assessed per hour, per employee.

(d) At export locations, the request for monthly averaging stays in effect until canceled.

(e) Requests to establish or cancel monthly averaging for the coming month must be received by 2:00 p.m. of the last business day in the month.

(f) Service cancellation fees, WAC 16-240-054, are not considered to be revenue under monthly averaging.))

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-042 Payment of fees and charges. (1) All department fees and charges for services rendered are due within thirty days of the statement date. Interest at the rate of one percent per month, or fraction thereof, shall accrue on any balance owed after thirty days of the statement date.

(2) If the department does not receive payment within thirty days:

(((1))) (a) Services may be withheld until the delinquent account is paid; or

(((2))) (b) Cash payment for subsequent services may be required.

((The department assesses a penalty of twelve percent per annum on all delinquent account balances.))

NEW SECTION

WAC 16-240-043 Minimum operating fund discount. (1) The fund balance will be evaluated by July 1st of every even numbered year. If the fund exceeds the minimum balance by at least five percent, the excess will be prorated as a future discount to those customers who paid for services during the previous three calendar years. If an excess operating fund balance exists, the director or designee will authorize the program to apply the discount to qualified customers on a monthly basis at the time of future service billings during the next calendar year.

(2) The discount will be made available to qualified customers as follows. The department will establish the percent of discount available to qualified customers as based on each customer's fees paid over the previous three calendar years in relation to the total amount determined to be in excess of the revenue minimum. During the discount calendar year, each qualified customer will be entitled to receive a discount in the amount of one-twelfth of its total potential discount amount during each month that it incurs fees. No discount will be available in excess of the total fees charged in any month. No discount will accrue if not used during any month of the applicable calendar year.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-046 Straight time rate. The straight time rate is assessed as cited below.

(1) An hourly fee is specified in the schedule of fees.

(2) No other fee is established in the schedule of fees.

(3) The revenue minimum under WAC 16-240-038 applies.

(4) The revenue minimum required for staffing at export locations determined on a ((daily or monthly)) weekly basis under WAC 16-240-038 applies.

(5) No contractual agreement supersedes the straight time rate.

(6) Straight time is assessed in one-half hour increments.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-054 Service cancellation fee. A service cancellation fee applies when service is requested and then canceled or not performed.

(1) When a service is requested before or after the inspection office's established hours, a cancellation fee would apply as follows:

(a) When a service is requested before or after an office's standard Monday through Friday shifts, or anytime on Saturdays, Sundays, or holidays; and

(b) The requested service is canceled after 2:00 p.m. of the last business day before the requested service; then

(c) A service cancellation fee according to WAC 16-240-060, Table 1, will be assessed per employee scheduled.

(2) ((At locations where monthly averaging has been instituted, a cancellation fee would apply as follows:

(a) A request for service must be filed by 2:00 p.m. on the last business day before service to guarantee full staffing at the service location;

(b) When full staff at the location is requested and then canceled or services are not actually performed through no fault of the department; then

(c) The service cancellation fee will be assessed per employee scheduled.

~~(3)~~)) When service is requested for a vessel inspection, a cancellation fee would apply as follows:

(a) When a vessel inspection is requested and then canceled after 2:00 p.m. of the last business day before the requested service, a cancellation fee will apply.

(b) The service cancellation fee will be assessed per employee scheduled to inspect the vessel.

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-060 WSDA grain program fees for service. USGSA—AMA—WSDA Table 1 contains fees for GIPSA, FGIS scale authorization, straight-time hourly rate, overtime hourly rate, and service cancellation fees for services performed under the United States Grain Standards Act, the Agricultural Marketing Act of 1946, and Washington state rule.

USGSA—AMA—WSDA Table 1
WSDA Grain Program Fees for Service

1.	Scale authorization fee, **per hour, per employee**	**$((~~50.00~~)) 56.00**
2.	Straight-time rate, **rate per hour, per employee**	**$((~~30.00~~)) 56.00**
3.	Overtime rate, **per hour, per employee**	**$((~~15.00~~)) 28.00**
4.	Service cancellation fee, **per employee**	**$((~~150.00~~)) 200.00**

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-070 Fees for services under the United States Grain Standards Act. (1) USGSA Tables 1 through 7 in this section contain fees for official sampling and/or inspection and/or weighing services and fees for other associated services under the United States Grain Standards Act (USGSA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not ((~~specifically cited in WAC~~)) otherwise provided for in this chapter for services under the United States Grain Standards Act are described below.

(a) Fees for other services under the United States Grain Standards Act not specifically cited in WAC 16-240-070 are provided at the rates contained in WAC 16-240-080 or 16-240-090 ((~~and/~~))or at the published rates of the laboratory or organization providing the official service or analysis. The program will require the recipient of services to provide advance consent to the rate for any service necessary to be performed at an external laboratory or organization.

(b) An applicant may be required to provide the necessary supplies and equipment when requesting a new or special type of analysis.

USGSA Table 1
Fees for Combination Inspection and Weighing Services

1.	In, out, or local, **per metric ton**	**$((~~0.150~~)) 0.260**
((~~2. Vessels (export and domestic ocean-going)~~		
	~~a. First 2,500,000 metric tons per fiscal year, **per metric ton**~~	**~~$0.200~~**
	~~b. From 2,500,001 to 4,000,000 metric tons per fiscal year, **per metric ton**~~	**~~$0.150~~**
	~~c. From 4,000,001 to 5,500,000 metric tons per fiscal year, **per metric ton**~~	**~~$0.100~~**
	~~d. Over 5,500,000 metric tons per fiscal year, **per metric ton**~~	**~~$0.050~~**

~~Note: For vessels (export and domestic ocean-going):~~

~~■ The vessel tonnage assessment is applied in full lot increments and is reset at the beginning of each fiscal year. The fiscal year begins July 1 and ends the following June 30.~~))

■ The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in USGSA Table 1 are charged at the per factor fee.

■ During vessel loading, assessments for other tests, such as protein analysis, falling number determinations, or mycotoxin analysis will be assessed at the per unit rates included in this fee schedule.

2.	Locations with approved automated weighing systems, **per metric ton**	**$0.240**
Note: For automated weighing systems: • When approved automated weighing systems are not functioning properly, additional staff may be required at the straight time hourly rate.		
3.	Trucks or containers, **per truck or container**	**$((~~22.00~~)) 25.00**
4.	Additional nongrade determining factor analysis, **per factor**	**$3.00**

USGSA Table 2
Fees for Official Sampling and Inspection Without Weighing Services

1.	Original or new sample reinspection trucks or containers sampled by approved grain probe, including factor only or sampling only services, **per truck or container ((~~1~~))**	**$((~~17.00~~)) 20.00**
2.	Railcars sampled by USDA approved mechanical sampler, including factor only or sampling only services, **per railcar ((~~1, 2~~))**	**$((~~17.00~~)) 20.00**

3.	Original or new sample reinspection railcars sampled by USDA approved grain probe, applicant assisted, including factor only or sampling only services, **per railcar ((~~1, 2~~))**	**$((~~17.00~~)) 20.00**
4.	Original or new sample reinspection railcars sampled by USDA approved grain probe, including factor only or sampling only services, **per railcar ((~~1, 2~~))**	**$((~~26.50~~)) 30.00**
5.	Inspection of bagged grain, including tote bags, per hundredweight (cwt)	**$0.100**
6.	Additional nongrade determining factor analysis, **per factor**	**$3.00**

((~~1~~)) **Note: The following applies to all fees in this table:**

- For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 2.
- Analysis that requires additional equipment or personnel will be provided at the hourly rate. Examples are special grades, such as the determination of waxy corn, or criteria analysis, such as stress cracks in corn or seed sizing in soybeans.

((~~2~~)) ■ The per railcar rate applies to each railcar included in a batch grade. A batch grade is two or more cars that are combined, at the applicant's request, for a single grade.

((~~5. Additional nongrade determning factor analysis, **per factor** $3.00~~))

USGSA Table 3
Fees for Official Class X Weighing Services Without an Inspection of Bulk Grain

1.	In, out, or local, **per metric ton**	**$((~~0.130~~)) 0.200**
2.	Trucks or containers, **per weight lot**	**$((~~15.00~~)) 20.00**

USGSA Table 4
Fees for Inspection of Submitted Samples, Fees for Reinspections Based on Official File Samples and Fees for Additional Factors

1.	Submitted samples, including factor-only inspections, **per inspection ((~~1, 2~~))**	**$((~~9.00~~)) 12.00**
2.	Reinspections based on official file sample, including factor-only reinspections, **per inspection ((~~1, 2~~))**	**$((~~9.00~~)) 12.00**
3.	Additional, nongrade determining factor analysis, **per factor ((~~2~~))**	**$3.00**

((~~1~~)) **Note: The following applies to all fees in this table:**

- When submitted samples are not of sufficient size to allow for official grade analysis, obtainable factors may be provided, upon request of the applicant, at the submitted sample rates shown above.
- For barley, determining and certifying of dockage to tenths is included in the fees in USGSA Table 4.

((~~2~~)) ■ Analysis that requires additional equipment or personnel will be provided at the hourly rate. Examples are special grades, such as the determination of waxy corn, or criteria analysis, such as stress cracks in corn or seed sizing in soybeans.

USGSA Table 5
Fees for Official Analysis for Protein, Oil, or Other Official Constituents

Original or reinspection based on file sample, **per test**	**$((~~7.00~~)) 9.00**

Note: The following applies to the fee in USGSA Table 5:

- When a reinspection service includes a request for a new sample, the appropriate sampling fee will also be assessed.
- Results for multiple criteria achieved in a single testing operation are provided at the single test rate unless certificated separately.

USGSA Table 6
Fees for Testing for the Presence of Mycotoxins Using USDA Approved Methods

Original, reinspection based on official file sample, or submitted sample, **per test**	**$((~~37.50~~)) 40.00**

Note: The following applies to this table:

- When a reinspection service includes a request for a new sample, the appropriate sampling fee to obtain the sample will be assessed in addition to the per test fee shown earlier (see WAC 16-240-070, USGSA Table 2).

USGSA Table 7
Fees for Stowage Examination Services on Vessels or Ocean-Going Barges and Fees for Other Stowage Examination Services

1.	Vessels or ocean-going barges stowage examination, original or reinspection, **per request**	**$((~~300.00~~)) 500.00**
2.	Other stowage examinations of railcars, trucks, trailers, or containers, original or reinspection, **per inspection**	**$((~~9.00~~)) 12.00**

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-080 Fees for services under the Agricultural Marketing Act of 1946. (1) AMA Tables 1 through 5 in this section contain official sampling and/or inspection and/or weighing services and fees for other services under the Agricultural Marketing Act of 1946 (AMA). Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Fees that are not ((~~specifically cited in WAC~~)) otherwise provided for in this chapter for services under the Agricultural Marketing Act of 1946 are described below.

(a) Fees for other services under the Agricultural Marketing Act of 1946 not contained in WAC 16-240-080 are contained in WAC 16-240-070 or 16-240-090 and/or at the published rates of the laboratory or organization providing the official service or analysis.

(b) An applicant may be required to provide the necessary supplies and/or equipment when requesting a new or special type of analysis.

AMA Table 1
Fees for Combination Sampling, Inspection and Weighing Services, and Additional Factors

1.	In, out, or local, **per metric ton ((~~1, 2~~))**	**$((~~0.150~~)) 0.260**
2.	Locations with approved automated weighing systems, per metric ton	**$0.240**
Note: For automated weighing systems:		
■	When approved automated weighing systems are not functioning properly, additional staff may be required at the straight time hourly rate.	
3.	Vessels (export or domestic), **per metric ton ((~~1, 3, 4~~))**	**$((~~0.200~~)) 0.260**
((~~3.~~)) 4.	Trucks or containers, **per truck or container ((~~1, 2~~))**	**$30.00**
((~~4.~~)) 5.	Additional, nongrade determining factor analysis, **per factor ((~~1~~))**	**$3.00**
Note: The following applies to all fees in this table:		
((~~1~~)) ■	The rates in the above section also apply to services provided under federal criteria inspection instructions, state established standards, and/or other applicant defined criteria.	
((~~2~~)) ■	Dockage breakdown is included in the basic inspection fee.	
((~~3~~)) ■	The metric ton vessel rate includes all additional factor inspection services required by the load order. All other additional factor inspection services in AMA Table 1 are charged at the per factor fee.	
((~~4~~)) ■	Assessments for other tests, such as mycotoxin analysis, provided during vessel loading will be assessed at the per unit rates included in this fee schedule.	

AMA Table 2
Fees for Official Sampling and Inspection Without Weighing Services, and Additional Factors

1.	Trucks((~~,~~)) or containers((~~, or tote lots,~~)) sampled by USDA approved grain probe, including factor only or sampling only services, **per truck((~~,~~)) or container((~~, or tote lot~~))**	**$30.00**
2.	Railcars sampled by USDA approved mechanical samplers, including factor only or sampling only services, **per railcar**	**$30.00**
3.	Railcars sampled by USDA approved grain probe, including factor only or sampling only services, **per railcar**	**$30.00**
4.	Inspection of bagged commodities or tote bags, including factor only or sampling only services, **per hundredweight (cwt)**	**$((~~0.080~~)) 0.100**
5.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
Note: The following applies to all fees in this table:		
■	Dockage breakdown is included in the basic inspection fee.	
■	Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate.	
■	The rates shown above also apply to services provided under federal criteria inspection instructions.	

AMA Table 3
Fees for Official Weighing Services without Inspections

1.	In, out, or local, per metric ton	**$((~~0.130~~)) 0.200**
2.	Trucks or containers, **per weight lot**	**$((~~15.00~~)) 20.00**

AMA Table 4
Fees for Inspecting Submitted Samples

1.	Submitted sample, thresher run or processed, including factor-only inspections, **per sample**	**$((~~19.00~~)) 20.00**
2.	Additional, nongrade determining factor analysis, **per factor**	**$3.00**
Note: The following applies to all fees in this table:		
■	Dockage breakdown is included in the basic inspection fee.	

■ Analysis for special grade requirements or criteria analysis that requires additional equipment or personnel will be provided at the hourly rate. ■ The rates shown above also apply to inspection services provided under federal criteria inspection instructions. ■ When the size of a submitted sample is insufficient to perform official grade analysis, factor-only analysis is available on request of the applicant.

AMA Table 5
Fees for Miscellaneous Services

1.	Falling number determinations, including liquefaction number on request, **per determination**	**$((~~15.00~~)) 20.00**
2.	Sampling and handling of processed commodities, **per hour, per employee**	**$((~~30.00~~)) 56.00**
3.	Laboratory analysis, **at cost**	**At cost**
Note: The following applies to all fees in this table: ■ On request, shipping arrangements billed directly by shipper to the customer's shipping account may be coordinated by the department.		

AMENDATORY SECTION (Amending WSR 05-11-058, filed 5/17/05, effective 6/17/05)

WAC 16-240-090 Fees for other services performed by WSDA. (1) WSDA Tables 1 through 3 in this section contain fees for other services performed at the request of the applicant when no USGSA or AMA standards exist. Services available include inspection, sampling, testing, weighing, laboratory analysis, and certification.

(2) Applicant-defined analysis may be available from the department.

(a) Hourly fees for sampling and/or sample preparation may be assessed.

(b) The analysis will be provided at the established hourly rate or may be provided at the cost quoted by the laboratory or organization providing the service or analysis.

(c) Applicant may be required to provide supplies and equipment when requesting a new analysis or special service.

(3) Official samples, as defined under 7 C.F.R. 800.75, may be provided upon timely request by an interested party, specifying the number of samples requested. Samples are provided in up to five pound bags and are charged the fee stated in Table 3.

WSDA Table 1
Fees for Inspecting Miscellaneous Agricultural Commodities under Chapter 16-213 WAC

1.	Submitted sample, **per sample**	**$((~~9.00~~)) 12.00**
2.	Railcars, sampled by USDA approved diverter-type mechanical samplers, **per car**	**$((~~17.00~~)) 20.00**
3.	Railcars, sampled by USDA approved grain probe, **per car**	**$((~~26.50~~)) 30.00**
4.	Trucks or containers, sampled by USDA approved grain probe, **per truck or container**	**$((~~17.00~~)) 20.00**
Note: The following applies to all ((~~items~~)) fees in ((~~WSDA Table 1~~)) this table: ■ These rates also apply to inspection services provided under applicant-specified criteria or standards other than USGSA, AMA or WSDA. For example: Millet may be inspected under state of Montana standards, upon applicant request.		

WSDA Table 2
Fees for Phytosanitary Certification

1.	In conjunction with official inspection, **per certificate**	**$((~~25.00~~)) 30.00**
2.	For phytosanitary certification only, without official inspection, add required sampling time, **per hour, per employee**	**$((~~30.00~~)) 56.00**

WSDA Table 3
Fees for Miscellaneous Services

1.	Unofficial constituent analysis, **per test**	**$((~~7.00~~)) 9.00**
2.	Sample pick-up fee, on department established routes, **per sample**	**$((~~0.85~~)) 1.25**
3.	Laboratory analysis, provided at other than WSDA grain inspection program offices, **per analysis**	**At cost**
4.	Official samples, **per bag**	**$5.00**

WSR 12-21-070
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed October 18, 2012, 11:29 a.m., effective November 18, 2012]

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

Purpose: The department is amending and adding sections to these rules to comply with and be consistent with Initiative 1163, and SHB 2314 Long-term care workers. In addition, the department is clarifying in rule the provision related to disqualifying drug crimes.

The department added new sections WAC 388-78A-24641, 388-78A-24642, 388-78A-24681, and 388-78A-24701.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2020, 388-78A-2461, 388-78A-2462, 388-78A-2464, 388-78A-2465, 388-78A-2465 [388-78A-2466], 388-78A-

2468, 388-78A-2469, 388-78A-2470, 388-78A-2474, and 388-78A-2750.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 12-15-073 on July 18, 2012.

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

WAC 388-78A-2020 Definitions.

"Administrator" means a boarding home administrator who must be in active administrative charge of the boarding home as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care training and home care aide certification. ~~For training, certification, and background check purposes, the administrator or designee is presumed to provide direct care.~~

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check.

If the results of the Washington state name and date of birth background check indicate the person ~~has been convicted of a crime or has a finding that is disqualifying under WAC 288-78A-2470~~ is disqualified by having a conviction listed in WAC 388-78A-2470 subsections 1 through 6, or by having a finding listed in WAC 388-78A-2470 subsections 7 through 9, then the boarding home must:

(1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and

(2) Not allow a volunteer or student to have unsupervised access to residents.

NEW SECTION

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information.

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

~~(b) Document in writing the basis for making the decision, and make it available to the department upon request.~~

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

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW
WAC 388-78A-2020, change the words "presumed to provide direct care" in the definition for "administrator."	This comment was accepted and the department clarified when an administrator may be exempt from training and home aide certification.
WAC 388-78A-24641, rephrase the sentence to clarify that both crimes and findings are disqualifying under WAC 388-78A-2470.	This comment was accepted and the department made a change to clarify that the disqualification could be from specified convictions or findings.
WAC 388-78A-24701, delete this entire section, including language on documentation and "character, competence and suitability" to current and prospective employees.	The department has accepted part of this comment. Although the department had added the language based upon stakeholder comments, we did delete the proposed language related to documentation. The department did not accept the comment on "character, competence and suitability" since this language is not a new requirement and is in current existing rules (WAC 388-78A-2465(2)). It was moved to a new section for clarity to make it easier for providers to find the process for assessing employees and prospective employees who have nondisqualifying crimes.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 11, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 11, Repealed 1.

Date Adopted: October 15, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-22 issue of the Register.

WSR 12-21-077
PERMANENT RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed October 19, 2012, 10:39 a.m., effective November 19, 2012]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SB 6171 was passed by the 2012 legislature which increased the tonnage limitation from five hundred to seven hundred fifty gross tons (international) on foreign flagged yachts applying for a pilotage exemption.

This amendment to RCW 88.16.070 became effective on June 7, 2012.

Purpose: To align the language of this rule so it is consistent with the statute. The proposed changes are also intended to modify the procedures, fee structure and the petition form when applying for an exemption from pilotage requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-360.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 12-16-079 on July 31, 2012.

Changes Other than Editing from Proposed to Adopted Version: A modification was made to subsection (6) in order to better define annual renewals of vessel exemptions.

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

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

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

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

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

Date Adopted: September 13, 2012.

Peggy Larson
Executive Director

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

WAC 363-116-360 Exempt vessels. (1) Under the authority of RCW 88.16.070, application may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels ((~~or yachts~~)), which are not more than five hundred gross tons (international), do not exceed two hundred feet in length, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or yachts, which are not more than seven hundred fifty gross tons (international), and do not exceed two hundred feet in length. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least ((~~sixty days~~)) forty-eight hours prior to planned vessel operations ((~~in the Puget Sound pilotage district~~)) where possible. Petitions filed with less than ((~~sixty days~~)) forty-eight hours notice may be considered by the chair at the chair's discretion((~~.~~

~~(b) The petition requesting exemption shall be~~)) on a board-approved form ((~~which~~)). The form shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the areas and dates of planned operations, and such other information as the board shall require ((~~on its petition form~~)).

(((~~(c)~~))) (b) Pay the appropriate initial application or renewal fee with the submittal of the petition, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be ((~~reviewed by the chair, who shall make a recommendation to the board to be~~)) considered at its next regularly or specially scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist.

(3)Any grant of an ((~~interim~~)) exemption, including interim exemptions, may contain such conditions as the board, or in the case of an interim exemption, the chair, deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include: A requirement that the vessel employ the services of a pilot on its initial voyage into ((~~Puget Sound~~)) state pilotage waters; and/or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than sixteen hundred gross tons or as a master of inland steam or motor vessels of not more than five hundred gross tons, such license to include a current radar endorsement; and/or that the vessel possess specific navigational charts, publications and navigational equipment necessary to ensure safe operation.

(((~~(3) The recommendation of the chair shall be considered at the next regular or specially scheduled meeting of the board. Interested parties shall receive notice and opportunity for hearing at that time, provided that the party notifies the board at least five days in advance of the meeting of its desire for hearing.~~)))

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the

specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	3 Months or Less	1 Year or Less	Annual Renewal
A. Yachts			
Up to and including 50 feet LOA	$((~~300~~)) 50	$((~~500~~)) 50	$((~~200~~)) 50
Up to and including 100 feet LOA	450	750	300
Up to and including 200 feet LOA	750	1125	450
B. Passenger Vessels			
Up to and including 100 feet LOA	1125	1500	600
Up to and including 200 feet LOA	1500	1500	750

(6) Petitions for annual renewals must be submitted within one year of the expiration of the previous exemption.

WSR 12-21-082
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 10-17—Filed October 19, 2012, 3:28 p.m., effective November 19, 2012]

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

Purpose: The proposed rule implements chapter 70.285 RCW and addresses:

- Criteria that manufacturers of brake friction material must follow to certify compliance using third party accredited laboratories;
- Requirements relating to product and packaging markings to appear on brake friction material;
- Requirements for how and what data must be submitted regarding the concentration of copper and other metals in brake pads sold or offered for sale in Washington state;
- A process by which companies may apply for an exemption from certain requirements of chapter 70.285 RCW; and
- Other issues and requirements necessary to implement chapter 70.285 RCW.

Statutory Authority for Adoption: Chapter 70.285 RCW.

Adopted under notice filed as WSR 12-12-056 on June 5, 2012.

Changes Other than Editing from Proposed to Adopted Version: Under WAC 173-901-060 the responsibility to ensure a unique identification code is assigned to compliant brake friction material has been shifted from the industry sponsored registrar to the brake friction material manufacturer.

Manufacturers of products that are exempted from the requirements of the law may mark their products with either an "X" or a "WX."

A variety of editing changes were made to promote the clarity of the rules and for internal constancy. A list of these changes may be found in the concise explanatory statement.

A final cost-benefit analysis is available by contacting Ian Wesley, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6747, fax (360) 407-6715, e-mail ian.wesley@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, 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 18, 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: October 19, 2012.

Ted Sturdevant
Director

Chapter 173-901 WAC

BETTER BRAKES

NEW SECTION

WAC 173-901-010 Purpose. (1) This chapter implements chapter 70.285 RCW, which mandates a phase out of the use of copper, asbestos, and several heavy metals in brake friction material that is sold or offered for sale in Washington state.

(2) As brake friction material wears down, copper and other metals are deposited on roadways, where they are washed into our streams and rivers. Copper is highly toxic to fish and other aquatic species. Young salmon are especially susceptible to the effects of copper. Removing copper and other toxic metals from brake materials will help to clean up water bodies around the state.

NEW SECTION

WAC 173-901-020 Applicability—Who must comply with the chapter? This chapter applies to:

(1) Manufacturers, wholesalers, distributors, installers, and retailers of brake friction materials that are sold or offered for sale in Washington state; and

(2) Manufacturers, wholesalers, distributors, and retailers of motor vehicles containing brake friction materials that are sold or offered for sale in Washington state.

NEW SECTION

WAC 173-901-030 Applicability—Which friction materials must comply with this chapter? (1) This chapter applies to brake friction materials designed for use on motor vehicles, as defined in RCW 46.04.320, that are subject to licensing requirements under RCW 46.16A.030.

(2) Some brake friction materials are exempted from this chapter by chapter 70.285 RCW. These include brake friction materials designed for use on:

(a) Motorcycles as defined in RCW 46.04.330;

(b) Motor vehicles employing internal-closed-oil-immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(c) Military combat vehicles;

(d) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320;

(e) Collector vehicles, as defined in RCW 46.04.126; or

(f) Motor vehicle brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(3) Some brake friction materials are exempt from certain requirements of this chapter. These include:

(a) Brake friction material manufactured prior to 2015 is exempt from WAC 173-901-050 (1) and (2), and 173-901-060. This exemption expires on January 1, 2025;

(b) Brake friction material manufactured prior to 2021 is exempt from WAC 173-901-050(2). This exemption expires on January 1, 2031;

(c) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from WAC 173-901-050 (1) and (2); and

(d) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from WAC 173-901-050(2).

(4) Friction materials that can be used on both exempted and nonexempted vehicles must comply with this chapter unless they are clearly labeled as designed for a specific use that is exempted from the requirements of chapter 70.285 RCW and this chapter.

NEW SECTION

WAC 173-901-040 Definitions. (1) **"Brake friction material"** means that part of a motor vehicle brake designed to retard or stop the movement of a motor vehicle through friction against a rotor made of a more durable material. "Rotor" means the rotating portion of a motor vehicle brake system including, but not limited to, brake disks and brake drums.

(2) **"Brake friction material manufactured as part of an original equipment service contract"** means brake friction material that:

(a) Is provided as service parts originally designed for and using the same brake friction material formulation sold with a new motor vehicle. If there are any changes to the design of the service part's brake friction formulation, the product is no longer brake fiction material manufactured as part of an original equipment service contract; and

(b) Is manufactured as part of a contract between a vehicle manufacturer and a brake friction material manufacturer that requires the brake friction material manufacturer to provide brakes with the identical brake friction material formulation to those that originally came with a new motor vehicle. The brake friction material manufacturer may only sell these parts directly to the other party to the contract, the vehicle manufacturer.

(3) **"Certification mark"** has the same meaning as in 15 U.S.C. Sec. 1127.

(4) **"Department"** means the department of ecology.

(5) **"Industry-sponsored registrar"** means an organization or organizations designated by one or more of the entities listed in WAC 173-901-020 to certify and register compliance with the requirements of chapter 70.285 RCW and this chapter on behalf of the designating entity or entities.

(6) **"ISO"** means the International Standards Organization.

(7) **"Manufacturer"** means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This chapter places differing requirements on manufacturers of motor vehicles and manufactures of brake friction materials. In each instance the term "manufacturer" is used, this chapter identifies which type of manufacturer is referred to.

(8) **"Motor vehicle"** does not include:

(a) Motorcycles as defined in RCW 46.04.330;

(b) Motor vehicles employing internal-closed-oil-immersed motor vehicle brakes or similar brake systems that are fully contained and emit no debris or fluid under normal operating conditions;

(c) Military combat vehicles;

(d) Race cars, dual-sport vehicles, or track day vehicles, whose primary use is for off-road purposes and are permitted under RCW 46.16A.320; or

(e) Collector vehicles, as defined in RCW 46.04.126.

(9) **"Motor vehicle brake"** means an energy conversion mechanism used to retard or stop the movement of a motor vehicle. Motor vehicle brake does not include brakes designed primarily to hold motor vehicles stationary and not for use while motor vehicles are in motion.

(10) **"Regulated constituents"** means:

(a) Asbestiform fibers;

(b) Cadmium and its compounds;

(c) Chromium (VI)-salts;

(d) Lead and its compounds; and

(e) Mercury and its compounds.

(11) **"SAE"** means the SAE International.

(12) **"Small volume motor vehicle manufacturer"** means a manufacturer of motor vehicles with Washington annual sales of less than one thousand new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehi-

cles, and heavy-duty engines based on the average number of vehicles sold for the three previous consecutive model years.

(13) **"Specified concentrations"** means, for each of the following:

(a) Asbestiform fibers, 0.1 percent by weight;

(b) Cadmium and its compounds, 0.01 percent by weight;

(c) Chromium (VI)-salts, 0.1 percent by weight;

(d) Lead and its compounds, 0.1 percent by weight;

(e) Mercury and its compounds, 0.1 percent by weight; and

(f) Beginning January 1, 2021, for copper and its compounds, 5 percent by weight.

(14) **"Vehicle dealer"** has the same meaning as defined in RCW 46.70.011.

(15) **"Wholesaler, distributor, installer, and retailer"** includes any person that sells or offers to sell brake friction materials to consumers in the state of Washington, and any person that sells or offers to sell brake friction materials to such person. "Selling or offering to sell brake friction material" includes installing or offering to install brake friction material in a vehicle for a fee.

NEW SECTION

WAC 173-901-050 Prohibition on the sale of certain brake friction materials. (1) Beginning January 1, 2015, no manufacturer, wholesaler, distributor, installer, or retailer of brake friction material nor any manufacturer of motor vehicles may sell or offer for sale brake friction material in Washington state that:

(a) Contains asbestiform fibers in concentrations exceeding 0.1 percent by weight;

(b) Contains cadmium and its compounds in concentrations exceeding 0.01 percent by weight;

(c) Contains chromium (VI)-salts in concentrations exceeding 0.1 percent by weight;

(d) Contains lead and its compounds in concentrations exceeding 0.1 percent by weight; or

(e) Contains mercury and its compounds in concentrations exceeding 0.1 percent by weight.

(2) Beginning January 1, 2021, no manufacturer, wholesaler, retailer, installer or distributor of brake friction material nor any manufacturer of motor vehicles may sell or offer for sale brake friction material in Washington state containing more than five percent copper and its compounds by weight.

(3) Exemptions:

(a) Brake friction material manufactured prior to 2015 is exempt from subsections (1) and (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2025.

(b) Brake friction material manufactured prior to 2021 is exempt from subsection (2) of this section for the purposes of clearing inventory. This exemption expires January 1, 2031.

(c) Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2015, is exempt from subsections (1) and (2) of this section. For more information about parts manufactured as part of an original equipment service contract see WAC 173-901-150.

Brake friction material manufactured as part of an original equipment service contract for vehicles manufactured prior to January 1, 2021, is exempt from subsection (2) of this section. For more information about parts manufactured as part of an original equipment service contract see WAC 173-901-150.

NEW SECTION

WAC 173-901-060 Self-certification of compliance. (1) Manufacturers of brake friction material must certify to the department that any brake friction material that is sold or offered for sale in Washington state complies with the requirements of chapter 70.285 RCW and this chapter using the following process:

(a) **Step 1:** Submit a sample of each brake friction material for laboratory testing. A brake friction material manufacturer may either:

(i) Submit a brake friction material sample directly to a laboratory accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080; or

(ii) Submit a sample of brake friction material to an industry-sponsored registrar that will send the sample to a laboratory accredited in accordance with WAC 173-901-070 for testing in accordance with WAC 173-901-080, on behalf of the brake friction material manufacturer.

(b) **Step 2:** Ensure that the laboratory provides laboratory testing results for each brake friction material directly to an industry-sponsored registrar. The brake friction material manufacturer may review the testing results prior to the laboratory sending the results to the registrar. However, the manufacturer must ensure that the laboratory submits the results from all testing conducted on a given friction material formula. All testing and reporting of results must be carried out in accordance with WAC 173-901-080.

(c) **Step 3:** Ensure that each brake friction material that complies with the requirements of chapter 70.285 RCW and this chapter is assigned a unique identification code ending in the appropriate environmental compliance marking as described in WAC 173-901-100.

(d) **Step 4:** Ensure that an industry-sponsored registrar lists each brake friction material that complies with the requirements of this chapter on the internet in a publicly accessible and searchable data base or list. A link to this data base or list must be provided to the department and the department must be notified if the internet address of this data base or list changes.

(e) **Step 5:** Ensure that self-certification documentation is submitted to an industry-sponsored registrar for transmission to the department on behalf of the brake friction material manufacturer. Self-certification documentation must:

(i) Include the contact information for the brake friction material manufacturer;

(ii) Include a signed and dated statement by an authorized representative of the brake friction material manufacturer declaring under penalty of perjury according to the laws of the state of Washington that all brake friction materials bearing the listed unique identification codes are of the same composition as those submitted to the laboratory and meet all

of the requirements of chapter 70.285 RCW and this chapter; and

(iii) Be in a form and format prescribed by the department.

(f) **Step 6:** Ensure that the registrar then transmits the self-certification documentation and laboratory testing results, on behalf of the brake friction material manufacturer, to the department. Self-certification documentation and test results must be transmitted in a quarterly report. The report must:

(i) Be in an electronic form and format prescribed by the department;

(ii) Contain a table showing each friction material sold or offered for sale in Washington state as identified by its unique identification codes and the cumulative average of all laboratory testing results for a given friction material demonstrating that the identified friction material complies with the requirements of chapter 70.285 RCW and this chapter. This information must be reported in accordance with WAC 173-901-080(5); and

(iii) Contain the self-certification documentation submitted to the registrar.

(g) **Step 7:** Ensure that brake friction material and its packaging is marked with proof of certification in accordance with WAC 173-901-090.

(2) There is no need to submit self-certification documentation for individual brake friction materials to the department between the regular quarterly reports.

(3) Manufacturers of brake friction material may use one set of testing results and self-certification documentation, and a single unique identification code for multiple products using an identical brake friction material formulation.

(4) Manufacturers of brake friction material are responsible for the accuracy of all information transmitted to the department. Manufacturers of brake friction materials may implement quality controls not otherwise specified above to ensure the accuracy of information transmitted to the department.

(5) Provided that each step is completed, manufacturers of brake friction material may alter the order of the process, in so far as the preceding steps are not required for the completion of subsequent steps. For example, a unique identification code may be issued at the beginning of the process or the industry-sponsored registrar may add compliant brake friction materials to the publicly available data base or list after the self-certification documentation has been submitted to the department.

(6) **Prerequisites for certification:**

(a) A manufacturer of brake friction material must file an initial baseline report as described in WAC 173-901-110, or obtain a waiver from this report under WAC 173-901-110(7), before it may certify compliance with the requirements in chapter 70.285 RCW and this chapter.

(b) A manufacturer of brake friction material that has received a penalty under this chapter may not certify other products until the penalty is paid.

(7) **Updating certification:** Manufacturers of brake friction material must recertify each previously certified brake friction material that is still being manufactured at least once every three years.

When recertifying brake friction materials, manufacturers of brake friction materials must submit updated self-certification documentation and new laboratory testing results. However, brake friction materials containing more than five percent copper, but that meets the requirements for the regulated constituents, do not need to be submitted for new testing to be recertified prior to 2021.

(8) **Exemption:** Brake friction material manufactured prior to 2015 is exempt from this section.

(9) **Optional certification:** A manufacturer of brake friction material that is not required to comply with the requirements of this law may certify compliance and mark brake friction materials in accordance with this chapter, provided that it certifies the product in accordance with this section.

NEW SECTION

WAC 173-901-070 Which laboratories must a manufacturer of brake friction material use to certify compliance with this chapter? (1) To certify compliance, a manufacturer of brake friction material must ensure that its brake friction material is tested by a laboratory that is qualified and equipped for testing products in accordance with the SAE J2975:2011 testing method, and that has been found to be competent to perform the specific testing methods described by SAE J2975:2011 by maintaining accreditation:

(a) To the ISO 17025:2005 standard by a lab accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Multilateral Recognition Arrangement, as of the effective date of this chapter;

(b) By any accreditation body that is recognized by the National Environmental Laboratory Accreditation Program, as of the effective date of this chapter; or

(c) By the Washington state environmental laboratory accreditation program under RCW 43.21A.230 and chapter 173-50 WAC.

(2) A manufacturer of brake friction material may certify compliance using testing results generated by a laboratory accredited to an alternative standard or by a laboratory accreditation body not listed in subsection (1) of this section if the alternative standard or accreditation body is approved by the department in advance of testing results being used for certification. The brake friction material manufacturer, laboratory, or laboratory accreditation body proposing the alternative shall be responsible for generating data sufficient to demonstrate to the department that these alternatives are equivalent to or better than the standards or accreditation bodies listed in subsection (1) of this section. Once an alternative laboratory standard or accreditation body has been approved by the department, any brake friction material manufacturer may use the standard or accredited laboratories for certification.

NEW SECTION

WAC 173-901-080 How to test brake friction materials and report results. (1) The manufacturer of brake friction material offered for sale in Washington state must ensure that its brake friction materials sold or offered for sale in Washington state are tested:

(a) By a laboratory accredited in accordance with WAC 173-901-070; and

(b) Using the testing protocol SAE J2975:2011 or an alternative testing method or protocol approved under subsection (9) of this section.

(2) Manufacturers of brake friction material must ensure that brake friction material is tested for each of the following:

(a) Antimony;

(b) Asbestiform fibers;

(c) Cadmium;

(d) Chromium (VI);

(e) Copper;

(f) Lead;

(g) Mercury;

(h) Nickel; and

(i) Zinc.

(3) **Who is responsible for the accuracy of laboratory testing results?** The manufacturer of brake friction material is responsible for the accuracy of the laboratory testing results reported to the department.

(4) **How many times does each friction material need to be tested?** As SAE J2975:2011 recommends, all testing for the regulated constituents, copper, nickel, zinc, and antimony must be done at least in triplicate.

(a) Due to the margin of error in the test method, additional testing may be required to demonstrate that the brake friction material contains less than the specified concentrations of each of the regulated constituents and copper. For example, if a pad contains 4.9 percent copper, the first round of testing results could come back showing the average testing result is greater than 5 percent copper by weight. Consequently, these results would not be suitable for demonstrating compliance and the brake friction material would need to be retested in accordance with SAE J2975:2011. The additional testing results would then need to be calculated into the cumulative average of all testing results conducted on a given formula. To be used for certification, the cumulative average of all testing must show that the brake friction material contains less than the specified concentrations of the regulated constituents and copper.

(b) If an approved alternative testing method or protocol is used, all testing must be done in accordance with the alternative testing method or protocol.

(5) **How must laboratory testing results be reported to the department?**

(a) All laboratory testing results for a friction material must be transmitted from the testing laboratory directly to an industry-sponsored registrar.

(b) The cumulative average of all testing done on a given brake friction material formulation must be reported to the department, via the industry-sponsored registrar, on behalf of the brake friction material manufacturer.

(c) The cumulative average must show that the concentration of the regulated constituents and copper are less than the specified concentrations.

(6) **What happens if laboratory error occurs?** If laboratory error is suspected, the laboratory may, at its discretion and in accordance with its standard operating procedures, choose to retest the brake friction material. The results from the testing in which the error occurred do not need to be included in the testing results transmitted to the industry-sponsored registrar or in the testing reported to the department.

(7) **How long must a manufacturer of brake friction material retain copies of laboratory testing results used for certification?** A manufacturer of brake friction materials must maintain copies of laboratory testing results for a period of ten years after the date of certification and must provide copies of these documents to the department upon its request.

(8) **May a manufacturer of brake friction material certify compliance using testing results derived using a method or protocol other than SAE J2975:2011?** A manufacturer of brake friction material may use alternative testing and sampling preparation methods if the alternative is approved by the department in advance of using these testing methods or protocols for certification. The brake friction material manufacturer proposing the alternative shall be responsible for generating data sufficient to demonstrate to the department that the alternative is at least as effective as SAE J2975:2011. Once an alternative testing method or protocol has been approved by the department, any manufacturer of brake friction material may use the approved, alternative method for certification. The department may only approve alternative testing procedures:

(a) When a manufacturer of brake friction material proposes an alternative testing method or protocol;

(b) When the brake friction material manufacturer has provided sufficient evidence to demonstrate that the proposed alternative is at least as effective as SAE J2975:2011; and

(c) When the proposed alternative method or protocol is publicly available.

NEW SECTION

WAC 173-901-090 Marked proof of certification. (1) **What is marked proof of certification?** Marked proof of certification is a certification mark appearing on brake friction material packaging coupled with a unique identification code and environmental compliance marking, described in WAC 173-901-100, on the brake friction material. The certification mark on the product serves to notify end users of the brake friction material that the product is compliant with the law. While the identification code and environmental marking is used to link the product to laboratory testing results and self-certification documentation, together the code and certification mark provide proof that the brake friction material meets the requirements of chapter 70.285 RCW and this chapter. When a brake friction material manufacturer marks a brake friction material or its packaging with proof of certification the manufacturer is certifying that:

(a) The brake friction material meets the applicable criteria for the environmental compliance marking, described in WAC 173-901-100, with which it has been marked;

(b) The brake friction material has been registered with an industry-sponsored registrar; and

(c) Self-certification documentation has been submitted to the department.

(2) **When must brake friction material and its packaging be marked?** Brake friction material that is manufactured on or after January 1, 2015, and is sold or offered for

sale in Washington state must have marked proof of certification on the brake friction material and its packaging.

(3) **How must brake friction material be marked?** A manufacturer of brake friction material must:

(a) Mark its brake friction material in accordance with SAE J866:2012. This chapter does not require manufacturers to mark the hot and cold coefficients of friction as specified in the SAE J866:2012. Note: These markings are included in the J866 standard because other states have regulations that require brake friction materials to be marked with the hot and cold coefficients of friction.

(b) Ensure the unique identification code reported to the department is the same as the code marked on brake friction material in accordance with SAE J866:2012;

(c) Ensure that the unique identification code is a code that contains the appropriate environmental compliance marking described in WAC 173-901-100. This marking is also described in SAE J866:2012;

(d) Mark its brake friction material with the last two digits of the year the material was manufactured as described in SAE J866:2012; and

(e) Ensure that the marking on the brake friction material is legible.

(4) **May a manufacturer of brake friction material mark a brake friction material with additional information such as batch code information?** Yes. A manufacturer of brake friction material may mark brake friction material with additional information such as batch code information. Batch code information must be marked in accordance with SAE J866:2012.

(5) **How must brake friction material packaging be marked?** Brake friction material packaging must be marked with a certification mark. The certification mark must be registered with the United States Patent and Trademark Office and it must be intended to certify that the brake friction material contained in the package meets the requirements of chapter 70.285 RCW and this chapter. Brake friction material packaging may be marked with a certification mark that is owned by an industry-sponsored registrar.

(6) **Must brakes that do not meet the definition of "brake friction material," such as brakes for motorcycle, be marked?** There is no requirement that these brakes be marked. A brake friction material manufacturer may mark products that are not required to comply with the requirements of the law with "WX" or "X." Manufacturers of brake friction material that is not required to comply with the requirements of the law may certify their product and mark it in accordance with this chapter.

NEW SECTION

WAC 173-901-100 Environmental compliance marking. (1) **What is the environmental compliance marking?** The environmental compliance marking is the last letter or last two letters in the unique identification code marked on brake friction materials. It must be an "A," "B," "N," "WX," or "X" and it allows a person to determine the level of environmental compliance of the brake friction material.

(2) **What does the environmental compliance marking "A" indicate?** An "A" indicates that the brake friction material manufacturer has submitted self-certification documentation and laboratory testing results showing the brake friction material does not contain any of the following regulated constituents in amounts exceeding the specified concentrations:

(a) Asbestiform fibers, 0.1 percent by weight;

(b) Cadmium and its compounds, 0.01 percent by weight;

(c) Chromium (VI)-salts, 0.1 percent by weight;

(d) Lead and its compounds, 0.1 percent by weight; or

(e) Mercury and its compounds, 0.1 percent by weight.

(3) **What does the environmental compliance marking "B" indicate?** A "B" indicates that the brake friction material manufacturer has submitted self-certification documentation and laboratory testing results showing the brake friction material does not contain any of the compounds listed in subsection (2) of this section in amounts exceeding the specified concentrations and that the brake friction material contains between .5 and 5 percent copper by weight.

(4) **What does the environmental compliance marking "N" indicate?** An "N" indicates that the brake friction material manufacturer has submitted self-certification documentation and laboratory testing results showing the brake friction material does not contain any of the compounds listed in subsection (2) of this section in amounts exceeding the specified concentrations and that the brake friction material contains less than .5 percent copper by weight.

(5) **What does the environmental compliance marking "WX" indicate?** A "WX" or "X" indicates that the brake friction material has been granted an exemption from certain requirements of chapter 70.285 RCW and this chapter, under WAC 173-901-140, it is designed for use on a vehicle that is not required to meet the requirements of chapter 70.285 RCW and this chapter, or is manufactured as part of an original equipment service contract. A brake friction material marked with a "WX" or "X" may only be installed on the vehicles or type of vehicles for which it is designed. It must not be installed on a vehicle that is required to comply with chapter 70.285 RCW and this chapter.

NEW SECTION

WAC 173-901-110 Reporting requirements for brake friction material manufacturers. (1) After January 1, 2015, self-certification documentation submitted to the department, under WAC 173-901-060, will fulfill brake friction materials manufacturers' reporting requirements, under RCW 70.285.070.

(2) By January 1, 2013, manufacturers of brake friction material offered for sale in Washington state are required to file an initial baseline report with the department.

(3) For the initial baseline report, due by January 1, 2013, each manufacturer of brake friction material must report the following information to the department, in a form and format prescribed by the department:

(a) Contact information for the brake friction material manufacturer, including the mailing address, phone number,

and e-mail address of a representative of the company who can serve as a point of contact for the department;

(b) A table containing the following information:

(i) Each friction material formula manufactured, during 2011, identified by a code assigned by the brake friction material manufacturer. While manufacturers of brake friction material may assign the code, the code must conform to data specifications outlined by the department, including the length of the code, the characters that may be in the code, or other data specifications identified by the department.

(ii) The percent by weight concentrations of copper, nickel, zinc, and antimony in each formula manufactured by the brake friction material manufacturer. These concentrations must be reported using the guidelines in subsection (4) of this section for each formula, whether it is used on light vehicles, heavy/commercial vehicles, or both.

(4) **How will manufacturers of brake friction material determine concentrations of copper, nickel, zinc, and antimony in brake friction materials?**

(a) For the initial report, manufacturers of brake friction material are not required to conduct laboratory tests on brake friction materials to determine the concentrations of copper, nickel, zinc, and antimony. A brake friction material manufacturer may report the concentrations of copper, nickel, zinc, and antimony, by percent by weight:

(i) Using the design intent or formula of brake friction materials; and

(ii) If necessary, consulting with suppliers to determine the concentrations of these elements in raw materials.

(b) Brake friction material manufacturers must report the average concentration based on the amount of the element present in the brake friction material. For example: Only 79.9 percent of the amount of copper oxide (CuO) used in a brake friction material formula would be reported as copper.

(c) Averages, reported to the department, must be rounded to the hundredth of a percent.

(5) **How should brass be calculated into the average reported to the department?** When possible brake friction material manufacturers should calculate the average concentrations of copper, nickel, zinc, and antimony using the actual amounts of these elements in the brass they are using. If this information cannot be obtained, the brake friction material manufacturer may assume that the brass it is using contains seventy percent copper and thirty percent zinc, by weight.

(6) **How will brake friction material manufacturers transmit the initial report to the department?** Initial baseline reporting must follow a process similar to the certification procedure outlined in WAC 173-901-060. Initial baseline reporting must follow the following process:

(a) **Step 1:** Manufacturers of brake friction material must determine the concentrations of copper, nickel, zinc, and antimony in each brake friction material formulation they manufacture;

(b) **Step 2:** Manufacturers of brake friction material must transmit this information to an industry-sponsored registrar;

(c) **Step 3:** Manufacturers of brake friction material must ensure that the industry-sponsored registrar transmits this information to the department in an electronic form and format prescribed by the department.

(7) **How will new market entrants fulfill the baseline reporting prerequisite for certification?**

(a) Manufacturers of brake friction material offered for sale in Washington state are required to file a baseline report by January 1, 2013.

(b) Brake friction material manufacturers that do not currently offer products for sale in Washington state or that fail to file a report by January 1, 2013, may not certify their brake friction material until they file a baseline report.

(c) Manufacturers of brake friction materials seeking to certify brake friction material manufactured prior to January 1, 2016, must provide the baseline report described in this section.

(d) Manufacturers of brake friction material seeking to certify brake friction materials manufactured on or after January 1, 2016, must provide the same baseline report described in this section except that it shall be for brake friction materials manufactured during 2014 as opposed to 2011.

(e) Manufacturers of brake friction material that did not manufacture brake friction materials sold or offered for sale in Washington state between January 1, 2011, and December 31, 2014, must certify to this fact and the department may waive the baseline reporting prerequisite for certification.

NEW SECTION

WAC 173-901-120 How will the department establish baseline concentration levels for copper, antimony, nickel, and zinc? (1) By July 1, 2013, the department will calculate the mean concentration of copper, antimony, nickel, and zinc in brake friction material from the data submitted by brake friction material manufacturers, under WAC 173-901-110, for light and heavy/commercial vehicles.

(2) The department must also calculate for both light and heavy/commercial vehicles how many formulations have:

(a) Less than .5 percent copper by weight;

(b) Between .5 and 5 percent copper by weight; and

(c) More than 5 percent copper by weight.

(3) The department must also calculate similar information as outlined in subsection (2) of this section for antimony, nickel, and zinc. However, the specific ranges will not be determined until after the data has been reported.

NEW SECTION

WAC 173-901-130 Applying for an exemption. (1) **Applicability.** Manufacturers of brake friction material or motor vehicles may apply to the department for an exemption from the requirements of this chapter. Exemptions are limited to:

(a) Small volume vehicle manufacturers;

(b) Specific motor vehicle models; or

(c) Special classes of vehicles, such as fire trucks, police cars, and heavy or wide-load equipment hauling vehicles.

(2) **Criteria for receiving an exemption.** To receive an exemption the manufacturer must demonstrate that complying with the requirements of chapter 70.285 RCW and this chapter:

(a) Is not feasible;

(b) Does not allow compliance with safety standards; or

(c) Causes significant financial hardship.

(3) **Application contents.** The application must include:

(a) The contact information, including the name, phone, e-mail, and mailing address, for a representative of the manufacturer seeking the exemption who can answer questions about the application;

(b) A detailed description of:

(i) The specific motor vehicle model or the class of motor vehicle for which the brake friction material is designed;

(ii) The special needs or characteristics of the vehicle(s) that require the use of noncompliant brake friction material;

(iii) Brake friction material for which the exemption is sought including the concentration of the regulated constituent(s) and copper in the brake friction material for which the applicant is seeking an exemption; and

(iv) The purpose of the regulated constituent(s) and copper in the brake friction material.

(c) An estimate of the number of vehicles in Washington state that would be able to use the exempted brake friction material and a description of the method used to derive this estimate;

(d) A statement that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship;

(e) Detailed documentation that reasonably demonstrates that the statement in subsection (3)(d) of this section is true and correct. Documentation must at a minimum include:

(i) A list of all known brake friction materials that meet the requirements of chapter 70.285 RCW and this chapter;

(ii) An analysis of why these brake friction materials are not viable options for the specific vehicle model, class of vehicle, or small volume vehicle manufacturer for which the exemption is sought; and

(iii) If the applicant is seeking an exemption on the grounds that complying with the requirements of this chapter would cause a significant financial hardship, the applicant must submit financial documents demonstrating this to be the case.

(f) A description of the efforts the manufacturer has undertaken to reach compliance with chapter 70.285 RCW prior to seeking an exemption; and

(g) The signature of an authorized representative of the manufacturer and an accompanying dated statement that declares under penalty of perjury according to the laws of the state of Washington that the information contained in the application is accurate.

(4) Applicants must submit an electronic copy of the application to the department.

NEW SECTION

WAC 173-901-140 Process for reviewing an exemption application. (1) Upon receipt of an exemption application the department will review the application to determine if the application is complete. To be complete an application must include each item in WAC 173-901-130(3).

(2) The department will notify the applicant, within thirty days of the receipt of the application:

(a) That the application has been received and is complete; or

(b) That the application is incomplete and identify which sections are missing or incomplete. If the application is incomplete, the applicant must then complete the application and resubmit it.

(3) After receiving a complete application, the department will review the application. The department will, within ninety days of mailing the notice that the completed application has been received, either:

(a) Determine that the applicant **has demonstrated** that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship and grant the exemption;

(b) Determine that the applicant **has been unable to demonstrate** that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship and deny the application for exemption; or

(c) Determine that the applicant **has not provided enough information to demonstrate** that complying with the requirements of this chapter is not feasible, does not allow compliance with safety standards, or causes significant financial hardship and request additional information.

(4) If the department requests additional information from the applicant the applicant must:

(a) Notify the department that it has received the request for additional information;

(b) Inform the department that it intends to provide the requested additional information; and

(c) Specify a reasonable time frame, not more than one hundred eighty days, within which the applicant will provide the requested information.

(5) After the department has received the additional information the department will review the application and may make any of the determinations listed under subsection (3) of this section.

(6) For the purposes of this section the term "not feasible" means not capable of being done or carried out. The department shall only grant this exemption in instances where the manufacturer has demonstrated that it is impossible or unreasonably impracticable to comply with the requirements of the chapter, as opposed to in instances of minor obstacles and mere difficulty.

(7) **Renewal of exemptions:** If the department grants an application for an exemption, the exemption will be valid for a three-year term. No sooner than ninety days prior to the end of the three-year term, the applicant may provide written notice, that the exemption is still needed. Upon sending this notice the exemption will renew automatically, for an additional three-year term.

(8) **Expiration of exemptions:** If the department has reason to believe that an exemption may no longer be needed, the department may notify the manufacturer that in order to receive the next renewal it will need to update its application and demonstrate that the exemption is still needed. The department must provide this notice at least one year prior to the next renewal date. If the manufacturer fails to update its application or the department, after reviewing the updated application, determines that the exemption is no longer needed, the exemption will expire.

NEW SECTION

WAC 173-901-150 Brake friction material manufactured as part of an original equipment service contract (OESC). (1) Brake friction materials manufactured as part of an original equipment service contract (OESC) are not required to comply with either of the following:

(a) RCW 70.285.030(1) and WAC 173-901-050(1), for brake friction materials designed for use on vehicles manufactured prior to January 1, 2015; or

(b) RCW 70.285.030(2) and WAC 173-901-050(2), for brake friction materials, designed for use on vehicles manufactured prior to January 1, 2021.

(2) Brake friction materials manufactured as part of an OESC are still subject to all other requirements of chapter 70.285 RCW and this chapter including, but not limited to, certification of compliance, marked proof of certification, and reporting requirements.

(3) A vehicle manufacturer must have a system in place to ensure that brake friction material manufactured as part of an OESC is only installed on the vehicles for which it is designed.

(4) **How does a manufacturer of brake friction material manufactured as part of an OESC certify compliance with the requirements of chapter 70.285 RCW and this chapter?**

(a) If a brake friction material manufactured as part of an OESC does not contain any of the regulated constituents or copper in amounts exceeding the specified concentrations, the manufacturer of the brake friction material should certify using the normal procedure outlined in WAC 173-901-060.

(b) If the brake friction material contains more than the specified concentrations, the manufacturer of the brake friction material must follow the same procedure outlined in WAC 173-901-060 except that:

(i) For brake friction materials manufactured as part of an OESC for vehicles manufactured prior to January 1, 2015, manufacturers of brake friction material will not be required to submit testing results for the regulated constituents. For brake friction materials manufactured as part of an OESC for vehicles manufactured from January 1, 2015, through December 31, 2020, manufacturers of brake friction material will be required to submit testing results for the regulated constituents. To fulfill the reporting requirements under RCW 70.285.070 and WAC 173-901-110, manufacturers of brake friction materials manufactured as part of an OESC for vehicles of any date of manufacture must meet the initial baseline reporting requirements for concentrations of antimony, copper, nickel, and zinc and their compounds as required by WAC 173-901-110 (3) through (7), and after submitting the initial baseline report, must submit testing results to an industry-sponsored registrar and to the department for copper, nickel, zinc, and antimony.

(ii) Brake friction manufacturers must ensure that the unique identification code reported to the department and marked on brake friction materials manufactured as part of an original equipment service contract ends in a "WX" or "X"; and

(iii) Brake friction manufacturers must include in the self-certification documentation, submitted to the department and an industry-sponsored registrar, a description of the vehicle model and its year of manufacture for which the brake friction material is manufactured.

(5) **May brake friction material manufactured as part of an OESC be installed on a vehicle other than the one it is designed for?** Brake friction material manufactured as part of an OESC must not be sold or offered for sale for use on a vehicle other than the vehicle model and model year described in the self-certification documentation.

NEW SECTION

WAC 173-901-160 Responsibilities of wholesalers, distributors, installers, and retailers of brake friction materials. (1) **May I sell brake friction material that I have in stock before the effective dates of chapter 70.285 RCW?** Yes. Brake friction material manufactured before the effective dates may still be sold for a period of time:

(a) Brake friction material that was manufactured before January 1, 2015, may be sold until January 1, 2025, regardless of its content or whether it has been marked with proof of certification;

(b) Brake friction material that was manufactured before January 1, 2021, and contains more than five percent copper by weight may be sold until January 1, 2031; and

(c) Brake friction materials manufactured as part of an original equipment service contract that have been certified and marked may be sold indefinitely after the various effective dates regardless of the amount of the copper or regulated constitutes in the product.

(2) **How will I know that the brake friction material I sell is compliant?** Brake friction material and its packaging are required to be marked with a certification mark and unique identification code indicating that the brake friction material complies with this chapter. Please refer to WAC 173-901-090, 173-901-100, and SAE J866:2012 for details on the markings. The following table describes which brake friction materials are acceptable for sale and when. Each of the following markings will be the last three digits on the unique code marked on brake friction material:

Brake friction material marked with:	May be sold until:
"N" followed by the last two digits of the year of manufacture.	Brake friction material marked with an "N" meets all of the requirements of this chapter and there are no restrictions on its sale.
"B" followed by the last two digits of the year of manufacture.	Brake friction material marked with a "B" meets all of the requirements of this chapter and there are currently no restrictions on its sale. However, future restriction may be put in place.

Brake friction material marked with:	May be sold until:
"A" followed by the last two digits of the year of manufacture when the year of manufacture is 2012 through 2020.	Brake friction material marked with an "A" that has a manufacture year of 2012 through 2020 may be sold until 2031.
"A" followed by the last two digits of the year of manufacture when the year of manufacture is 2021 or later.	Brake friction materials marked with an "A" that has a manufacture year of 2021 or later, may not be sold or offered for sale in Washington state.
"WX" or "X" with or without the year of manufacture.	Brake friction materials marked with a "WX" or "X" are designed for use on exempted vehicles or are otherwise exempted from the requirements of this chapter. It is a violation of this chapter to install these friction materials on nonexempt vehicles or in a manner otherwise prohibited by this chapter.
Brake friction material that is not marked with an environmental compliance marking or the year of manufacture.	Unmarked brake friction material manufactured prior to 2015 may be sold for use on any vehicle until 2025. It is a violation of this chapter to sell unmarked brake friction material that is manufactured after 2015 for use on a vehicle that is required to comply with this chapter. Brakes intended for use on certain vehicles, such as motorcycles, are not required to be marked and may be installed regardless of the manufacture date.

(3) **What will happen if I sell a pad that is in violation of this chapter?** For a complete description of the enforcement provisions please see WAC 173-901-180. However, if a wholesaler, distributor, installer, or retailer is found to be violating this chapter, the department must issue a warning letter and provide information and assistance to help this person achieve compliance. If they continue to sell brake friction material in violation of this chapter after receiving a warning and assistance, the department may issue penalties.

(4) **Is it a violation of this chapter to sell a brake friction material that has been marked in accordance with this chapter, yet is found to contain one of the regulated constituents or copper in amounts exceeding the specified concentrations?**

(a) A wholesaler, distributor, installer, or retailer that sells or offers for sale brake friction material that has been marked with proof of certification will not be in violation of this chapter, even if the brake friction material contains the regulated constituents or copper in amounts exceeding the specified concentrations.

(b) However, if the wholesaler, distributor, installer, or retailer knew that the brake friction material contained any of the regulated constituents or copper in amounts exceeding the specified concentrations and knew that the brake friction material was labeled incorrectly, yet sold it or offered it for sale in Washington state, they would be in violation of chapter 70.285 RCW and this chapter.

(5) **What should I do if I am sold brake friction material that does not comply with the requirements of this chapter?** If you are sold brake friction material that is in violation of this chapter, you may not resell it. Report the violation to the department.

(6) **If I purchase brake friction material from a brake friction material manufacturer and package it in a new box, what must I do before offering my product for sale in Washington state?** You are responsible for ensuring that the brake friction material is registered with an industry-sponsored registrar before reboxing the product.

(a) If the brake friction material has already been registered, you do not need to reregister or retest the brake friction material and are not responsible for the accuracy of the information submitted to the registrar and the department. You must package the brake friction material in a package that is marked in accordance with WAC 173-901-090.

(b) If the brake friction material has not been registered, you may not offer the product for sale in Washington state unless you register the product with an industry-sponsored registrar and mark the brake friction material and its packaging in accordance with WAC 173-901-090.

NEW SECTION

WAC 173-901-170 Responsibilities of vehicle manufacturers, vehicle dealers, and other people selling motor vehicles. (1) **Vehicle manufacturer responsibilities:** Manufacturers of new motor vehicles offered for sale in Washington state must ensure that new motor vehicles are equipped with brake friction material certified to be compliant with the requirements of this chapter.

(2) **Do vehicle dealers or other people selling motor vehicles have a responsibility to ensure that the cars they sell are equipped with compliant brake friction material?**

(a) Vehicle dealers or other people selling motor vehicles do not have a responsibility to ensure that the cars they sell are equipped with compliant brake friction material.

(b) However, if a vehicle dealer or another person who is selling a motor vehicle replaces the brake friction material of a new or used vehicle, prior to resale, the seller must replace the brake friction material with a brake friction material that complies with the requirements of this chapter.

NEW SECTION

WAC 173-901-180 Enforcement—Violations—Penalties. (1) The department will enforce this chapter. The department may:

(a) Periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(b) Verify that brake friction material manufacturers have submitted accurate self-certification documentation to the department by requiring brake friction manufacturers to submit complete copies of laboratory testing results and/or samples of brake friction material formulations for which self-certification documentation has been submitted. A brake friction material manufacturer that is required to submit verifying testing results or samples of brake friction material must provide these within seven days of receiving a written notice from the department. The department may not require a manufacturer of brake friction material to verify compliance by submitting samples of brake friction material more than once every three years unless the brake friction material manufacturer has been issued a penalty or required to recall a product under this chapter.

(2) Enforcement of this chapter by the department will rely on notification and information exchange between the department and manufacturers, distributors, retailers, installers, and an industry-sponsored registrar.

(a) After issuing a penalty to or requiring a recall from a manufacturer, the department will notify the industry-sponsored registrar of the violation and inform the registrar if any brake friction materials with a registered unique identification code are not in compliance with the requirements of chapter 70.285 RCW or this chapter.

(b) The department will also post a notice of the penalty or recall on its web site.

(3) The department will issue one warning letter by certified mail to a manufacturer, distributor, installer, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (4) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (5) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(4) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with RCW 70.285.080 (2)(b) and this chapter are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates RCW 70.285.030 or 70.285.050 or this chapter, the brake friction material distributor or retailer may be subject to civil penalties according to this section.

(5) A brake friction material manufacturer that knowingly violates this chapter shall recall the brake friction material and reimburse the brake friction distributor, installer, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(6) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates RCW 70.285.030, 70.285.050, 70.285.080 (2)(b), or this chapter on the vehicle being sold and was aware that the brake friction material violates RCW 70.285.030, 70.285.050, 70.285.080 (2)(b), or this chapter, the motor vehicle distributor or retailer is subject to civil penalties under this section.

(7) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(8) Before the effective date of the prohibitions in RCW 70.285.030 or 70.285.050, the department will prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(9) All penalties collected under this chapter will be deposited in the state toxics control account created in RCW 70.l05D.070.

WSR 12-21-091
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 22, 2012, 3:16 p.m., effective November 22, 2012]

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

Purpose: DSHS aging and disability services administration is amending chapters 388-513 and 388-515 WAC in order to:

- Combine categorically needy (CN) and medically needy (MN) home and community based waiver eligibility.
- Update excess home equity standards and add formula for the increase based on federal standards for

January 2011, and ongoing and updating the federal utility standard used in spousal deeming.

- Clarifying reasonable limits for qualifying medical deductions.
- Update links and references based on HB [2E2SHB] 1738 and health care authority (HCA) medicaid WACs recodified under Title 182 WAC.
- Update references of the former general assistance program to aged, blind, disabled (ABD) cash and medical care services (MCS).
- Add language to the hardship waiver WAC to include transfers between registered domestic partners or legally married same-sex couples.
- Updated references and adding clarifying language.
- Adding language regarding the treatment of entrance fees of individuals residing in continuing care retirement communities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1301, 388-513-1305, 388-513-1315, 388-513-1320, 388-513-1330, 388-513-1340, 388-513-1345, 388-513-1350, 388-513-1363, 388-513-1364, 388-513-1365, 388-513-1367, 388-513-1380, 388-513-1395, 388-515-1505, 388-515-1506, 388-515-1507, 388-515-1508, 388-515-1509, 388-515-1510, 388-515-1511, 388-515-1512, 388-515-1513, 388-515-1514, 388-515-1540, and 388-515-1550.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), section 209(1), chapter 37, Laws of 2010 (ESSB 6444).

Adopted under notice filed as WSR 12-16-023 on July 25, 2012.

Changes Other than Editing from Proposed to Adopted Version: Changed references from Title 388 WAC to Title 182 WAC based on the recodification of WACs by the HCA. Chapter 388-519 WAC references changed to chapter 182-519 WAC, changed WAC reference [from] WAC 388-478-0075 to WAC 182-505-0100 which describes the federal poverty level (FPL) standard.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 26, 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 1, Amended 26, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-23 issue of the Register.

WSR 12-21-097

PERMANENT RULES

TACOMA COMMUNITY COLLEGE

[Filed October 23, 2012, 8:50 a.m., effective November 23, 2012]

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

Purpose: Revise chapter 132V-116 WAC, Parking and traffic rules and regulations, changes to language update terminology and simplify and clarify other provisions of the chapter.

Citation of Existing Rules Affected by this Order: Amending 21.

Statutory Authority for Adoption: RCW 28B.50.140 (10).

Adopted under notice filed as WSR 12-16-030 on July 25, 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 21, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 21, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2012.

Mary A. Chikwinya
Vice-President for
Student Services

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-010 Authority. Pursuant to the authority granted by RCW 28B.50.140(10), the board of trustees of Community College District 22 empowers the president of the college district to make on-campus parking available for visitors, faculty, students and staff at a fee established and approved by the board. The board further authorizes the president to formulate rules and regulations which ensure the safety of operators of vehicles and pedestrians using the college's streets, crosswalks and paths. (((~~*Tacoma Community College Board Policy Handbook*, Chapter VII, Section 7.1010; 5-76.~~)))

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-030 Definitions. For the purposes expressed in this document, the following definitions and terms shall apply:

(1) **College:** Tacoma Community College, or any additional community college hereafter established within Community College District 22, state of Washington, and those individuals responsible for its control and operation.

(2) **College community:** Trustees, students, employees, and guests on college-owned or controlled facilities.

(3) **College facilities:** Any or all property controlled or operated by the college.

(4) **Student:** Any person enrolled at the college.

(5) **Public safety ((~~and security~~)) officer:** An employee of the college accountable to the ((~~dean of~~)) vice-president for administrative services and responsible for campus security, safety, parking and traffic control.

(6) **Vehicle:** Any conveyance which can be legally operated on the streets and highways of the state of Washington, or whose primary purpose is recreational.

(7) **Visitors:** Persons who come upon the campus as guest, and persons who lawfully visit the campus for purposes which are in keeping with the college's role as an institution of higher learning in the state of Washington.

(8) **Permanent permit:** A permit which is valid for a college quarter, year or portion thereof.

(9) **((~~Termporary~~)) Temporary permit:** A permit issued in lieu of a permanent permit for a period designated on the permit.

(10) **((~~Handicapped~~)) Disabled permit:** A permit issued to a person with a physical, mental or sensory impairment.

(11) **College term:** Unless otherwise designated, the time period commencing with the summer quarter of the calendar year and extending through the subsequent fall, winter, and spring quarters. The summer quarter shall be considered the first quarter of the college year for parking and traffic control purposes.

(12) **Campus:** The grounds and buildings of the college.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-050 Parking and traffic responsibility. The ((~~dean of~~)) vice-president for administrative services is responsible for parking and traffic management on campus. In general, the responsibility is delegated to the college's public safety ((~~and security~~)) supervisor, who is authorized to coordinate directly with the ((~~dean of~~)) vice-president for administrative services and others on campus as required by his/her duties.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-060 Permits required for motor vehicles on campus. No student or employee shall stop, park, or leave a motor vehicle, whether attended or unattended, upon the campus without ((~~a~~)) first being issued a temporary, permanent, or disabled parking permit ((~~issued pursuant to WAC 132V-116-030 (8), (9) or (10)~~)), except that:

(1) Any student parking on campus will be given ten calendar days from the ((~~beginning of his/her enrollment~~)) first day of each quarter to obtain a permit from the office of public safety ((~~and security~~)).

(2) Any employee parking on campus must obtain a permit within ten calendar days after commencing employment with the college, and where applicable, will renew the permit within ten days after its expiration.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-070 Registration of vehicles. All students and employees who operate motor vehicles, including motorcycles, on the campus will register them with the office of public safety ((~~and security~~)).

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-080 Authorization for issuance of permits. The office of public safety ((~~and security~~)) is authorized to issue parking permits to members of the college community pursuant to the following regulations:

(1) Students may be issued parking permits upon the registration of their vehicles with the office of public safety ((~~and security~~)) pursuant to this subsection (1).

(2) Employees may be issued parking permits pursuant to WAC 132V-116-060(2).

(3) Public safety ((~~and security~~)) officers may issue temporary parking permits when such permits are necessary to conduct the business or operation of the college.

(4) Public safety ((~~and security~~)) officers may issue temporary parking permits, not to exceed a period of five working days, for the use of an additional ((~~car~~)) vehicle whenever the registered vehicle is being repaired.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-100 Valid permits. The following are valid permits when they are properly displayed and unexpired:

(1) A permanent permit.

(2) A temporary permit.

(3) A ((~~handicapped~~)) disabled permit.

(4) Carpool permit issued by the city of Tacoma, transit agencies.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-110 Display of permit. (1) A permanent parking permit shall be affixed to ((~~right rear bumper area of the vehicle. A temporary permit shall be placed within the vehicle on the dashboard where it can be plainly observed~~)) the lower left inside corner of the vehicle windshield.

(2) A temporary permit shall be placed within the vehicle on the left side of the dashboard where it can be plainly observed.

(3) Permits for motorcycles shall be ((~~affixed to the vehicles in visible locations~~)) retained by the motorcycle rider who must provide the permit upon request. Permits should not be affixed to motorcycles.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-120 Transfer of permits. A parking permit is not transferable from person to person. ((~~If a vehicle is sold or traded, the permit holder may obtain a new permit from the office of safety and security.~~)) A permit is transferable from vehicle to vehicle as long as the vehicles are registered with the office of public safety.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-160 Designation of parking spaces. Parking spaces shall be designated for the following categories:

(1) Students;

(2) Employees;

(3) ((~~Handicapped~~)) Disabled persons;

(4) Visitors;

(5) Other business purposes;

(6) Carpool.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-170 Parking within designated spaces. All vehicles must be parked in designated spaces only.

(1) No vehicle may be parked in any undesignated area except the following:

(a) Approved maintenance vehicles.

(b) Emergency vehicles.

(c) Approved construction vehicles.

(d) Approved delivery vehicles.

(2) Unless prior arrangements have been made, no vehicle shall be parked on campus for a period in excess of ((~~seventy-two~~)) forty-eight hours. Vehicles which have been parked in excess of ((~~seventy-two~~)) forty-eight hours may be impounded and stored at the expense of the owner.

(3) No vehicle shall be parked so as to occupy any portion of more than one parking space. Vehicles may be towed and impounded for this violation.

(4) Parking in designated areas will be strictly enforced between the hours of 7:00 a.m. and ((~~7:00~~)) 8:00 p.m., Monday through Friday.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-180 Regulatory signs and directions. The office of public safety ((~~and security~~)) is authorized to erect signs, barricades, and other structures and to paint marks or other directions upon the entry ways, streets, and parking areas of the campus. Vehicle operators shall observe and obey all regulatory signs and directions and shall comply with traffic control.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-200 Movement of vehicles. Except as authorized by the office of public safety ((~~and security~~)), movement of motor vehicle traffic is limited to entrances, drives and parking areas.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-210 Operation of bicycles. Bicycle and nonengine cycle operators shall observe the following rules and regulations:

(1) ((~~Bicycles and other nonengine cycles~~)) They shall be operated in a responsible manner.

(2) ((~~No bicycle~~)) They shall not be parked inside a building ((~~nor blocking~~)) or block a building entrance.

(3) ((~~Bicycles~~)) They should be secured to racks as provided so as not to endanger pedestrian traffic.

(4) ((~~Bicycle~~)) Operators will observe traffic rules and regulations when operating on entrances, drives, and parking areas.

(5) Bicycles and nonengine cycles that have been parked in excess of forty-eight hours may be turned over to lost and found for thirty days. If unclaimed they will be donated to charity.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-220 Report of accident. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or total or claimed damage to either or both vehicles of any amount shall within twenty-four hours report such accident to the college's office of public safety ((~~and security~~)). This does not relieve any person so involved in an accident from his responsibility to file a state of Washington motor vehicle accident report within twenty-four hours after such accident.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-230 Special traffic and parking regulations and restrictions authorized. Upon special occasions causing additional and/or heavy traffic and during emergencies, the college's public safety ((~~and security~~)) supervisor is authorized to impose special traffic and parking regulations and restrictions for the achievement of the objectives specified in WAC 132V-116-020.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-240 Enforcement. (1) All parking and traffic rules and regulations shall be enforced throughout the calendar year.

(2) The ((~~dean of~~)) vice-president for administrative services or ((~~his~~)) designee shall be responsible for the enforcement of the rules and regulations contained in this document.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-250 Issuance of traffic citations. Public safety ((~~and security~~)) officers or their subordinates will issue citations for any violations of these rules and regulations. Such citations will include the date, approximate time, vehicle identification number, infraction, name of the officer and schedule of fines. The traffic citations may be served in person, via mail, or by attaching a copy outside the vehicle.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-260 Fines and penalties. Fines and penalties may be assessed for all violations of these rules and regulations.

(1) The ((~~dean of~~)) vice-president for administrative services, or ((~~in his absence the president or the acting president~~)) designee, is the only college employee authorized to impound vehicles parked on college property.

(a) Vehicles wrongfully parked in designated areas or parked in undesignated areas are subject to ((~~impoundment~~)) impound.

(b) ((~~Impoundment~~)) Impound and storage expenses shall be the responsibility of the owner of the impounded vehicle.

(c) The college shall not be liable for loss or damage of any kind resulting from such ((~~impoundment~~)) impound and storage.

(d) ((~~Impoundment~~)) Impound of a vehicle does not remove the obligation for any fines associated with the citation.

(2) An accumulation of traffic citations by a student in excess of thirty dollars or the failure by a student to satisfy any traffic fines, regardless of the amount thereof, by the end of the academic quarter may result in disciplinary action initiated by the ((~~dean of~~)) vice-president for student services against the student.

(3) The ((~~dean of~~)) vice-president for administrative services shall direct all citations to the office of business services for collection or paid at the cashier's station.

(4) A schedule of fines shall be set by the board of trustees((~~.~~

~~(5) The following schedule of fines is adopted by the board and shall be published on the traffic citation forms.~~

~~(a) Vehicle parked in a manner so as to obstruct traffic; $3.00~~

~~(b) Occupying more than one space; $2.00~~

~~(c) Occupying space not designated for parking; $2.00~~

~~(d) Illegal parking (parked in area not authorized by permit; $2.00~~

~~(e) Failure to yield right of way; $3.00~~

~~(f) Parking in fire lane; $3.00~~

~~(g) Speeding; $5.00~~

~~(h) Failure to stop for stop sign/signal; $5.00~~

~~(i) Reckless/negligent driving; $5.00~~

~~(j) No parking permit displayed; $5.00~~

~~(6) If the fine is paid within 24 hours of the issuance of the citation, the fine will be reduced to $1.00, except for moving violations~~)) and published on the public safety web site and on the portal.

(((~~7~~))) (5) In the event a student fails or refuses to pay a fine, the following may be initiated by the ((~~dean of~~)) vice-president for student services:

(a) Student may not be eligible to register for any more courses until all fines are paid;

(b) Student may not be able to obtain a transcript of his grades or credits until all fines are paid;

(c) Student may not receive a degree until all fines are paid;

(d) Student may be denied future parking privileges;

(e) Student's vehicle may be impounded.

(((~~8~~))) (6) Upon failure of an employee or student to appeal ((~~from~~)) any fine or penalty as set forth herein, or upon a decision by the ((~~dean of~~)) vice-president for administrative services affirming the employee's or student's debt to the college, whichever is applicable, the amount of the fine will be set-off against and deducted from any present or future salary or other financial obligation owed to the employee or student by the college.

AMENDATORY SECTION (Amending Order 77-2, filed 6/3/77)

WAC 132V-116-270 Appeal of fines and penalties. Any fines and penalties levied against a violator of the rules and regulations set forth herein must be appealed in writing, stating fully all grounds for appeal, within five days from the date of the citation, to the public safety ((~~and security~~)) supervisor who will:

(1) After notice to the appealing party, confer with said party and review the appeal to determine whether a satisfactory solution can be reached without further administrative action. The public safety ((~~and security~~)) supervisor will advise the appellant, as soon as practicable, of his proposed decision.

(2) If the appellant is dissatisfied with the public safety ((~~and security~~)) supervisor's proposed decision, the appeal will be forwarded to the ((~~dean of administrative services who will meet with all parties, review the circumstances of the appeal and render a decision within ten days~~)) parking appeals committee. The decision of the parking appeals committee will be final.

WSR 12-21-118

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed October 23, 2012, 4:24 p.m., effective November 23, 2012]

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

Purpose: Chapter 246-886 WAC amended rules relating to the registration of humane societies and animal control agencies authorized to use approved legend drugs and sodium pentobarbital. The rule updated euthanasia core training elements and established consistent standards for the administration, storage, and recordkeeping of legend drugs and sodium pentobarbital. WAC 246-887-050, 246-887-060, 246-887-070 were repealed and the standards were added to chapter 246-886 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-887-050, 246-887-060, 246-887-070 and 246-886-070; and amending WAC 246-886-001, 246-886-010, 246-886-020, 246-886-030, 246-886-040, 246-886-060, 246-886-080, 246-886-090, and 246-886-100.

Statutory Authority for Adoption: RCW 69.41.080 and 69.50.310.

Other Authority: RCW 18.64.005.

Adopted under notice filed as WSR 12-14-105 on July 3, 2012.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule is the same as the proposed language with only minor grammatical corrections.

A final cost-benefit analysis is available by contacting Doreen E. Beebe, Washington State Board of Pharmacy, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4834, fax (360) 236-2901, e-mail doreen.beebe@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 9, Repealed 4.

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 2, Amended 9, Repealed 4.

Date Adopted: August 16, 2012.

Chris P. Barry
Chair

Chapter 246-886 WAC

ANIMAL CONTROL—LEGEND DRUGS AND CONTROLLED SUBSTANCES

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-001 Purpose. The ((~~purpose of~~)) rules in this chapter ((~~shall be to ensure compliance with the law and rules regarding~~)) establish the use of legend drugs and controlled substances for euthanasia by animal control agencies and humane societies ((~~for the sole purpose of sedating animals prior to euthanasia, when necessary~~)), and ((~~for use in~~)) chemical capture programs.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-010 Definitions. (((~~(1) "Board": The Washington state board of pharmacy.~~

~~(2)~~)) The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Animal control agency"((~~:~~)) means any agency authorized by law to euthanize or destroy animals; to sedate animals prior to euthanasia or to engage in chemical capture of animals.

(((~~(3)~~))) (2) "Approved legend drugs" means any legend drug approved by the board for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.

(3) "Board" means the Washington state board of pharmacy.

(4) "Chemical capture programs" means wildlife management programs registered under RCW 69.50.320 and 69.41.080 to use approved legend drugs and controlled substance for chemical capture. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes.

(5) "Controlled substances" means a drug, substance, or immediate precursor in Schedule I through V of Article II of chapter 69.50 RCW and Schedule I through V of chapter 246-887 WAC.

(6) "Humane society"((~~: A society incorporated and authorized to act under RCW 16.52.020.~~

~~(4)~~)) means a nonprofit organization, association, or corporation, the primary purpose of which is to prevent cruelty to animals, place unwanted animals in homes, provide other services relating to "lost and found" pets, and provide animal care education to the public, as well as sponsoring a neutering program to control the animal population.

(7) "Legend drugs"((~~: "Legend drugs"~~)) means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(((~~(5) "Controlled substances": "Controlled substance" means a drug, substance, or immediate precursor in Schedule I through V of Article II of chapter 69.50 RCW.~~

~~(6) "Approved legend drug": Any legend drug approved by the board for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.~~)) (8) "Registered entity" means any humane society or animal control agency registered under RCW 69.50.310.

HUMANE SOCIETY AND ANIMAL CONTROL AGENCY

AMENDATORY SECTION (Amending Order 277B, filed 5/28/92, effective 6/28/92)

WAC 246-886-020 Registration. (1) Humane societies and animal control agencies registered with the board under RCW 69.50.310 ((~~and WAC 246-887-050 to~~)) may purchase, possess, and administer sodium pentobarbital ((~~as provided therein may also, under that registration, purchase, possess,~~)) and ((~~administer~~)) approved legend drugs as provided in RCW 69.41.080 ((~~and herein~~)).

(2) To apply for registration a humane society or animal control agency shall submit to the board a completed application for registration on forms provided by the board.

(3) A registered humane society or animal control agency shall:

(a) Employ at least one individual who has completed a training program described in WAC 246-886-040;

(b) Designate a responsible person as defined in WAC 246-886-060;

(c) Maintain written policies and procedures available for inspection by the board that includes processes to:

(i) Require completion of approved training as defined in WAC 246-886-040 by each of the agency's agents or personnel who possess, and administer approved legend drugs or sodium pentobarbital, prior to being approved to administer such drugs;

(ii) Establish a system for the secure storage of all drugs to prevent access by unauthorized personnel to guard against theft and diversion;

(iii) Establish a system for accountability of access, use, and stocking of drug inventory;

(iv) Ensure the proper disposal of all drugs in compliance with state and federal laws and rules; and

(v) Establish a method to investigate and report the theft, loss, or diversion of approved legend drugs and sodium pentobarbital, in compliance with state and federal laws and rules.

AMENDATORY SECTION (Amending WSR 94-02-060, filed 1/3/94, effective 2/3/94)

WAC 246-886-030 Approved legend drugs. ((~~(1)~~)) The following legend drugs are ((~~hereby~~)) designated as "approved legend drugs" for use by registered humane societies or animal control agencies for ((~~limited purposes~~)) pre-euthanasia sedation:

((~~(a)~~)) (1) Acetylpromazine.

((~~(b) Ketamine~~)) (2) Dexmedetomidine.

(3) Medetomidine.

((~~(c)~~)) (4) Xylazine.

((~~(2) A humane society or animal control agency shall not be permitted to purchase, possess, or administer approved legend drugs unless that society or agency:~~

~~(a) Is registered with the board under RCW 69.50.310 and WAC 246-887-050 to purchase, possess, and administer sodium pentobarbital;~~

~~(b) Submits to the board written policies and procedures ensuring that only those of its agents and employees who have completed a board-approved training program will possess or administer approved legend drugs; and~~

~~(c) Has on its staff at least one individual who has completed a board-approved training program.~~

~~(3) The following legend drugs are hereby designated as "approved legend drugs" only for use by agents and biologists of the Washington state department of wildlife: Naltrexone, detomidine, metdetomidine and yohimbine.~~))

NEW SECTION

WAC 246-886-035 Sodium pentobarbital—Approved controlled substance. (1) Registered humane societies and animal control agencies may only use sodium pentobarbital to euthanize injured, sick, homeless or unwanted domestic pets, and domestic or wild animals.

(2) Registered humane societies and animal control agencies shall only possess sodium pentobarbital labeled "For veterinary use only."

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-040 Training of personnel. (1) ((~~Approved legend drugs may only be administered by those personnel who have completed a board-approved training program. Such~~)) Personnel of a registered humane society or animal control agency may administer approved legend drugs and sodium pentobarbital if the individual:

(a) Has been approved by the registered entity to administer these drugs; and

(b) Has completed a board-approved training program or training that is substantially equivalent.

(2) Application for approval of a training program((~~s shall~~)) must be submitted to the board ((~~for approval no later than thirty days~~)) prior to the initiation of training.

((~~(2) Any~~)) (3) A training program ((~~shall~~)) must:

(a) Use a ((~~text~~)) manual approved by the board((~~. The board will make available a list of approved texts. Training programs shall~~));

(b) Be at least four hours in length ((~~and shall~~));

(c) Be taught by a licensed veterinarian or by a person who has completed an approved training program taught by a licensed veterinarian((~~. Each program shall require that the trainee participate in~~));

(d) Require both didactic and practical training in the use of ((~~these drugs and shall be required to~~)) both approved legend drugs and sodium pentobarbital;

(e) Require a passing score of no less than seventy-five percent on a final examination((~~. Training programs shall~~)); and

(f) Include, but not be limited to, the following topics:

(((~~(a)~~))) (i) Anatomy and physiology((~~:~~)):

(A) Methods of euthanasia;

(B) Routes of drug administration;

(C) Use of sedatives;

(D) Drug dosing;

(E) Use of restraints; and

(F) Process and verification of death;

(((~~(b)~~))) (ii) Pharmacology of the drugs;

(((~~(c)~~))) (iii) Indications, contraindications, and adverse effects;

(((~~(d)~~))) (iv) Human hazards;

(((~~(e)~~))) (v) Disposal of medical waste (needles, syringes, etc.);

(((~~(f)~~))) (vi) Recordkeeping and security requirements; and

(vii) Applicable federal and state laws and rules.

(4) Training programs shall retain a list of persons who have successfully completed the program for a minimum of two years.

(5) The board shall maintain a registry of approved training programs and manuals. Interested persons may request a copy of the registry by contacting the board.

AMENDATORY SECTION (Amending Order 277B, filed 5/28/92, effective 6/28/92)

WAC 246-886-060 Responsible individuals. (1) ((~~Each agency or~~)) A registered humane society ((~~registered in accordance with WAC 246-887-050~~)) or animal control agency shall name a designated individual as the person who ((~~shall be~~)) is responsible for maintaining all records and submitting all reports required by applicable federal or state law or ((~~regulation, including chapter 246-887 WAC~~)) rule.

(2) ((~~This~~)) The designated individual ((~~shall also be~~)) is responsible for the ordering, possession, safe storage, and ((~~utilization~~)) use of the sodium pentobarbital and approved legend drugs.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-080 Recordkeeping and reports. (1) A registered humane society or animal control agency must use a bound ((~~log book~~)) logbook with consecutively numbered pages ((~~shall be used~~)) to record the receipt, use, and disposition of approved legend drugs and sodium pentobarbital. ((~~No more than~~)) Only one drug ((~~shall~~)) may be recorded on any single page.

(2) The ((~~record shall be in~~)) logbook must have sufficient detail to allow an audit of the drug usage to be performed and must include:

(a) Date and time of administration;

(b) Route of administration;

(c) Identification number or other identifier assigned to the animal;

(d) Estimated weight of the animal;

(e) Estimated age and breed of the animal;

(f) Name of drug used;

(g) Dose of drug administered;

(h) Amount of drug wasted; and

(i) Initials of the primary person administering the drug.

(3) The logbook may omit subsections (2)(b), (d), and (e) of this section if the information is recorded in other records cross-referenced by the animal identification number or other assigned identifier.

(((~~(2) All invoices, record books, disposition records, and other records regarding approved legend drugs shall be maintained in a readily retrievable manner for no less than two years.~~

~~(3) All records shall be available for inspection by the state board of pharmacy or any officer who is authorized to enforce this chapter.~~))

(4) Personnel of the registered entity shall document any errors or discrepancies in the drug inventory in the logbook. He or she shall report the findings to the responsible supervisor for investigation.

(5) The registered entity shall report any unresolved discrepancies in writing to the board within seven days, and to the federal Drug Enforcement Administration if the loss includes a controlled substance.

(6) The designated individual, as defined in WAC 246-886-060, shall perform a physical inventory or count of approved legend drugs ((~~shall be performed and reconciled with the log book no less frequently than~~)) and sodium pentobarbital every six months. The physical inventory must be reconciled with the logbook.

(((~~(5) Any discrepancy in the actual inventory of approved legend drugs shall be documented in the log book and reported immediately to the responsible supervisor who shall investigate the discrepancy. Any discrepancy which has not been corrected within seven days shall be reported to the board of pharmacy in writing.~~

~~(6) Any approved~~)) (7) The supervisor or designated individual shall destroy legend drugs ((~~which has become~~)) that are unfit for use due to contamination or having passed its expiration date ((~~shall be destroyed by a supervisor and another staff member. Record of such destruction shall be made~~)). A second member of the staff shall witness drugs that are destroyed or wasted. The records of the destruction of drugs are documented in the ((~~log book which shall be signed and dated by~~)) logbook with the date of the event and signatures of the individuals involved.

(8) A registered entity shall return all unwanted or unused sodium pentobarbital to the manufacturer or destroy them in accordance with the rules and requirements of the board, the federal Drug Enforcement Administration, and the department of ecology.

(9) A registered entity shall maintain a written list of all authorized personnel who have demonstrated the qualifications to possess and administer approved legend drugs, and sodium pentobarbital.

(10) All records of the registered entity must be available for inspection by the board or any officer who is authorized to enforce this chapter.

(11) The registered entity shall maintain the logbook and other related records for a minimum of two years.

AMENDATORY SECTION (Amending Order 191B, filed 8/30/91, effective 9/30/91)

WAC 246-886-090 Drug storage and field use. (1) The registered humane society and animal control agency must store all approved legend drugs ((~~shall be stored~~)) and sodium pentobarbital in a substantially constructed securely locked cabinet or drawer. Only those persons authorized to administer the drugs shall have keys to the storage area ((~~shall be restricted to those persons authorized to administer the drugs. Specifically designated agents and employees of the registrant may possess a supply of approved legend drugs for emergency field use. Such emergency supply shall be stored in a locked metal box securely attached to the vehicle~~)).

(2) The registered entity may designate only the following agents or personnel to possess and administer approved legend drugs and sodium pentobarbital for locations other than the registered location:

(a) Humane officer;

(b) Animal control enforcement officer;

(c) Animal control authority;

(d) Peace officer authorized by the chief of police, sheriff, or county commissioner.

(3) Designated agents of the registered entity may possess a supply of approved legend drugs and sodium pentobarbital for emergency field use. Such emergency supply must be stored in a locked metal box securely attached to the vehicle. The designated agent is responsible for:

(a) The drug inventory present at the beginning of a shift and is present or accounted for at the end of each shift.

(b) Recording all receipts and use of approved legend drugs and sodium pentobarbital from the emergency supply.

AMENDATORY SECTION (Amending Order 191B, recodified as filed 8/30/91, effective 9/30/91)

WAC 246-886-100 Violations. The board may suspend or revoke a registration issued under chapter 69.50 RCW if the board determines that any agent or employee of a registered humane society or animal control agency has purchased, possessed, or administered legend drugs in violation of RCW 69.41.080 or 69.50.310, or this chapter or has otherwise demonstrated inadequate knowledge in the administration of legend drugs. The board's revocation or suspension of a registration ((~~as provided herein~~)) would restrict the registered entity's ability to use both approved legend drugs and sodium pentobarbital.

CHEMICAL CAPTURE PROGRAM

NEW SECTION

WAC 246-886-180 Approved legend drugs. The following legend drugs are designated as "approved legend drugs" for use by agents and biologists of the Washington state department of fish and wildlife chemical capture programs:

(1) Naltrexone;

(2) Detomidine;

(3) Metdetomidine; and

(4) Yohimbine.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-886-070	Notification.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-887-050	Sodium pentobarbital for animal euthanasia.
WAC 246-887-060	Sodium pentobarbital administration.
WAC 246-887-070	Sodium pentobarbital records and reports.

WSR 12-21-133
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed October 24, 2012, 10:10 a.m., effective November 24, 2012]

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

Purpose: Implements chapter 302, Laws of 2011 (SSB 5187) that requires, in part, an inpatient psychiatric facility that provides services to minors to inform, both verbally and in writing, a parent or guardian of a minor who is seeking treatment for that minor, of all statutorily available treatment options, including the option for parent-initiated treatment.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0430 and 388-865-0575.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.375, 71.34.500, 71.34.510, 71.34.520, 71.34.610, 71.34.620, 71.34.630, 71.34.640, 71.34.650, and 71.34.750.

Other Authority: Chapter 302, Laws of 2011 (SSB 5187).

Adopted under notice filed as WSR 12-18-070 on September 4, 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 2, Amended 2, 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 2, Amended 2, Repealed 0.

Date Adopted: October 15, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-09-061, filed 4/19/10, effective 5/20/10)

WAC 388-865-0430 Clinical record. ((~~The~~)) A licensed community mental health agency must have and maintain a clinical record for each individual served in a manner consistent with WAC 388-865-0435, 388-865-0436, or any successors. The clinical record must contain:

(1) An intake evaluation((~~;~~)).

(2) Evidence that the consumer rights statement was provided to the individual, or their parent or other legal representative ((~~if~~)) when applicable((~~;~~)).

(3) Documentation that the provider requested a copy of and inserted into the clinical record if provided, any of the following:

(a) Mental health advance directives;

(b) Medical advance directives;

(c) Powers of attorney;

(d) Letters of guardianship, parenting plans and/or court order for custody;

(e) Least restrictive alternative order(s);

(f) Discharge summaries and/or evaluations stemming from outpatient or inpatient mental health services received within the last five years, when available.

(4) Any crisis plan that has been developed((~~;~~)).

(5) The individual service plan and all revisions to the plan((~~;~~)).

(6) Documentation that services are provided by or under the clinical supervision of a mental health professional((~~;~~)).

(7) Documentation of any clinical consultation or oversight provided by a mental health specialist((~~;~~)).

(8) Documentation of:

(a) All service encounters;

(b) Objective progress toward established goals as outlined in the treatment plan; and

(c) How any major changes in the individual's circumstances were addressed.

(9) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred((~~;~~)).

(10) Documentation that the department of corrections was notified by the provider when an individual on a less restrictive alternative or department of corrections order for mental health treatment informs the provider that the individual is under supervision by the department of corrections. Notification can be either written or oral. If oral notification, it must be confirmed by a written notice, including e-mail and fax. The disclosure to department of corrections does not require the person's consent.

(a) If the individual has been given relief from disclosure by the committing court, the individual must provide a copy of the court order to the treating community mental health agency (CMHA).

(b) There must be documentation that an evaluation by a designated mental health professional (DMHP) was requested in the following circumstance:

(i) The mental health provider becomes aware of a violation of the court-ordered treatment of an individual when the violation concerns public safety; and

(ii) The individual's treatment is a less restrictive alternative and the individual is being supervised by the department of corrections.

(11) Either documentation of informed consent to treatment by the individual or parent or other legal representative or if treatment is court ordered, a copy of the detention or involuntary treatment order((~~;~~)).

(12) Documentation that the individual, or their parent or other legal representative if applicable, are informed about the benefits and possible side effects of any medications prescribed for the individual in language that is understandable((~~;~~)).

(13) Documentation of confidential information that has been released without the consent of the individual under the provisions in RCW 70.02.050, 71.05.390, 71.05.630, and the Health Insurance Portability and Accountability Act (HIPAA)((~~;~~)).

(14) For individuals receiving community support services, the following information must be requested from the individual and the responses documented:

(a) The name of any current primary medical care provider;

(b) Any current physical health concerns;

(c) Current medications and any related concerns;

(d) History of any substance use/abuse and treatment;

(e) Any disabilities or special needs;

(f) Any previously accessed inpatient or outpatient services and/or medications to treat a mental health condition; and

(g) Information about past or current trauma and abuse.

(15) A description of the individual's strengths and resources((~~; and~~)).

(16) A description of the individual's self-identified culture.

(17) If the individual is a minor and, if applicable:

(a) Documentation that the minor's parent(s) brought the minor to the agency to be evaluated by a mental health specialist.

(b) Written authorization that allows the bringing of the minor to the agency to be evaluated by a mental health specialist.

(c) Documentation that the minor was evaluated by a mental health specialist and a determination of whether or not the minor has a mental disorder that requires outpatient treatment.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0575 Special considerations for serving minor children. Inpatient evaluation and treatment facilities serving minor children seventeen years of age and

younger must develop and implement policies and procedures to address special considerations for serving children((, ~~including~~)). These special considerations must include:

(1) Procedures to ensure that adults ((~~must be~~)) are separated from ((~~children~~)) minors who are not yet thirteen years of age((~~,~~)).

(2) ((~~Children~~)) Procedures to ensure that a minor who ((~~have had their thirteenth birthday, but are under the age of eighteen, may be~~)) is at least age thirteen but not yet age eighteen is served with adults only if the ((~~child's~~)) minor's clinical record contains ((~~a professional judgment saying that placement in an adult facility will not be harmful to the child or adult~~)):

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in an inpatient evaluation and treatment facility that serves adults will not be harmful to the minor or to the adult.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that operates inpatient psychiatric beds for minors and is licensed by the department of health under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of mental health treatment or evaluation. The facility must:

(a) Provide a written and verbal notice to the minor's parent(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options.

(b) Obtain and place in the clinical file, a signed acknowledgment from the minor's parent(s) that the notice required under (a) of this subsection was received.

(5) Procedures that address provisions for ((~~evaluation of children~~)) evaluating a minor brought to the facility for evaluation by ((~~their parents~~)) a parent(s).

(((~~5~~))) (6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation or abandonment of a ((~~child~~)) minor has occurred.

(((~~6) For a child~~)) (7) Procedures to ensure a minor thirteen years or older who is brought to an inpatient evaluation and treatment facility or hospital for immediate mental health services((~~,~~)) is evaluated by the professional person in charge of the facility. The professional person must evaluate the ((~~child's~~)) minor's mental condition((~~,~~)) and determine a mental disorder, the need for inpatient treatment, and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the ((~~child~~)) minor up to twelve hours for evaluation by a designated mental health professional to commence detention proceedings.

(((~~7) Admission of children~~)) (8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent ((~~must have~~)) has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

(((~~8) Notice must be~~)) (9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to inpatient treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510.

(((~~9) Children~~)) (10) Procedures to ensure a minor who ((~~have~~)) has been admitted on the basis of a designated mental health professional petition for detention ((~~must be~~)) is evaluated by the facility providing seventy-two hour evaluation and treatment to determine the ((~~child's~~)) minor's condition and either admit or release the ((~~child~~)) minor. If the ((~~child~~)) minor is not approved for admission, the facility must make recommendations and referral for further care and treatment as necessary.

(((~~10~~))) (11) Procedures for the examination and evaluation of a ((~~child~~)) minor approved for inpatient admission to include:

(a) The needs to be served by placement in a chemical dependency facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the ((~~child~~)) minor of rights in accordance with chapter 71.34 RCW.

(((~~11~~))) (12) Procedures to petition for fourteen-day commitment that are in accordance with ((~~the requirements of~~)) RCW 71.34.730.

(((~~12~~))) (13) Procedures for commitment hearing requirements and release from further inpatient treatment which may be subject to reasonable conditions, if appropriate, that are in accordance with RCW 71.34.740.

(((~~13~~))) (14) Procedures for discharge and conditional release of a ((~~child~~)) minor in accordance with RCW 71.34.770, provided that the professional person in charge gives the court written notice of the release within three days of the release. If the ((~~child~~)) minor is on a one hundred eighty-day commitment, the children's long-term inpatient program (CLIP) administrator must also be notified.

(((~~14~~))) (15) Procedures to ensure rights of ((~~children~~)) a minor undergoing treatment and posting of such rights ((~~must be~~)) are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

(((~~15~~))) (16) Procedures for the release of a ((~~child~~)) minor who is not accepted for admission or who is released by an inpatient evaluation and treatment facility that are in accordance with RCW 71.34.365.

(((~~16) Information concerning~~)) (17) Procedures to ensure treatment of ((~~children~~)) a minor and all information obtained through treatment under this chapter ((~~may be~~)) are disclosed only in accordance with RCW 71.34.340.

(((~~17) Availability of~~)) (18) Procedures to make court records and files available that are in accordance with RCW 71.34.335.

(((~~18~~))) Procedures to release mental health services information ((~~must~~)) only ((~~be released~~)) in accordance with RCW 71.34.345 and other applicable state and federal statutes.

NEW SECTION

WAC 388-865-0576 Minor children ages thirteen through seventeen—Admission, treatment, and discharge without parental consent—Evaluation and treatment facility. (1) Under RCW 71.34.500, an evaluation and treatment facility may admit a minor child who is at least thirteen years of age and not older than seventeen years of age without the consent of the minor's parent(s) when:

(a) In the judgment of the professional person in charge of the facility, there is reason to believe that the minor is in need of inpatient treatment because of a mental disorder;

(b) The facility provides the type of evaluation and treatment needed by the minor;

(c) It is not feasible to treat the minor in a less restrictive setting or in the minor's home; and

(d) The minor gives written consent for the voluntary inpatient treatment.

(2) The evaluation and treatment facility must provide notice to the minor's parent(s) when the minor is voluntarily admitted. The notice must be in a form most likely to reach the minor's parent(s) within twenty-four hours of the minor's voluntary admission and advise the parent(s):

(a) That the minor has been admitted to inpatient treatment;

(b) Of the location and telephone number of the facility;

(c) Of the name of the professional staff member designated to provide the minor's treatment and discuss the minor's need for inpatient treatment; and

(d) Of the medical necessity for the minor's admission.

(3) The evaluation and treatment facility must:

(a) Review and document the minor's need for continued inpatient treatment at least every one hundred eighty days; and

(b) Obtain a renewal of the minor's written consent for the voluntary inpatient treatment at least every twelve calendar months.

(4) A minor admitted to an evaluation and treatment facility under RCW 71.34.500 may give notice of intent to leave at any time. The notice must be in writing, signed by the minor, and clearly state the minor intends to leave the facility.

(a) The facility staff member receiving the notice must:

(i) Immediately date it;

(ii) Record its existence in the minor's clinical record; and

(iii) Send a copy to the:

(A) Minor's attorney, if the minor has one;

(B) County-designated mental health professional; and

(C) Minor's parent(s).

(b) The facility must ensure a facility professional staff member discharges the minor from the facility by the second judicial day following receipt of the minor's notice of intent to leave.

(5) The evaluation and treatment facility must obtain parental consent, or authorization from a person who may consent on behalf of the minor under RCW 7.70.065, before admitting a minor child twelve years of age or younger.

NEW SECTION

WAC 388-865-0578 Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor's consent—Evaluation and treatment facility. (1) Under RCW 71.34.600, an evaluation and treatment facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's parent(s) brings the minor to the facility.

(2) The evaluation and treatment facility must ensure a trained professional person (defined in RCW 71.05.020) evaluates the minor within twenty-four hours of the time the minor was brought to the facility.

(3) If the professional person determines the condition of the minor requires additional time for evaluation, the additional time must not be longer than seventy-two hours.

(4) If the evaluation and treatment facility holds the minor for treatment, the treatment must be limited to medically necessary treatment that the professional person has determined is needed to stabilize the minor's condition in order to complete the evaluation.

(5) The evaluation and treatment facility must:

(a) Notify the department within twenty-four hours of completing the minor's evaluation if the minor is held for inpatient treatment.

(b) Notify the minor being held for inpatient treatment of the right under RCW 71.34.620 to petition the superior court for release from the facility. The minor must be informed of this right before the department completes a review of the minor's admission and inpatient treatment (see subsection (7) of this section). If the minor is not released as a result of a petition for judicial review, the facility must release the minor no later than thirty days following the later of:

(i) The date of the department's determination under RCW 71.34.610; or

(ii) The date the petition is filed, unless a mental health professional initiates proceedings under Title 71 RCW.

(6) The minor's clinical record must show documentation that the department and the minor were notified as required under (a) and (b) of this subsection.

(7) One of the following must occur when the department conducts a review under RCW 71.34.610.

(a) If the department determines it is no longer medically necessary for the minor to receive inpatient treatment, the department notifies the minor's parent(s) and the facility. The facility must release the minor to the minor's parent(s) within twenty-four hours of receiving notice from the department.

(b) If the professional person in charge of the facility and the minor's parent(s) believe that it is medically necessary for the minor to remain in inpatient treatment, the facility must release the minor to the parent(s) on the second judicial day following the department's determination in order to allow the parent(s) time to file an at-risk youth petition under chapter 13.21A RCW.

(c) If the department determines it is medically necessary for the minor to receive outpatient treatment and if the minor declines to obtain such treatment, the refusal is grounds for the minor's parent(s) to file an at-risk youth petition under chapter 13.21A RCW.

(8) The evaluation and treatment facility must not discharge a minor admitted under RCW 71.34.600 based solely on the minor's request.