

WSR 14-05-001
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket A-131761, General Order R-574—Filed February 5, 2014, 1:26 p.m., effective March 8, 2014]

In the matter of amending and adopting several rules in Title 480 WAC relating to adoption-by-reference date revisions and other minor administrative changes.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 13-23-108 for an expedited rule making, filed with the code reviser on November 20, 2013. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 The commission adopts these rules to incorporate by reference federal rules and national standards pertaining to motor carriers, household goods carriers, passenger transportation companies, private and nonprofit transportation providers, railroad companies, solid waste and/or refuse collection companies, hazardous liquid pipelines, gas companies, electric companies, and water companies. There are no differences between the text of the proposed rules as published in the register and the text of the rules as adopted. The commission did not receive any comments on the proposed rules.

6 REFERENCE TO AFFECTED RULES: This order amends the following sections of the Washington Administrative Code:

Rule Changes			
Action	WAC No.	Rule Title	Changes
Chapter 480-14 WAC, Motor carriers, excluding household goods carriers and common carrier brokers.			
Amend	480-14-999	Adoption by reference.	a. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 49, Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following: <ul style="list-style-type: none"> - Part 171 - General Information, Regulations and Definitions. - Part 172 - Hazardous Materials Table, etc. - Part 173 - Shippers General Requirements for Shipping and Packages.
Chapter 480-15 WAC, Household goods carriers.			
Amend	480-15-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-Of-Service Criteria, amends the effective date to April 1, 2013 - No significant changes - new edition of previously adopted reference. • Title 49 Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following: <ul style="list-style-type: none"> - Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - No changes since last adoption. - Part 375 - Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations. - Part 379 - Preservation of Records - No changes since last adoption. - Part 380 - Special Training Requirements - No changes since last adoption.

Rule Changes			
Action	WAC No.	Rule Title	Changes
			<ul style="list-style-type: none"> - Part 382 - Controlled Substance and Alcohol Use and Testing. - Part 383 - Commercial Driver's License Standards; Requirements and Penalties. - Part 385 - Safety Fitness Procedures. - Part 390 - Safety Regulations, General. - Part 391 - Qualification of Drivers. - Part 392 - Driving of Commercial Motor Vehicles. - Part 393 - Parts and Accessories Necessary for Safe Operation - No changes since last adoption. - Part 395 - Hours of Service of Drivers. - Part 396 - Inspection, Repair and Maintenance. - Part 397 - Transportation of Hazardous Materials - No changes since last adoption.
Chapter 480-30 WAC, Passenger transportation companies.			
Amend	480-30-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • North American Standard Out-Of-Service Criteria, amends the effective date to April 1, 2013 - No significant changes - new edition of previously adopted reference. • Title 49 Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following: <ul style="list-style-type: none"> - Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - No changes since last adoption. - Part 379 - Preservation of Records - No changes since last adoption. - Part 380 - Special Training Requirements - No changes since last adoption. - Part 382 - Controlled Substance and Alcohol Use and Testing. - Part 383 - Commercial Driver's License Standards; Requirements and Penalties. - Part 385 - Safety Fitness Procedures. - Part 390 - Safety Regulations, General. - Part 391 - Qualification of Drivers. - Part 392 - Driving of Commercial Motor Vehicles. - Part 393 - Parts and Accessories Necessary for Safe Operation - No changes since last adoption. - Part 395 - Hours of Service of Drivers. - Part 396 - Inspection, Repair and Maintenance. - Part 397 - Transportation of Hazardous Materials - No changes since last adoption.

Rule Changes			
Action	WAC No.	Rule Title	Changes
Chapter 480-31 WAC, Private, nonprofit transportation providers.			
Amend	480-31-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • North American Standard Out-Of-Service Criteria, amends the effective date to April 1, 2013 - No significant changes - new edition of previously adopted reference. • Title 49 Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following: <ul style="list-style-type: none"> - Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - No changes since last adoption. - Part 379 - Preservation of Records - No changes since last adoption. - Part 380 - Special Training Requirements - No changes since last adoption. - Part 382 - Controlled Substance and Alcohol Use and Testing. - Part 383 - Commercial Driver's License Standards; Requirements and Penalties. - Part 385 - Safety Fitness Procedures. - Part 390 - Safety Regulations, General. - Part 391 - Qualification of Drivers. - Part 392 - Driving of Commercial Motor Vehicles. - Part 393 - Parts and Accessories Necessary for Safe Operation - No changes since last adoption. - Part 395 - Hours of Service of Drivers. - Part 396 - Inspection, Repair and Maintenance. - Part 397 - Transportation of Hazardous Materials - No changes since last adoption.
Chapter 480-62 WAC, Railroad companies—Operations.			
Amend	480-62-999	Adoption by reference.	<p>1. Adoption by reference dates changed as follows:</p> <ul style="list-style-type: none"> • Title 49 Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following parts: <ul style="list-style-type: none"> - Part 171 - General Information, Regulations, and Definitions. - Part 172 - Emergency Response Information, Training Requirements, and Security Plans. - Part 173 - Shippers General Requirements for Shipments and Packages. - Part 174 - Carriage by Rail - No changes made since last adoption date. - Part 178 - Specifications for Packagings. - Part 179 - Specifications for Tank Cars - No changes made since last adoption date. - Part 209 - Railroad Safety Enforcement Procedures.

Rule Changes			
Action	WAC No.	Rule Title	Changes
			<ul style="list-style-type: none"> - Part 211 - Rules of Practice - No changes made since last adoption date. - Part 212 - State Safety Participation Regulations - No changes made since last adoption date. - Part 213 - Track Safety Standards. - Part 214 - Railroad Workplace Safety. - Part 217 - Railroad Operating Rules - No changes made since last adoption date. - Part 218 - Railroad Operating Practices - No changes made since last adoption date. - Part 219 - Control of Alcohol and Drug Use. - Part 220 - Railroad Communications - No changes made since last adoption date. - Part 221 - Rear-end Marking Device - No changes made since last adoption date. - Part 225 - Railroads Accidents/Incidents. - Part 228 - Hours of Service of Railroad Employees. - Part 234 - Grade Crossing Signal System Safety. - Part 239 - Passenger Train Emergency Preparedness - No changes made since last adoption date. - Part 240 - Qualification and Certification of Locomotive Engineers - No changes made since last adoption date. - Part 570.6 and 570.7 - Vehicle in Use Inspection Standards - No changes since last adoption date. • Manual on Uniform Traffic Control Devices (MUTCD), amends the effective date to October 25, 2013. <ul style="list-style-type: none"> - Amends the effective date of adoption to October 25, 2013, for the following safety standards: - ANSI Z308.1-2009, American National Standard for Minimum Requirements for Workplace First Aid Kits - No changes since last adoption date. - ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests - No changes since last adoption date.
Chapter 480-70 WAC, Solid waste and/or refuse collection companies.			
Amend	480-70-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • North American Standard Out-Of-Service Criteria, amends the effective date to April 1, 2013 - No significant changes - New edition of previously adopted reference. • Title 40 Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following: <ul style="list-style-type: none"> - Part 262 - Standards Applicable to Generators of Hazardous Waste - No changes since last adoption date.

Rule Changes			
Action	WAC No.	Rule Title	Changes
			<ul style="list-style-type: none"> • Title 49 Code of Federal Regulations, amends the effective date of adoption to October 25, 2013, for the following: <ul style="list-style-type: none"> - Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs - No changes since last adoption. - Part 171 - General Information, Regulations, and Definitions. - Part 172 - Hazardous Materials Table, etc. - Part 173 - Shippers General Requirements for Shipping and Packages. - Part 174 - Carriage by Rail - No changes made since last adoption date. - Part 175 - Carriage by Aircraft. - Part 176 - Carriage by Vessel. - Part 177 - Carriage by Public Highway - No changes made since last adoption date. - Part 178 - Specifications for Packagings. - Part 179 - Specifications for Tank Cars - No changes made since last adoption date. - Part 180 - Continuing Qualification and Maintenance of Packagings. - Part 379 - Preservation of Records - No changes since last adoption. - Part 380 - Special Training Requirements - No changes since last adoption. - Part 382 - Controlled Substance and Alcohol Use and Testing. - Part 383 - Commercial Driver's License Standards; Requirements and Penalties. - Part 385 - Safety Fitness Procedures. - Part 390 - Safety Regulations, General. - Part 391 - Qualification of Drivers. - Part 392 - Driving of Commercial Motor Vehicles. - Part 393 - Parts and Accessories Necessary for Safe Operation - No changes since last adoption. - Part 395 - Hours of Service of Drivers. - Part 396 - Inspection, Repair and Maintenance. - Part 397 - Transportation of Hazardous Materials - No changes since last adoption.
Chapter 480-73 WAC, Hazardous liquid pipeline companies.			
Amend	480-73-999	Adoption by reference.	1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • Title 18 Code of Federal Regulations, amends the effective date of adoption to September 23, 2013, for the following: <ul style="list-style-type: none"> - Part 357

Rule Changes			
Action	WAC No.	Rule Title	Changes
Chapter 480-75 WAC, Hazardous liquid pipelines—Safety.			
Amend	480-75-999	Adoption by reference.	<ol style="list-style-type: none"> Adoption by reference changed as follows: <ul style="list-style-type: none"> Title 49 Code of Federal Regulations, amends section (b)(1) changes where this publication is referenced in WAC.
Chapter 480-90 WAC, Gas companies—Operations.			
Amend	480-90-999	Adoption by reference.	<ol style="list-style-type: none"> Adoption by reference dates changed as follows: <ul style="list-style-type: none"> The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies, <ul style="list-style-type: none"> Amends the effective date of adoption to 2007. Adoption by reference text changed as follows: <ul style="list-style-type: none"> The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies, <ul style="list-style-type: none"> Amends section (2) to use the correct title.
Chapter 480-93 WAC, Gas companies—Safety.			
Amend	480-93-999	Adoption by reference.	<ol style="list-style-type: none"> Adoption by reference changed as follows: <ul style="list-style-type: none"> Title 49 Code of Federal Regulations, amends section (1)(b) changes WAC chapter titles.
Chapter 480-100 WAC, Electric companies.			
Amend	480-100-999	Adoption by reference.	<ol style="list-style-type: none"> Adoption by reference dates changed as follows: <ul style="list-style-type: none"> Title 18 Code of Federal Regulations, amends the effective date of adoption to November 27, 2013, for the following: <ul style="list-style-type: none"> Part 101. The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies, <ul style="list-style-type: none"> Amends the effective date of adoption to 2007. The National Electrical Code, <ul style="list-style-type: none"> Amends the effective date of adoption to August 20, 2013. Adoption by reference text changed as follows: <ul style="list-style-type: none"> Main Paragraph, <ul style="list-style-type: none"> Amends opening paragraph to remove "They are available for inspection at the commission branch of the Washington state library." Title 18 Code of Federal Regulations, <ul style="list-style-type: none"> Amends section (1)(d) to include "It is also available for inspection at the commission." The Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies, <ul style="list-style-type: none"> Amends section (2) to use the correct title. The National Electrical Code, <ul style="list-style-type: none"> Amends section (3)(a) to include "including errata 70-14-1 published September 16, 2013."

Rule Changes			
Action	WAC No.	Rule Title	Changes
Chapter 480-108 WAC, Electric companies—Interconnection with electric generators.			
Amend	480-108-999	Adoption by reference.	<ol style="list-style-type: none"> 1. Adoption by reference dates changed as follows: <ul style="list-style-type: none"> • The National Electrical Code, <ul style="list-style-type: none"> - Amends the effective date of adoption to August 20, 2013. 2. Adoption by reference text changed as follows: <ul style="list-style-type: none"> • Main Paragraph, <ul style="list-style-type: none"> - Amends opening paragraph to remove "They are available for inspection at the commission branch of the Washington state library or as otherwise indicated." • The National Electrical Code, <ul style="list-style-type: none"> - Amends section (1)(a) to include "including errata 70-14-1 published September 16, 2013." - Amends section (1)(b) to include the names of the WAC that this section applies. • The National Electrical Safety Code, <ul style="list-style-type: none"> - Amends section (2)(b) to include the names of the WAC that this section applies. • Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, <ul style="list-style-type: none"> - Amends section (3)(b) to include the names of the WAC that this section applies. - Amends section (3)(c) to remove superfluous letters in a web address. • American National Standards Institute (ANSI) Standard C37.90, <ul style="list-style-type: none"> - Amends section (4)(b) to include the names of the WAC that this section applies. - Amends section (4)(c) to remove superfluous letters in a web address. • Institute of Electrical and Electronics Engineers (IEEE) Standard 519, <ul style="list-style-type: none"> - Amends section (5)(b) to include the names of the WAC that this section applies. - Amends section (5)(c) to remove superfluous letters in a web address. • Institute of Electrical and Electronics Engineers (IEEE) Standard 141, <ul style="list-style-type: none"> - Amends section (6)(b) to include the names of the WAC that this section applies. - Amends section (6)(c) to remove superfluous letters in a web address. • Institute of Electrical and Electronics Engineers (IEEE) Standard 142, <ul style="list-style-type: none"> - Amends section (7)(b) to include the names of the WAC that this section applies.

Rule Changes			
Action	WAC No.	Rule Title	Changes
			<ul style="list-style-type: none"> - Amends section (7)(c) to remove superfluous letters in a web address. • Underwriters Laboratories (UL), <ul style="list-style-type: none"> - Amends section (8)(b) to include the names of the WAC that this section applies. • Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269, <ul style="list-style-type: none"> - Amends section (9)(b) to include the names of the WAC that this section applies.
Chapter 480-110 WAC, Water companies.			
Amend	480-110-999	Adoption by reference.	1. Adoption by reference changes as follows: <ul style="list-style-type: none"> • Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies, <ul style="list-style-type: none"> - Amends the adopted version to the one in effect in 2007.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: A preproposal statement of inquiry is not required under RCW 34.05.353 for expedited rule making.

8 NOTICE OF EXPEDITED RULE MAKING: The commission filed a notice of expedited rule making (CR-105) on November 20, 2013, at WSR 13-23-108. The notice informed interested persons that the commission was proposing rules under an expedited rule-making process as required by RCW 34.05.353. The commission provided notice of its expedited rule making to all persons on the commission's list of persons requesting such information pursuant to RCW 34.05.353, and to all persons affected by the adoption-by-reference rule proposal. The notice provided interested persons the opportunity to submit written comments to the commission no later than February 3, 2014. The commission posted the relevant rule-making information on its internet web site at www.utc.wa.gov/131761.

9 COMMENTERS (WRITTEN COMMENTS): The commission did not receive any comments on the proposed rules.

10 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-105 at WSR 13-23-108.

11 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-62-999, 480-70-999, 480-73-999, 480-75-999, 480-90-999, 480-93-999, 480-100-999, 480-108-999, and 480-110-999 should be amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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 13, 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.

ORDER

12 THE COMMISSION ORDERS:

13 (1) WAC 480-14-999, 480-15-999, 480-30-999, 480-31-999, 480-62-999, 480-70-999, 480-73-999, 480-75-999, 480-90-999, 480-93-999, 480-100-999, 480-108-999, and 480-110-999, are amended to read as set forth in Appendix A, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

14 (2) This order and the rules set out in Appendix A, after being recorded in the register of the Washington utilities and transportation commission shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, February 5, 2014.

Washington Utilities and Transportation Commission
 David W. Danner, Chairman
 Philip B. Jones, Commissioner
 Jeffrey D. Goltz, Commissioner

APPENDIX A

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-14-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available

for inspection at the commission branch of the Washington state library. The publication, effective dates, references within this chapter, and availability of the resource is within Title 49 Code of Federal Regulations (C.F.R.), including all appendices and amendments is published by the United States Government Printing Office.

(1) The commission adopts the version in effect on October (~~(5, 2012)~~) 25, 2013, for 49 C.F.R. Parts 171, 172 and 173.

(2) This publication is referenced in WAC 480-14-250 (Insurance requirements).

(3) Copies of Title 49 C.F.R. are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-15-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~(2012)~~) 2013.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~(5, 2012)~~) 25, 2013.

(b) This publication is referenced in WAC 480-15-560 (Equipment safety requirements) and WAC 480-15-570 (Driver safety requirements).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-30-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~(2012)~~) 2013.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~(5, 2012)~~) 25, 2013.

(b) This publication is referenced in WAC 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-31-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) *North American Standard Out-of-Service Criteria* (OOSC) is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, (~~(2012)~~) 2013.

(b) This publication is referenced in WAC 480-31-120 (Equipment—Inspection—Ordered for repairs).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October (~~(5, 2012)~~) 25, 2013.

(b) This publication is referenced in WAC 480-31-100 (Equipment—Safety), WAC 480-31-120 (Equipment—Inspection—Ordered for repairs), and WAC 480-31-130 (Operation of motor vehicles).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-62-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October ~~((5, 2012))~~ 25, 2013.

(b) This publication is referenced in WAC 480-62-160 (Compliance policy), WAC 480-62-200 (Roadway worker safety and operating rules and statutes), WAC 480-62-205 (Track safety standards), WAC 480-62-210 (Crossing signal circuitry), WAC 480-62-215 (Hazardous materials regulations), WAC 480-62-235 (Flaggers), and WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) **Manual on Uniform Traffic Control Devices**, cited as Manual on Uniform Traffic Control Devices, or MUTCD, is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October ~~((5, 2012))~~ 25, 2013.

(b) This publication is referenced in WAC 480-62-230 (Traffic control devices) and WAC 480-62-235 (Flaggers).

(c) Copies of the MUTCD are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **ANSI Z308.1 - 2009 American National Standard for Minimum Requirements for Workplace First Aid Kits** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on October ~~((5, 2012))~~ 25, 2013.

(b) This publication is referenced in WAC 480-62-240 (Passenger carrying vehicles—Equipment).

(c) Copies of ANSI Z308.1 - 2009 American National Standard for Minimum Requirements for Workplace First Aid Kits and Supplies are available from Global Engineering Documents in Englewood, Colorado.

(4) **ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests** is published by the American National Standards Institute.

(a) The commission adopts the version in effect on October ~~((5, 2012))~~ 25, 2013.

(b) This publication is referenced in WAC 480-62-235 (Flaggers).

(c) Copies of ANSI/ISEA 207-2011 - American National Standard for High-Visibility Public Safety Vests are available from Global Engineering Documents in Englewood, Colorado.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-70-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **The North American Standard Out-of-Service Criteria** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, ~~((2012))~~ 2013.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements).

(c) The *North American Out-of-Service Criteria* is a copyrighted document. Copies are available from CVSA.

(2) **Title 40 Code of Federal Regulations**, cited as 40 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October ~~((5, 2012))~~ 25, 2013.

(b) This publication is referenced in WAC 480-70-041 (Definitions, general).

(c) Copies of Title 40 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(3) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October ~~((5, 2012))~~ 25, 2013.

(b) This publication is referenced in WAC 480-70-201 (Vehicle and driver safety requirements), WAC 480-70-431 (Biomedical waste, adoption of federal regulations), and WAC 480-70-486 (Hazardous waste, adoption of federal regulations).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 11-04-041, filed 1/25/11, effective 2/25/11)

WAC 480-73-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., is published by the United States Government Printing Office.

(2) The commission adopts the version in effect on ~~((April 1, 2010))~~ September 23, 2013.

(3) This publication is referenced in WAC 480-73-130 (Accounting system requirements), WAC 480-73-150 (Retaining and preserving records and reports), and WAC 480-73-160 (Annual reports).

(4) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-75-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references

within this chapter, and availability of the resources are as follows:

(1) **Title 49 Code of Federal Regulations**, cited as 49 C.F.R., Parts 195 and 199 including all appendices and amendments except for 49 C.F.R. Sections 195.0 and 195.1, and 49 C.F.R. Sections 199.1 and 199.2, published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2012.

(b) This publication is referenced in WAC 480-75-370 (Design factor (*F*) for steel pipe) (~~(, WAC 480-75-630 (Incident reporting),)~~) and WAC 480-75-660 (Procedural manual for operations, maintenance, and emergencies).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>.

(2) **The American Society of Mechanical Engineers (ASME) B31.4**, 2006 edition, October 20, 2006.

(a) This publication is referenced in WAC 480-75-350 (Design specifications for new pipeline projects), WAC 480-75-440 (Pipeline repairs), and WAC 480-75-450 (Construction specifications).

(b) Copies of ASME B31.4 are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The 2007 edition, July 2007, of **Section IX of the ASME Boiler and Pressure Vessel Code**.

(a) This publication is referenced in WAC 480-75-430 (Welding procedures).

(b) Copies of the 2007 edition, of *Section IX of the ASME Boiler and Pressure Vessel Code* are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(4) The commission adopts **American Petroleum Institute (API) standard 1104** (20th edition 2005, including errata/addendum July 2007 and errata 2 (December 2008)).

(a) This publication is referenced in WAC 480-75-430 (Welding procedures) and WAC 480-75-460 (Welding inspection requirements).

(b) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <http://www.api.org/>. It is also available for inspection at the commission.

(5) The commission adopts **API RP standard 1117** Third Edition, July 2008, including errata December 2008 and errata 2 (August 2009).

(a) This publication is referenced in WAC 480-75-500 (Moving and lowering hazardous liquid pipelines).

(b) Copies of API standard 1117 Third Edition, July 2008, including errata December 2008 and errata 2 August 2009 are available from API, <http://www.api.org/>. It is also available for inspection at the commission.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-90-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available

for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on April 1, 2012.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-90-203 (Accounting system requirements), WAC 480-90-244 (Transferring cash or assuming obligation), WAC 480-90-252 (Federal Energy Regulatory Commission (FERC) Form No. 2), and WAC 480-90-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in ~~((1985))~~ 2007.

(b) This publication is referenced in WAC 480-90-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-93-999 Adoption by reference. In this chapter, the commission adopts by reference each of the regulations and/or standards identified below. Each regulation or standard is listed by publication, publisher, scope of what the commission is adopting, effective date of the regulation or standard, the place within the commission's rules the regulation or standard is referenced, and where to obtain the regulation or standard.

(1) Parts 191, 192, 193, and 199 of Title 49 Code of Federal Regulations, including all appendices and amendments thereto as published by the United States Government Printing Office.

(a) The commission adopts the version of the above regulations that were in effect on October 1, 2012, except the following sections are not adopted by reference: 191.1, 192.1(a), 193.2001(a), 199.1. In addition, please note that in WAC 480-93-013, the commission includes "new construction" in the definition of "covered task," as defined in 49 CAR § 192.801 (b)(2).

(b) This publication is referenced in WAC 480-93-005 (Definitions), 480-93-080 (Welder and plastic joiner identification and qualification), 480-93-100 (Valves), 480-93-110

(Corrosion control), 480-93-124 (Pipeline markers), 480-93-155 (Increasing maximum allowable operating pressure), 480-93-170 (Tests and reports for gas pipelines), 480-93-180 (Plans and procedures), and 480-93-18601 (Leak classification and action criteria—Grade—Definition—Priority of leak repair).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>. It is also available for inspection at the commission.

(2) Section IX of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code.

(a) The commission adopts the 2007 edition, July 1, 2007, of Section IX of the ASME Boiler and Pressure Vessel Code.

(b) This publication is referenced in WAC 480-93-080.

(c) Copies of Section IX of the ASME Boiler and Pressure Vessel Code (2007 edition, including addenda through July 1, 2005) are available from ASME, <http://www.asme.org/codes/>. It is also available for inspection at the commission.

(3) The American Petroleum Institute (API) standard 1104 (20th edition October 2005, including errata/addendum July 2007 and errata 2 (2008)).

(a) The commission adopts the 20th edition 2005, including errata/addendum July 2007 and errata 2 (2008) of this standard.

(b) This standard is referenced in WAC 480-93-080.

(c) Copies of API standard 1104 (20th edition 2005, including errata/addendum July 2007 and errata December 2008) are available from the Office of API Publishing Services, <http://www.api.org/>. It is also available for inspection at the commission.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-100-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. (~~They are available for inspection at the commission branch of the Washington state library.~~) The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) **Title 18 Code of Federal Regulations**, cited as 18 C.F.R., including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on (~~April 1, 2014~~) November 27, 2013.

(b) The accounting and reporting for the types of transactions and events covered by the amendment should not be construed as indicative of their treatment by this commission for ratemaking purposes.

(c) This publication is referenced in WAC 480-100-203 (Accounting system requirements), WAC 480-100-244 (Transferring cash or assuming obligation), WAC 480-100-252 (Federal Energy Regulatory Commission (FERC) Form No. 1), and WAC 480-100-268 (Essential utilities services contracts report).

(d) Copies of Title 18 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

(2) The **Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities** is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in (~~1985~~) 2007.

(b) This publication is referenced in WAC 480-100-228 (Retention and preservation of records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water Companies* is a copyrighted document. Copies are available from NARUC in Washington, D.C.

(3) The **National Electrical Code** is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition (~~published on January 24, 2012~~) effective August 20, 2013, including errata 70-14-1 published September 16, 2013.

(b) This publication is referenced in WAC 480-100-163 (Service entrance facilities).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts 02169, or at internet address <http://www.nfpa.org/>.

(4) The **American National Standard for Electric Meters: Code for Electricity Metering**, ANSI C12.1 is published by the American National Standards Institute.

(a) The commission adopts the version published in 2008.

(b) This publication is referenced in WAC 480-100-318 (Meter readings, multipliers, and test constants), WAC 480-100-338 (Accuracy requirements for electric meters), and WAC 480-100-343 (Statement of meter test procedures).

(c) The ANSI C12.1 is a copyrighted document. Copies are available from Global Engineering Documents in Englewood, Colorado.

AMENDATORY SECTION (Amending WSR 13-15-089, filed 7/18/13, effective 8/18/13)

WAC 480-108-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. (~~They are available for inspection at the commission branch of the Washington state library or as otherwise indicated.~~) The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the edition (~~published on January 24, 2012~~) effective August 20, 2013, including errata 70-14-1 published September 16, 2013.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address <http://www.nfpa.org/>.

(2) National Electrical Safety Code (NESC).

(a) The commission adopts the 2012 edition.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of the National Electrical Safety Code are available from the Institute of Electrical and Electronics Engineers at <http://standards.ieee.org/nesc>.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003 and reaffirmed in 2008.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at (~~<http://www.ieee.org/web/standards/home>~~) <http://www.ieee.org>.

(4) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at (~~<http://www.ieee.org/web/standards/home>~~) <http://www.ieee.org>.

(5) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published in 2004.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at (~~<http://www.ieee.org/web/standards/home>~~) <http://www.ieee.org>.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at (~~<http://www.ieee.org/web/standards/home>~~) <http://www.ieee.org>.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 142, Recommended Practice for Grounding of Industrial and Commercial Power Systems.

(a) The commission adopts the version published in 2007.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of IEEE Standard 142 are available from the Institute of Electrical and Electronics Engineers at (~~<http://www.ieee.org/web/standards/home>~~) <http://www.ieee.org>.

(8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, Controllers and Interconnection Systems Equipment for Use with Distributed Energy Resources.

(a) The commission adopts the version published in 2010.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) UL Standard 1741 is available from Underwriters Laboratory at <http://www.ul.com>.

(9) Occupational Safety and Health Administration (OSHA) Standard at 29 C.F.R. 1910.269.

(a) The commission adopts the version published in 1994.

(b) This publication is referenced in WAC 480-108-040 (General terms and conditions of interconnection).

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

AMENDATORY SECTION (Amending WSR 05-06-051, filed 2/28/05, effective 3/31/05)

WAC 480-110-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The *Uniform System of Accounts for Water Utilities* is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in 1996.

(b) This publication is referenced in WAC 480-110-505 (Accounting, and reporting requirements and regulatory fees).

(c) The *Uniform System of Accounts for Water Utilities* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

(2) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities* is published by the National Association of Regulatory Utility Commissioners (NARUC).

(a) The commission adopts the version in effect in (~~1985~~) 2007.

(b) This publication is referenced in WAC 480-110-485 (Retaining and preserving records and reports).

(c) The *Regulations to Govern the Preservation of Records of Electric, Gas, and Water ((Companies)) Utilities* is a copyrighted document. Copies are available from NARUC, in Washington, D.C.

WSR 14-05-035
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed February 12, 2014, 9:41 a.m., effective March 15, 2014]

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

Purpose: The department is amending these rules to comply with and be consistent with newly passed state laws SB [SSB] 5077 Gender-neutral terms; HB [SHB] 1629 Concerning credentialing and continuing education requirements for long-term services; and SB 5510 Vulnerable adults—Abuse.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020, 388-78A-2035, 388-78A-2440, 388-78A-2460, 388-78A-2474, 388-78A-2730, and 388-78A-3180.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 13-20-082 on December 27 [September 30], 2013.

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 7, 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 7, Repealed 0.

Date Adopted: February 5, 2014.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal

assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

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

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrator" means an assisted living facility administrator who must be in active administrative charge of the assisted living facility 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.

"Adult day services" means care and services provided to a nonresident individual by the assisted living facility on the assisted living facility premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a assisted living facility license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Assisted living facility" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also

provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its assisted living facility license as long as it is continually licensed as an assisted living facility. "Assisted living facility" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Assisted living facility" may also include persons associated with the assisted living facility to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing direct personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of an assisted living facility, except volunteers who are directly supervised.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Direct supervision" means oversight by a person on behalf of the assisted living facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the assisted living facility either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the assisted living facility; or

(3) Intermittent nursing services, if provided directly or indirectly by the assisted living facility.

"Enforcement remedy" means one or more of the department's responses to an assisted living facility's non-compliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; or
- (6) Developmental disabilities care.

"Independent living unit" means:

- (1) Independent senior housing;
- (2) Independent living unit in a continuing care retirement community or other similar living environments;
- (3) Assisted living facility unit where domiciliary services are not provided; or
- (4) Assisted living facility unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the assisted living facility license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

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

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

- (1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

- (2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facility), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the assisted living facility may serve at any one time, as determined by the department.

- (1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

- (2) The maximum facility capacity is equal to the lesser of:

- (a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

- (b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

- (c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

- (d) For assisted living facilities licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

- (e) For assisted living facilities licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

- (3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

- (a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

- (b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

- (c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

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

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of an assisted living facility in accordance with chapter 246-888 WAC.

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

"Medication service" means any service provided either directly or indirectly by an assisted living facility related to medication administration, medication administration,

tion provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

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

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within an assisted living facility. A nonresident individual may not receive from the assisted living facility:

(1) Domiciliary care directly or indirectly; or

(2) The items or services listed in the definition of "general responsibility for the safety and well-being of the resident", except as allowed under WAC 388-78A-2032 or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

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

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of an assisted living facility:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the assisted living facility for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident; or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed assisted living facility and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the assisted living facility must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of assisted living facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the assisted living facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in an assisted living facility, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the assisted living facility;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the assisted living facility. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the assisted living facility and to receive information from the assisted living facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

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

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any assisted living facility employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

(4) Admitted to any facility, including any assisted living facility; or

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

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the assisted living facility. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

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

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2035 Disclosure statement to nonresident individuals. (1) An assisted living facility must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;

(b) Licensing requirements for assisted living facilities under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care (~~(ombudsman)~~) ombuds does not apply to nonresident individuals and nonresident units.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2440 Resident register. (1) The assisted living facility must maintain in the assisted living facility a single current register of all assisted living facility residents, their roommates and identification of the rooms in which such persons reside or sleep.

(2) The assisted living facility must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all individuals who resided in the assisted living facility within the past five years, including:

(a) Move-in date;

(b) Full name;

(c) Date of birth;

(d) Date of moving out;

(e) Reason for moving out; and

(f) Location and address to which the resident was discharged.

(3) The assisted living facility must make this register immediately available to:

(a) Authorized department staff;

(b) Representatives of the long-term care (~~(ombudsman's)~~) ombuds's office; and

(c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2460 Quality assurance committee.

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any assisted living facility licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the assisted living facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care (~~(ombudsman)~~) ombuds program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the assisted living facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the assisted living facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the assisted living facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with assisted living facility requirements, the documents are not protected as quality assurance committee documents when in the possession of the department.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against an assisted living facility.

(7) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2474 Training and home care aide certification requirements.

(1) The assisted living facility must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The assisted living facility must ensure all assisted living facility administrators, or their designees, and caregivers hired on or after January 7, 2012 meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

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

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The assisted living facility must ensure that all staff receive appropriate training and orientation to perform their specific job duties and responsibilities.

(4) The assisted living facility must ensure all persons listed in subsection (2) of this section, obtain the home-care aide certification.

(5) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant training program are exempt from long-term care worker basic training requirements. Continuing education requirements under chapter 388-112 WAC still apply ~~((as outlined in chapter 388-112 WAC))~~ to these individuals, except for registered nurses and licensed practical nurses.

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

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2730 Licensee's responsibilities. (1)

The assisted living facility licensee is responsible for:

(a) The operation of the assisted living facility;

(b) Complying at all times with the requirements of this chapter, chapter 18.20 RCW, and other applicable laws and rules; and

(c) The care and services provided to the assisted living facility residents.

(2) The licensee must:

(a) Maintain the occupancy level at or below the licensed resident bed capacity of the assisted living facility;

(b) Maintain and post in a size and format that is easily read, in a conspicuous place on the assisted living facility premises:

(i) A current assisted living facility license, including any related conditions on the license;

(ii) The name, address and telephone number of:

(A) The department;

(B) Appropriate resident advocacy groups; and

(C) The state and local long-term care ~~((ombudsman))~~ ombuds with a brief description of ~~((ombudsman))~~ ombuds services.

(iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.

(c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of

responsibility for the daily operations and provisions of services in the assisted living facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint the assisted living facility administrator consistent with WAC 388-78A-2520.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3180 Required enforcement remedies. The department must impose an appropriate remedy consistent with RCW 18.20.125 and as otherwise authorized by RCW 18.20.185 or 18.20.190 whenever the department finds an assisted living facility has:

(1) A serious problem, a recurring problem, or an uncorrected problem;

(2) Created a hazard that causes or is likely to cause death or serious harm to one or more residents;

(3) Discriminated or retaliated in any manner against a resident, employee, or any other person because that person or any other person made a complaint or provided information to the department, the attorney general, a law enforcement agency, or the long-term care ~~((ombudsman))~~ ombuds; or

(4) Willfully interfered with the performance of official duties by a long-term care ~~((ombudsman))~~ ombuds.

**WSR 14-06-007
PERMANENT RULES**

**OFFICE OF
FINANCIAL MANAGEMENT**

[Filed February 20, 2014, 8:27 a.m., effective March 24, 2014]

Effective Date of Rule: March 24, 2014.

Purpose: We have done a review of our Washington management service (WMS) rules and have determined the following rules require updating.

The proposed change to WAC 357-58-125 addresses salary setting when there is a downward reallocation (involuntary downward movement) of a WMS position. We are also proposing new WAC 357-58-126 to address how an employee is affected when his/her WMS position is involuntarily moved downward. These proposed changes are in line with the current Washington general service (WGS) rule.

WAC 357-19-225 and 357-19-181 addresses how an incumbent whose position is converted from exempt to classified is placed within classified service. Since WMS positions are classified, we are proposing adding language to WAC 357-19-225 and 357-19-181 to include WMS review period. We are also proposing removing the language in WAC 357-19-225 which says "date of hire into the position that is being converted to classified" and replacing it with references to the new proposed WAC 357-01-303 and 357-01-304 (seniority date). In addition, we are proposing adding "including exempt service" to WAC 357-46-055.

Currently, there is not a rule that addresses how salary is set when a WMS employee returns from an exempt appoint-

ment. We are proposing adding new WAC 357-58-132 which says the employee's salary must not be less than the previous base salary adjusted according to any changes to the salary standard or general wage increases that occurred while the employee was in exempt service. A housekeeping change is being made to WAC 357-58-450 to include reference to new WAC 357-58-132.

We are proposing adding new WAC 357-58-226 which addresses what happens when a WMS employee who is serving a review period and was appointed to a WGS nonpermanent position returns to the same or different WMS position.

Citation of Existing Rules Affected by this Order: Amending WAC 357-58-125, 357-19-225, 357-58-450, 357-19-181, and 357-46-055.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 14-02-105 on December 31, 2013.

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 5, Amended 5, Repealed 0.

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

Date Adopted: February 20, 2014.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

NEW SECTION

WAC 357-01-303 Seniority date (general government). For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for reasons listed in WAC 357-46-055.

For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for reasons listed in WAC 357-46-055.

NEW SECTION

WAC 357-01-304 Seniority date (higher education). For higher education employees, the seniority date is deter-

mined in accordance with the employer's layoff procedure. The employer's layoff procedure must specify a uniform method for determining the seniority date for employees of the higher education institution or related board who are covered by the civil service rules. Employees on military leave as provided in WAC 357-31-370 must not have their seniority date adjusted for the time spent on military leave without pay.

AMENDATORY SECTION (Amending WSR 05-19-009, filed 9/8/05, effective 10/10/05)

WAC 357-19-181 When is an employee appointed to a position with permanent status? An appointing authority must make a permanent status appointment of an employee under the following conditions:

(1) Upon successful completion of a probationary, trial service, or transition review period;

(2) Upon reassignment of a permanent employee who is not in trial service status;

(3) Upon transfer, demotion, reversion, or elevation when the employee is not required to serve a trial service period;

(4) Upon rehire from layoff or appointment to a position as a layoff option when a transition review period is not required;

(5) Upon the director conferring permanent status to an employee under remedial action provisions; and

(6) Upon conversion of an exempt position to the classified service, per WAC 357-19-225, if the incumbent has been employed for at least an amount of time equal to the probationary period or WMS review period for the class. If the incumbent has not been employed that long, the employee must serve a probationary period or WMS review period. The employer may count the time spent in the position prior to conversion towards the probationary period or WMS review period.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-225 How is an incumbent, whose position is converted from exempt to classified, placed within classified service? An incumbent whose position is converted from exempt to classified service may be placed within the classified service as follows:

(1) If the incumbent has been continuously employed for a period of time equivalent to or greater than the probationary period or WMS review period established for the classified position, the incumbent will have permanent status and does not serve a probationary period or WMS review period. If the incumbent has been employed for less than the duration of the probationary period or WMS review period, WAC 357-19-020 (~~applies~~) and 357-58-285 apply.

(2) The incumbent is not required to pass a qualifying examination.

(3) Salary is set in accordance with WAC 357-28-165.

(4) The incumbent is credited with unused accrued sick leave at the time of conversion and continues to accrue sick leave as provided in chapter 357-31 WAC (Leave and holidays chapter).

(5) The incumbent is credited with unused accrued vacation leave at the time of conversion and accrues vacation leave at the same rate as for classified employees as provided in chapter 357-31 WAC.

(6) Seniority is established (~~(using the date of hire into the position that is being converted to classified service))~~ in accordance with WAC 357-01-303 and 357-01-304.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service (including exempt service) as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; and/or
- (e) Reducing the effects of layoff.
- (f) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(2) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status, excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; and/or
- (e) Reducing the effects of layoff.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-125 What is an involuntary downward movement and how does that affect the salary? An involuntary downward movement is based on a nondisciplinary reassignment of duties that results in a lower salary standard and/or lower evaluation points for an employee's current position. (~~(Such downward movement will not decrease the employee's current salary. The employee's current salary will be retained until such time as the WMS management band maximum exceeds the employee's salary or the employee leaves the position.))~~ A WMS employee occupying a position that is effected by an involuntary downward movement must be placed within the salary standard established for the WMS

position at an amount equal to his/her previous base salary. If the previous base salary exceeds the new salary standard, the employee's base salary must be set equal to the maximum of the salary standard for the position. The employee's base salary may be set higher than the salary standard maximum, but not exceeding the previous base salary, if allowed by the employer's salary determination policy.

NEW SECTION

WAC 357-58-126 How is the employee affected when his/her position is involuntarily moved downward as described in WAC 357-58-125? (1) If the employee meets the position requirements and chooses to remain in the position the employee retains appointment status and his/her salary is set in accordance with WAC 357-58-125.

(2) If the employee chooses to vacate the position or does not meet the position requirements, the employer's WMS layoff procedure applies.

NEW SECTION

WAC 357-58-132 Upon return from exempt service, how is a WMS employee's salary set? The employee's base salary must not be less than the employee's previous base salary in classified service, adjusted according to any changes to the salary standard established for the position or any general wage increases/adjustments that occurred while the employee was in exempt service.

NEW SECTION

WAC 357-58-226 What happens when a WMS employee who was serving a review period and was appointed to a WGS nonpermanent position returns to the same or different WMS position? If a WMS employee was serving a review period and accepted a nonpermanent appointment to a WGS position and returned to the same or different WMS position, the employer may allow the prior time served in the WMS review period to count towards the completion of the review period.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-450 How does a WMS employee return from an exempt appointment((s))? When an exempt employee has the right to return under WAC 357-04-030 to a WMS position the return will be accomplished as provided in WAC 357-19-195 (~~(and)~~), 357-19-200, and 357-58-132.

WSR 14-06-008

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 20, 2014, 8:28 a.m., effective March 24, 2014]

Effective Date of Rule: March 24, 2014.

Purpose: In January 2008, Congress passed the National Defense Authorization Act (NDAA) which added Family and Medical Leave Act (FMLA) coverage for military exigency leave and service member caregiver leave. The Department of Labor (DOL), already in the process of revising their regulations, added these changes to new regulations which came out in January 2009. Then in October 2009, Congress passed the 2010 NDAA which made further changes to military exigency leave and service member caregiver leave. DOL's new regulations reflect the changes from the second act passed by Congress. These changes were effective March 8, 2013. We are proposing the following rule changes to incorporate the new regulations that became effective March 8, 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-525 and 357-31-530.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 14-02-103 on December 31, 2013.

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 2, Repealed 0.

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

Date Adopted: February 20, 2014.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993? (1) The Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. 2601 et seq.) and its implementing rules, 29 C.F.R. Part 825, and additional amendments and subsequent regulations provide that an eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

- (a) As a result of the employee's serious health condition;
- (b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition;
- (c) For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460; and/or
- (d) Due to a qualifying exigency (as described in the Family and Medical Leave Act of 1993 and its amendments (29 U.S.C. 2601 et seq.) and its implementing rules, 29 C.F.R. Part 825) arising from the fact that the employee's

spouse, child of any age, or parent is on covered active duty or has been notified of pending call to covered active duty in the armed forces (~~(in support of a contingency operation)~~).

(i) (~~(This)~~) Subsection (1)(d) only applies if the spouse, child, or parent of the employee is a member of the National Guard (~~(or)~~), Reserves, (~~(and certain retired members of the regular armed forces and retired reserves. This section does not apply if the spouse, child, or parent of the employee is a member of the regular armed forces on active duty)~~) or regular armed forces.

(ii) (~~(This section)~~) Subsection (1)(d) only applies to federal calls to active duty and the deployment must be to a foreign country.

(2) An eligible employee who is the spouse, son, daughter, parent of a child of any age, or next of kin of a covered service member shall be entitled to a total of twenty-six work weeks of leave during a twelve-month period to care for the service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The leave described in this paragraph shall only be available during a single twelve-month period. This twelve-month period begins on the first day leave is taken pursuant to this subsection.

(a) For purposes of this section, "covered service member" is:

(i) A current member of the armed forces, including National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or

(ii) A covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness. A covered veteran is one who was a member of the armed forces, including National Guard or Reserves, and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

(b) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual other than the individual's spouse, parent, or child in the following order of priority:

- (i) Blood relatives who have been granted legal custody of the service member;
- (ii) Siblings;
- (iii) Grandparents;
- (iv) Aunts and uncles;
- (v) Cousins;
- (vi) The service member can designate another blood relative as the "nearest blood relative" and that designation takes precedent over the above list.

(~~(b)~~) For purposes of this section, "covered service member" is a member of the armed forces, including the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious illness or injury.)

(c) For purposes of this section, "serious illness or injury" means (~~(an injury or illness incurred by the covered service member in the line of duty while on active duty in the~~

armed forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating);

(i) In the case of a current member of the armed forces, including a member of the National Guard or Reserves, an illness or injury incurred by the covered service member in the line of duty while on active duty in the armed forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty while on active duty in the armed forces and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(ii) In the case of a covered veteran an illness or injury that was incurred by the member in the line of duty while on active duty in the armed forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty while on active duty in the armed forces) and manifested itself before or after the member became a veteran and meets one of the four criteria outlined in 29 C.F.R. 825.102.

(3) During the twelve-month period described in subsection (2) above, an eligible employee shall be entitled to a combined total of twenty-six work weeks of leave under subsections (1) and (2) above. Nothing in this section shall be construed to limit the availability of leave under subsection (1) during any other twelve-month period.

(4) For general government employers, the twelve-month period in subsections (1) and (2) above is measured forward from the date the requesting employee begins leave under the Family and Medical Leave Act of 1993. The employee's next twelve-month period would begin the first time leave under the Family and Medical Leave Act is taken after completion of the previous twelve-month period. Higher education employers must define within their family and medical leave policy how the twelve months are measured. With respect to leave to care for a covered service member in subsection (2) of this section, higher education institutions must measure the twelve-month period forward from the day the leave begins regardless of what method is used for other FMLA purposes.

AMENDATORY SECTION (Amending WSR 11-19-091, filed 9/20/11, effective 10/24/11)

WAC 357-31-530 Under the Family and Medical Leave Act of 1993, how is an eligible employee defined? In accordance with 29 C.F.R. Part 825, an eligible employee is an employee who has worked for the state for at least twelve months and for at least one thousand two hundred fifty hours during the previous twelve-month period. Paid time off such as vacation leave, sick leave, temporary salary reduction leave, ((the)) personal holiday, compensatory time off, or shared leave and unpaid leave is not counted towards the one thousand two hundred and fifty hour eligibility requirement.

**WSR 14-06-011
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed February 20, 2014, 3:09 p.m., effective March 23, 2014]

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

Purpose: The office of superintendent of public instruction is authorized to adopt criteria to identify challenged schools in need of improvement and to determine whether a challenged school in need of improvement is also a persistently lowest-achievement school for purposes of the required action district process.

Citation of Existing Rules Affected by this Order: Amending WAC 392-501-707, 392-501-710, and 392-501-720.

Statutory Authority for Adoption: RCW 28A.657.020.

Adopted under notice filed as WSR 13-23-066 on November 18, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

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

Date Adopted: January 6, 2014.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 10-24-057, filed 11/29/10, effective 12/1/10)

WAC 392-501-707 Authority. The authority for these rules is RCW 28A.657.020, 28A.657.030, and 28A.657.100, which require the superintendent of public instruction to annually:

(1) Identify challenged schools in need of improvement and a subset of such schools that are the persistently lowest-achieving schools((-to)) in the state;

(2) Recommend school districts for designation as required action districts to the state board of education((-); and ((to))

(3) Make recommendations to the state board of education regarding the release of school districts from being designated as a required action district.

AMENDATORY SECTION (Amending WSR 10-24-057, filed 11/29/10, effective 12/1/10)

WAC 392-501-710 Purpose. The purpose((s)) of this chapter ((are)) is to:

(1) Adopt criteria for identifying challenged schools in need of improvement and a subset of such schools that are the persistently lowest-achieving schools in the state;

(2) Establish criteria for recommending to the state board of education school districts for required action; and

(3) Establish exit criteria for districts that receive a required action designation.

NEW SECTION

WAC 392-501-715 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Challenged schools in need of improvement" are the lowest-achieving schools within the state. Challenged schools in need of improvement include priority schools and focus schools.

(2) "Schools" are the public schools of the state, including schools that are eligible to use Title I funds for school wide programs, schools that participate in Title I by using Title I funds for school wide programs, schools that are not eligible to use Title I funds, and charter schools.

(3) "Title I" is Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended.

(4) "Washington achievement index" is a system developed by the state board of education pursuant to RCW 28A.657.110 to identify schools and school districts for recognition, continuous improvement, and for additional state support. The Washington achievement index includes an "all students group" category, a "targeted subgroups" category and student subgroup categories including American Indian, Asian, Black/African American, Hispanic, Pacific Islander, White, two or more races, low income, students with disabilities, English language learners.

AMENDATORY SECTION (Amending WSR 10-24-057, filed 11/29/10, effective 12/1/10)

WAC 392-501-720 Process and criteria for identifying ~~((persistently lowest achieving))~~ challenged schools in need of improvement. By ~~((December 1, 2010, and annually thereafter))~~ February 1st of every year, the superintendent of public instruction ~~((shall))~~ will identify ~~((persistently lowest-achieving Title I and Title I eligible schools based on the following criteria:~~

~~((1) A Title I school that has been identified as being in improvement, corrective action or restructuring in accordance with the 2001 reauthorization of the federal Elementary and Secondary Education Act that:~~

~~((a) Is among the lowest achieving five percent in the all students group in reading and mathematics combined for the past three consecutive years; or~~

~~((b) Is a high school that has a weighted average graduation rate that is less than sixty percent based on the past three years of data.~~

~~((2) A secondary school that is eligible for, but does not receive, Title I funds that:~~

~~((a) Is among the lowest achieving five percent of secondary schools in the all students group in reading and mathematics combined for the past three consecutive years; or~~

~~((b) Is a high school that has a weighted average graduation rate that is less than sixty percent based on the past three years of data.~~

~~((3) However, the superintendent of public instruction may exclude specific schools from the list based on a case-by-case analysis. The case-by-case analysis shall consider the percentage of overage and under-credited students, whether including the school on the list would be invalid or unreliable due to the small number of students on whom the identification would be based, and on other reasonable contextual conditions that would make it inappropriate for the school to be included on the list.))~~ challenged schools in need of improvement using the following criteria:

(1) Priority schools are the persistently lowest-achieving schools in the state. Priority schools are:

(a) Schools in the priority-lowest five percent tier of the Washington achievement index for the all students group in reading, writing, science, mathematics and beginning in the 2014-2015 school year, English language arts, combined for the past three consecutive years based on the composite index score; or

(b) High schools that grant diplomas with a five-year adjusted cohort graduation rate that is less than sixty percent based on the past three consecutive years.

(2) Focus schools are:

(a) Schools that are in the underperforming tier of the Washington achievement index in one or more student subgroup categories in reading, writing, science, mathematics and beginning in the 2014-2015 school year, English language arts, combined for the past three consecutive years based on the composite index score; or

(b) High schools that grant diplomas with a five-year adjusted cohort graduation rate that is less than sixty percent among one or more of student subgroup categories for the past three consecutive years.

WSR 14-06-014

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 20, 2014, 5:03 p.m., effective March 23, 2014]

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

Purpose: To move the notification of eligible K-3 high poverty schools from October (after the school year starts) back to April. This is due to K-1 high poverty funding compliance that begins in the 2014-15 school year.

Citation of Existing Rules Affected by this Order: Amending WAC 392-140-915.

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

Adopted under notice filed as WSR 14-02-036 on December 23, 2013.

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: February 6, 2014.

Randy Dorn

AMENDATORY SECTION (Amending WSR 13-21-022, filed 10/7/13, effective 11/7/13)

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is one in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building, and the school is not part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding. (~~CEDARS data as of October of the previous school year will be used to determine school eligibility.~~) If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

~~(A preliminary CEDARS extract of October data will be pulled on March 31st to be used to determine a preliminary list of eligible schools to be published in April. This list will be used by districts as a basis for estimating the total eligible high poverty enrollment to be put into the F-203 for budgeting purposes. Districts will have until September 30th to make adjustments to this data before it is considered final for funding purposes.~~

~~A secondary CEDARS extract of October data will be pulled on July 30th. An updated list of eligible schools will be presented to districts in August.~~

~~On September 30th, the October CEDARS data for the previous school year will be considered final for K-3 high poverty funding purposes. A final data extract will be used to determine schools that are eligible for high poverty funding. Final determination of eligible schools for the current school year will be available in mid-October.~~)

CEDARS data as of October of the previous school year will be used to determine school eligibility. A CEDARS extract of October 1st data will be pulled on March 31st to be used as the basis for K-3 high poverty funding eligibility for the subsequent school year. The list of eligible schools will be published by mid April. No changes to CEDARS data made after March 31st will be considered, and appeals will not be allowed.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's F-203 from September through December. Funding based on average annual full-time equivalent

enrollment reported in final approved eligible schools will begin in January and continue through August. Districts must meet the legislative compliance requirements of the K-1 high poverty funding in order to retain the full allotment.

WSR 14-06-019

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 24, 2014, 10:53 a.m., effective March 27, 2014]

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

Purpose: WAC 192-120-010 is amended to provide that the department will no longer send by regular mail a claimant information booklet to every individual who files a claim for unemployment benefits. Instead, claimants will be e-mailed a notice providing a link to the handbook. If the department is unable to send the notice by e-mail, it will be sent by regular mail. Hard copies of the booklet remain available upon request. The department will prominently display a link to the booklet on its web site.

WAC 192-270-035 is amended to clarify that the time frames for submitting a training plan and enrolling are based on the date of e-mailing or mailing the informational notice, rather than the claimant information booklet.

Citation of Existing Rules Affected by this Order: Amending WAC 192-120-010 and 192-270-035

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 14-02-007 on December 19, 2013.

Changes Other than Editing from Proposed to Adopted Version: Minor changes in WAC 192-270-035 to make it more consistent with WAC 192-120-010. The changes are not substantial and do not change the effect of the amended rule.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, 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 2, Repealed 1.

Date Adopted: February 24, 2014.

Nan Thomas
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-120-010 Claimant information booklet.

(1) The department will publish and post on its web site an information ~~((for claimants))~~ booklet ~~((, form number EMS 8139, to))~~ for unemployment insurance claimants that provides basic information on the laws, rules, and procedures ~~((about claims))~~ for unemployment insurance benefit ~~((s))~~ claims. Single copies of the booklet will be available to the public at no charge.

(2) ~~((Each person))~~ The department will send claimants who file ~~((s))~~ an application for benefits ~~((will be mailed a copy of the most recent version of the information for claimants booklet.~~

(3) ~~Each person who is mailed a copy of the information booklet will be responsible for filing claims in accordance with its instructions.~~

(4) ~~A replacement booklet will be mailed to any person who requests one.~~

(5) ~~Each person who is mailed a booklet is responsible for reporting and filing claims according to the information))~~ a link to the booklet by e-mail or other electronic means. If the department does not have the ability or authorization to notify a claimant by e-mail or other electronic means, the department will mail the claimant a written notice containing the web address for the booklet. The department will mail a hard copy of the booklet to any claimant who requests it.

(3) The department will maintain a brief descriptive web address to help claimants locate the booklet online. The link to the booklet will be prominently displayed on the department's web site.

(4) Each claimant is responsible for filing weekly claims and following all instructions as required in the booklet for the duration of the claim unless other specific information is given to the ~~((person))~~ claimant in writing.

~~((6))~~ (5) The department will assist any person who ~~((may have))~~ advises the department that he or she is having difficulty understanding the booklet.

~~((7))~~ (6) If ~~((you fail to))~~ a claimant does not ask for help in understanding the booklet, ~~((you))~~ he or she will be presumed to understand its contents and held responsible for any failure to act as directed by the booklet.

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the ~~((claimant information booklet))~~ informational notice mailed or e-mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the ~~((claimant information booklet))~~ informational notice is considered your notification of the eligibility requirements for the training benefits program.

(2) Submitting a training plan.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you have ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibil-

ity requirements for training benefits. For new claims, the deadline will be ninety-five calendar days from the date your application for benefits is filed, which represents ninety days plus five days for the ~~((booklet to reach you by mail))~~ informational notice to reach you if sent by regular mail.

(3) Enrollment in training.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you must be enrolled in training within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be one hundred twenty-five calendar days from the date your application for benefits is filed, which represents one hundred twenty days plus five days for the ~~((booklet to reach you by mail))~~ informational notice to reach you if sent by regular mail.

(4) If you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), these time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the time frames established under this section.

(6) If you return to work, and subsequently become unemployed, the time frames described in subsections (2) and (3) begin with the date you file your additional claim for benefits.

WSR 14-06-037

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed February 25, 2014, 1:59 p.m., effective March 28, 2014]

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

Purpose: Chapter 246-105 WAC, the rule aligns immunization exemption procedures required for entry into school and child care centers with RCW 28A.210.090; updates references to national immunization guidelines; and adds definitions and other language to clarify existing policies without changing its effect.

Citation of Existing Rules Affected by this Order: Amending WAC 246-105-020, 246-105-030, 246-105-040, 246-105-050, 246-105-060, and 246-105-070.

Statutory Authority for Adoption: RCW 28A.210.140.

Other Authority: RCW 28A.210.090.

Adopted under notice filed as WSR 13-24-095 on December 3, 2013.

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

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

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

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

Date Adopted: January 8, 2014.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-020 Definitions. For the purposes of this chapter, the words and phrases in this section have the following meanings unless the context clearly indicates otherwise:

(1) "Certificate of exemption (COE)" means a form that is:

(a) Approved by the department and consistent with the requirements of WAC 246-105-050(2); or

(b) An immunization form produced by the state immunization information system.

(2) "Certificate of immunization status (CIS)" means a form that is:

(a) Approved by the department and consistent with the requirements of WAC 246-105-050(1); or

(b) An immunization form produced by the state immunization information system.

(3) "Chief administrator" means:

(a) The person with the authority and responsibility for supervising the immediate operation of a school or child care center; or

(b) A person designated in writing by the statutory or corporate board of directors of the school district or school; or

(c) If (a) and (b) of this subsection do not apply, a person or persons with the authority and responsibility for supervising the general operation of the school district or school.

(4) "Child" means any person regardless of age admitted to:

(a) Any public school district; or

(b) Any private school or private institution subject to approval by the state board of education or described in RCW 28A.305.130 and 28A.195.010 through 28A.195.060; or

(c) Any child care center.

(5) "Child care center" means any (~~licensed~~) facility or center licensed by the department of early learning under chapter 43.215 RCW that regularly provides care (~~for~~) for a group of thirteen or more children one month of age through

twelve years of age for periods of less than twenty-four hours per day (~~(subject to licensure by the department of early learning as described in chapter 43.215 RCW)).~~

(6) "Conditional" means a type of temporary immunization status where a child is not immunized against one or more of the vaccine-preventable diseases required by this chapter for full immunization. A child in this status is allowed to attend a school or child care center provided the child makes satisfactory progress toward full immunization.

(7) "Department" means the department of health.

(8) "Exempt" or "exemption" means a type of immunization status where a child has not been immunized against one or more of the vaccine-preventable diseases required by this chapter for full immunization due to medical, religious, philosophical or personal reasons. A child in this status is allowed to attend a school or child care center only by providing the required COE form.

(9) "Full immunization" or "fully immunized" means an immunization status where a child has provided proof of acquired immunity or has been vaccinated with immunizing agents against each of the vaccine-preventable diseases listed in WAC 246-105-030 according to the national immunization guidelines described in WAC 246-105-040.

(10) "Health care practitioner" means a physician licensed under chapter 18.71 or 18.57 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(11) "Health care provider" means a person licensed, certified or registered in a profession listed in RCW 18.130.040 (2), if administering vaccinations is within the profession's scope of practice.

(12) "Immunizing agent" means any vaccine or other immunologic drug licensed and approved by the United States Food and Drug Administration (FDA), or meeting World Health Organization (WHO) requirements, for immunization of persons against vaccine-preventable diseases.

~~((11))~~ (13) "Local health officer" means the individual appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as the director of public health of a combined city-county or combined county health district.

~~((12))~~ (14) "National immunization guidelines" means guidelines that are:

(a) Approved by the Advisory Committee on Immunization Practices (ACIP); and

(b) Published in the *Morbidity and Mortality Weekly Report (MMWR)*; and

(c) Consistent with the terms and conditions set forth in WAC 246-105-040.

~~((13))~~ (15) "Parent" means, for the purposes of signature requirements in this rule:

(a) The mother, father, legal guardian, or any adult *in loco parentis* of a child (~~(seventeen))~~ less than eighteen years of age (~~(or younger)~~); or

(b) A person eighteen years of age or older; or

(c) An emancipated minor.

~~((14))~~ (16) "Religious membership" means membership in a religious body or church whose teachings or beliefs

preclude a health care practitioner from providing medical treatment to the child.

(17) "Satisfactory progress" for purposes of conditional status or an expired temporary medical exemption means the start or continuance towards full immunization status through the receipt of missing immunizations in a manner consistent with the national immunization guidelines described in WAC 246-105-040 and within the following time frames:

(a) Any missing immunizations must be received within thirty days after the first day of attendance or after a temporary medical exemption is no longer valid, unless receipt within such time is inconsistent with the guidelines.

(b) When the immunizations are part of a series with recommended intervals between doses, each additional missing immunization must be received no later than thirty days past the recommended date of administration of the next dose as established by the guidelines.

~~((15))~~ (18) "School" means a facility, site, or campus for programs of education as defined in RCW 28A.210.070 to include preschool and kindergarten through grade twelve.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-030 Vaccine-preventable diseases children must be protected against for full immunization.

In accordance with the conditions of this chapter, a child is required to be vaccinated against, or show proof of acquired immunity for, the following vaccine-preventable diseases before attending school or a child care center:

- (1) ~~((Diphtheria))~~ Chickenpox (Varicella);
- (2) ~~((Tetanus))~~ Diphtheria;
- (3) ~~((Pertussis (whooping cough)))~~ German Measles (Rubella);
- (4) ~~((Poliomyelitis))~~ Haemophilus influenzae type B disease;
- (5) ~~((Measles (rubeola)))~~ Hepatitis B;
- (6) ~~((Mumps))~~ Measles (Rubeola);
- (7) ~~((Rubella))~~ Mumps;
- (8) ~~((Hepatitis B))~~ Pneumococcal disease;
- (9) ~~((Haemophilus influenzae type B disease))~~ Polio (Poliomyelitis);
- (10) ~~((Varicella))~~ Tetanus; and
- (11) ~~((Effective July 1, 2009, pneumococcal))~~ Whooping Cough (Pertussis).

AMENDATORY SECTION (Amending WSR 12-17-018, filed 8/2/12, effective 9/2/12)

WAC 246-105-040 Requirements based on national immunization guidelines. The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the national immunization guidelines in the "Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Persons Aged 0(-) Through 18 Years,

United States ((2012)) 2013"; as published in the Morbidity and Mortality Week Report (MMWR) ((2012;61(05):Q1-4) 2013;62(01): 2-8.

(2) In addition to the ages and intervals required by subsection (1) of this section, the following vaccine administration guidelines shall apply. Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(a) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(b) Diagnosis or verification of a history of varicella disease by a health care provider acting within his or her scope of practice; or

(c) Diagnosis or verification of a history of herpes zoster by a health care provider acting within his or her scope of practice; or

(d) Serologic proof of immunity against varicella; or

(e) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-050 Required documentation of immunization status. (1) Before a child may attend a school or child care center, a parent must provide proof of immunization status using the following ~~((types of))~~ documentation:

~~((1))~~ (a) A department-approved CIS form ~~((which must be))~~ signed by the parent. The CIS form must include:

~~((a))~~ (i) Name of child ~~((or student));~~

~~((b))~~ (ii) Birth date;

~~((c))~~ (iii) Type of vaccine(s) administered;

~~((d))~~ (iv) Month, day, and year of each dose of vaccine received;

~~((e))~~ (v) A section to indicate whether ~~((an accompanying))~~ a COE form ~~((has been provided))~~ accompanies the CIS form;

~~((f))~~ (vi) A section to document serologic proof of immunity ~~((which must be))~~ signed by a ~~((licensed))~~ health care provider acting within his or her scope of practice and ~~((include))~~ including a copy of a lab report; and

~~((g))~~ (vii) Parent signature and date.

~~((2))~~ (b) If applicable, a department-approved COE form signed by a parent. A COE form must include:

~~((a))~~ (i) Name of child ~~((or student));~~

~~((b))~~ (ii) Birth date;

~~((c))~~ (iii) A place to indicate whether the parent is claiming a medical, religious, personal, or philosophical exemption. This must include:

(A) A statement signed and dated by a health care practitioner stating that he or she has provided the parent information about the benefits and risks of immunization to the child as a condition of obtaining a medical, religious, personal, or philosophical exemption;

(B) The requirement in (b)(iii)(A) of this subsection does not apply to a parent who demonstrates a religious membership under subsection (b)(iii)(F) of this subsection;

~~(C)~~ A ~~(section)~~ place to indicate ~~((a))~~ any permanent or temporary medical exemption for one or more vaccines which must be signed and dated by a ~~((licensed))~~ health care ~~((provider))~~ practitioner;

~~((d))~~ ~~(D)~~ A ~~(section)~~ place to indicate ~~((a religious))~~ any personal or philosophical exemption for one or more vaccines;

~~((e))~~ ~~(E)~~ A ~~(section)~~ place to indicate ~~((a personal or philosophical))~~ any religious exemption for one or more vaccines; and

~~((f))~~ ~~(F)~~ A place to demonstrate religious membership. This must include a statement signed and dated by the parent identifying the name of the church or religious body, affirming membership in it, and affirming that the religious beliefs or teachings of the church or religious body preclude a health care practitioner from providing medical treatment to the child;

~~(iv)~~ Notice to parents that if an outbreak of vaccine-preventable disease for which the child is exempted occurs, the child may be excluded from the school or child care center for the duration of the outbreak; and

~~((g))~~ ~~(v)~~ Parent signature and date.

(2) Parents who must include a signed statement from a health care practitioner under subsection (1)(b)(iii) of this section may submit:

(a) A photocopy of the signed COE in place of the original; or

(b) Along with the COE form, a letter from the health care practitioner in place of the signed statement under subsection (1)(b)(iii) of this section. The letter must:

(i) Indicate that the health care practitioner has provided the parent information about the benefits and risks of immunization to the child;

(ii) Reference the child's name; and

(iii) Be signed and dated by the health care practitioner.

(3) If immunizations are deferred on a temporary basis for medical reasons under subsection (1)(b)(iii)(C) of this section, the child must make satisfactory progress toward full immunization once the medical exemption has expired.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-060 Duties of schools and child care centers. (1) Schools and child care centers shall require:

(a) A CIS form conforming to WAC 246-105-050 (1)(a) for new enrollees registering for admission into kindergarten through grade twelve or a child care center as a requirement of admission. Information on the CIS is used to determine if a child is fully immunized, conditional or exempt.

(b) For enrollees attending under conditional status or an expired temporary medical exemption, documentation of satisfactory progress toward full immunization.

(c) For enrollees claiming exempt status, a signed COE form indicating a medical, religious, philosophical, or personal exemption conforming to WAC 246-105-050 (1)(b)(iii) or, if applicable, WAC 246-105-050(2).

~~((i))~~ ~~A medical exemption is allowed when a signature of a licensed medical doctor (M.D.), a doctor of osteopathy (D.O.), doctor of naturopathy (N.D.), physician assistant~~

~~(P.A.), or nurse practitioner (A.R.N.P.), acting within the scope of practice, certifies medical reasons to defer or forego one or more immunizations required for full immunization.~~

~~(ii) If immunizations are deferred on a temporary basis for medical reasons, the student must make satisfactory progress toward full immunization once the medical exemption has expired.)~~

(2) In maintaining child immunization records, schools and child care centers shall:

(a) Keep all department-approved forms described in WAC 246-105-050 for each enrolled child attending their school or child care center.

(b) Keep a list of children currently with medical, religious, philosophical, or personal exemptions. This list must be transmitted to the local health department upon request.

(c) Return the department-approved CIS or applicable COE or a legible copy of such documents to the parent if the child is withdrawn from a school or child care center or transferred from the school. A school or child care center may not withhold from the parent a child's department-approved CIS or COE for any reasons, including nonpayment of school or child care center fees.

(d) Provide access to immunization records to agents of the state or local health department of each child enrolled.

(3) In maintaining child immunization records, the chief administrator shall:

(a) Retain records for at least three years on a child who is excluded from school under this chapter. The record must include the child's name, address, and date of exclusion.

(b) Submit an immunization status report under chapter 28A.210 RCW either electronically on the internet or on a form provided by the department. The report must be submitted to the department by November 1 of each year. If a school opens after October 1, the report is due thirty days from the first day of school.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-070 Duties of health care providers or organizations. ~~((Persons or organizations))~~ A health care provider administering immunizations, or the organizations he or she works for, either public or private, shall~~((:~~

~~((:))~~ furnish each person immunized, or his or her parent, with a written record of immunization containing information required by ~~((the state board of health; and~~

~~(2) Provide immunizations and records in accordance with chapter 246-100 WAC))~~ this chapter.

WSR 14-06-040
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed February 26, 2014, 8:21 a.m., effective March 29, 2014]

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

Purpose: The rule changes update WACs to reflect changes passed by the 2013 legislature, and provide other updates.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-209-020, 434-215-150, 434-230-047, 434-230-095, 434-335-430, 434-335-440, 434-335-445 and 434-335-450; and amending WAC 434-12A-110, 434-208-060, 434-208-130, 434-208-140, 434-215-021, 434-215-025, 434-215-130, 434-230-015, 434-230-025, 434-230-055, 434-230-100, 434-230-110, 434-230-130, 434-230-045, 434-235-020, 434-235-040, 434-235-030, 434-250-100, 434-250-105, 434-250-110, 434-250-120, 434-250-320, 434-250-095, 434-261-086, 434-261-100, 434-262-020, 434-262-031, 434-262-070, 434-324-026, 434-324-045, 434-324-076, 434-324-111, 434-324-115, 434-324-118, 434-335-270, 434-335-280, 434-335-300, 434-335-310, 434-335-320, 434-335-330, 434-379-009, 434-379-010, 434-381-120, 434-840-005, and 434-840-100.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 13-24-064 on November 26, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 1, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 13, Repealed 3.

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 7, Amended 45, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 31, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 8, Amended 45, Repealed 8; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 26, 2014.

Ken Raske
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-110 Exemptions. (1) The Public Records Act provides that a number of document types are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the office of the secretary of state for inspection and copying:

RCW 5.60.060(2) (attorney-client privilege, together with attorney work product privilege).

RCW 5.60.060(5) (communications to a public officer in official confidence).

RCW 5.60.070 (communications between a mediator and a party to mediation).

RCW 19.34.240 (digital signatures).

RCW 19.34.420 (digital signatures).

RCW 29A.08.710 through ~~((29A.08.785))~~ 29A.08.775 (voter registration records).

RCW 29A.32.100 (arguments and statements for voters pamphlet).

~~((RCW 29A.60.080 (sealing of voting devices);))~~

RCW 29A.60.110 (sealing of ballot containers).

RCW 40.14.030 (exempt records accessioned into state archives).

RCW 40.24.070 (address confidentiality program).

RCW 43.07.100 (records of entities supplying information to the bureau of statistics).

5 U.S.C. § 552(a) (the federal Privacy Act).

The foregoing list is for informational purposes only and failure to list an exemption shall not affect the efficacy of any exemption. The secretary of state reserves the right to determine that a public record is exempt under the provisions of state law.

(2) The office of the secretary of state is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(b) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

(c) Lists of presidential electors selected by political parties or independent candidates;

(d) Voted ballots and signed ballot declarations from service and overseas voters received no later than 8:00 p.m. on election day. Voted ballots and signed ballot declarations from voters who are neither service nor overseas voters received no later than 8:00 p.m. on election day, as long as hard copies of the ballot and ballot declaration are received no later than the day before certification of the election (~~Consistent with WAC 434-250-080, it is the first ballot and declaration received that may be processed and counted. Voted ballots received electronically no later than 8:00 p.m. on election day are timely even if the postmark on the return envelope is after election day~~);

(e) Resolutions from cities, towns, and other districts calling for a special election;

(f) Voter registration forms, unless the form is illegible or the signature image is poor quality requiring the county auditor to reject the form;

(g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC 434-261-050; and

(h) Requests to withdraw.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, referendum, recall, or other signature petitions may be filed electronically.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-208-130 Political parties. (1) ~~((For purposes of RCW 29A.04.086, "major political party" means a political party whose nominees for president and vice president received at least five percent of the total votes cast for that office at the last preceding presidential election. A political party that qualifies as a major political party retains such status until the next presidential election at which the presidential and vice presidential nominees of that party do not receive at least five percent of the votes cast.~~

~~(2))~~ For purposes of RCW 42.17A.005, the secretary of state recognizes as a minor political party a political party whose nominees for president and vice-president qualified to appear on the ballot in the last preceding presidential election according to the minor party nomination process provided in chapter 29A.56 RCW ~~((29A.20.111 through 29A.20.201))~~. A political party that qualifies as a minor political party retains such status until certification of the next presidential election. This definition is for purposes of chapter 42.17A RCW only.

~~((3))~~ (2) As allowed by WAC 434-215-012, 434-215-120, and 434-215-130, candidates for partisan office may state a preference for any political party and are not restricted to stating a preference for a political party that meets the definition of major or minor political party. A candidate's party preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate. With the exception of elections for president and vice-president, a party's status as a major or minor political party, or a candidate's preference for a major or minor political party, plays no role in how candidates qualify to appear on the primary election ballot, qualify to appear on the general election ballot, or are elected to public office.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-208-140 Election notices. Election notices are governed by RCW 29A.04.220 and ~~((29A.52.XXX (section 45, chapter 10 (ESSB 5124), Laws of 2011)))~~ 29A.52.355.

(1) "Short titles for ballot measures" means the name of the jurisdiction, the measure number, and the heading or caption.

(2) The notice for elderly and disabled person required by RCW 29A.04.220 may be combined with the notice of election required by RCW ~~((29A.52.XXX (section 45, chapter 10 (ESSB 5124), Laws of 2011)))~~ 29A.52.355 in a single publication.

(3) Public meetings associated with the election include county canvassing board meetings.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-209-020 Definitions.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-215-021 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the office of precinct committee officer shall be in substantially the following form:

((

Declaration of Candidacy

Precinct Committee Officer

instructions File this form with your county elections department.
Note: This document becomes public record once filed.

office information member of the Democratic Party
 Republican Party
precinct representing (name / number)

personal information as registered to vote
first name middle last
date of birth (mm / dd / yyyy) phone number
residential address city / ZIP

ballot information
exact name I would like printed on the ballot (*only contested races will appear on the ballot*)

contact information
mailing address (*if different from residential address*) city / ZIP
email address phone number

oath
I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.
Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.
sign here [] date here []

for office use only
voter registration number date
 precinct verified office code
staff

03/2012

))

Declaration of Candidacy

Precinct Committee Officer

instructions File this form with your county elections department.
No filing fee is required.
Note: This document becomes public record once filed.

office information member of the Democratic Party
 Republican Party
precinct representing (name / number)

personal information as registered to vote
first name middle last
date of birth (mm / dd / yyyy) phone number
residential address city / ZIP

ballot information
exact name I would like printed on the ballot (*only contested races will appear on the ballot*)

contact information
mailing address (*if different from residential address*) city / ZIP
email address phone number

oath
I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.
Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.
sign here [] date here []

for office use only
voter registration number date
 precinct verified office code
staff

03/2012

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

WAC 434-215-025 Filing fee petitions. (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

~~(2) ((The filing fee petition described in RCW 29A.24.101(3) does not apply. The filing fee petition must be in substantially the following form:~~

~~The warning prescribed by RCW 29A.72.140; followed by:~~

~~"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."~~

~~(3)) A candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically.~~

~~((4)) (3) A candidate submitting a filing fee petition must submit all signatures when filing the declaration of candidacy. The candidate cannot supplement the signatures at a later date.~~

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

~~(2) ((The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States.)) If two or more certificates of nomination are filed purporting to nominate the same candidates for president and vice-president by two different minor political parties, or both by a party and as an independent candidate, the first valid certificate of nomination filed with the secretary of state shall be accepted and subsequent certificates must be rejected.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-150 No major party ticket.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-230-015 Ballots and instructions. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A citizen of the United States;

A legal resident of the state of Washington;

At least 18 years old on election day;

Voting only once in this election;

Not under the authority of the Department of Corrections for a Washington felony conviction; and

Not disqualified from voting due to a court order.

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this ~~((oath))~~ declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

County auditors may use existing stock of declarations until ~~((June 1, 2012))~~ December 31, 2014.

(d) Explain how to make a mark, witnessed by two other people, if unable to sign the declaration;

(e) Explain how to place the ballot in the security envelope and place the security envelope in the return envelope;

(f) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(g) If applicable, explain that postage is required, ((if applicable)) or exactly how much postage is required. See WAC 434-250-200 on return postage;

(h) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

(i) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

(j) Include, for a primary election that includes a partisan office, a notice on an insert explaining:

"In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(k)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (k)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) Counties may use varying sizes and colors of ballots, provided such size and color is used consistently throughout

a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.170. (~~Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161(5), and 29A.36.191.~~)

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-025 Order of offices. Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

- (1) Initiatives to the people;
- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature and any alternate proposals;
- (5) Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);
- (6) Advisory votes;
- (7) Countywide ballot measures;
- ~~((7))~~ (8) President and vice-president of the United States;
- ~~((8))~~ (9) United States senator;
- ~~((9))~~ (10) United States representative;
- ~~((10))~~ (11) Governor;
- ~~((11))~~ (12) Lieutenant governor;
- ~~((12))~~ (13) Secretary of state;
- ~~((13))~~ (14) State treasurer;
- ~~((14))~~ (15) State auditor;
- ~~((15))~~ (16) Attorney general;
- ~~((16))~~ (17) Commissioner of public lands;
- ~~((17))~~ (18) Superintendent of public instruction;
- ~~((18))~~ (19) Insurance commissioner;
- ~~((19))~~ (20) State senator;
- ~~((20))~~ (21) State representative;
- ~~((21))~~ (22) County officers;
- ~~((22))~~ (23) Justices of the supreme court;
- ~~((23))~~ (24) Judges of the court of appeals;
- ~~((24))~~ (25) Judges of the superior court; and
- ~~((25))~~ (26) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-055 Partisan primary. In a primary for partisan congressional, state or county office conducted pursuant to chapter 2, Laws of 2005 (Initiative 872):

- (1) Voters are not required to affiliate with a political party in order to vote in the primary election. For each office, voters may vote for any candidate in the race.

(2) Candidates are not required to obtain the approval of a political party in order to file a declaration of candidacy and appear on the primary or general election ballot as a candidate for partisan office. Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. A candidate's political party preference is not used to determine which candidates advance to the general election.

(3) Based on the results of the primary, the two candidates for each office who receive the most votes and who receive at least one percent of the total votes cast for that office advance to the general election. The primary election does not serve to nominate any political party's candidates, but serves to winnow the number of candidates down to a final list of two for the general election. Voters in the primary are casting votes for candidates, not choosing a political party's nominees. ~~((RCW 29A.36.191 does not apply since the predecessor statute, RCW 29A.36.190, was repealed in chapter 2, Laws of 2005.))~~

(4) Chapter 2, Laws of 2005 (Initiative 872) repealed the prior law governing party nominations. Political parties may nominate candidates by whatever mechanism they choose. The primary election plays no role in political party nominations, and political party nominations are not displayed on the ballot.

~~((5) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.))~~

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-230-100 Political party precinct committee officer. (1) The election of major political party precinct committee officers is established in RCW ~~((29A.52. — (section 3, chapter 89, Laws of 2012)))~~ 29A.52.171 and RCW 29A.80.051.

(2) The election of precinct committee officer is an intra-party election; candidates compete against other candidates in the same political party.

(a) If only one candidate files for a position, that candidate is deemed elected without appearing on the ballot and the county auditor shall issue a certificate of election.

(b) If more than one candidate files for a position, the contested race must appear on the ballot at the primary and the candidate who receives the most votes is declared elected.

(c) If no candidates file during the regular filing period, the race does not appear on the ballot and the position may be filled by appointment pursuant to RCW 29A.28.071.

(d) No write-in line may be printed on the ballot for a contested race, and no write-in votes may be counted.

(3) If both major political parties have contested races on the ballot in the same precinct, the political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political party appearing sec-

ond. Within each party, candidates shall be listed in the order determined by lot.

(4)(a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The following explanation must be printed before the list of candidates: "For this office only: In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. Your vote for a candidate affirms your affiliation with the same party as the candidate. This preference is private and will not be matched to your name or shared."

(c)(i) If all candidates are listed under one heading, the applicable party abbreviation "Dem" or "Rep" must be printed next to each candidate's name, with the first letter of the abbreviation capitalized. For example:

John Smith Dem

Jane Doe Dem

(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized.

(d) One of the following statements, as applicable, must be printed directly below each candidate's name: "I affirm I am a Democrat." or "I affirm I am a Republican."

(5) A voter may vote for only one candidate, regardless of party, for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as over-votes.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-110 President and vice-president of the United States. (1) When the race for president and vice-president appears on a general election ballot, the candidates for these offices must be paired together.

(2) The full name of the political party, rather than an abbreviation, must be provided for each pair of candidates, with a designation that these candidates are the nominees of the party. The first letter of each word in the political party name must be capitalized. For example:

Example Party Nominees

(3) If candidates are not nominees of a political party and are running as independent candidates, that description must be provided for the pair of candidates. The first letter of each word in the description must be capitalized. For example:

Independent Candidates

(4) The order that candidates appear on the ballot is based on their political party ~~((The political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the candidates of the other political parties following according to the votes cast for their nominees for president at the last presidential election. Candidates of parties that did not have nominees in the last presidential election, and independent candidates, follow in the order of their qualification with the secretary of state))~~, as established

by RCW 29A.36.161. Minor party and independent candidate nominating petitions are processed in the order in which they are submitted to the office of the secretary of state.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-230-130 Envelopes. Mail-in ballots must be accompanied by the following:

(1) A security envelope or sleeve, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, display the words ("~~POSTAGE REQUIRED~~") "APPLY FIRST-CLASS POSTAGE HERE" or "POSTAGE PAID" in the upper right-hand corner, and conform to postal department regulations.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-230-047 Nonpartisan county office.

WAC 434-230-095 When a candidate dies or is disqualified.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-045 Candidate format. (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be listed first, and the candidate who received the second highest number of votes in the primary shall be listed second. If the two candidates who received the most votes in the primary received exactly the same number of votes, the order in which their names are listed on the general election ballot shall be determined by lot.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith
(Prefers Example Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith
(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-235-020 Voter registration. (1) A service or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) A ballot with a valid signature on the ballot declaration.

(2) Pursuant to RCW 29A.40.010 and 29A.40.091, a service or overseas voter does not have to be registered in order to request a ballot. Consequently, a service or overseas voter who is not already registered in Washington may request a ballot and (~~be registered~~) register after the registration deadlines of RCW 29A.08.140 have passed. A service or overseas voter who is already registered to vote in Washington may not transfer or update a registration after the deadlines in RCW 29A.08.140 have passed.

(a) If the voter is not currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system as a service or overseas voter.

(b) A service or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to a missing or incomplete residential address on the

application, the county auditor must attempt to contact the voter to clarify the application.

(i) If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office.

(ii) After the election or primary, the county auditor must place the voter on inactive status and send the voter a confirmation notice to obtain the voter's correct residential address.

(d) A service or overseas voter (~~(who registers to vote by signing the ballot declaration)~~) is not required to provide a driver's license number, Social Security number or other form of identification as required ~~(in)~~ by RCW 29A.08.107.

(3) The county auditor must offer a service or overseas voter the option of receiving blank ballots by e-mail or postal mail. This requirement is satisfied if the service or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when registering, updating a registration, or requesting a ballot. The county auditor must attempt to contact the voter by phone, e-mail, postal mail, or other means. If the voter does not indicate a preference or does not respond, the county auditor must send ballots by postal mail.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-235-040 Processing ballots. (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) For service and overseas voters, the date on the ballot declaration associated with the voter's signature determines the validity of the ballot. The signature on the ballot declaration must be dated no later than election day.

(3) Voted ballots returned by fax or e-mail must be received no later than 8:00 p.m. on election day. ~~((The county auditor must apply procedures to protect the secrecy of voted ballots returned by fax or e-mail. Voted ballots returned by e-mail may be returned as multiple attachments or multiple e-mails. In order to maintain the secrecy of the ballot, the county auditor must print the e-mail and attachments. The printed e-mail and declaration page must be processed and retained the same as a ballot declaration. The printed ballot must be processed and retained the same as other ballots. In order to maintain the secrecy of the ballot, the electronic versions of the e-mail, ballot declaration, and ballot are exempt from public disclosure.))~~

(4) The county auditor must provide statistics on voting by service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-235-030 Voting. (1) A service or overseas voter may request or return a ballot by:

(a) Any manner authorized by WAC 434-250-030;

(b) A federal post card application issued by the federal voting assistance program; or

(c) A federal write-in absentee ballot issued by the federal voting assistance program.

(2) The county auditor must issue a ballot by mail, e-mail, or fax if specifically requested by the voter. A ballot does not have to be mailed if it is e-mailed or faxed to the voter. If an e-mail is returned as undeliverable and the voter has not provided an alternate e-mail address, then the ballot must be sent by postal mail.

(3) Ballot materials must include the mailing address, phone number, fax number, e-mail address, and web site of the county auditor's office to enable a voter to contact the elections office for additional information about the election. Ballot materials must include instructions on how to return the ballot by fax, e-mail, or postal mail, including how to include the ballot privacy sheet between the declaration page and the ballot. Ballot materials must include instructions on how to confirm that the voted ballot has been received by the elections office, in a format that the voter can keep after the voted ballot has been returned.

(4) If the county auditor is unable to issue a ballot due to insufficient information, the county auditor must attempt to contact the voter, consistent with WAC 434-235-020, to clarify the request. If the county auditor is unable to obtain sufficient information, other than residential address, to issue the ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(5) Pursuant to RCW 29A.40.091, return envelopes must be printed to indicate that they may be returned postage-free.

NEW SECTION

WAC 434-250-037 Mail ballot certification. Pursuant to RCW 29A.40.070, fifteen days before each primary or election, the county auditor shall certify to the secretary of state:

(1) That ballots were mailed or issued to service and overseas voters at least forty-five or thirty days before election day, whichever deadline is applicable. For elections that include a federal office, the certification must include the number of ballots mailed or issued to service and overseas voters;

(2) That ballots were mailed or issued to regular voters at least eighteen days before election day;

(3) That ballots issued via electronic ballot delivery systems were proofed and checked for accuracy prior to the mailing deadline for service and overseas ballots; and

(4) If any ballots were not mailed or issued by the applicable deadlines, the reason for the delay and steps taken to remedy the delay.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-100 Ballot deposit sites. (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open until 8:00 p.m. Staffed deposit sites may be open according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. ~~((If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place and refer the ballot to the canvassing board.))~~

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) Ballot boxes must be secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must ~~((be placed into secured transport carriers and returned to))~~ either be transported to the county auditor's office or another designated location by at least two authorized people, or placed into a secured transport carrier for transport to the county auditor's office or other designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots; however, any voter who is in line at 8:00 p.m. must be allowed to vote and deposit his or her ballot. If a ballot is returned after the ballot box is emptied or secured at 8:00 p.m. on election day, the ballot must be referred to the canvassing board.

(3) Within twenty-five feet of a ballot deposit site that is not located within a voting center, no person may electioneer, circulate campaign material, solicit petition signatures, or interfere with or impede the voting process. Whenever it is necessary to maintain order around a ballot deposit site, the county auditor may contact a law enforcement agency for assistance.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-105 Voting centers. (1) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be an accessible location. "Accessible" means the combination of factors which create an environment free of barriers to the mobility or functioning of voters. The environment consists of the routes of travel to and through the buildings or facilities used for voting. The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a voting center. A voting center is fully accessible if all responses in each category are "Yes";

(b) Be marked with signage outside the building indicating the location as a place for voting;

(c) Issue ballots that include a declaration in the ballot materials;

(d) Offer disability access voting in a location or manner that provides for voter privacy. For each voting center, the county auditor must have a contingency plan to accommodate accessible voting in the event that an accessible voting unit malfunctions or must be removed from service;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095, if the voting center offers voting on a direct recording electronic voting device. ~~The ((voter must either:~~

(i) county auditor shall require the voter to print and sign the ballot declaration provided in WAC 434-230-015. Ballot declaration signatures may not be maintained in the order in which they were signed. Before the voter may vote on a direct recording electronic voting device, the county auditor must either:

(i) Verify the signature on the ballot declaration against the signature in the voter registration record; or

(ii) Require the voter to provide photo identification, consistent with RCW 29A.40.160; ((or

(ii) Sign the ballot declaration required by WAC 434-230-015, and the signature on the declaration must be verified against the signature in the voter registration record before the voter may vote on a direct recording electronic voting device;))

(g) Provide either a voters' pamphlet or sample ballots;

(h) Provide voter registration forms;

(i) Display a HAVA voter information poster;

(j) Display the date of that election;

(k) During a primary that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(j), and during a general election that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(k). The party preference notices may also be posted on-screen in direct recording electronic voting devices;

(l) Provide instructions on how to properly mark the ballot; and

(m) Provide election materials in alternative languages if required by the Voting Rights Act.

(2) Where it appears that a particular voter is having difficulty casting his/her vote, and as a result, is impeding other voters from voting, the staff may provide assistance to that voter in the same manner as provided by law for those voters who request assistance. Where it appears that a voter is impeding other voters from voting to simply cause delay, the staff shall ask the voter to expedite the voting process. In the event the voter refuses to cooperate, the staff shall, whenever practical, contact the county auditor, who may request assistance from the appropriate law enforcement agencies if he or she deems such action necessary.

(3) At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots; however, any voter who is in a voting center or in line at a voting center at 8:00 p.m. must be allowed to vote and deposit his or her ballot. Voted ballots, including provisional, mail-in, and direct recording electronic and paper records, must be placed into secured transport carriers for return to the county auditor's office or another designated location.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

- (a) Verification of the signature and postmark on the ballot declaration;
 - (b) Removal of the security envelope from the return envelope;
 - (c) Removal of the ballot from the security envelope;
 - (d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;
 - (e) Duplication of damaged and write-in ballots;
 - (f) Scanning and resolution of ballots on a digital scan voting system; and
 - (g) Other preparation of ballots for final processing.
- (2) "Final processing" means the reading of ballots by an optical scan voting system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ballots.

(5) Initial processing of voted ballots, which may include scanning and resolving ballots on a digital scan voting system, may begin as soon as voted ballots are received. All ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and

logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor follows a security plan that has been submitted ~~((an))~~ by the county auditor and approved ~~((security plan~~ ~~to))~~ by the secretary of state ~~((that))~~ to prevent ~~((s))~~ tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all overvotes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted if:

(a) The ballot declaration is signed with a valid signature;

(b) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark; and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) The ballot ~~((of a service or overseas voter))~~ is received by fax or e-mail ~~((is received))~~ no later than 8:00 p.m. on election day. If the ballot is from a voter who is neither a service nor overseas voter, a hard copy of the ballot and ballot declaration must also be received no later than the day before certification of the election.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which

the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4)(a) For ballots returned by fax or e-mail, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by e-mail, the county auditor must print the e-mail and attachments; the printed e-mail and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the e-mail, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted ballots returned by e-mail may be returned with multiple attachments or as multiple e-mails.

(b) If the ballot is from a voter who is neither a service nor overseas voter, the voter must also return a hard copy of the ballot and ballot declaration no later than the day before certification.

(i) Consistent with WAC 434-250-080, the first valid ballot and declaration received is counted; subsequently received versions are not counted.

(ii) In order to maintain secrecy of the ballot, the hard copy ballot may not be compared to the ballot received electronically.

(iii) Voted ballots returned electronically no later than 8:00 p.m. on election day are timely even if the hard copy subsequently returned contains a postmark after election day.

(c) Ballots returned electronically with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(5) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

NEW SECTION

WAC 434-250-200 Return postage. The Mailing Standards of the United States Postal Service, Domestic Mail Manual, requires each county auditor to include on the ballot, ballot instructions, mailing instructions or return envelope, and the specific amount of first-class postage necessary to return the ballot by mail. This is not required:

(1) For ballots issued to service and overseas voters;

(2) For ballots returned using the business reply mail service;

(3) For ballots returned with postage prepaid by stamps, meter, or permit reply mail; or

(4) If the county auditor has an account with the post office guaranteeing payment of return postage due.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-320 Locations to deposit ballots. A county auditor must provide at least two locations to deposit ballots beginning eighteen days prior to election day and ending at 8:00 p.m. on election day. These locations may be either a ballot deposit site, as defined in WAC 434-250-100, or a voting center, as defined in WAC 434-250-105. At least one location may be at the county auditor's office. All other deposit sites must be at geographical locations that are different from the county auditor's office.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-095 Direct recording electronic voting devices. (1) ~~(If a voter requests to vote on a direct recording electronic voting device, the county auditor must first confirm that the voter has not already returned a voted ballot. Confirmation that the voter has not already returned a voted ballot may be achieved by accessing the county voter registration system by electronic, telephonic, or other means. If the county auditor is unable to confirm that the voter has not already returned a voted ballot, the voter may not vote on a direct recording electronic voting device.~~

~~In order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If a voted mail ballot is subsequently returned after a ballot is cast on the direct recording electronic voting device, the mail ballot must not be counted.~~

~~(2)) Before a direct recording electronic voting device may be used by a voter, an election officer must verify:~~

~~(a) The paper printer or paper canister is secured so that the paper record may not be removed from the device by anyone other than an election officer;~~

~~(b) Only a blank portion of the paper record is visible to the voter as he or she approaches the device; and~~

~~(c) The paper printer or paper canister is sealed with a numbered seal to ensure the paper tape cannot be removed by the voter.~~

(2) Before a direct recording electronic voting device may be used by a voter, an election officer must confirm that the voter has not already returned a voted ballot. Confirmation that the voter has not already returned a voted ballot may be achieved by accessing the county voter registration system by electronic, telephonic, or other means. In order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If the county auditor is unable to confirm whether the voter has already returned a voted ballot, the voter may not vote on a direct recording electronic voting device. If a voted mail ballot is subsequently returned after a ballot is cast on the direct recording electronic voting device, the mail ballot must not be counted.

(3)(a) If a ballot on a direct recording electronic device has not been cast but has been printed by the voter, the election officer may cast the ballot.

(b) If a ballot on a direct recording electronic device has not been printed nor cast by the voter, the election officer must cancel the ballot and make a corresponding notation in the accountability form.

(4) If any seal or lock on a direct recording electronic device, including seals for the paper printer or paper canister, has been broken or tampered with, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(5) If the paper printer for a direct recording electronic device malfunctions or runs out of paper, the following must occur:

(a) If the election officer has confirmed that no ballots have been cast after the printer ran out of paper or malfunctioned, he or she must remove the direct recording electronic device and paper printer from service, and document the problem. The direct recording electronic device and paper printer may be returned to service only if the problem has been corrected.

(b) If the election officer is unable to confirm that no ballots were cast after the printer ran out of paper or malfunctioned, or if the problem cannot be corrected, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. The auditor must present a written report regarding the circumstances of the removal from service to the county canvassing board.

(6) If an electronic ballot has been cast without a readable corresponding paper record, the county auditor may print the ballot image stored on the device for use as a paper record for that device, in the case of an audit or manual recount. This may require printing all ballot images from that machine.

(7) A provisional ballot may only be voted on a direct recording electronic voting device if the voting system has been certified by the secretary of state for provisional voting and the county auditor has submitted approved procedures to the secretary of state.

(8)(a) If a direct recording electronic voting device must be transferred from a voting center that is not in the same location as the counting center, the paper records must be either:

(i) Placed in transfer containers; or

(ii) Transferred in the paper printer or paper canister if the paper printer or paper canister is sealed so the paper record cannot be removed without breaking the seal.

(b) Paper records must be accompanied by a transmittal sheet which must include at a minimum:

(i) The voting center where the direct recording electronic device was utilized;

(ii) The seal number from the paper printer; and

(iii) The serial number or other identifier of the direct recording electronic device if distinctly unique from the seal number on the paper record printer or paper canister.

(c) If paper records are placed in a transfer container, the election officer must sign the transmittal sheet and place it in the transfer container. The number of paper record tapes included in the container must be recorded on the transmittal sheet. A unique prenumbered seal must be applied to the container.

(d) The data pack or cartridge of the direct recording device must be transported to the counting center in a sealed container.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481(a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area shall be valid only if they ~~((fulfill the consistent pattern requirements))~~ form a pattern of similar marks as outlined in (b) of this subsection, or qualify as written instructions in (e) of this subsection. Marks that trace or outline the target area are not valid votes unless they ~~((fulfill the consistent pattern requirements))~~ form a pattern of similar marks as outlined in (b) of this subsection. The following marks in the target area are exceptions that are not valid votes:

(i) Obvious stray marks((-);

(ii) Hesitation marks((-);

(iii) Parts of written notes((-); and

(iv) Corrected votes, as described in (c) and (e) of this subsection.

(b) ~~((Consistent))~~ Pattern of similar marks. Marks made outside of the target area shall ~~((only))~~ be counted as valid votes ~~((if))~~ as long as those marks form a ((consistent)) pattern of similar marks ((is used throughout the whole ballot. This means that)). All races and issues for which the voter has indicated a choice outside the target area must have ~~((the same))~~ a similar mark.

(i) Marks made outside of the target area may be counted as valid votes even if one pattern of similar marks is used on one page of the ballot and another pattern of similar marks is used on another page of the ballot.

(ii) Marks made outside of the target area shall be counted as valid votes if one pattern of similar marks is used for measures and another pattern of similar marks is used for candidate races.

(iii) If some marks are in the target area and some are not, but the same type of mark is used ((in a consistent pattern throughout the whole ballot)), all such marks shall be counted as valid votes.

(iv) If the marks strike through candidate names or ballot measure responses in a ((consistent)) pattern of similar marks throughout the ((whole)) ballot, all such marks shall be counted as valid votes.

(v) A mark outside the target area on a ballot that contains only one race or measure is not required to form a pattern.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote. If a second choice is not marked, the race shall be considered undervoted.

(iii) If the voter has marked two target areas and placed an 'X' or slash over one of the marked areas, the choice without the 'X' or slash shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and placed an 'X' in the same target area, but has not marked a second target, it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to vote or correct a vote (~~and provides~~) by providing written instruction regarding his or her intent, it shall be counted as the voter instructed. Written instructions can include(s) words, circles, lines, or arrows.

(f) Identifying marks. Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a declared write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Write-in: Blank line and candidate. If a candidate's target area is marked, and the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: Overvotes. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Write-in: Not eligible. A write-in vote for a race not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked (~~for a candidate~~) in a target area partially extend into the response area (~~of another candidate~~), it shall be counted as a vote if most of the mark is in the (~~proper~~) target area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

Exception: On a federal write-in absentee ballot (FWAB) in which the voter has not written in a candidate's name but has written in the name of a political party, the written instructions may be counted as a vote if the canvassing board can discern that a candidate's party preference is consistent with the voter's instructions. The canvassing board shall not count the instructions as a vote if no candidate's party preference is consistent with the voter's instructions, or if multiple candidates' party preferences are consistent with the voters' instructions.

(s) Anything else. Voter intent on questionable marks not covered by the rules in this manual must be determined by county canvassing boards according to all applicable laws of the state of Washington and the canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-261-100 Ballot duplication procedures. (1)

Written procedures shall be established detailing the situations in which ballots may be duplicated. These procedures shall be included as a part of the county canvassing board manual.

(2) If a county uses an automated duplication program, only votes appearing in a human-readable form on the original ballot may be duplicated onto a machine-readable ballot. The human-readable votes on the original ballot must be compared to the votes printed on the duplicated ballot to ensure that the votes are duplicated accurately. If a human-readable version of any races or ballot pages of the original

ballot are not returned or available, votes in those races may not be duplicated or counted.

NEW SECTION

WAC 434-261-108 Random check of ballot counting equipment. If a random check of up to six batches of ballots is conducted pursuant to RCW 29A.60.170 in a county that uses optical scan voting equipment, each batch must be tabulated on a different scanner if more than one scanner is used in the election. If there are more scanners used in the election than batches to be checked, then the scanners must be selected at random.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-020 Preliminary abstract of votes. (1) Prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. The preliminary abstract of votes must list separately for each precinct:

(a) ~~((Votes cast by mail ballot;))~~ Number of registered voters;

(b) Number of ballots cast;

(c) Votes cast for and against each measure((s));

~~((e))~~ (d) Votes cast for each candidate((s)); ~~((and~~

~~((d))~~ (e) Total number of write-in votes in each race; and

(f) Total number of overvotes and undervotes in each race.

(2) Pursuant to RCW 29A.60.230, the county auditor may aggregate results or take other necessary steps to maintain the secrecy of ballots.

(3) The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where a voter has already voted one ballot;

(b) Where two voted ballots are ~~((contained within a))~~ returned ~~((mail ballot envelope containing))~~ together:

(i) If the two ballots are returned with only one valid signature on the ballot declaration, ((unless both ballots are voted identically, in which case one ballot will)) the races and measures voted the same on both ballots may be counted once.

(ii) If ~~((there are))~~ the two ballots are returned with two valid signatures on the ballot declaration, both ballots ~~((must))~~ may be counted in their entirety;

(c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(e) Where the voter has overvoted;

(f) Where the voter validly transferred out of the county.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-262-070 Official county canvass report. (1) Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon;

(b) Provides the total number of registered voters and votes cast in the county;

(c) Contains the oath required by RCW 29A.60.200, signed by ~~((all members of the board or their designees))~~ the county auditor and attested to by the chair or designee who administered the oath; and

(d) Shall have a space where the official seal of the county shall be attached.

(2) The official county canvass report shall include:

(a) The certification;

(b) The auditor's abstract of votes as described in WAC 434-262-030;

(c) The reconciliation report required by RCW 29A.60.235, which must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received, and any additional information necessary to explain variances; and

(d) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The certification shall be signed by all members of the county canvassing board or their designees. If one member of the canvassing board cannot be present, and a designee for that member is unavailable, the certification shall be signed by a quorum of the board.

(4) The official county canvass report is the cumulative report referenced in RCW 29A.60.230. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court. The vote totals contained therein shall constitute the official returns of that election.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-324-026 Voter registration form.

((

instructions

You must be a United States citizen to register to vote.

how to register to vote or update a registration

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office. Addresses are on the reverse side.

for more information

online www.vote.wa.gov
call 1-800-448-4881
visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Your name, address, gender and date of birth are public information.

12/2011

Washington State Voter Registration Form

register online at www.myvote.wa.gov

qualifications

if you mark no to either of these questions, do not complete this form

- yes no I am a citizen of the United States of America.
- yes no I will be at least 18 years old by the next election.

personal information

last name first middle

date of birth (mm / dd / yyyy) male female

residential address (in Washington)

city ZIP

mailing address (if different than residential address)

city state / ZIP

email address (optional) phone number (optional)

- I am in the Armed Forces (includes National Guard and Reserves).
- I am a U.S. citizen living outside the U.S.

Washington driver license / state ID #

□ □ □ □ □ □ □ □ □ □ □ □

if you do not have a Washington driver license or state ID card, provide the last four digits of your Social Security number

x x x - x x - □ □ □ □

declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for 30 days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here [] date here []

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name first middle

former residential address city state / ZIP

))

Instructions

Use this form to register to vote or to update an existing registration.

Print all information clearly using black or blue pen.

Mail or deliver this completed form to your county elections department. Addresses are on the next page.

Deadline

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, contact your county elections department.

Voting

You will receive your ballot in the mail. Contact your county elections department if you wish to vote in person.

Notice

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Public disclosure

Your name, address, gender and date of birth are public information.

For more information

web www.vote.wa.gov

call 1-800-448-4881

visit your county elections department

Washington State Voter Registration Form

Register online at www.myvote.wa.gov

1 Personal information

last name _____ first _____ middle _____

date of birth (mm / dd / yyyy) _____ male female

residential address (in Washington) _____ apt # _____

city _____ ZIP _____

mailing address (if different than residential address) _____

city _____ state / ZIP _____

phone number (optional) _____ email address (optional) _____

2 Qualifications

If you mark no to either of these questions, do not complete this form

- yes no I am a citizen of the United States of America.
- yes no I will be at least 18 years old by the next election.

3 Military / overseas status

- I am in the Armed Forces (includes National Guard and Reserves; and military spouses or dependents away from home because of service).
- I live outside the U.S.

4 Identification — Washington driver license / ID number

If you do not have a Washington driver license or ID, provide the last four digits of your Social Security number x x x - x x -

5 Former registration

If you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name _____ first _____ middle _____

former residential address _____ city _____ state / ZIP _____

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I will be at least 18 years old when I vote, I am not disqualified from voting due to a court order, and I am not under Department of Corrections supervision for a Washington felony conviction.

sign here _____ date here _____

NEW SECTION

WAC 434-324-028 Illegible or missing postmarks. (1)

Consistent with RCW 29A.08.020, if the postmark on a voter registration application submitted by mail is illegible or missing, the date of receipt by the elections office is considered the date of application. If an application is received by the

elections official by the close of business on the fifth day after the cutoff date for voter registration, the application is considered to have arrived by the voter registration deadline.

(2) Postage that contains a date, such as metered postage or a dated stamp, is not a postmark. If an application has dated postage and no postmark, it is an application missing a postmark.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-324-045 Verification of applicant's identity. (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identification notice at the time of registration that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, he or she is provisionally registered to vote.

(b) A statement explaining that if this information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide his or her driver's license number, state identification card number or the last four digits of his or her Social Security number, or a copy of one of the following forms of identification, either before or when ((they)) he or she votes:

- ~~(i) ((A Washington driver's license or state ID card;~~
- ~~(ii) The last four digits of his or her Social Security number;~~
- ~~(iii)) Valid photo identification;~~
- ~~((iv)) (ii) A valid enrollment card of a federally recognized tribe in Washington;~~
- ~~((v)) (iii) A current utility bill, or a current bank statement;~~
- ~~((vi)) (iv) A current government check;~~
- ~~((vii)) (v) A current paycheck; or~~
- ~~((viii)) (vi) A government document, other than a voter registration card, that shows both the registrant's name and current address.~~

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. The applicant must be notified at the time of each election that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration shall be canceled.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

WAC 434-324-076 Voter registration updates. (1) The county auditor may request additional identifying information before processing a voter registration update submitted on behalf of a family or household member.

(2) If a voter submits a registration transfer to a new county by the statutory deadline, but the voter's previous county issues the voter a ballot before the transfer is processed and the voter votes the ballot issued by the previous county, the previous county must treat the voted ballot as if it is a provisional ballot and forward it to the voter's new county. The previous county does not need to forward the ballot if none of the races or issues on the voted ballot from the previous county is on a ballot in the voter's new county. If any races or issues on the ballot from the old county are applicable to the voter's residential address in the new county, the votes on those races and issues should only be counted by the new county if the voter does not vote and return a ballot issued by the new county.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel his or her own voter registration by submitting a signed written notification to the auditor for the county in which he or she is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC 434-379-020. A county auditor may not process a voluntary cancellation between the deadline in RCW 29A.08.140 for updating a registration and certification of the primary or election.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-324-115 Challenge of voter's registration. All county auditors and the secretary of state shall furnish to the public on request forms ~~((substantially similar to the sample included below for the purpose of allowing))~~ that allow a registered voter to challenge the registration of another voter pursuant to RCW 29A.08.810 through 29A.08.850. The secretary of state must make the form available on its web site.

~~((VOTER REGISTRATION CHALLENGE~~

~~AFFIDAVIT~~

I, declare under penalty of perjury under the laws of the State of Washington that I am a registered voter in the State of Washington and that I hereby challenge the voter registration of:

Name	Registered Address
I have personal knowledge and belief that this person is not qualified to vote or does not reside at the address given on his or her voter registration record, as evidenced below. I have	

exercised due diligence to personally verify the evidence presented:

REASON FOR CHALLENGE

Check the appropriate box below. The voter:

- Is not a U.S. Citizen.
- Will not be at least eighteen years old by the next election.
- Has been convicted of a felony and his or her right to vote has not been restored.
- Has been judicially declared ineligible to vote due to mental incompetency.
- Does not reside at the address at which he or she is registered to vote, in which case I am submitting either:
 - 1) The address at which the challenged voter actually resides:
 - or
 - 2) Evidence that I exercised due diligence to verify that the voter does not reside at the address provided and to attempt to contact the voter to learn the voter's actual residence. I personally:
 - Sent a letter with return service requested to all known addresses for the voter;
 - Visited the voter's residential address to contact persons at the address to determine if the voter actually resides there. If I was able to contact anyone who owns, manages, resides, or is employed at the address, I am submitting a signed affidavit from that person stating that, to his or her personal knowledge, the voter does not reside at the address;
 - Searched local telephone directories to determine whether the voter maintains a telephone listing at an address within the county;
 - Searched county auditor property records to determine whether the voter owns any property in the county; **and**
 - Searched the statewide voter registration database to determine if the voter is registered at any other address in the state.

List the evidence for the challenge:

Signature of Challenger Date and Place Signed

Address City, State, Zip

Attach all necessary documentation.

FILING A VOTER REGISTRATION CHALLENGE

General Information

The registration of a person as a voter is presumptive evidence of that person's right to vote. A voter registration challenge cannot be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to a challenge are public records. A challenge may be dismissed if it is not in proper form or if the reason is not grounds for a challenge. The challenge process is established in RCW 29A.08.810 through 29A.08.850. Residency requirements are established in Article VI, section 4 of the Washington state Constitution, RCW 29A.04.151 and 29A.08.112.

Who May File a Challenge and When

A registered voter or the prosecuting attorney may file a challenge. To affect an upcoming election, the challenge must be filed at least forty five days before the election. However, if the challenged voter registered less than sixty days before the election or moved less than sixty days before the election without transferring the registration, the challenge must be filed at least ten days before the election or ten days after the voter registered, whichever is later.

Exceptions to the Residency Requirements

A voter does not lose his or her voting residency if absent due to state or federal employment, military service, school attendance, confinement in a public prison, out-of-state business, or navigation at sea. A voter who lacks a traditional residential address, such as a person who resides in a shelter, park, motor home or marina, is assigned a precinct based on the voter's physical location.

The Hearing

The county auditor notifies the voter and challenger of the hearing date and time. The voter and challenger may either appear in person or submit testimony by affidavit. The county auditor presides over the hearing, unless the challenge was filed during the forty five days before an election, in which case the county canvassing board presides over the hearing. The challenger has the burden to prove by clear and convincing evidence that the voter's registration is improper. The voter has an opportunity to respond. The final decision may only be appealed in superior court.))

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-118 Data auditing of county voter election management system with the official statewide voter registration data base. Each auditor must perform data audits of its county election management system to ensure all of its data matches data in the official statewide voter registration data base. The data audits must be performed on a periodic basis and must be performed within a reasonable amount of time prior to an election.

During data auditing, the auditor must transfer voter registration records from the county election management system to the official statewide voter registration data base for verification of voter information and voter status. The official

statewide voter registration data base must update the voter information and verify that the voter status provided by the county election management system matches the voter status in the official statewide voter registration data base. Upon completion of this verification process, the voter's registration status is either:

(1) Confirmed, and the county is authorized to issue a ballot to the voter; or

(2) Denied because the official statewide voter registration data base indicates the voter's registration record is in pending or canceled status. The auditor must update the county election management system with the appropriate voter status, or investigate the discrepancy. The voter is not authorized to vote.

~~((In addition, the county election management system must update the statewide voter registration data base with the appropriate voter information.))~~

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-270 Definition of official logic and accuracy test. As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130 ~~((for all voting systems used)).~~

NEW SECTION

WAC 434-335-275 Pretest. The county auditor must pretest all programming and tabulation equipment to be used in the primary or election prior to the official logic and accuracy test.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-280 Logic and accuracy test conduct. The county must provide adequate personnel to properly operate the ballot ~~((counting equipment))~~ tabulation system. Whenever possible, the ~~((equipment should))~~ system shall be operated during the test by the same person or persons who will be responsible for ~~((the ballot count))~~ operating the system on election day. ~~((If any error in programming or mechanical function is detected, the cause must be determined and corrected, and an errorless test completed before the primary or election.))~~ The official logic and accuracy test shall be conducted as follows:

(1) Every ballot tabulator and scanner to be used in the primary or election shall be tested. Digital scan test decks shall be scanned during the official logic and accuracy test.

(2) Undervotes recorded by a digital scan system shall be auto-resolved. Some undervotes may be manually resolved to demonstrate the process.

(3) Optical scan tabulators shall be set to out-stack blank ballots, overvotes, and write-in votes.

(4) A printout of the test results shall be produced and compared to the expected test results. If the test results do not match the expected test results, the reason for the discrepancy must be satisfactorily determined and corrections made, if necessary.

(5) The upload of results to the secretary of state's office shall be tested and verified.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-300 Logic and accuracy testing of ~~((voting))~~ vote tabulation systems ~~((and equipment)).~~ ~~((+))~~ At least three days before each state primary or general election, the office of the secretary of state ~~((must))~~ shall observe the official logic and accuracy test of the ~~((programming of the vote tabulating system to be used at that primary or election))~~ vote tabulation system prepared by the county auditor. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. ~~((The test must also verify that the machines are functioning to specifications.~~

~~(2) County auditors must conduct the test in the same manner as subsection (1) of this section for special elections not held in conjunction with a state primary or general election. The secretary of state is not represented at the tests for special elections.))~~

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-310 Procedures for ~~((conduct of primary or general election))~~ conducting an emergency logic and accuracy test. If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to ~~((the))~~ processing ~~((of))~~ any official ballots through the ~~((tabulating))~~ vote tabulation system. If ~~((no))~~ a representative of the office of the secretary of state is ~~((able))~~ unable to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-320 Scheduling the logic and accuracy test ~~((scheduling and preparation))~~—State primary and general election. ~~((Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests.))~~ The office of the secretary of state must contact each county auditor at least ~~((thirty))~~ forty-five days before ~~((the))~~ a state primary or general election to schedule the official logic and accuracy test. After the test has been scheduled, the county auditor ~~((must))~~ shall notify the parties, press, public, and candidates of the date and time of the test.

NEW SECTION

WAC 434-335-323 Preparing the logic and accuracy test. (1) Each county shall prepare a matrix of the test pattern used to mark the test deck of ballots for the official logic and

accuracy test. The matrix shall consist of a spreadsheet listing the number of votes cast for each candidate and responses for and against each measure in each precinct or ballot style. The matrix shall include:

(a) For every precinct or ballot style, the first response position of every race or measure marked so the total votes cast for the first candidate of a race or the first response to a measure equals the total number of precincts or ballot styles being tested;

(b) Two votes for the second response position, three votes for the third response position, four votes for the fourth response position, etc.;

(c) For each tabulator's test deck:

(i) One write-in vote;

(ii) One overvoted race;

(iii) One blank ballot; and

(iv) At least one of each type of ballot to be used during the election including ballots on demand, alternative language ballots, electronically marked ballots, and electronically duplicated ballots.

(d) For all responses within a race or measure, including write-ins, unique results. Additional ballots must be added to the test deck in the following circumstances:

(i) Within a race or measure, more than one response has the same results;

(ii) A candidate appears in two different races on the same ballot; and

(iii) More than one measure appears on a ballot within the same jurisdiction and each has the same response position names. For example, if two measures with "yes" and "no" response names appear for the same jurisdiction, the test results shall be unique between the two measures.

(2) A copy of the county's test matrix and a sample ballot shall be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. The office of the secretary of state shall review the provided matrix to determine if it is prepared in accordance with this section.

(3) The county auditor shall produce a test deck of ballots based on the test matrix to be used in the official logic and accuracy test.

NEW SECTION

WAC 434-335-325 Exception to logic and accuracy test pattern. A county auditor may file an exception request with the secretary of state to modify the test pattern provided in WAC 434-335-323. The county auditor must provide a description of the modification in detail, a sample test matrix, and the reasons for an exception. The exception request must be filed with the secretary of state no later than July 1st. The secretary of state must accept or reject the request in writing within thirty days. Accepted test patterns may be used in all future elections.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-330 Logic and accuracy test certification. (1) The official logic and accuracy test shall be certified by the county auditor or deputy, the secretary of state repre-

sentative, and any political party observers ((must certify that the test of voting systems that will be used in the)) for a state primary or general election ((was conducted)) in accordance with RCW 29A.12.130. ((This certification must include verification that)) Additionally, the county auditor must verify in writing that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. ((Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

~~(2) For special elections not held in conjunction with a state primary or general election, the secretary of state is not represented and does not retain a copy of the certification. The county auditor or deputy and any political party observers must certify that the test of voting systems that will be used in the special election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming must be kept in secure storage, employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.~~

~~(3))~~ (2) The county auditor shall provide the secretary of state representative copies of the following documents:

(a) Test results;

(b) A zero report;

(c) Signed verification of the version numbers;

(d) Signed certification of the official logic and accuracy test;

(e) A test log of:

(i) The number of accessible voting units to be used in the primary or election; and

(ii) The electronic duplication system, if electronic duplication will be used in the primary or election; and

(f) Any other documentation requested by the secretary of state representative in advance of the official test.

(3) Copies of the certification documents must be retained by the secretary of state and the county auditor. All test results, test ballots, the signed certification, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage until the day of the primary or election. The secure storage must use numbered seals and logs that will detect any inappropriate access.

(4) If, for any reason, ~~((any))~~ changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

NEW SECTION**WAC 434-335-335 Other primaries and elections.**

For a primary or election that is not a state primary or election, the county auditor must conduct the official logic and accuracy test in the same manner as though it is a state primary or election.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 434-335-430 Definition.
- WAC 434-335-440 Logic and accuracy pretest—State primary and general election—Optical and digital scan systems.
- WAC 434-335-445 The preparation of logic and accuracy test decks.
- WAC 434-335-450 Optical and digital scan test ballot selection—State primary and general elections.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-379-009 Processing filed petitions. (1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment (~~(with the office of the secretary of state)~~) to file the signed petitions at least two business days in advance. Pursuant to RCW 29A.72.170, the secretary of state must reject petitions until a sufficient number that meet the minimum signature requirement are filed together. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in electronic Microsoft Word format.

(2) Upon receipt of the petitions, the office of the secretary of state shall count the number of petitions received, and provide that total to the sponsor.

(3) A petition may not be rejected merely because it includes stray marks, scribbles, notes, or highlighting as long as the printed text on the petition is not illegible.

(4) A petition may not be rejected merely because the circulator's declaration on the back side of the petition is unsigned, or is signed with a stamp. AGO 2006 No. 13; *Washington Families Standing Together v. Secretary of State Sam Reed*, Thurston County Superior Court No. 09-2-02145-4, September 8, 2009.

(5) Once a petition is submitted to the office of the secretary of state, a person may not withdraw his or her signature from a petition. Letters submitted to the secretary of state requesting the removal of a signature from a petition must be retained by the secretary as part of the public record for the petition.

(6) Each petition must be reviewed for fraud, such as patterns of similar handwriting indicating forged signatures.

(7) Each signature line must be reviewed to invalidate:

- (a) Obscenities;
 - (b) Lines with an out-of-state address;
 - (c) Text that is not a name;
 - (d) Duplicate names;
 - (e) Lines that are crossed out and not readable;
 - (f) Lines that include a name and address that both appear to be fictitious; or
 - (g) Lines that are blank or unfilled.
- (8) The following characteristics of a signature line do not, by themselves, invalidate the signature:
- (a) A name that is fictitious with an address that does not appear to be fictitious. Lines that include a name that appears to not be fictitious but an address that does appear to be fictitious, or vice versa;
 - (b) Lines that are crossed out but still readable;
 - (c) Lines that are missing a printed name;
 - (d) Lines that are missing any portion of the address;
 - (e) Multiple lines that have similar handwriting, as long as the signature handwriting is not similar;
 - (f) Lines in which the signature, printed name, or address is written in the wrong field; or
 - (g) Signatures, printed names, or addresses written in the margin.

(9) After each signature line has been reviewed, the remaining signatures must be counted to obtain the total number of signatures submitted. That total must be provided to the sponsor.

(10) The secretary of state must verify either a random sample of the signatures submitted using the statistical formula authorized by RCW 29A.72.230 and established in WAC 434-379-010, or all of the signatures submitted. If the measure does not qualify for the ballot based on a random sample, the secretary of state must proceed to a full check of all signatures submitted. The secretary of state must follow WAC 434-379-020 to verify signatures.

AMENDATORY SECTION (Amending WSR 05-12-116, filed 5/31/05, effective 7/1/05)

WAC 434-379-010 Random sampling procedure. In the verification of signatures on initiative and referendum petitions, under RCW 29A.72.230, the following statistical test may be employed:

(1) Take a minimum three percent unrestricted random sample of the signatures submitted;

(2) Check each signature sampled to determine the number of valid signatures in the sample, the number of signatures in the sample which are invalid because the individual signing is not registered or the signature is improper in form, and the number of signatures which are duplicated in the sample;

(3) Calculate an allowance for the chance error of sampling by multiplying the square root of the number of invalid signatures in the sample by 1.5;

(4) Estimate the upper limit of the number of signatures in the population which are invalid by dividing the sum of the invalid signatures in the sample and the allowance for the chance error of sampling by the sampling ratio, i.e. the num-

ber of signatures sampled divided by the number of signatures submitted;

(5) Determine the maximum allowable number of pairs of signatures in the population by subtracting the sum of the number of signatures required by Article II, Section ~~((4A))~~ 1 of the Washington state Constitution and the estimate of the upper limit of the number of invalid signatures in the population from the number of signatures submitted;

(6) Determine the expected number of pairs of signatures in the sample by multiplying the square of the sampling ratio by the maximum allowable number of pairs of signatures in the population;

(7) Determine the acceptable number of pairs of signatures in the sample by subtracting 1.65 times the square root of the expected number of pairs of signatures in the sample from the expected number of pairs of signatures in the sample;

(8) If the number of pairs of signatures in the sample is greater than the acceptable number of pairs of signatures in the sample, each signature shall be canvassed to determine the exact number of valid signatures;

(9) If the number of pairs of signatures in the sample is less than the acceptable number of pairs of signatures in the sample, the petition shall be deemed to contain sufficient signatures and the serial number and ballot title shall be certified to the state legislature as provided in RCW 29A.72.230 or to the county auditors as provided in RCW 29A.72.250.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state no later than the Friday following the last day of the filing period.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: ~~((within))~~ No later than seven business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, ~~((within))~~ no later than seven business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot~~((:))~~;

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, ~~((not))~~ no later than the date the committee submits its initial argument to the secretary of state;

(c) For arguments for or against a ballot measure~~((:))~~;

(i) For an initiative to the people or referendum measure:
No later than ten business days following appointment of the initial committee members;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, no

later than fourteen business days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, ~~((by))~~ no later than five business days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters' pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so. Once statements or arguments are submitted to the secretary, changes by the candidate or committee will not be accepted unless requested by the secretary.

AMENDATORY SECTION (Amending WSR 08-23-094, filed 11/19/08, effective 12/20/08)

WAC 434-840-005 Definitions. For the purposes of this chapter:

(1) "Address" means any physical locations where the participant resides, works, or attends school, for which the participant is requesting confidentiality.

(2) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.

(3) "Agency" means an office, department, division, bureau, board, commission, or other statutory unit of state or local government or any functional subdivision of that agency.

(4) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advocacy, counseling, referral, or shelter services to victims of sexual assault, domestic violence, trafficking, or stalking who has been designated by the respective agency, and has been accepted by the secretary of state to assist individuals with threat assessment, safety planning, determining whether the program's services can help keep the victim safe, and the completion and submission of the ACP application.

(5) "Authorization card form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.

(6) "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

(7) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual resi-

dential address the agency is incapable of fulfilling its statutory duties and obligations.

(8) "Protected records voter" means a program participant who has applied and qualified (~~as an ongoing absentee voter~~) for confidential voter registration, as provided under RCW 40.24.060, WAC 434-840-100, and 434-840-310.

(9) "Record" means any information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(10) "Substitute mailing address" means the mailing address designated by the secretary of state which shall not be the program participant's residential address as documented on her or his application for program participation.

AMENDATORY SECTION (Amending WSR 08-23-094, filed 11/19/08, effective 12/20/08)

WAC 434-840-100 ((Acknowledgement)) Acknowledgment for marriage and voting record confidentiality.

(1) When a program participant requests confidentiality for marriage records, both the program participant and her or his intended spouse shall sign and date a statement provided by the secretary of state, that describes access limitations on confidential marriage records.

(2) When a program participant requests confidentiality for voting records, she or he shall sign a statement provided by the secretary of state that documents the date of this request (~~and the ongoing absentee ballot voting process to be used~~).

(3) The authorized personnel shall receive the original copy of this signed (~~acknowledgement~~) acknowledgment, the address confidentiality program shall have one copy and the program participant shall have one copy.

**WSR 14-06-041
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed February 26, 2014, 8:46 a.m., effective April 1, 2014]

Effective Date of Rule: April 1, 2014.

Purpose: The purpose of this rule making is to increase the elevator fees by 13.1 percent. Labor and industries was given the authority by 3ESSB 5034, which passed the legislature in 2013, to increase the elevator fees by 13.1 percent. The elevator program's budget and projected revenue were evaluated and the fee increase is necessary to support the program's expenditures which includes the addition of six new full-time employees (five inspectors and one technical specialist) as requested by the department.

Citation of Existing Rules Affected by this Order: Amending WAC 296-96-00922 What are the fees associated with licensing?, 296-96-01005 When do I need and what are the steps in obtaining a permit?, 296-96-01010 What are the installation permit fees for conveyances, material lifts, and hoists and how are they calculated?, 296-96-01012 What are the permit fees for alterations to conveyances, material lifts, and hoists and how are they calculated?, 296-96-01025, What

is the permit fee for personnel and material hoists?, 296-96-01027, Are initial installation permit fees refundable?, 296-96-01030, What is the process for installation and alteration plan approval?, 296-96-01035, Are there inspection fees?, 296-96-01040, What is the fee for testing and inspecting regular elevators used as temporary elevators to provide transportation for construction personnel, tools, and materials only?, 296-96-01045, What are the inspection requirements and fees for conveyances in private residences?, 296-96-01050, How do I get a supplemental inspection?, 296-96-01055, Are technical services available and what is the fee?, 296-96-01057, Does the department charge a fee to perform investigations and what is the fee?, 296-96-01060, Can I request an after hours inspection and what is the fee?, and 296-96-01065, What are the annual operating certificate fees?

Statutory Authority for Adoption: Chapter 70.87 RCW and chapter 4, Laws of 2013 (3ESSB 5034).

Adopted under notice filed as WSR 14-01-089 on December 17, 2013.

A final cost-benefit analysis is available by contacting Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 15, 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 15, Repealed 0.

Date Adopted: February 26, 2014.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-00922 What are the fees associated with licensing? The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	\$((56.90) <u>64.30</u>)

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic examination fee	Per application	\$(171.20) <u>193.60</u>
Reciprocity application fee((*))	Per application*	\$(56.90) <u>64.30</u>
Elevator mechanic license	2 years	\$(114.10) <u>129.00</u>
Elevator contractor license	2 years	\$(114.10) <u>129.00</u>
Temporary elevator mechanic license	30 days	\$(28.30) <u>32.00</u>
Elevator mechanic/contractor timely renewal fee((**))	2 years	\$(114.10) <u>129.00</u>
Elevator mechanic/contractor late renewal fee((***))	2 years	\$(228.40) <u>258.30</u>
Training provider application/renewal fee	2 years	\$(114.10) <u>129.00</u>
Continuing education course fee by approved training provider((****))	1 year**	Not applicable
Replacement of any licenses		\$(17.00) <u>19.20</u>
Refund processing fee		\$(34.10) <u>38.50</u>

* Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity agreement.

(~~(**)~~ Renewals will be considered "timely" when the renewal application is received on or prior to the expiration date of the license.

~~(***)~~ Late renewal is for renewal applications received no later than ninety days after the expiration of the licenses. If the application is not received within ninety days from license expiration, the licensee must reapply and pass the competency examination.

~~(****)~~) This fee is paid directly to the continuing education training course ** provider approved by the department.

AMENDATORY SECTION (Amending WSR 07-24-041, filed 11/30/07, effective 1/1/08)

WAC 296-96-01005 When do I need and what are the steps in obtaining a permit? (1) See WAC 296-96-01000 for the permit process.

(2) Construction and alteration permits are valid for one year from the date of issue. However, permits may be renewed if you:

(a) Apply for a renewal permit before your current permit expires;

(b) The department approves your request for a renewal permit; and

(c) You pay a ~~\$(51.60)~~ 58.30 renewal fee to the department for each permit you renew;

(3) If your permit has expired you must reapply for a new permit.

(4) See WAC 296-96-01006 for work requiring a permit.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01010 What are the installation permit fees for conveyances, material lifts, and hoists and how are they calculated? Installation permit fees are based on the total cost of the conveyance and the labor to install the conveyance. The following permit fees apply to the construction or relocation of all conveyances and material lifts:

TOTAL COST OF CONVEYANCE	FEE
\$0 to and including \$1,000	\$(56.90) <u>64.30</u>
\$1,001 to and including \$5,000	\$(85.40) <u>96.50</u>
\$5,001 to and including \$7,000	\$(142.60) <u>161.20</u>
\$7,001 to and including \$10,000	\$(171.20) <u>193.60</u>
\$10,001 to and including \$15,000	\$(228.40) <u>258.30</u>
OVER \$15,000	\$(319.80) <u>361.60</u> plus
Each additional \$1,000 or fraction thereof	\$(7.90) <u>8.90</u>

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01012 What are the permit fees for alterations to conveyances, material lifts, and hoists and how are they calculated? Permit fees are based on the total cost of the equipment, materials and labor to perform the alteration. The following permit fees apply to the alteration of all conveyances and material lifts:

TOTAL COST OF ALTERATION	FEE
\$0 to and including \$1,000	\$(56.90) <u>64.30</u>
\$1,001 to and including \$5,000	\$(85.40) <u>96.50</u>
\$5,001 to and including \$7,000	\$(142.60) <u>161.20</u>
\$7,001 to and including \$10,000	\$(171.20) <u>193.60</u>
\$10,001 to and including \$15,000	\$(228.40) <u>258.30</u>
OVER \$15,000	\$(228.40) <u>258.30</u>
Each additional \$1,000 or fraction thereof	\$(7.90) <u>8.90</u>

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01025 What is the permit fee for personnel and material hoists? The fee for each personnel hoist or material hoist installation is \$((228.40)) 258.30
See WAC 296-96-01035(2) for requirements for jumps.

Note: An operating certificate is also required for these types of conveyances.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01027 Are initial installation permit fees refundable? Your initial installation permit fees are refundable if the installation work has not been performed, minus a processing fee, unless your permits have expired. No refunds will be issued for expired permits. All requests for refunds must be submitted in writing to the elevator section and must identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is \$((34.10)) 38.50

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01030 What is the process for installation and alteration plan approval? Prior to the start of construction, the applicant must submit to the department for approval two copies of plans for new installations or major alterations. To be approved, the plan must comply with the latest adopted edition of the American Society of Mechanical Engineers (ASME), the National Electrical Code (NEC) and applicable Washington Administrative Codes (WAC). In addition, the plans must include all information necessary in determining whether each installation/alteration complies with all applicable codes. The permit holder must keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan must be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for reviewing your plans are:

For each installation/major alteration. \$((28.30)) 32.00
If more than two sets of plans are submitted, the fee for each additional set \$((41.20)) 12.60

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01035 Are there inspection fees? Yes. The initial inspection(s) of a conveyance or for the initial inspection of construction, alteration or relocation of a conveyance is included with your permit fee. Once the department has approved the initial installation of the conveyance you will be issued a temporary operating certificate that is valid for 30 days. Prior to the expiration of the 30-day temporary operating certificate the application for an annual operating certificate and the appropriate fees must be paid to the department. Once the department has received the appropriate fees and application the owner will be issued the first

annual operating certificate. The owner or owners' representative will receive an invoice from the department for renewal. The owner is required to renew the annual operating certificate yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is \$((114.10)) 129.00 per conveyance plus \$((55.40)) 62.60 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is \$((114.10)) 129.00 plus \$((56.90)) 64.30 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

The permit holder may be allowed to operate a hoist prior to the jump inspection if:

(a) The electrical limits will not allow the lift to operate above the previously inspected landing.

(b) The state elevator inspector is contacted, agrees and can schedule within 3 days.

(3) **Variance inspections.**

(a) The fee for an on-site variance inspection is \$((171.20)) 193.60 per conveyance plus \$((56.90)) 64.30 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is \$((56.90)) 64.30 per conveyance. The individual requesting the variance must provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is \$((28.30)) 32.00.

Note: You must provide the department with written approval from the building official, indicating that the conveyance is not required for building occupancy, when you apply to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is \$((56.90)) 64.30. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit must be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be \$((114.10)) 129.00 per conveyance and \$((56.90)) 64.30 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/

potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01040 What is the fee for testing and inspecting regular elevators used as temporary elevators to provide transportation for construction personnel, tools, and materials only? (1) The fee for the inspecting and testing of regular elevators used as temporary elevators is \$((91.20)) 103.10, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department must be conspicuously posted in the elevator.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01045 What are the inspection requirements and fees for conveyances in private residences? (1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to installation, a licensed elevator contractor must complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating certificate is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating certificate, the following fee must be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence	\$((26.60)) <u>30.00</u>
Each inclined wheel chair lift in a private residence	\$((26.60)) <u>30.00</u>
Each vertical wheel chair lift in a private residence	\$((33.50)) <u>37.80</u>
Each dumbwaiter in a private residence.	\$((26.60)) <u>30.00</u>
Each inclined elevator at a private residence . . .	\$((94.90)) <u>107.30</u>
Each private residence elevator	\$((61.10)) <u>69.10</u>
Duplication of a lost, damaged or stolen operating permit	\$((11.20)) <u>12.60</u>

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01050 How do I get a supplemental inspection? Any person, firm, corporation or governmental agency can request a supplemental inspection from the department by paying a fee of \$((68.40)) 77.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. This fee is for inspections occurring during regular working hours.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01055 Are technical services available and what is the fee? You may request elevator field technical services from the department by paying a fee of \$((68.40)) 77.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01057 Does the department charge a fee to perform investigations and what is the fee? An elevator inspector may charge at a rate of \$((68.40)) 77.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These services shall include accident investigation relating to any and all accidents. This fee would include an inspection as required during the accident investigation.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01060 Can I request an after-hours inspection and what is the fee? You may request an inspection outside of normal business hours, which are 7:00 a.m. to 5:00 p.m., if an inspector is available and the inspection is authorized by the department. The minimum fee for an after-hours inspection is \$((85.40)) 96.50 and \$((85.40)) 96.50 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors. This fee is in addition to any other fees required for your project.

AMENDATORY SECTION (Amending WSR 12-06-065, filed 3/6/12, effective 4/30/12)

WAC 296-96-01065 What are the annual operating certificate fees? An annual operating certificate will be issued to you upon payment of the appropriate fee. The owner of record will be invoiced by the department. If a change of owner has occurred, it is the new owner's responsibility to ensure the department has the corrected information. Below is the fee structure table:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator	\$((114.10)) <u>129.00</u>
Each roped-hydraulic elevator	\$((142.60)) <u>161.20</u>
plus for each hoistway opening in excess of two	\$((11.20)) <u>12.60</u>
Each cable elevator	\$((142.60)) <u>161.20</u>
plus for each hoistway opening in excess of two	\$((11.20)) <u>12.60</u>
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled	\$((11.20)) <u>12.60</u>
Each limited-use/limited-application (—LULA) elevator	\$((114.10)) <u>129.00</u>
Each escalator	\$((94.80)) <u>107.20</u>
Each dumbwaiter in other than a private residence	\$((61.10)) <u>69.10</u>
Each material lift	\$((114.10)) <u>129.00</u>
Each incline elevator in other than a private residence	\$((122.70)) <u>138.70</u>
Each belt manlift	\$((114.10)) <u>129.00</u>
Each stair lift in other than a private residence	\$((61.10)) <u>69.10</u>
Each wheel chair lift in other than a private residence	\$((61.10)) <u>69.10</u>
Each personnel hoist	\$((114.10)) <u>129.00</u>
Each grain elevator personnel lift	\$((94.80)) <u>107.20</u>
Each material hoist	\$((114.10)) <u>129.00</u>
Each special purpose elevator	\$((114.10)) <u>129.00</u>
Each private residence elevator installed in other than a private residence	\$((114.10)) <u>129.00</u>
Each casket lift	\$((94.80)) <u>107.20</u>
Each sidewalk freight elevator	\$((94.80)) <u>107.20</u>
Each hand-powered manlift or freight elevator	\$((64.20)) <u>72.60</u>
Each boat launching elevator	\$((94.80)) <u>107.20</u>

TYPE OF CONVEYANCE	FEE
Each auto parking elevator	\$((94.80)) <u>107.20</u>
Each moving walk	\$((94.80)) <u>107.20</u>
Duplication of a damaged, lost or stolen operating permit	\$((11.20)) <u>12.60</u>

WSR 14-06-044

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed February 26, 2014, 10:19 a.m., effective March 29, 2014]

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: The amendment to the marketing order (chapter 16-532 WAC) was approved in a referendum of affected hop producers pursuant to RCW 15.65.170.

Purpose: Changes the unit of measure for an "affected unit" is changed from two hundred pounds to one pound. The assessment rate is changed to \$0.0125 per "affected unit." This represents an increase of twenty-five percent in the current assessment rate.

The hop commission board determined that an increase in the assessment rate is necessary for the board to remain solvent in light of declining crop production and will allow the commission to continue to carry out their mandated mission.

Citation of Existing Rules Affected by this Order: Amending WAC 16-532-010 and 16-532-040.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 13-21-017 on October 7, 2013.

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 2, Repealed 0.

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

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

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

Date Adopted: February 26, 2014.

Don R. Hover
Director

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

WAC 16-532-010 Definitions. For the purpose of this marketing order:

(1) "Director" means the director of agriculture of the state of Washington or his duly appointed representative.

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

(3) "Act" means the Washington State Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

(4) "Person" means any person, firm, association or corporation.

(5) "Affected producer" or "producer" means any person who produces hops in commercial quantities in the state of Washington.

(6) "Commercial quantity" means any hops produced for market by a producer in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, or distributing hops not produced by him.

(8) "Hop commodity board" hereinafter referred to as "board" means the commodity board formed under the provisions of WAC 16-532-020.

(9) "Hops" means and includes all kinds and varieties of "humulus lupulus" grown, picked and dried in the state of Washington, whether loose, packaged or baled and all oils, extracts and/or lupulin derived therefrom.

(10) "Processed" means and includes all hops which are converted into pellets, extracts, oils, lupulin, and/or other forms, including hops which are frozen in undried form, but excluding whole, dried hop cones, whether loose or baled.

(11) "Marketing season" means the twelve month period beginning with January 1 of any year and ending December 31, both dates being inclusive.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to hops. A producer-handler shall be deemed to be a producer with respect to the hops which he produces and a handler with respect to the hops which he handles, including those produced by himself.

(13) "Affected area" means the state of Washington.

(14) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(15) "Affected unit" means ~~((two hundred))~~ one pound~~((s))~~ net of hops, or the amount of lupulin, extract or oil produced from ~~((two hundred))~~ pound~~((s))~~ net of hops.

AMENDATORY SECTION (Amending WSR 08-15-039, filed 7/10/08, effective 8/10/08)

WAC 16-532-040 Assessments and collections. (1) Assessments.

(a) The annual assessment on all varieties of hops shall be ~~((up to two dollars and fifty cents))~~ \$0.0125 per affected unit, as approved by referendum vote of affected producers~~((; the results of which shall be retained on file in the board's administrative office)).~~

(b) For the purpose of collecting assessments the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(iii) Require the person subject to the assessment to remit assessments for any hops which are processed prior to the first sale; or

(iv) Require the person subject to the assessment to remit an inventory report for any hops which are not processed or sold prior to December 31 of the year in which they are produced.

(c) Subsequent to the first sale or processing, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of the order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 14-06-045

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 26, 2014, 12:57 p.m., effective March 29, 2014]

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

Purpose: The health care authority (HCA) is updating its program benefits packages and scope of health care service categories effective January 1, 2014, to comply with changes

required by the federal Affordable Care Act and recently passed state budget. Some of the changes include adding alternative benefit plan as a program; adding applied behavior analysis and habilitation services as categories of service; adding preventive exams, vaccinations, and screening, brief intervention, referral and treatment for chemical dependency to health care professional services; defining habilitation services; and adding naturopathy to the definition of "physician."

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0085, 182-501-0060, and 182-501-0065.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 3ESHB [3ESSB] 5034 (chapter 4, Laws of 2013); Patient Protection and Affordable Care Act (Public Law 111-148).

Adopted under notice filed as WSR 14-03-103 on January 17, 2014.

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

Date Adopted: February 26, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-037, filed 9/11/13, effective 10/12/13)

WAC 182-500-0085 Medical assistance definitions—

P. "Patient transportation" means client transportation to and/or from covered health care services under federal and state health care programs.

"Physician" means a doctor of medicine, osteopathy, naturopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Prescribing provider" means any physician or other health care professional authorized by law or rule to prescribe drugs for current clients of Washington's health care programs administered by the agency.

"Prior authorization" is the requirement that a provider must request, on behalf of a client and when required by rule, the agency's or the agency's designee's approval to render a health care service or write a prescription in advance of the client receiving the health care service or prescribed drug, device, or drug-related supply. The agency's or the agency's designee's approval is based on medical necessity. Receipt of

prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

"Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- Artificially replace a missing portion of the body;
- Prevent or correct physical deformity or malfunction; or
- Support a weak or deformed portion of the body.

"Provider" means an institution, agency, or person that is licensed, certified, accredited, or registered according to Washington state laws and rules, and:

(1) Has signed a core provider agreement or signed a contract with the agency or the agency's designee, and is authorized to provide health care, goods, and/or services to medical assistance clients; or

(2) Has authorization from a managed care organization (MCO) that contracts with the agency or the agency's designee to provide health care, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

"Public institution" see "institution" in WAC 182-500-0050.

AMENDATORY SECTION (Amending WSR 13-15-044, filed 7/11/13, effective 8/11/13)

WAC 182-501-0060 Health care coverage—Program benefit((s)) packages—Scope of service categories. (1) This rule provides a table that (~~lists~~):

(a) Lists the following Washington apple health (WAH) programs:

(i) The alternative benefits plan (ABP) medicaid;
 (ii) Categorically needy (~~CM~~) (CN) medicaid(=);
 (iii) Medically needy (MN) medicaid(=); and
 (iv) Medical care services (MCS) programs (includes incapacity-based and aged, blind, and disabled medical care services (~~and the medical component of the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program~~)), as described in WAC 182-508-0005; and

(b) The benefit((s)) packages showing what service categories are included for each program.

(2) Within a service category included in a benefit((s)) package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefit((s)) package:

(a) Are determined(=) in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited authorization when allowed by the agency.

(d) Are paid for by the agency or its designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or

recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or its designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or its designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) ~~((Other))~~ Programs not addressed in the table:

(a) ~~((Early and periodic screening, diagnosis, and treatment (EPSDT) services are not addressed in the table. For EPSDT services, see chapter 182-534 WAC and WAC 182-501-0050(10).))~~

(b) The following programs are not addressed in the table:

(i)) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

~~((ii))~~ (b) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790);

(c) Postpartum and family planning extension (see WAC 182-523-0130(4) and 182-505-0115(5));

(d) Eligibility for pregnant minors (see WAC 182-505-0117); and

(e) Kidney disease program (see chapter 182-540 WAC).

(6) **Scope of service categories.** The following table lists the agency's categories of health care services.

(a) Under the ABP, CN, and MN headings there are two columns. One addresses clients twenty years of age and younger and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y		Y	Y	Y	Y	Y
Applied behavior analysis (ABA)	Y	N	Y	N	Y	N	N
Behavioral health services							
• Mental health (MH) inpatient care	Y	Y	Y	Y	Y	Y	Y
• MH outpatient community care	Y	Y	Y	Y	Y	Y	Y ²
• MH psychiatric visits	Y	Y	Y	Y	Y	Y	Y ³
• MH medication management	Y	Y	Y	Y	Y	Y	Y
• Substance use disorder (SUD) detoxification	Y	Y	Y	Y	Y	Y	Y
• SUD diagnostic assessment	Y	Y	Y	Y	Y	Y	Y
• SUD residential treatment	Y	Y	Y	Y	Y	Y	Y
• SUD outpatient treatment	Y	Y	Y	Y	Y	Y	Y
Blood/blood products/related services	Y	Y	Y	Y	Y	Y	Y
Dental services	Y	Y	Y	Y ⁴	Y	Y ⁴	Y ⁴
Diagnostic services (lab and X ray)	Y	Y	Y	Y	Y	Y	Y
Early and periodic screening, diagnosis, and treatment (EPSDT) services	Y	N	Y	N	Y	N	N
Habilitative services	Y	Y	N	N	N	N	N
Health care professional services	Y	Y	Y	Y	Y	Y	Y
Hearing evaluations	Y	Y	Y	Y	Y	Y	Y
Hearing aids	Y	N	Y	N	Y	N	N
Home health services	Y	Y	Y	Y	Y	Y	Y
Hospice services	Y	Y	Y	Y	Y	Y	N
Hospital services Inpatient/outpatient	Y	Y	Y	Y	Y	Y	Y
Intermediate care facility/services for persons with intellectual disabilities	Y	Y	Y	Y	Y	Y	Y
Maternity care and delivery services	Y	Y	Y	Y	Y	Y	Y
Medical equipment, durable (DME)	Y	Y	Y	Y	Y	Y	Y
Medical equipment, nondurable (MSE)	Y	Y	Y	Y	Y	Y	Y
Medical nutrition services	Y	Y	Y	Y	Y	Y	Y

Service Categories	ABP 20-	ABP 21+	CN ¹ 20-	CN 21+	MN 20-	MN 21+	MCS
Nursing facility services	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
Organ transplants	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
Orthodontic services	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
Out-of-state services	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	N
Outpatient rehabilitation services (OT, PT, ST)	<u>Y</u>	<u>Y</u>	Y	Y	Y	N	Y
Personal care services	<u>Y</u>	<u>Y</u>	Y	Y	N	N	N
Prescription drugs	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
Private duty nursing	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	N
Prosthetic/orthotic devices	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
((Psychological evaluation⁵			Y	Y	Y	Y	(N))
Reproductive health services	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
Respiratory care (oxygen)	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
School-based medical services	<u>Y</u>	<u>N</u>	Y	N	Y	N	N
Vision care Exams, refractions, and fittings	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y
Vision hardware Frames and lenses	<u>Y</u>	<u>N</u>	Y	N	Y	N	N

- ¹ Clients enrolled in the ~~((children's health insurance program and the))~~ Washington apple health for kids and Washington apple health for kids with premium programs, which includes the children's health insurance program (CHIP), receive CN-scope of ((medical)) health care services.
- ² Restricted to incapacity-based MCS clients enrolled in managed care.
- ³ Incapacity-based MCS clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.
- ⁴ ~~Restricted to those clients who meet the categorical requirements described in WAC 182-535-1060.~~
- ⁵ ~~Only two allowed per lifetime.)~~

AMENDATORY SECTION (Amending WSR 13-15-044, filed 7/11/13, effective 8/11/13)

WAC 182-501-0065 Health care coverage—Description of service categories ((of service)). This rule provides a brief description of the medical, dental, mental health, and substance use disorder (SUD) service categories listed in the table in WAC 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category.

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in agency rules:

(a) **Ambulance** - Emergency medical transportation and ambulance transportation for nonemergency medical needs. (WAC 182-546-0001 through 182-546-4000.)

(b) **Applied behavior analysis (ABA)** – (WAC 182-531-1410 through 182-531-1434.)

(c) Behavioral health services -

(i) Mental health inpatient care - Voluntary and involuntary admissions for psychiatric services. (WAC 182-550-2600.)

(ii) Mental health outpatient (community mental health) services - Nonemergency, psychological evaluation, nonurgent counseling. (WAC 182-531-1400, 388-865-0215, ~~((and))~~ 388-865-0230, and 388-865-0610 (1)(d)(i).)

(iii) Psychiatric visits. (WAC 182-531-1400 and 388-865-0230.)

(iv) Mental health medication management. (WAC 182-531-1400.)

(v) Substance use disorder (SUD) detoxification. (WAC ~~((182-508-0305))~~ 388-877B-0100 through 388-877B-0130 and 182-550-1100; WAC 182-556-0400(3).)

(vi) ~~((Substance use disorder))~~ SUD diagnostic assessment. (WAC ~~((182-508-0330))~~ 388-877B-0500 through 388-877B-0550.)

(vii) ~~((Substance use disorder))~~ SUD residential treatment. (WAC ~~((182-508-0310 through 182-508-0375; and WAC 182-556-0100))~~ 388-877B-0200 through 388-877B-0280.)

(viii) ~~((Substance use disorder))~~ SUD outpatient treatment. (WAC ~~((182-508-0310 through 182-508-0375))~~ 388-877B-0300 through 388-877B-0370; WAC 182-533-0701 through 182-533-0730(~~;~~ WAC 182-556-0100 and 182-556-0400).)

~~((e))~~ **(d) Blood, blood products, and related services** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (WAC 182-550-1400 and 182-550-1500.)

~~((e))~~ **(e) Dental services** - Diagnosis and treatment of dental problems including emergency treatment and preventive care. (Chapters 182-535 and 182-535A WAC.)

~~((e))~~ **(f) Diagnostic services** - Clinical testing and imaging services. (WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.)

~~((f))~~ **(g) Early and periodic screening, diagnosis, and treatment (EPSDT)** – (Chapter 182-534 WAC and WAC 182-501-0050(10).)

(h) Habilitative services – (Chapter 182-545 WAC.)

~~((e))~~ **(i) Health care professional services** - Office visits, ~~((emergency oral health;))~~ vaccinations, screening/brief intervention/referral to treatment (SBIRT), emergency room, nursing facility, home-based, and hospital-based care; surgery, anesthesia, pathology, radiology, and laboratory services; obstetric services; kidney dialysis and renal disease services; osteopathic care, podiatry services, physiatry, and pulmonary/respiratory services; and allergen immunotherapy. (Chapter 182-531 WAC.)

~~((g))~~ **(j) Hearing evaluations** - Audiology; diagnostic evaluations; hearing exams and testing. (WAC 182-531-0100 and 182-531-0375.)

~~((h))~~ **(k) Hearing aids** - (Chapter 182-547 WAC.)

~~((i))~~ **(l) Home health services** - Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (WAC 182-551-2000 through 182-551-2220.)

~~((j))~~ **(m) Hospice services** - Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (WAC 182-551-1210 through 182-551-1850.)

~~((k))~~ **(n) Hospital services—Inpatient/outpatient** - Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (Chapter 182-550 WAC.)

~~((l))~~ **(o) Intermediate care facility/services for persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. (Chapter 388-835 WAC.)

~~((m))~~ **(p) Maternity care and delivery services** - Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case management services, family planning services and community health worker visits. (WAC 182-533-0330.)

~~((n))~~ **(q) Medical equipment, durable (DME)** - Wheelchairs, hospital beds, respiratory equipment; casts, splints, crutches, trusses, and braces. (Chapter 182-543 WAC.)

~~((o))~~ **(r) Medical equipment, nondurable (MSE)** - Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, and urological supplies. (Chapter 182-543 WAC.)

~~((p))~~ **(s) Medical nutrition services** - Enteral and parenteral nutrition, including supplies. (Chapters 182-553 and 182-554 WAC.)

~~((q))~~ **(t) Nursing facility services** - Nursing, therapies, dietary, and daily care services. (Chapter 388-97 WAC.)

~~((r))~~ **(u) Organ transplants** - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow

and peripheral stem cell; skin grafts; and corneal transplants. (WAC 182-550-1900 and 182-556-0400.)

~~((s))~~ **(v) Orthodontic services** - (Chapter 182-535A WAC.)

~~((t))~~ **(w) Out-of-state services** - ~~((See))~~ (WAC 182-502-0120 ~~((for services out-of-state))~~).

~~((u))~~ **(x) Outpatient rehabilitation services (OT, PT, ST)** - Evaluations, assessments, and treatment. (WAC 182-545-200.)

~~((v))~~ **(y) Personal care services** - Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (WAC 388-106-0010, 388-106-0200, 388-106-0300, 388-106-0600, 388-106-0700, 388-106-0745, and 388-106-0900.)

~~((w))~~ **(z) Prescription drugs** - Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

~~((x))~~ **(aa) Private duty nursing** - Continuous skilled nursing services provided in the home, including client assessment, administration of treatment, and monitoring of medical equipment and client care for clients seventeen years of age and under. (WAC 182-551-3000.) For benefits for clients eighteen years of age and older, see WAC 388-106-1000 through 388-106-1055.

~~((y))~~ **(bb) Prosthetic/orthotic devices** - Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (WAC 182-543-5000.)

~~((z))~~ ~~**(cc) Psychological evaluation** - Complete diagnostic history, examination, and assessment, including the testing of cognitive processes, visual motor responses, and abstract abilities.~~ (WAC 388-865-0610.)

~~((aa))~~ **(cc) Reproductive health services** - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-001 through 182-532-140.)

~~((ab))~~ **(dd) Respiratory care (oxygen)** - All services, oxygen, equipment, and supplies related to respiratory care. (Chapter 182-552 WAC.)

~~((ac))~~ **(ee) School-based medical services** - Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). (Chapter 182-537 WAC.)

~~((ad))~~ **(ff) Vision care** - Eye exams, refractions, fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (WAC 182-531-1000.)

~~((ae))~~ **(gg) Vision hardware** - Frames and lenses. (Chapter 182-544 WAC.)

WSR 14-06-048

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed February 26, 2014, 2:27 p.m., effective March 29, 2014]

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

Purpose: Proposed changes to WAC 315-38-010. The Mega Millions lottery states have voted to make technical changes to the game of Mega Millions, effective October 22, 2013. These changes revise the Mega Millions interstate game agreement, which necessitates revisions to chapter 315-38 WAC in order for consistency.

Citation of Existing Rules Affected by this Order: Amending WAC 315-38-010.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 14-03-047 on January 9, 2013 [2014].

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

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

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

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

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

Date Adopted: February 26, 2014.

Jana L. Jones
Legal Counsel

AMENDATORY SECTION (Amending WSR 05-11-050, filed 5/13/05, effective 6/13/05)

WAC 315-38-010 General description. Mega Millions is a game conducted by the Washington state lottery, pursuant to chapter 67.70 RCW and Title 315 WAC and pursuant to the requirements of the multistate agreement, Mega Millions official game rules, Mega Millions finance and operation procedures and Mega Millions line drawing procedures, all of which are incorporated by this rule pursuant to WAC 315-30-010. The Mega Millions game awards prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings. Chapter 315-38 WAC applies only to Mega Millions tickets purchased and redeemed in Washington state. Players who purchase Mega Millions tickets in other party lottery states must comply with the rules of the party lottery state in which the ticket was purchased.

WSR 14-06-049

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 26, 2014, 4:00 p.m., effective March 29, 2014]

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

Purpose: To comply with the legislature's directive to increase reimbursement rates to medicare's levels for independent ARNPs who provide qualified evaluation and management services and vaccine administration services to eligible clients for dates of service July 1, 2013, through December 31, 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 182-53-2010.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 3ESSB 5034, section 213(26), chapter 4, Laws of 2013 2nd sp. sess., 63rd legislature.

Adopted under notice filed as WSR 14-03-072 on January 15, 2014.

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 1, Repealed 0.

Date Adopted: February 26, 2014.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-531-2010 Enhanced reimbursement—Independent advanced registered nurse practitioners (ARNPs). (1) Effective for dates of service July 1, 2013, through December 31, 2014, the agency is authorized by the legislature to increase reimbursement rates to medicare levels for independent ARNPs who provide qualified primary care services to eligible medicaid clients.

(2) For the purpose of this section, the following definitions apply:

(a) Independent ARNP – Means a health care practitioner who is not supervised by an eligible primary care physician and not already receiving increased rates for evaluation and management services and vaccine administration services as provided under the Affordable Care Act, section 1202.

(b) Qualified primary care services – Means evaluation and management services and vaccine administration services provided to eligible medicaid clients.

(3) The agency calculates the enhanced rate for independent ARNPs using medicare's payment methodology.

(a) ARNP services are paid at eighty percent of the lesser of the actual charge or eighty-five percent of what a physician is paid under the medicare physician fee schedule.

(b) For the purpose of this enhanced rate calculation, the amount payable to a physician is determined by the Centers for Medicare and Medicaid Services (CMS) as authorized by C.F.R. 447.405 for qualified services in calendar years 2013 and 2014.

(4) If the enhanced rate is less than the agency's published fee schedule rate, the agency's payment will equal the published rate.

(5) This rate increase does not apply to either of the following:

(a) Federally qualified health center services and rural health clinic services reimbursed as part of the encounter rate.

(b) Services provided under state-only funded programs.

(c) Services paid at an enhanced or supplemental rate through a separate provision or regulation.

WSR 14-06-050

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed February 27, 2014, 7:48 a.m., effective March 30, 2014]

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: The amendment to the marketing order (chapter 16-573 WAC) was approved in a referendum of affected oilseed producers pursuant to RCW 15.65.170.

Purpose: During past legislative sessions, significant amendments were made to the Washington canola and rapeseed commission's enabling statute, chapter 15.65 RCW. These statutory changes, in part, prompted the proposed amendments to chapter 16-573 WAC. The proposed amendments rename the commission to the "oilseeds commission" to more accurately capture the commodities covered; expand the commission's policy and purpose statements; update the definitions; reduce the number of board members and eliminate selection by district; expand the "affected area" to include the entire state of Washington; update the commission member selection process; add additional powers and duties to benefit the industry; update meeting and administrative procedures; and, other housekeeping changes. These proposed amendments are intended to achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-573-070; and amending WAC 16-573-010, 16-573-020, 16-573-030, 16-573-040, 16-573-041, 16-573-060, and 16-573-080.

Statutory Authority for Adoption: Chapters 15.65 and 34.05 RCW.

Adopted under notice filed as WSR 13-20-088 on September 30, 2013.

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 7, Repealed 1.

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: February 27, 2014.

Don. R. Hover
Director

Chapter 16-573 WAC

~~((CANOLA AND RAPESEED))~~ OILSEEDS COMMISSION

NEW SECTION

WAC 16-573-005 Marketing order for Washington oilseeds—Policy statement. (1) The marketing of canola, rapeseed, and mustard (oilseeds) within this state is in the public interest. It is vital to the continued economic well-being of citizens of this state and their general welfare that its canola, rapeseed, and mustard (oilseeds) industry be properly promoted by:

(a) Enabling producers of canola, rapeseed, and mustard (oilseeds) to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the oilseeds they produce; and

(b) Working towards stabilizing the agricultural industry by increasing production of oilseeds within the state.

(2) That it is in the overriding public interest that support for the oilseed industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that oilseeds be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's oilseeds;

(b) Increase the sale and use of Washington state's oilseeds in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's oilseeds;

(d) Increase the knowledge of the qualities and value of Washington state's oilseed products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of oilseeds produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state oilseeds commodity board exists primarily for the benefit of the people of the state of

Washington and its economy and, with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to oilseeds under the provisions of this marketing order.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-010 Definitions ((of terms)). ~~((For the purpose of this marketing order:))~~ The following definitions for terms used in this chapter must be interpreted as consistent with the definitions in chapter 15.65 RCW, Washington state agricultural commodity boards.

(1) "Director" means the director of agriculture of the state of Washington or the director's duly appointed representative.

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

(3) "Act" means the Washington State Agriculture Enabling Act ~~((of 1961))~~ or chapter 15.65 RCW.

(4) "Person" means any ~~((person))~~ individual, firm, association ((or)), corporation, limited liability company, trust, partnership, society, or any other organization of individuals or any unit or agency of local or state government.

(5) ~~((Affected))~~ Producer means any person who produces, or causes to be produced, in commercial quantities, ~~((canola or rapeseed, or both))~~ oilseeds in the state of Washington. "To produce" means to act as a producer. For the purposes of this order, a "producer" is the same as an "affected producer" under chapter 15.65 RCW.

(6) "Commercial quantity" means all ~~((the canola or rapeseed))~~ oilseeds produced for market in any calendar year by any producer.

(7) ~~((Affected))~~ Handler means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing ~~((canola or rapeseed))~~ oilseeds not produced by the handler and includes any lending agencies for a commodity credit corporation loan to producers. For the purposes of this chapter, a handler is the same as an "affected handler" under chapter 15.65 RCW. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) ~~((Canola and rapeseed commodity))~~ Board ~~((referred to as "board"))~~ means the ~~((canola and rapeseed))~~ oilseeds commodity board formed under WAC 16-573-020.

(9) ~~((Canola or rapeseed or "canola and rapeseed"))~~ Oilseeds means any of the Brassica Sp. oilseeds (canola and rapeseed) and all mustards, produced for use as oil, meal, planting seed, condiment, or other industrial or chemurgic uses ~~((, and includes mustard)).~~

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning on June 1 of any year and ending with the last day of May, both dates being inclusive.

(11) ~~((Producer handler is both a "producer" and a "handler" with respect to canola and rapeseed and is covered by this order as a producer when engaged in the business of producing canola or rapeseed or a handler when engaged in processing, selling, marketing or distributing canola or rapeseed.~~

~~((12))~~ "Affected area" means the ((following counties located in)) the state of Washington((: Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kliekitat, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima)).

~~((13))~~ (12) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

~~((14))~~ (13) "Affected unit" means one hundred pounds (hundredweight) of ((canola or rapeseed, or both)) oilseeds as defined in subsection (9) of this section.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-020 The ~~((canola and rapeseed)) oilseeds board.~~ (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the oilseeds board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of ~~((eight))~~ seven members ~~((Six members must be affected producers elected under provisions of this order. One member must be an affected handler appointed by the elected producers. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the department and the public.~~

(b) For the purpose of nomination and election of producer members of the board, the affected area of the state of Washington is divided into three representative districts as follows:

(i) District I must have two board members, being positions one and two and include the counties of Adams, Benton, Douglas, Franklin, Grant, Kliekitat, Lincoln, and Yakima.

(ii) District II must have two board members, being positions three and four and include the counties of Ferry, Pend Oreille, Spokane, and Stevens.

(iii) District III must have two board members being positions five and six and include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.

(iv) The handler appointed by the elected producers will be position seven.) as follows:

Position 1 is appointed by the director and must be a producer.

Position 2 is appointed by the director and must be a producer.

Position 3 is elected by the producers and must be a producer.

Position 4 is elected by the producers and must be a producer.

Position 5 is elected by the producers and must be a producer.

Position 6 is appointed by the director and must be a handler.

Position 7 is appointed by the director to represent the department and the public and must be neither a producer nor a handler.

(b) Transition to amended marketing order: The position numbers under the prior marketing order correspond to the positions under the amended marketing order as follow:

<u>Prior Marketing Order Position</u>	<u>Amended Marketing Order Position</u>
<u>1</u>	<u>1</u>
<u>2</u>	<u>2</u>
<u>3</u>	<u>3</u>
<u>4</u>	<u>Eliminated</u>
<u>5</u>	<u>4</u>
<u>6</u>	<u>5</u>
<u>7</u>	<u>6</u>
<u>8</u>	<u>7</u>

(c) Board members elected or appointed under the prior marketing order shall continue to serve their respective terms, provided that thirty days from the effective date of this amended marketing order, the board shall forward to the director the names of the board members elected or appointed to position 1, 2, and 6 under this amended marketing order, whereupon the director will appoint the members to serve their respective terms. The qualifications required for each position under this amended marketing order become effective upon expiration of any terms starting under the prior marketing order. Any vacancies on the effective date of this amended marketing order must be filled in conformance with this amended marketing order.

(3) Board membership qualifications.

(a) ~~((The affected producer members))~~ At the time of election or appointment to the board, the producer members of the board must be ~~((practical producers of canola or rapeseed))~~ actually engaged in producing oilseeds in the ~~((district in and for which they are nominated and elected and must be))~~ state of Washington; citizens and residents of the state ~~((of Washington,))~~; over the age of ~~((twenty-five))~~ eighteen years ~~((, each of whom is and has been actually engaged in producing canola or rapeseed within the state of Washington for a period of five years and has during that time))~~; and not handlers or dealers of oilseeds. Further, the producer members must have derived a substantial portion of ~~((their))~~ income ~~((therefrom and who is not engaged in business as a handler or other dealer))~~ from actually producing oilseeds in Washington during the preceding five-year period.

(b) ~~((The affected))~~ At the time of appointment to the board, the handler member of the board must be ~~((a practical handler of canola or rapeseed and must be a citizen and resident of))~~ actually engaged in handling oilseeds in the state of Washington, ~~((over the age of twenty-five years and who is and has been,))~~ either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative ~~((actually engaged in handling canola or rapeseed within))~~; a citizen and resident of this state; and over the ~~((state))~~ age of ~~((Washington for a period of five))~~ eighteen years ~~((and has during that period))~~. Further, the handler member must have derived a substantial portion of ~~((their))~~ income ~~((therefrom))~~ from actually handling oilseeds in Washington during the preceding five-year period.

(c) Board members must meet the qualifications of board members ~~((of the board must continue during))~~ throughout their term of office.

(4) Term of office.

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

~~(b) Membership positions on the board are designated numerically; affected producers will have positions one through six, the affected handler will have position seven and the member appointed by the director will have position eight.~~

~~(e) The term of office for the initial board members must be as follows:~~

~~Positions one and three – One year, ending on May 31, 1999;~~

~~Positions two and five – Two years, ending on May 31, 2000;~~

~~Positions four, six and seven – Three years, ending on May 31, 2001.~~

~~(d) No elected producer member of the board can serve more than two full consecutive three-year terms))~~ beginning under this amended marketing order as follows:

Positions 1 and 3: First term expires May 31, 2014;

Positions 2 and 4: First term expires May 31, 2015;

Positions 5 and 6: First term expires May 31, 2016.

(5) Nomination ~~((and election))~~ of board members.

(a) Each year the director shall call for nomination meetings ~~((in those districts whose))~~ for board ~~((members term is))~~ position terms that are about to expire, regardless of whether the position is elected or director appointed. The meeting(s) must be held at least thirty days in advance of the date set by the director for the election ~~((of board members))~~ or advisory vote.

(b) Notice of ~~((every))~~ a nomination meeting must be published in newspapers of general circulation within the affected ~~((district))~~ area at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers ~~((within the affected district))~~ according to the list maintained by the ~~((director under))~~ board pursuant to RCW ~~((15.65.200 of the act))~~ 15.65.295.

~~((Nonreceipt of notice by any))~~ (c) A finding that an interested person did not receive notice will not invalidate the proceedings at the nomination meeting.

(d) Any ~~((qualified affected))~~ producer may ~~((be nominated))~~ nominate a qualified producer orally for membership on the board at the nomination meeting~~((s))~~. Nominations may also be ~~((made within five days after the meeting))~~ by written petition ~~((filed with the director,))~~ signed by at least five ~~((affected))~~ producers ~~((, At the inception of this order, nominations may be made at the issuance hearing))~~ and filed with the director within five days after the nomination meeting.

~~((b))~~ (e) If the board moves and the director approves that the nomination meeting procedure be ~~((deleted))~~ waived, the director shall give notice of the vacancy by mail to all ~~((affected))~~ producers. Nominating petitions for producers or handlers must be signed by at least five affected producers ~~((of the district from which the candidate will be elected))~~ or handlers, as applicable. The final date for filing nominations must be at least twenty days after the notice was mailed.

(f) When only one nominee is nominated for any position, RCW 15.65.250 applies and the director shall determine whether the nominee meets the qualifications for the position and, if so, declare the nominee elected or appoint the nominee to the position.

(6) Election or advisory vote of board members.

(a) (~~Members of the board must be elected~~) Elections and advisory votes must be conducted by secret mail ballot within the month of April under the supervision of the director. (~~Affected~~) Elected producer members of the board must be elected by a majority of the votes cast by the (~~affected~~) producers (~~within the affected district~~). Each (~~affected~~) producer is entitled to one vote.

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

(c) If more than two candidates are nominated for any director-appointed producer or handler board member position, an advisory vote must be conducted under RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. If only two candidates are nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected (~~district~~) area at least ten days in advance of the date of the election or advisory vote. At least ten days before every election for board membership, the director shall mail a ballot of the candidates to each (~~affected~~) producer entitled to vote whose name appears upon the list of the (~~affected~~) producers maintained by the (~~director in accordance with RCW 15.65.200 of the act~~) board pursuant to RCW 15.65.295. Any other (~~affected~~) producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(~~Nonreceipt of a ballot by an affected~~) (e) A finding that a producer did not receive a ballot will not invalidate the election or advisory vote of any board member.

(~~(d) The appointed handler member of the initial board shall be elected by a majority of the elected members at the first meeting.~~)

(7) Vacancies (~~prior to election~~).

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the first or second board meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the remaining board members will recommend to the director a qualified person for appointment to the vacant position. The director will appoint the person recommended by the board unless the person fails to meet the qualifications of board members under RCW 15.65 and this order.

(8) Quorum. A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

(9) Board compensation. No board member (~~(of the board)~~) will receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt by resolution a provision for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

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

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

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

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

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. The expenses and costs may be paid by check, draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish ~~((a))~~ an "(eanola and rapeseed) oilseed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited ~~((at least annually))~~ subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the ~~((state of Washington))~~ commission. A copy of the audit shall be delivered within thirty days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The premium for the bond or bonds must be paid by the board from assessments collected. The bond may not be necessary if any board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(j) To establish by resolution a headquarters which shall continue unless changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States ~~((to))~~ for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts and interagency agreements with any private or public agency, whether federal, state, or local. Purchasing and contracting must comply with chapter 39.26 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts of agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of oilseeds.

(s) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(t) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of oilseeds including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(u) To maintain a list of names and addresses of producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(v) To maintain a list of names and addresses of all persons who produce oilseeds and the amount, by unit of oilseeds produced during the past three years pursuant to RCW 15.65.295.

(w) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(x) To execute any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least quarterly, with the time and date fixed by resolution of the board and held in accordance with chapter 42.30 RCW (Open Public Meetings Act). The board shall file notice of the time and place of regular meetings with the code reviser on or before

January of each year for publication in the state register. The board shall publish notice of any change from such meeting schedule in the state register for distribution at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. The board must give notice of the annual meeting ~~((must be given by the board))~~ at least ten days prior to the meeting by written notice to each producer ~~((and by notifying the regular news media))~~.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with reasonable notice to the members. ~~((The))~~ Any board member may waive, in writing, notice of any special meeting ~~((may be waived by a written waiver from each member of the board))~~. Notice of special meetings must comply with chapter 42.30 RCW.

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

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-030 Marketing order purposes. ~~((The))~~ This marketing order is to promote the general welfare of the state ~~((to enable producers of canola and rapeseed to help themselves establish orderly, fair, sound, efficient, unhampered marketing, grading and standardization of canola or rapeseed, or both. To execute the purposes of the order, the board shall provide for a program in one or more of the following areas))~~ and for the purpose of maintaining existing markets or creating new or larger local, domestic and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita use of oilseed products grown in Washington state. The Washington state oilseeds board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) Establish plans and conduct programs for ~~((advertising))~~ marketing, sales, promotion or other programs for maintaining present markets or creating new or larger markets for ~~((canola or rapeseed, or both))~~ oilseeds. The programs shall be directed toward increasing the sale of ~~((canola and rapeseed))~~ oilseeds without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of ~~((canola or rapeseed))~~ oilseeds nor disparage the quality, value, sale or use of any other agricultural commodity.

(2) Provide for research in the production, processing, irrigation, transportation, handling or distribution of ~~((canola and rapeseed))~~ oilseeds and expend the necessary funds for ~~((the))~~ such purposes. Insofar as practicable, the research must be carried out by ~~((experiment stations of))~~ Washington State University, but if in the judgment of the board ~~((that the experiment station do))~~ the Washington State University does not have adequate facilities for a particular project or if some other research agency has better facilities ~~((therefor))~~, the

project may be carried out by other research agencies selected by the board.

(3) ~~((Provide by rules for:~~

~~(a) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and, or label for canola and rapeseed or any products thereof;~~

~~(b) Requiring producers, handlers or other persons to conform to the grades and, or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of canola or rapeseed in offering, advertising and delivering it therefor;~~

~~(c) Providing for inspection and enforcement to ascertain and effectuate compliance;~~

~~(d) Establishing rules respecting the foregoing;~~

~~(e) Providing that the board shall execute inspection and enforcement of, and may (within the general provisions of the order) establish detailed provisions relating to, the standards and grades and the rules. Any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing and shall not be considered an amendment for the purposes of the act and order.~~

~~(4)) Provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market.~~

~~((5) Provide for marketing information and services to affected producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of canola and rapeseed purchased by handlers from affected producers.~~

~~(6)) (4) Conduct programs for the purpose of providing information and education including:~~

~~(a) Marketing information and services for producers of oilseeds for the verification of grades, standards, weights, tests and sampling of quality and quantity of oilseeds purchased by handlers from producers;~~

~~(b) Information and services enabling producers to meet their resource conservation objectives;~~

~~(c) Oilseed-related education and training.~~

~~(5) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of oilseeds produced in Washington state to any elected official or officer or employee of an agency.~~

~~(6) The director shall approve any plans, programs, and projects concerning:~~

~~(a) The establishment, issuance, effectuation and administration of programs authorized under this section for advertising and promotion of oilseeds.~~

~~(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of oilseeds may be encouraged, expanded, improved, or made more efficient.~~

~~(7) Prohibit making or publishing false or misleading advertising. The regulation may authorize uniform trade practices applicable to all similarly situated handlers and, or other persons.~~

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-040 Assessments and collections. (1) Assessments.

(a) The assessment on all varieties of ~~((canola or rapeseed))~~ oilseeds subject to this marketing order shall be ten cents per hundredweight and shall be deducted by the first purchaser from the price paid to the grower. The assessment shall be remitted to the board in accordance with procedures adopted by the board.

(b) The assessments shall not be payable on any ~~((canola or rapeseed))~~ oilseeds used by the ~~((affected))~~ producer on their premises for feed, seed and personal consumption.

(2) **Collections.** Excess moneys collected by the board under ~~((the))~~ this order during the fiscal year may be carried over and used during the next successive fiscal year. The board may also recommend that excess moneys at the close of a fiscal year be refunded on a pro rata basis to the ~~((affected))~~ producers from whom the moneys were collected.

(3) **Penalties.** Any due and payable assessment levied in the specified amount as may be determined by the board under the act and ~~((the))~~ this order is a personal debt of the person assessed or who owes the debt, and it is due and payable to the board when payment is called for by the board. If a person fails to pay the board the full amount of the assessment by the date due, the board may add to the unpaid assessment or sum an amount not exceeding ten percent of the amount owed. In the event of failure of the person or persons to pay the full amount due, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent ~~((thereon))~~, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-041 Time—Place—Method for payment and collection of assessments. Effective with the growing season of 1998, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-573-040:

(1) All first handlers of ~~((canola and rapeseed))~~ oilseeds grown in the state of Washington, or the person acting on behalf of a first buyer, shall withhold the amount of assessment from their remittance to growers of ~~((canola or rapeseed))~~ oilseeds and transmit it to the board.

(2) All assessments will be due and payable to the board within thirty days of collection. With the submission of the assessments, a report listing the name, address, volume handled or purchased and amount deducted or collected for each producer must be submitted to the board on forms provided by or approved by the board.

(3) Any assessments paid after the above deadlines shall be accompanied by a penalty fee of ten percent in accordance with RCW 15.65.440 of the act.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

~~**WAC 16-573-060 Termination of the order.** ((The order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent to the dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether the termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of the affected producers file written application with the director for the termination. The termination shall not, however, become effective until the expiration of the marketing season.)) Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.~~

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

~~**WAC 16-573-080 ((Separability)) Severability.** If any provisions of the order are declared invalid, or the applicability to any person, circumstances or thing is held invalid, the validity of the remainder provisions or of the applicability to any other person, circumstances or thing shall not be affected.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-573-070 Effective time.

WSR 14-06-053

**PERMANENT RULES
DEPARTMENT OF**

RETIREMENT SYSTEMS

[Filed February 27, 2014, 11:10 a.m., effective October 1, 2014]

Effective Date of Rule: October 1, 2014.

Purpose: This rule-making activity amends rules related to administrative factors used for purchasing service credit past the deadline date and for members in the teachers' retirement system plans 2 and 3 to purchase service credit for out-of-state teaching.

Citation of Existing Rules Affected by this Order: Repealing WAC 415-10-040 and 415-10-090; and amending WAC 415-02-175, 415-02-370, 415-10-010, 415-10-020, 415-10-030, 415-10-050, 415-10-070, 415-10-100, and 415-112-292.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 14-03-120 on January 21, 2014.

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 9, Repealed 2.

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

Date Adopted: February 26, 2014.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-175 May I establish service credit for the time I was on an unpaid authorized leave of absence?

(1) Will I get service credit for the time I was on an unpaid authorized leave of absence? You will receive service credit for the period of time you are on an unpaid authorized leave of absence, up to a maximum of twenty-four service credit months during your entire working career, provided all of the following apply:

(a) You are a member of LEOFF Plan 2, PERS Plan 2 or 3, PSERS, SERS Plan 2 or 3, or TRS Plan 2 or 3;

(b) Your leave of absence was authorized by your employer;

(c) You resumed employment according to the requirements in subsection (3) of this section; and

(d) You establish the service credit for the period of leave according to the provisions in this section.

(2) How does an unpaid authorized leave of absence affect my retirement? If you establish service credit for the period of time you were on an unpaid authorized leave of absence:

(a) It will be used as part of your total service credit to determine retirement eligibility and pension; but

(b)(i) Except as noted in (b)(ii) of this subsection, the period of time you were on leave will not be included in your average final compensation period.

Example:

Joseph has the following earnable compensation prior to retirement:

YR 1	\$30,000
YR 2	\$35,000
YR 3	\$40,000
YR 4	\$45,000
YR 5	\$50,000
YR 6	Unpaid leave of absence for entire year
YR 7	\$55,000

Joseph's AFC period will be YR 2, YR 3, YR 4, YR 5, and YR 7.

(ii) This provision does not apply to interruptive military service. If you establish service credit for a period of interruptive military service and that period falls in your AFC period, you are entitled to have the salary you would have earned during that time period used in the calculation of your AFC.

(3) **Do I qualify to establish this service credit?** As a requirement for establishing this service credit, you must resume employment within the same retirement system you left.

(a) After resuming employment, you may request, and pay for, service credit whether you are a contributing member or whether you become inactive.

(b) If you are a law enforcement officer in LEOFF Plan 2 and took a part-time unpaid leave of absence while you worked part-time, you may request service credit only after returning to full-time employment with the employer that authorized your leave of absence. In this case, you may only request part-time service credit for the portion of time you were on unpaid leave of absence.

(4) **How do I request this service credit?** If you wish to establish this service credit, you must contact the department. The department will obtain written verification from your employer confirming the months of your authorized leave of absence and your salary for the months preceding and following the leave.

(5) **How does the department determine the cost of establishing this service credit?**

(a) In order to establish service credit for the period of time you were on leave of absence, you must pay the employee and employer retirement contributions, plus applicable interest. LEOFF Plan 2 members must also pay the contributions normally paid by the state.

(b) The amount of the employee and employer contributions is calculated as follows:

(i) For TRS members, the salary upon which contributions are calculated is determined by averaging the salary earned for the school year, as defined in RCW 28A.150.040, prior to your unpaid leave of absence and the salary earned in the school year after you returned to work. If you were on leave of absence for less than the entire school year, that year's salary will be prorated according to the number of months you were on leave of absence.

(ii) For law enforcement officers in LEOFF Plan 2 who took a part-time unpaid leave of absence while working part-time, the salary upon which contributions are calculated is determined by:

(A) Averaging your basic salary during the last full month of employment before your part-time leave of absence, and your basic salary during the first full month after you return to full-time employment; and

(B) Multiplying the monthly salary determined according to (b)(ii)(A) of this subsection by the number of months you were on leave.

(iii) For members of other systems, the salary upon which contributions are calculated is determined by:

(A) Averaging the compensation earned during the last full month of employment before your leave of absence, and

the compensation you earned during the first full month after you returned to work; and

(B) Multiplying the monthly salary determined according to (b)(iii)(A) of this subsection by the number of months you were on leave.

If you worked part-time prior to the leave of absence, partial month wages will be used to estimate your average salary. In this case, you may only establish part-time service credit for the period of time you were on leave of absence.

(6) **What is the payment process for establishing this service credit?**

(a) You may purchase this service credit in one payment, or make payments at any time until the deadline expires.

(b) Interest will accrue on the unpaid balance until payment is made in full.

(c) The department will accept funds that have been rolled over from a tax deferred retirement account for the purchase of the service credit. However, the amount you may roll over is limited to the purchase price of the service credit. If the rollover amount does not cover the entire purchase price, you must pay the additional amount within thirty days of the rollover. If the balance is not paid within thirty days, the rollover funds will be returned to the original financial institution.

(d) If you took more than one authorized leave of absence, the department will bill you separately for each occurrence. Service credit will be granted for each occurrence only after the bill for that period is paid in full.

(7) **What is the deadline for establishing this service credit?** Except as provided in subsection (9) of this section:

(a) If you are a member of LEOFF Plan 2, PERS Plan 2, PSERS, or SERS Plan 2, payment in full must be received within five years from the initial date of your return to an eligible position, or prior to your retirement, whichever occurs first.

(b) If you are a member of PERS Plan 3 or SERS Plan 3, payment in full must be received prior to your retirement.

(c) If you are a member of TRS Plan 2 or 3, payment in full must be received by August 31st of the fifth school year, as defined in RCW 28A.150.040, after you return to employment or prior to your retirement, whichever comes first. The school year during which you return to work will be counted as year one.

(8) **What if I do not make payment in full by the deadline?**

(a) If you are a Plan 2 member or a PSERS member and do not make payment in full by the deadline, the amount you paid will be refunded to you.

(b) If you are a Plan 3 member and do not make payment by the deadline, the portion of your payments that were:

(i) Employer contributions will be refunded to you; and

(ii) Employee contributions will be deposited into your defined contribution account and available to you only upon separation from service.

(c) If you are a Plan 2 member or a PSERS member, the department will refund partial payments prior to the deadline upon your request.

(d) If you are a PERS Plan 2, SERS Plan 2, or TRS Plan 2 member and transfer to Plan 3 prior to making payment in full:

- (i) The department will refund any partial payments; and
- (ii) You must reapply under Plan 3 if you still wish to establish this service credit.

(9) **What is the exception to the deadline?** After your initial deadline has passed, you retain the right to establish this service credit until the date of your retirement. However, the purchase price will be equal to the full actuarial value of the increase in benefit that results from the purchased service credit. ~~((You may))~~ The department will use the two-part formula in WAC ((415-10-040)) 415-10-030 to determine actuarial value.

(10) **What state law applies to establishing service credit for an unpaid authorized leave of absence?**

- (a) PERS Plan 2: RCW 41.40.710;
- (b) PERS Plan 3: RCW 41.40.805;
- (c) TRS Plan 2: RCW 41.32.810;
- (d) TRS Plan 3: RCW 41.32.865;
- (e) SERS Plan 2: RCW 41.35.470;
- (f) SERS Plan 3: RCW 41.35.650;
- (g) LEOFF Plan 2: RCW 41.26.520;
- (h) PSERS: RCW 41.37.260;
- (i) Deadline extension: RCW 41.50.165.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-02-370 Factors for establishing or restoring service credit. RCW 41.50.165(2) and chapter 415-10 WAC allow you to establish or restore service credit by paying the actuarial value of the resulting increase in your monthly retirement allowance. This section describes ~~((how))~~ what the factors take into consideration when the department uses actuarial factors to calculate the lump sum costs. See also chapter 415-10 WAC.

~~((1) What are the factors for calculating the lump sum costs of establishing or restoring service credit?~~ There are three actuarial factors that may be used to calculate the cost of establishing or restoring service credit:

~~(a) The first factor used represents the pension accrual rate, the annuity price (value of future benefit payments), increases in average final compensation, future salary increases and interest discount between the age at which you establish or restore the service credit and the age at which you would be eligible to retire with a normal retirement allowance.~~

~~(b) The second factor used represents the cost of lowering the normal retirement age by one year.~~

~~(c) The third factor used represents future salary increases and interest discount between the age at which you establish or restore the service credit and the age at which you would be eligible to retire with a normal retirement allowance.~~

~~(2) At which age do I qualify for a normal retirement allowance?~~ Age requirements differ among plans. For specific information see the RCW pertaining to your plan:

LEOFF Plan 1:	RCW 41.26.090(1)
LEOFF Plan 2:	RCW 41.26.430(1)
PERS Plan 1:	RCW 41.40.180

PERS Plan 2:	RCW 41.40.630(1)
PERS Plan 3:	RCW 41.40.820(1)
PSERS:	RCW 41.37.210
SERS Plan 2:	RCW 41.35.420(1)
SERS Plan 3:	RCW 41.35.680(1)
TRS Plan 1:	RCW 41.32.480
TRS Plan 2:	RCW 41.32.765(1)
TRS Plan 3:	RCW 41.32.875(1)
WSPRS Plan 1:	RCW 43.43.250(2)
WSPRS Plan 2:	RCW 43.43.250(2))

What are the factors and how are they used in calculating the lump sum costs of establishing or restoring service credit? For each system and plan there is a two-dimensional "age and service" table of actuarial factors which are used to calculate the cost of establishing or restoring service credit.

The department will calculate the actuarial value of the service credit you purchase using the following formula:

$$\text{Total Cost} = \text{Part 1 Cost} + \text{Part 2 Cost}$$

Part 1: Annual Average Salary x Service Credit Years to Purchase x Factor 1

Part 2: Annual Average Salary x Current Service Credit Years x (Factor 1 – Factor 2)

Factor 1 takes into consideration your current age and service credit, including the service credit you are purchasing.

Factor 2 takes into consideration your current age and service credit, excluding the service credit you are purchasing.

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-10-010 Can I purchase service credit after the statutory deadline? RCW 41.50.165 generally allows you to purchase service credit that you failed to establish or reestablish within the statutory deadline.

(1) **You must pay the actuarial value of the increase to your retirement benefit.** The actuarial value of the increase to your benefit means the cost to the retirement system trust fund of:

(a) Including the additional service credit in your retirement benefit calculation; and

(b) Beginning your retirement benefit at an earlier age, if applicable. ~~((This second factor applies only to PERS Plan 1, TRS Plan 1, and WSPRS Plans 1 and 2.))~~

(2) **The valuation is based upon economic assumptions.** The cost to the retirement system trust fund for the increased value to your benefit is calculated based upon interest rate assumptions adopted by the pension funding council and actuarial factors calculated by the state actuary and adopted ((or approved)) by the ((state actuary)) department.

AMENDATORY SECTION (Amending WSR 08-02-048, filed 12/27/07, effective 1/27/08)

WAC 415-10-030 Calculation of cost to purchase service credit ~~(in certain plans)~~. ~~((If you are a member of LEOFF Plan 1 or 2, PERS Plan 2 or 3, PSERS, TRS Plan 2 or 3, or SERS Plan 2 or 3,))~~ The department will calculate the actuarial value of the service credit you purchase under RCW 41.50.165(2) using the following formula:

$$\begin{aligned} & ((\text{Service Credit Purchase Cost} = \\ & \text{Average Earnings} \times \text{Service Credit Being Purchased} \times \text{Factor 1} \end{aligned}$$

~~This represents the cost of the additional retirement allowance you will receive by including the additional service credit from your purchase into your retirement benefit calculation.))~~

$$\text{Total Cost} = \text{Part 1 Cost} + \text{Part 2 Cost}$$

Part 1: Annual Average Salary x Service Credit Years to Purchase x Factor 1

Part 2: Annual Average Salary x Current Service Credit Years x (Factor 1 – Factor 2)

Factor 1 takes into consideration your current age and service credit, including the service credit you are purchasing.

Factor 2 takes into consideration your current age and service credit, excluding the service credit you are purchasing.

The Part 1 cost pays for the additional value of the service credit you plan to purchase.

The Part 2 cost pays for the increased value of your current service credit. The value of your current service credit may increase with this purchase because you may be eligible for earlier retirement, better early retirement factors, or both. For some situations the Part 2 cost will be \$0.

Example: Purchase of additional service credit.

Ron is an active PERS Plan 2 member who currently has ~~((48))~~ 5 years of service. Ron turned age ~~((61))~~ 45 last month. His annual average ((earnings are \$50,000)) salary is \$40,000. Ron would like to purchase ~~((3))~~ 15 years of service that he previously withdrew but did not restore before the deadline.

~~((The department will first determine Ron's normal retirement age to identify the appropriate factor from the Factor 1 table[†] to use in the formula for calculating the service credit purchase cost. Normal retirement age (NRA) is the earliest age at which a member will be eligible to retire with unreduced benefits under the requirements of his or her system and plan. Ron's NRA will come when he is age 65 and has 21 years of service^{**}. Since he is currently age 61, Ron is 4 years (48 months) to normal retirement age. So, the department will use the factor 0.2016 from the Factor 1 table, which is factor for 48 months to NRA under PERS Plan 2.))~~

The department will ~~((then))~~ calculate the cost of purchasing the service credit using the Service Credit Purchase Cost formula:

~~((Cost = Average Earnings x Service Credit Being Purchased x Factor 1))~~

$$\text{Total Cost} = \text{Part 1 Cost} + \text{Part 2 Cost}$$

Part 1: Annual Average Salary x Service Credit Years to Purchase x Factor 1

Part 2: Annual Average Salary x Current Service Credit Years x (Factor 1 – Factor 2)

The cost of Ron's purchase would be calculated as follows:

$$\begin{aligned} & ((\text{Cost} = \$50,000 \times 3 \text{ (years purchased)} \times 0.2016 \text{ (48 months to NRA)} = \\ & \quad \quad \quad \$30,240)) \end{aligned}$$

Part 1: \$40,000 (Annual Average Salary) x 15 (Years to Purchase) x 0.1660* (Factor 1) = \$99,600

Part 2: \$40,000 (Annual Average Salary) x 5 (Current Service Credit) x (0.1660* – 0.1128*)(Factor 1 - Factor 2) = \$10,640

Ron's total cost to purchase ~~((3))~~ 15 years of service credit is ~~(((\$30,240))~~ \$110,240 (Part 1 + Part 2).

~~((Footnotes to section:~~

[†] See WAC 415-02-370.

^{**} Ron would first qualify under the PERS Plan 2 eligibility rule of being age 65 or older with at least 5 years of service.))

*Factors used are for illustration purposes in this example only as actuarial factors change periodically.

AMENDATORY SECTION (Amending WSR 97-01-014, filed 12/6/96, effective 1/6/97)

WAC 415-10-070 Requesting an estimate—Requesting a bill. (1) **The department will provide you a service credit purchase estimate upon request.** If, after receiving the estimate, you wish to purchase some or all of the available credit you must request a bill ~~((in writing))~~. Your request must identify the amount of service credit you wish to purchase.

(2) **Your bill will be based on a specific date of payment.** The cost to purchase the service credit could change if you attempt to pay after the specific payment date listed on the bill. If you do not make payment by the bill's due date but still wish to purchase service credit, you must request a new bill from the department.

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

WAC 415-10-100 Can a Plan 3 member purchase service credit? (1) Transferring purchased Plan 2 credit under RCW 41.50.165(2) into Plan 3. If you purchase Plan 2 service credit under this chapter and later enter Plan 3, that credit will also transfer to Plan 3.

(a) Fifty percent of the money you paid to purchase the service credit will be credited to the Plan 3 defined contribution account.

(b) The other fifty percent will be credited to the Plan 3 defined benefit plan established under RCW 41.32.831 for

TRS Plan 3, RCW 41.35.600 for SERS Plan 3, and RCW 41.40.780 for PERS Plan 3.

(2) **Purchasing Plan 2 service credit after transferring to Plan 3.** You may purchase service credit initially available under Plan 2 after you transfer to Plan 3. The service credit will be credited in Plan 3. If you purchase Plan 2 service credit under this chapter, fifty percent of the money you pay to purchase the service credit will be credited to your Plan 3 defined contribution account. The other fifty percent will be credited to the Plan 3 defined benefit portion established under RCW 41.32.831 for TRS Plan 3, RCW 42.35.600 for SERS Plan 3 and RCW 41.40.780 for PERS Plan 3.

(3) **Not applicable for service earned after transferring to Plan 3.** ~~((Service you earn as a Plan 3 member is automatically recredited if you reenter membership and earn at least twelve service credit months.))~~ Plan 3 does not have any deadlines on establishing optional service. ~~((Because there are no deadlines for establishing or reestablishing service credit there is no provision for purchasing service credit earned in Plan 3 under RCW 41.50.165.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 415-10-040 Calculation of cost to purchase service credit for members of PERS Plan 1, TRS Plan 1 or WSPRS Plan 1 or 2.
- WAC 415-10-090 If I reenter employment after separating from service and withdrawing my plan contributions, must I restore all periods of service?

AMENDATORY SECTION (Amending WSR 08-02-048, filed 12/27/07, effective 1/27/08)

WAC 415-10-020 Definitions. As used in this chapter:

(1) **Annual average ((earnings)) salary** means:

(a) In PERS Plan 1, TRS Plan 1 or WSPRS Plan 1: The average of your two highest consecutive years of compensation as of the date of your service credit purchase.

(b) In Plan 2 or Plan 3: The average of your five highest consecutive years of compensation as of the date of your service credit purchase.

(c) In PSERS: The average of your five highest consecutive years of compensation as of the date of your service credit purchase.

(d) In LEOFF Plan 1: The basic salary attached to your position at the date of your service credit purchase.

(2) **Factors** means the actuarial cost factors calculated by the state actuary and, except as noted below, adopted by the department that are used in the formulas for calculating the cost of a service credit purchase. ~~((See WAC 415-02-370 for additional information about the service credit purchase))~~ The law enforcement officers' and firefighters' (LEOFF) retirement board adopts the LEOFF Plan 2 factors.

(3) **LEOFF** means the law enforcement officers' and firefighters' retirement system established under chapter 41.26 RCW.

(4) **PERS** means the public employees' retirement system established under chapter 41.40 RCW.

(5) **PSERS** means the public safety employees' retirement system established under chapter 41.37 RCW.

(6) **SERS** means the school employees' retirement system established under chapter 41.35 RCW.

(7) **Service credit being purchased** means the number of service credit months or service credit years you are purchasing.

(8) **TRS** means the teachers' retirement system established under chapter 41.32 RCW.

(9) **WSPRS** means the Washington state patrol retirement system established under chapter 43.43 RCW.

~~((10) **Years of earlier retirement** equals the number of years or fractions of years you will be able to retire earlier as a result of your purchase of service credit.~~

~~((11) **Years of service** equals the total anticipated years of service you will have accrued at retirement, including the additional service credit you purchase under this section.))~~

AMENDATORY SECTION (Amending WSR 00-22-049, filed 10/27/00, effective 11/27/00)

WAC 415-10-050 Restrictions on purchasing service credit. (1) **You may not purchase service credit under RCW 41.50.165(2) if your deadline to establish or reestablish the service credit has not expired.**

(2) **If you are reestablishing credit you must purchase at least the service credit you earned in any one calendar month of employment.**

(3) **If you are establishing optional service credit ((~~for the first time~~)), you must purchase the entire period of service.** ~~((If you are not reestablishing credit canceled by a withdrawal of contributions, you must purchase the entire period of service.))~~

(4) **Your ability to purchase service credit may be limited by Internal Revenue Code restrictions.** The department may limit the amount of service credit you may purchase in any calendar year in order to stay within the maximum employee contribution limits established by the Internal Revenue Code for 401(a) tax qualified plans.

(5) **You may not make installment payments.** If you purchase service credit under this section, you must make payment in a single lump-sum as determined by the department for each unit of service credit purchased.

(6) **Purchasing service credit will not move you from one plan to another.** Plan membership is based upon the date your retirement system membership was established. Purchasing prior service credit does not change the date you first established membership and therefore does not change your plan membership.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-112-292 May I purchase TRS Plan 2 or Plan 3 service credit for public education experience gained by teaching out-of-state or for the federal government? If you earned service credit for teaching out-of-state or for the federal government, you may be eligible to purchase that public education experience as TRS service credit.

The public education claimed must have been covered by a retirement or pension plan and must have been as a teacher, as defined by that retirement or pension plan.

(1) **Do I qualify to purchase TRS service credit for public education experience outside of the state of Washington?** You are eligible to purchase service credit under this section if you meet all the following requirements at the time of purchase:

- (a) You are employed in a TRS Plan 2 or Plan 3 eligible position;
- (b) You have at least two years of TRS service credit;
- (c) You earned the education experience service credit by teaching in a public school in another state within the United States or with the United States federal government;
- (d) The service was covered by a state, political subdivision of a state, or federal retirement plan;
- (e) You are not receiving a benefit from the other system; and
- (f) You are not eligible for an unreduced benefit from the other system.

(2) **Do I qualify to purchase public education experience service credit if I am a substitute teacher?** You may purchase service credit under this section if your employer is currently reporting you as an active substitute teacher and you meet the requirements in subsection (1)(b) through (f) of this section.

(3) **If I purchase TRS service credit for public education experience, how may it be used?** The service credit you purchase under this section will be treated the same as service credit you earn in TRS. It will be used in the calculation of your retirement allowance, to qualify for retirement or early retirement, and to meet the Plan 3 ten-year vesting requirement.

(4) **What is the cost of the service credit?** You must pay the actuarial value of the resulting increase in your retirement allowance. The following formula is used to calculate the cost:

$$((Average\ earnings^{\dagger} \times Years\ of\ service\ credit\ being\ purchased \times Actuarial\ factor) = Cost$$

Example:

Will is an active TRS Plan 2 member, age sixty one, with seventeen years of service credit. If he was eligible to retire, his annual AFC would be \$50,000. He would like to purchase three years and six months of service credit for his public education experience. The cost is calculated as follows:

$$\$50,000 \times 3.5 \times Actuarial\ factor = Cost$$

For more information on how the department uses factors in determining the cost of purchasing service credit for public education experience, see WAC 415-02-370.)

$$Total\ Cost = Part\ 1\ Cost + Part\ 2\ Cost$$

Part 1: Annual Average Salary x Service Credit Years to Purchase x Factor 1

Part 2: Annual Average Salary x Current Service Credit Years x (Factor 1 – Factor 2)

Factor 1 takes into consideration your current age and service credit, including the service credit you are purchasing.

Factor 2 takes into consideration your current age and service credit, excluding the service credit you are purchasing.

Example of Cost to Purchase Service Credit:

TRS Plan 2 member, age 45, with 15 years of service credit and 5 years to be purchased for public education experience.

Part 1:

- Annual Average Salary: \$40,000
- Years to Purchase: 5
- Factor 1: 0.1756*

Part 2:

- Annual Average Salary: \$40,000
- Current Service Credit Years: 15
- Factor 2: 0.1494*

Total Cost to Purchase Service Credit:

$$\$40,000 (Annual\ Average\ Salary) \times 5 (Years\ To\ Purchase) \times 0.1756 (Factor\ 1) = \$35,120$$

$$\$40,000 (Annual\ Average\ Salary) \times 15 (Current\ Service\ Credit) \times (0.1756 - 0.1494) (Factor\ 1 - Factor\ 2) = \$15,720$$

$$Total\ Cost = \$50,840 (Part\ 1 + Part\ 2)$$

*Factors used are for illustration purposes in this example only as actuarial factors change periodically.

(5) **How much TRS service credit may I purchase for out-of-state or federal public education experience?** If you meet the requirements in this section, you may purchase up to seven years (eighty-four months) of TRS service credit. You may purchase service credit in one-month increments but may not purchase a partial month of service credit.

(6) **May I purchase some service credit now and some at a later date?** No, you may not purchase some service credit now and some at a later date. You have one opportunity to purchase service credit under this section. You may purchase service credit from more than one retirement system provided you purchase it at the same time.

(7) **How do I purchase the service credit?** To purchase TRS Plan 2 or Plan 3 service credit for out-of-state or federal public education experience, you must do the following:

- (a) You must complete an application provided by the department.
 - (i) You must complete, sign, and forward the application to your former retirement system(s).
 - (ii) Your former retirement system(s) must verify your service credit according to the instructions on the application.

(iii) If you are purchasing service credit from more than one retirement system, each retirement system must verify your service on a separate application.

(iv) Upon receipt of your properly completed application, the department will bill you for the service credit using the formula in subsection (4) of this section; the department will set a due date for the payment.

(b) You must make payment in full by the due date. If your payment is not received by the due date, your bill will become null and void. You may request a new bill from the department at a later date and it will reflect factors in effect at that time.

(i) You may make direct payment with either a personal or cashier's check. It may be possible to transfer funds from another eligible retirement account to pay your bill. However, DRS cannot accept funds in excess of the cost to make your purchase. You are advised to check with the administrator of your account to see if you can transfer those dollars.

(ii) Your employer may, at its option, pay some or all of the cost of the service credit.

(iii) If you are a Plan 2 member, your payment will be placed in your member account.

(iv) If you are a Plan 3 member, fifty percent of your payment will be placed in your defined contribution account and fifty percent will be placed in the trust fund from which your retirement allowance will be paid.

(8) **Do I need to give up my right to a benefit from my previous retirement system for the service credit I purchase in TRS?** No, you do not need to give up your right to a benefit from your previous retirement system for the service credit you purchase in TRS. At the time you purchase TRS service credit, you only need to prove that you are not currently receiving a benefit from your previous system and that you are not currently eligible for an unreduced benefit. Your previous retirement system will be required to verify this information on your application.

(9) **May I purchase public education experience service credit to add to my TRS service credit and also use out-of-state teaching service credit to qualify for early retirement?** Yes, you may purchase public education experience to add to your TRS service credit and/or use out-of-state teaching to qualify for early retirement. However, you may not use the same out-of-state service for both programs. Please see WAC 415-112-295. For example, if you have seven years of eligible out-of-state service credit, you may purchase five years to increase your TRS service credit and use the remaining two years to qualify for early retirement.

((† Up to sixty months of service credit will be used in determining your average earnings; for this formula, average earnings is the amount your average final compensation (AFC) would be if you retired on the date of the service credit purchase.))

WSR 14-06-054
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed February 27, 2014, 2:12 p.m., effective March 30, 2014]

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

Purpose: The agency is amending WAC 182-502-0002 and 182-502-0003 in response to amendments the agency is making to chapter 182-531 WAC for applied behavior analysis, filed under WSR 12-14-100 on July 7, 2012; and chapter 182-543 WAC for complex rehabilitation technology, filed under WSR 13-15-072 on July 16, 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 182-502-0002 and 182-502-0003.

Statutory Authority for Adoption: RCW 41.05.021; chapter 178, Laws of 2013 (E2SHB 1445); and chapter 4, Laws of 2013 (3ESSB 5034).

Adopted under notice filed as WSR 14-03-040 on January 8, 2014.

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 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 0, Amended 2, Repealed 0.

Date Adopted: February 27, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state ((department of social and health services)) health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include((s)) treatment, equipment, related supplies, and drugs.

(1) Professionals:

(a) Advanced registered nurse practitioners;

(b) Anesthesiologists;

(c) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531-1410 through 182-531-1436:

(i) Certified agency-affiliated counselors;

(ii) Certified counselors; and

(iii) Certified counselor advisors.

(d) Audiologists;

~~((d))~~ (e) Chemical dependency professionals:
 (i) Mental health care providers; and
 (ii) Peer counselors.
~~((e))~~ (f) Chiropractors;
~~((f))~~ (g) Dentists;
~~((g))~~ (h) Dental hygienists;
~~((h))~~ (i) Denturists;
~~((i))~~ (j) Dietitians or nutritionists;
~~((j))~~ (k) Hearing aid fitters/dispensers;
~~((k))~~ (l) Marriage and family therapists(~~(, only as provided in WAC 388-531-1400)~~);
~~((l))~~ (m) Mental health counselors(~~(, only as provided in WAC 388-531-1400)~~);
~~((m))~~ (n) Mental health care providers;
~~((n))~~ (o) Midwives;
~~((o))~~ (p) Naturopathic physicians;
~~((p))~~ (q) Nurse anesthetist;
~~((q))~~ (r) Occularists;
~~((r))~~ (s) Occupational therapists;
~~((s))~~ (t) Ophthalmologists;
~~((t))~~ (u) Opticians;
~~((u))~~ (v) Optometrists;
~~((v))~~ (w) Orthodontists;
~~((w))~~ (x) Orthotist;
~~((x))~~ (y) Osteopathic physicians;
~~((y))~~ (z) Osteopathic physician assistants;
~~((z))~~ (aa) Peer counselors;
~~((aa))~~ (bb) Podiatric physicians;
~~((bb))~~ (cc) Pharmacists;
~~((cc))~~ (dd) Physicians;
~~((dd))~~ (ee) Physician assistants;
~~((ee))~~ (ff) Physical therapists;
~~((ff))~~ (gg) Prosthetist;
~~((gg))~~ (hh) Psychiatrists;
~~((hh))~~ (ii) Psychologists;
~~((ii))~~ (jj) Radiologists;
~~((jj))~~ (kk) Registered nurse delegators;
~~((kk))~~ (ll) Registered nurse first assistants;
~~((ll))~~ (mm) Respiratory therapists;
~~((mm))~~ (nn) Social workers(~~(, only as provided in WAC 388-531-1400)~~); and
~~((nn))~~ (oo) Speech/language pathologists.
 (2) Agencies, centers and facilities:
 (a) Adult day health centers;
 (b) Ambulance services (ground and air);
 (c) Ambulatory surgery centers (medicare-certified);
 (d) Birthing centers (licensed by the department of health);
 (e) ~~(Blood banks~~;
~~(f))~~ Cardiac diagnostic centers;
~~((g))~~ (f) Case management agencies;
~~((h))~~ (g) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of ~~((alcohol and substance abuse (DASA)))~~ behavioral health and recovery (DBHR), and contracted through either:
 (i) A county under chapter 388-810 WAC; or
 (ii) ~~((DASA))~~ DBHR to provide chemical dependency treatment services.

~~((i))~~ (h) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by ~~((DASA))~~ DBHR);
~~((j))~~ (i) Community AIDS services alternative agencies;
~~((k))~~ (j) Community mental health centers;
~~((l))~~ (k) Diagnostic centers;
~~((m))~~ (l) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
~~((n))~~ (m) Family planning clinics;
~~((o))~~ (n) Federally qualified health centers (designated by the federal department of health and human services);
~~((p))~~ (o) Genetic counseling agencies;
~~((q))~~ (p) Health departments;
~~((r))~~ (q) Health maintenance organization (HMO)/managed care organization (MCO);
~~((s))~~ (r) HIV/AIDS case management;
~~((t))~~ (s) Home health agencies;
~~((u))~~ (t) Hospice agencies;
~~((v))~~ (u) Hospitals;
~~((w))~~ (v) Indian health service facilities/tribal 638 facilities;
~~((x))~~ (w) Tribal or urban Indian clinics;
~~((y))~~ (x) Inpatient psychiatric facilities;
~~((z))~~ (y) Intermediate care facilities for the mentally retarded (ICF-MR);
~~((aa))~~ (z) Kidney centers;
~~((bb))~~ (aa) Laboratories (CLIA certified);
~~((cc))~~ (bb) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
~~((dd))~~ (cc) Neuromuscular and neurodevelopmental centers;
~~((ee))~~ (dd) Nurse services/delegation;
~~((ff))~~ (ee) Nursing facilities (approved by the DSHS aging and ~~((disability services))~~ long-term support administration);
~~((gg))~~ (ff) Pathology laboratories;
~~((hh))~~ (gg) Pharmacies;
~~((ii))~~ (hh) Private duty nursing agencies;
~~((jj))~~ (ii) Radiology - Stand-alone clinics;
~~((kk))~~ (jj) Rural health clinics (medicare-certified);
~~((ll))~~ (kk) School districts and educational service districts;
~~((mm))~~ (ll) Sleep study centers; and
~~((nn))~~ (mm) Washington state school districts and educational service districts.
 (3) Suppliers of:
 (a) Blood, blood products, and related services;
 (b) Durable and nondurable medical equipment and supplies;
~~((b))~~ (c) Complex rehabilitation technologies;
~~((d))~~ (d) Infusion therapy equipment and supplies;
~~((e))~~ (e) Prosthetics/orthotics;
~~((f))~~ (f) Hearing aids; and
~~((e))~~ (g) Respiratory care, equipment, and supplies.
 (4) Contractors:
 (a) Transportation brokers;
 (b) Spoken language interpreter services agencies;

- (c) Independent sign language interpreters; and
- (d) Eyeglass and contact lens providers.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0003 Noneligible provider types. The ~~((department))~~ medicaid agency does not enroll licensed or unlicensed health care practitioners not specifically listed in WAC ~~((388-502-0002))~~ 182-502-0002, including, but not limited to:

- (1) Acupuncturists;
- (2) ~~((Counselors, except as provided in WAC 388-531-1400;~~
- ~~((3)))~~ Sanipractors;
- ~~((4))~~ Naturopaths;
- ~~((5)))~~ (3) Homeopaths;
- ~~((6)))~~ (4) Herbalists;
- ~~((7)))~~ (5) Massage therapists;
- ~~((8))~~ ~~social workers, except as provided in WAC 388-531-1400 and 388-537-0350;~~
- ~~((9)))~~ (6) Christian science practitioners, theological healers, and spiritual healers;
- ~~((10)))~~ (7) Chemical dependency professional trainee (CDPT); and
- ~~((11)))~~ (8) Mental health trainee (MHT).

WSR 14-06-056
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed February 27, 2014, 3:30 p.m., effective March 30, 2014]

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

Purpose: Clarifies when a member's eligible surviving spouse and minor children will be entitled to receive the defined benefit portion of Plan 3, after the death of a Plan 3 member in the public employees' retirement system (PERS), school employees' retirement system (SERS) or teachers' retirement system (TRS) who has not yet retired. Additionally, this rule-making activity updates the rules to reflect current agency policy no longer requiring a witness signature on the beneficiary designation form.

Citation of Existing Rules Affected by this Order: Amending WAC 415-108-315, 415-110-315, and 415-112-705.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 14-03-121 on January 21, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: February 26, 2014.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 05-12-041, filed 5/25/05, effective 6/25/05)

WAC 415-108-315 How do I designate a beneficiary, and who will receive a distribution if I die before retirement? ~~((This section applies to the designation of beneficiaries for Plan 1 and Plan 2 members' defined benefit and Plan 3 members' defined contribution accounts. RCW 41.40.835 governs the defined benefit portion of Plan 3.))~~

(1) If you die before retirement, the following statutes govern any distribution from your account:

(a) RCW 41.40.270 for Plan 1 members;

(b) RCW 41.40.700 for Plan 2 members;

(c) RCW 41.40.835 for Plan 3 members' defined benefits; and

(d) RCW 41.34.070 for Plan 3 members' defined contributions. See example three.

(2) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you ~~((and a witness))~~. Strict compliance with these provisions is required.

~~((2)))~~ (3) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making a distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, and telephone number of the current trustee; and

(iii) The tax identification number.

~~((3)))~~ (4) You may name contingent beneficiaries in addition to primary beneficiaries.

~~((4)))~~ (5) You may change your beneficiary designation at any time.

~~((5)))~~ (6) A change in marital status may invalidate your prior designation.

~~((6))~~ ~~Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.)~~ Distribution is governed by:

- (a) RCW 41.40.270 for Plan 1 members;
 (b) RCW 41.40.700 for Plan 2 members; and
 (c) RCW 41.34.070 for Plan 3 members.)

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.40.270(2) (Plan 1) or 41.40.700(2) (Plan 2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

- (a) Your accumulated contributions; or
 (b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

(8) For Plan 3 members, if you were eligible but had not applied for a service retirement or had completed enough service to be eligible for a service retirement at the time of your death, your surviving spouse, or your minor children or your spouse's minor children, if your spouse is deceased, is eligible to receive a defined benefit under RCW 41.40.835.

Examples:

EXAMPLE ONE.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.40.270 for Plan 1 members, RCW 41.40.700 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

EXAMPLE TWO.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

Facts

When she became a PERS 1 member, Joan was unmarried and named her mother as her beneficiary. Joan later married, but did not complete a new beneficiary form before she died with four years of service.

Result

Unless required to do otherwise by court order, the department will comply with RCW 41.40.270 (1)(b) and pay Joan's surviving spouse the accumulated contributions in her retirement account. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

Facts

John is a PERS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.40.700(2). However, Mary died the following week before requesting a distribution from the department.

Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

AMENDATORY SECTION (Amending WSR 05-12-041, filed 5/25/05, effective 6/25/05)

WAC 415-110-315 How do I designate a beneficiary, and who will receive a distribution if I die before retirement? ((This section applies to the designation of beneficiaries for Plan 2 members' defined benefit and Plan 3 members' defined contribution accounts. RCW 41.35.710 governs the defined benefit portion of Plan 3.))

(1) If you die before retirement, the following statutes govern any distribution from your account:

- (a) RCW 41.35.460 for Plan 2 members;
 (b) RCW 41.35.710 for Plan 3 members' defined benefits; and
 (c) RCW 41.34.070 for Plan 3 members' defined contributions. See example three.

(2) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you ((and a witness)). Strict compliance with these provisions is required.

~~((2))~~ (3) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making a distribution to any trust, the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, and telephone number of the current trustee; and

(iii) The tax identification number.

~~((3))~~ (4) You may name contingent beneficiaries in addition to primary beneficiaries.

~~((4))~~ (5) You may change your beneficiary designation at any time.

~~((5))~~ (6) A change in marital status may invalidate your prior designation.

~~((6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by:~~

~~(a) RCW 41.35.460 for Plan 2 members; and~~

~~(b) RCW 41.34.070 for Plan 3 members.)~~

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.35.460(2) (Plan 2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

(8) For Plan 3 members, if you were eligible but had not applied for a service retirement or had completed enough service to be eligible for a service retirement at the time of your death, your surviving spouse, or your minor children or your spouse's minor children, if your spouse is deceased, is eligible to receive a defined benefit under RCW 41.35.710.

Examples:

EXAMPLE ONE.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of

the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.35.460 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

EXAMPLE TWO.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

Facts

When she became a SERS Plan 2 member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

Result

Unless required to do otherwise by a court order, the department will comply with RCW 41.35.460(2) and pay Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

Facts

John is a SERS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.35.460(2). However, Mary died the following week before requesting a distribution from the department.

Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

AMENDATORY SECTION (Amending WSR 05-12-041, filed 5/25/05, effective 6/25/05)

WAC 415-112-705 How do I designate a beneficiary, and who will receive a distribution if I die before retirement? ((This section applies to the designation of beneficiaries for Plan 1 and Plan 2 members' defined benefit and Plan 3 members' defined contribution accounts. RCW 41.32.895 governs the defined benefit portion of Plan 3.))

(1) If you die before retirement, the following statutes govern any distribution from your account:

(a) RCW 41.32.520 for Plan 1 members;

(b) RCW 41.32.805 for Plan 2 members;

(c) RCW 41.32.895 for Plan 3 members' defined benefits; and

(d) RCW 41.34.070 for Plan 3 members' defined contributions. See example three.

(2) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you ~~((and a witness))~~. Strict compliance with these provisions is required.

~~((2))~~ (3) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making a distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, and telephone number of the current trustee; and

(iii) The tax identification number.

~~((3))~~ (4) You may name contingent beneficiaries in addition to primary beneficiaries.

~~((4))~~ (5) You may change your beneficiary designation at any time.

~~((5))~~ (6) A change in marital status may invalidate your prior designation.

~~((6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by:~~

~~(a) RCW 41.32.520 for Plan 1 members;~~

~~(b) RCW 41.32.805 for Plan 2 members; and~~

~~(c) RCW 41.34.070 for Plan 3 members.))~~

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.32.520 (1)(b) (Plan 1) or 41.32.805(2) (Plan 2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

(8) For Plan 3 members, if you were eligible but had not applied for a service retirement or had completed enough service to be eligible for a service retirement at the time of your death, your surviving spouse, or your minor children or your spouse's minor children, if your spouse is deceased, is eligible to receive a defined benefit under RCW 41.32.895.

Examples:

EXAMPLE ONE.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.32.520 for Plan 1 members, RCW 41.32.805 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

EXAMPLE TWO.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

Facts

When she became a TRS 1 member, Joan was unmarried and named her mother as her beneficiary. Joan later married, but did not complete a new beneficiary form before she died with four years of service.

Result

Unless required to do otherwise by a court order, the department will comply with RCW 41.32.520(1) and pay

Joan's surviving spouse the accumulated contributions in her retirement account. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

Facts

John is a TRS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.32.805(2). However, Mary died the following week before requesting a distribution from the department.

Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

b. We added language to make the "instrument of conveyance or sale" language used in REET Rule 102(4) more consistently used throughout the REET rules, including WAC 458-61A-301 (5), (6), and (7):

c. We made changes to use of the term "transfer" instead of "conveyance" more consistent throughout the REET rules and to avoid confusion by using the term "sale" (a defined term in REET Rule 102(17)) in one instance found in WAC 458-61A-303(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 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 11, 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: February 28, 2014.

Dylan Waits
Rules Coordinator

WSR 14-06-060

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed February 28, 2014, 9:46 a.m., effective March 31, 2014]

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

Purpose: The department amended WAC 458-61A-105, 458-61A-202, 458-61A-205, 458-61A-206, 458-61A-207, 458-61A-210, 458-61A-213, 458-61A-215, 458-61A-301, 458-61A-303, and 458-61A-304 to (1) amend REET affidavit documentation requirements for certain rules, (2) correct usage of certain terms in the rules, (3) make rule language consistent with the statutory language upon which the rules are based, and (4) edit typographical and grammatical errors in the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-105 Mobile and floating home sales, 458-61A-202 Inheritance or devise, 458-61A-205 Governmental transfers, 458-61A-206 Condemnation proceedings, 458-61A-207 Bankruptcy, 458-61A-210 Irrevocable trusts, 458-61A-213 IRS "tax deferred" exchange, 458-61A-215 Clearing or exiting title, and additions to title, 458-61A-301 Payment of tax, collection responsibility, audit responsibility, and tax rulings, 458-61A-303 Affidavit, and 458-61A-304 Supplemental statements.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, and 82.01.060.

Adopted under notice filed as WSR 13-23-109 on November 20, 2013.

Changes Other than Editing from Proposed to Adopted Version: a. The following ~~stricken~~ language was deleted from proposed WAC 458-61A-202(7):

"Documentation. In order to claim this exemption, the following documentation must be ~~available and provided to the county treasurer or the department upon request.~~ ..."

This complies with RCW 82.45.197 and results in no substantive change to that portion of the rule.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-105 Mobile and floating home sales.

(1) **Mobile homes.** The transfer of a mobile home is subject to either real estate excise tax or sales/use tax, depending on the characteristics of the transfer, regardless of whether the mobile home is classified as real or personal property on the assessment rolls.

(2) **Application of real estate excise tax.** The real estate excise tax applies to the transfer of a mobile home that:

(a) Is affixed to land by a foundation (post or blocks) and has connections for utilities;

(b) Is not required to be removed from the land as a condition of sale; and

(c) Has been subject to retail sales or use tax during a previous sale.

(3) **Sales or use tax.** Mobile home sales are subject to retail sales or use tax in the following instances:

(a) The initial retail sale of the mobile home;

(b) The sale from a dealer's lot of either a new or used mobile home;

(c) If the removal of the mobile from the land is a condition of the sale; or

(d) The mobile home is not affixed to the land by a foundation and does not have connections for utilities.

(4) **Used floating homes.** The real estate excise tax applies to the transfer of a used floating home that is:

(a) Constructed on a float used in whole or in part for human habitation as a single-family dwelling;

(b) Not designed for self-propulsion by mechanical means or for propulsion by means of wind; and

(c) Listed on the real property tax rolls of the county in which it is located and in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

AMENDATORY SECTION (Amending WSR 10-09-050, filed 4/15/10, effective 5/16/10)

WAC 458-61A-202 Inheritance or devise. (1) **Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property

agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The ~~((conveyance))~~ transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, ~~((retaining))~~ and retain a life estate ~~((for themselves))~~. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, while retaining a life estate ~~((for themselves))~~, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a ~~((testamentary))~~ trust ~~((without probate))~~ instrument, a certified copy of the death certificate, and a copy of the trust ~~((agreement))~~ instrument showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants with rights of survivorship and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order(-);

(f) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-205 ((Government)) Governmental transfers. (1) **Introduction.** Transfers of real property from a ~~((government))~~ governmental entity are not subject to the real estate excise tax. Transfers of real property to a ~~((government))~~ governmental entity are subject to real estate excise tax unless specifically exempted under this chapter. A completed real estate excise tax affidavit is required for transfers

both to and from a ~~((government))~~ governmental entity. In claiming the exemption, the affidavit must state as a reason for the exemption which constitutional provision or authorizing statute provides that the transferor is a governmental entity.

(2) **Government seller.** A governmental entity selling real property is exempt from the real estate excise tax.

(3) **Government purchaser.** Generally, a seller that is not a governmental entity must pay real estate excise tax on voluntary sales of real property to a governmental entity unless the transfer is otherwise exempt under this chapter. See WAC 458-61A-206 regarding transfers pursuant to condemnation proceedings or under threat of the exercise of eminent domain.

(4) **Transfers for a public purpose.** Transfers to a governmental entity for a public use in connection with the development of real property by a developer when the transfer is required for plat approval are not subject to the real estate excise tax. For example, a developer who deeds property to the city for streets and utilities is not subject to real estate excise tax on the transfer.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-206 Condemnation proceedings. (1) **Introduction.** Transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain, a court judgment or settlement with a ~~((government))~~ governmental entity based upon a claim of inverse condemnation, or as a result of the actual exercise of eminent domain, are not subject to the real estate excise tax.

(2) **Transfer must be to a governmental entity.** To qualify for this exemption, the threat of condemnation or the exercise of eminent domain must be made by a governmental entity with the actual power to exercise eminent domain.

(3) **Threat to exercise eminent domain must be imminent.** To qualify for this exemption, the governmental entity must have either filed condemnation proceedings against the seller/grantee; or:

(a) The governmental entity must have notified the seller in writing of its intent to exercise its power of eminent domain prior to the sale; and

(b) The governmental entity must have the present ability and authority to use its power of eminent domain against the subject property at the time of sale; and

(c) The governmental entity must have specific statutory authority authorizing its power of eminent domain for property under the conditions presented.

(4) **Inverse condemnation.** Inverse condemnation occurs when the government constructively takes real property even though formal eminent domain proceedings are not actually taken against the subject property. The seller must have a judgment against the governmental entity, or a court approved settlement, based upon inverse condemnation to claim the exemption.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a sale to a governmental entity may or may not be exempt on the basis of condemnation or threat of eminent domain. The

status of each situation must be determined after a review of all the facts and circumstances.

(a) The Jazz Port school district wants to purchase property for a new school. An election has been held to authorize the use of public funds for the purchase, and the general area for the site has been chosen. In order to proceed, the district will need to obtain a five-acre parcel owned by the Fairwood family. The district has been granted authority to obtain property by the use of eminent domain if required. The district has notified the Fairwoods in writing of its intention to exercise its powers of eminent domain if necessary to obtain the land. The Fairwoods, rather than allowing the matter to proceed to court, agree to sell the parcel to the Jazz Port district. The school district will use the parcel for construction of the new school. The conveyance from the Fairwoods to Jazz Port school district is exempt from real estate excise tax because the transfer was made under the imminent threat of the exercise of eminent domain.

(b) The Sonata City Parks Department has the authority to obtain land for possible future development of parks. The department would like to obtain waterfront property for preservation and future development. They approach Frankie and Chaz Friendly with an offer to purchase the Friendlys' 20-acre waterfront parcel. The Parks Department does not have a current appropriation for actual construction of a park on the site, and the City Council has not specifically authorized an exercise of eminent domain to obtain the subject property. The conveyance from the Friendlys to the city is subject to the real estate excise tax, because the transfer was not made under the imminent threat of the exercise of eminent domain.

AMENDATORY SECTION (Amending WSR 06-15-021, filed 7/7/06, effective 8/7/06)

WAC 458-61A-207 Bankruptcy. (1) **Introduction.** The real estate excise tax does not apply to the ~~((conveyance))~~ transfer of real property by a trustee in bankruptcy or debtor in possession made after the plan is confirmed under a chapter 11 or chapter 12 plan. Federal law preempts real estate excise tax on these transfers.

(2) **Documentation ~~((requirements))~~.** In order to claim this exemption, a copy of the Order of Confirmation or an extract from the Confirmed Bankruptcy Plan, showing the date the bankruptcy plan was confirmed, the court case cause number, and the bankruptcy chapter number, must be ~~((attached to the real estate excise affidavit provided to the department))~~ available and provided to the county treasurer or the department upon request.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-210 Irrevocable trusts. (1) **Introduction.** The distribution of real property to the beneficiaries of an irrevocable trust is not subject to the real estate excise tax if no valuable consideration is given for the transfer and the distribution is made according to the trust instrument.

(2) **Transfer into trust.** A ~~((conveyance))~~ transfer of real property to an irrevocable trust is subject to the real estate excise tax if:

(a) The transfer results in a change in the beneficial interest and not a mere change in identity or ownership; and

(b) There is valuable consideration for the transfer.

(3) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer of real property to a trust ((conveyance)) may or may not be exempt from real estate excise tax. The status of each situation must be determined after a review of all the facts and circumstances.

(a) Eric and Annie, husband and wife, transfer real property valued at \$500,000 to an irrevocable trust. The property has an underlying debt of \$300,000 that is secured by a deed of trust. Under the terms of the trust, the trustee is required to pay all the income annually to the grantors (Eric and Annie), or to the survivor if one of them dies. Upon the death of both Eric and Annie, the property will be divided equally among their children. The conveyance of the property into the trust is not subject to the real estate excise tax, even if the trust pays the indebtedness, because there has been no change in the present beneficial interest, and Eric and Annie did not receive consideration for the transfer.

(b) Jim and Jean, husband and wife, own real property valued at \$800,000. Upon Jean's death, her one-half interest in the property is transferred to Jean's testamentary trust under the terms of her will. Jim, as trustee, has sole discretion to accumulate income or to pay income to himself, or to their children, or to their grandchildren, or to each. The transfer to the trust is not subject to real estate excise tax. See WAC 458-61A-202.

(c) Upon Jean's death, Jim's remaining half-interest in the property is valued at \$400,000, with an underlying debt of \$30,000, for which he is personally liable. Jim transfers his half-interest to Jean's testamentary trust, and the trust pays or is obligated to pay the indebtedness. The conveyance of Jim's one-half interest is subject to real estate excise tax, because the transfer involves both a present change in the beneficial interest (after Jean's death, assets in Jean's trust are legally separate from assets belonging to Jim) and there is valuable consideration in the form of relief of liability for the debt. The real estate excise tax is due on the amount of the consideration (\$30,000).

(4) **Revocable trusts.** See WAC 458-61A-211 for the taxability of transfers into a revocable trust.

(5) **Documentation.** When real property is transferred to or from a testamentary trust, or real property is transferred to or from an irrevocable trust, the following must be available and provided to the county treasurer or the department upon request:

(a) A copy of the trust instrument; or

(b) A statement signed by the trustee or the grantor, or the representative of the trustee or grantor containing the following information:

(i) The name, address, and telephone number of the trustee or grantor, and/or representative of the trustee or grantor who is authorized to represent the trustee or grantor before the department of revenue;

(ii) The character of the trust, e.g., testamentary, irrevocable living trust, etc.;

(iii) The nature of the transfer:

(A) If the transfer is to or from a testamentary trust, the nature of and reason for the transfer.

(B) If the transfer is to or from an irrevocable living trust:

(I) The nature and reason for the transfer;

(II) Whether or not the property is encumbered with debt; and

(III) Whether or not the trustee may, at the time of the transfer, distribute income and/or principal to a person(s) other than the grantor(s).

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-213 IRS "tax deferred" exchange. (1)

Introduction. This rule describes the application of the real estate excise tax in transfers involving an exchange facilitator. An "exchange facilitator" is a person who acts as an agent on behalf of another person in connection with an exchange of real property under section 1031 of the Internal Revenue Code (~~(section 1031)~~) of 1986 (section 1031 tax deferred exchange).

(2) Acquisition of property by an exchange facilitator in connection with a section 1031 tax deferred exchange is subject to the real estate excise tax.

(3) The later transfer of the property by the facilitator in completion of the exchange is subject to real estate excise tax, unless the following requirements are met:

(a) The proper tax was paid on the initial transaction;

(b) A supplemental statement signed by the exchange facilitator, as provided by WAC 458-61A-304, is attached to the real estate excise tax affidavit indicating that the facilitator originally took title to the property for the sole purpose of effecting a section 1031 (~~(federal)~~) tax deferred exchange; and

(c) The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of real property owned by the grantee.

(4) If the deeds for both transactions to and from the exchange facilitator are being recorded at the same time, the proper tax can be paid on either the first or the second transaction at the discretion of the exchange facilitator.

(5) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a (~~(conveyance))~~ transfer of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) Bob owns commercial real property in Princeton County worth \$400,000. Bob wants to exchange his property in Princeton County for other commercial property in Eagle County owned by Sally. Sally agrees to sell her Eagle County property to Bob for \$600,000. Bob places his commercial property in Princeton County for sale. John contacts Bob and agrees to purchase the Princeton County property for \$450,000. Bob contacts Ted, an exchange facilitator, to arrange for a transfer of his property as a section 1031 (~~(federal)~~) tax deferred exchange. Per Ted's instructions, Bob

transfers the Princeton County property to Ted. Ted transfers the Princeton County property to John and receives \$450,000. Real estate excise tax is due on the transfer from Bob to Ted. No tax is due on the transfer from Ted to John. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, \$450,000 of which was received from the Princeton County sale and \$150,000 from a new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob.

(b) Bob is unable to find a buyer for his Princeton County property. Bob contacts Ted, the exchange facilitator, to arrange for a transfer of his property as a section 1031 ((~~federal~~)) tax deferred exchange. Per Ted's instructions, Bob transfers the Princeton County property to Ted. Ted holds the property until Bob can locate a buyer. Real estate excise tax is due on the transfer from Bob to Ted. The Eagle County property is transferred from Sally to Ted for the \$600,000 sales price, provided from a \$600,000 new loan obtained by Bob. Ted transfers the Eagle County property to Bob. Tax is due on the transfer from Sally to Ted. No tax is due on the transfer from Ted to Bob. One month later, Joan agrees to purchase the Princeton County property. Ted transfers the property to Joan for \$350,000. Tax is due on the transfer from Ted to Joan, because the funds used by Ted to acquire the Princeton County property from Bob were not provided by Joan.

(6) **Documentation.** A real estate excise tax affidavit is required for each transfer in a section 1031 tax deferred exchange, including the transfers to and from an exchange facilitator. The affidavit reflecting the claim for tax exemption must show the affidavit number and date of the tax payment, and have attached the supplemental statement as provided by WAC 458-61A-304 and subsection (3)(b) of this section.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-215 Clearing or exiting title, and additions to title. (1) **Introduction.** The real estate excise tax does not apply to quitclaim deeds given for the sole purpose of clearing title if no consideration passes otherwise. This rule does not apply to deeds executed for the purpose of adding persons to title, except in cases of persons added to title for co-signing security purposes only.

(2) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a ((~~conveyance~~)) transfer of real property may or may not qualify for exemption under this rule. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(a) An exiting minority partner gives the partnership a quitclaim deed for the purpose of removing any presumptive interest. This transfer is exempt from real estate excise tax under this rule.

(b) An heir to an estate gives the estate a quitclaim deed for the purpose of removing any presumptive interest they have in the estate. This transfer is exempt under this rule.

(c) A developer deeds greenbelts, streets or common areas in a development to the homeowners association upon completion of the development and under the terms and covenants of the development. This transfer is exempt under this rule.

(d) Joseph owns a residence and goes to a bank to refinance. His credit is not good enough to obtain the new loan in his name only, but he can qualify if he obtains a co-signor/co-borrower. Joseph's parents agree to co-sign the loan. The bank requests that the parents also go on title with Joseph, and he quitclaims a half interest to his parents. Although the deed may be phrased as a gift to his parents, the deed acts as a security interest for his parents in the event Joseph defaults. The addition of Joseph's parents to the title is exempt under this rule, provided Joseph makes all the mortgage payments, and Joseph receives no consideration from his parents for the transfer.

(e) The parents described in (d) of this subsection who have been on title with their child are now issuing a quitclaim deed to Joseph to exit title. Joseph has now paid off or refinanced the mortgage in his name only. The parents' intention was to go on title as "co-signors" only, not as co-purchasers of the property, and they have not made any payments toward the repayment of the loan. This transfer is exempt under this rule.

(3) **Documentation.** In order to claim this exemption, a narrative that explains the nature of the clearance of, or addition to title must be available and provided to the county treasurer or the department upon request. The narrative must be signed by both grantor and grantee, or agents of either, and attached to the real estate excise tax affidavit. ((The original narrative will be retained with the original affidavit at the county office and a copy of the narrative will be attached to the department's affidavit copy.))

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

WAC 458-61A-301 Payment of tax, collection responsibility, audit responsibility, and tax rulings. (1) **Tax imposed.**

(a) The taxes imposed are due at the time the sale occurs and are collected by the county when the documents of sale are presented for recording or, in the case of a transfer of a controlling interest (see WAC 458-61A-101), by the department.

(b) The tax is imposed upon the seller. Effective May 1, 2010, the parent corporation of a wholly owned subsidiary is the seller, if the subsidiary sells to a third party and the subsidiary is dissolved before paying the tax.

(2) **Payment of tax. Scope of section.** This section applies to sales of real property that are evidenced by conveyance, deed, grant, assignment, quitclaim, or transfer of title to real property. See WAC 458-61A-101 for procedures pertaining to transfers or acquisitions of a controlling interest in an entity owning real property in Washington.

(3) **County as agent for state.** Real estate excise tax is paid to and collected by the agent of the county where the property is located (unless the transaction involves the trans-

fer of a controlling interest, in which case the tax is paid to the department).

(4) **Computation of tax.** The tax is computed by multiplying the combined state and local tax rates in effect at the time of sale by the selling price. A current list of the current state and local real estate excise tax rates is available on the department's web site at dor.wa.gov. This information is also available by contacting the county where the property is located.

(5) **Evidence of payment.** The county agent stamps the instrument of conveyance or sale ~~((or conveyance))~~ prior to its recording as evidence that the tax has been paid or that an exemption from the tax was claimed. In the case of a used mobile home, the real estate excise tax affidavit is stamped as evidence of payment or a claimed exemption. The stamp references the affidavit number, date, and payment of or exemption from tax, and identifies the person stamping the instrument or affidavit.

(6) **Compliance with property tax statutes.** The county agent will not stamp the instrument of conveyance or sale or affidavit if:

(a) A continuance of use has been applied for but not approved by the county assessor under chapter 84.33 or 84.34 RCW; or

(b) Compensating or additional tax is due but has not been paid as required by RCW 84.33.086, 84.33.140 (5)(c), 84.34.108 (1)(c), 84.36.812, or 84.26.080.

(7) **Prerequisites to recording.** The county auditor will not file or record the instrument of conveyance or sale until all taxes due under this section have been paid or the transfer is determined to be exempt from tax as indicated by a stamped document.

(8) **Evidence of lien satisfaction.** A receipt issued by the county agent for payment of the tax may be used as evidence of satisfaction of a lien imposed under RCW 82.45.070.

(9) **Audit authority.** All transactions are subject to audit by the department. The department will audit transactions to confirm the proper amount of tax was paid and that any claim for exemption is valid. Failure to provide documentation to the department as requested may result in denial of any exemptions claimed and the assessment of additional tax.

(10) **Tax assessments.**

(a) If the department discovers an underpayment of tax due, it will notify the taxpayer and assess the additional tax due, together with all applicable interest and penalties. The assessment notice will identify the additional tax due and explain the reason for the assessment.

(b) Persons receiving an assessment must respond within thirty days from the date the assessment was mailed. Failure to respond may result in the assessment of additional penalties and interest and enforcement for collection of the deficient tax under the administrative provisions of chapters 82.32 and 82.45 RCW.

(11) **Tax rulings.** Any person may request a written opinion from the department regarding their real estate excise tax liability pertaining to a proposed transfer of real property or a proposed transfer or acquisition of the controlling interest in an entity with an interest in real property. The request should include sufficient facts about the transaction to enable the department to ascertain the proper tax liability. The

department will advise the taxpayer in writing of its opinion. The opinion is binding upon both the taxpayer and the department under the facts presented in accordance with WAC 458-20-100 ~~((9), appeals, small claims and settlements. To obtain a written opinion, send your request to:~~

Department of Revenue
Taxpayer Information & Education
P.O. Box 47478
Olympia, WA 98504-7478

~~You may also use the "contact" information available online at dor.wa.gov).~~ To request a ruling, use the form available at the department's web site at dor.wa.gov.

(12) **Refunds.**

(a) **Introduction.** Under certain circumstances, taxpayers (or their authorized representatives) may request a refund of real estate excise tax paid. The request must be filed within four years of the date of sale, and must be accompanied by supporting documents.

(b) **Claims for refunds.** Any person having paid the real estate excise tax in error may apply for a refund of the amount overpaid by submitting a completed refund request form.

(c) **Forms and documentation.** Refund request forms are available from the department or the county. The completed form along with supporting documentation is submitted to the county office where the tax was originally paid. If the tax was originally paid directly to the department, ~~((the claim form and supporting documentation are submitted to:~~

Department of Revenue
Miscellaneous Tax Section
P.O. Box 47477

~~Olympia, WA 98504-7477))~~ you may apply for a refund using the forms and procedures provided at the department's web site at dor.wa.gov.

(d) **Circumstances under which refunds are authorized.** The authority to issue a refund under this chapter is limited to the following circumstances:

(i) Real estate excise tax was paid on the ~~((conveyance))~~ transfer back to the seller in a transaction that is completely rescinded (as defined in WAC 458-61A-209);

(ii) Real estate excise tax was paid on the ~~((conveyance))~~ transfer back to the seller on a sale rescinded by court order. The county treasurer must attach a copy of the court decision to the department's affidavit copy (see also WAC 458-61A-208, Deeds in lieu of foreclosure);

(iii) Real estate excise tax was paid on the initial ~~((conveyance))~~ transfer recorded in error by an escrow agent before the closing date, provided that the property is conveyed back to the seller;

(iv) Real estate excise tax was paid on the ~~((conveyance))~~ transfer back to the seller in accordance with (d)(iii) of this subsection;

(v) Real estate excise tax was paid on the initial ~~((conveyance))~~ transfer recorded before a purchaser assumes an outstanding loan that represents the only consideration paid for the property, provided:

(A) The purchaser is unable to assume the loan; and

(B) The property is conveyed back to the seller. The refund is allowed because there is a failure of the consideration;

(vi) The ~~((conveyance))~~ transfer back to the seller in (d)(v) of this subsection;

(vii) Double payment of the tax;

(viii) Overpayment of the tax through error of computation; or

(ix) Real estate excise tax paid when the taxpayer was entitled to claim a valid exemption from the tax but failed to do so at the time of transfer.

(e) **Responsibilities of county.**

(i) **Request for refund made prior to disposition of proceeds.** If the taxpayer submits a valid refund request to the county before the county treasurer has remitted the tax to the state treasurer, the county may void the receipted affidavit copies and issue the refund directly. The county will then submit a copy of the initial affidavit, together with a copy of the refund request, to the department. If, after reviewing the request for refund and supporting documentation, the county is unable to determine the validity of the request, the county will send the request, a copy of the affidavit, and all supporting documentation to the department for determination. If the county denies the request for refund, in whole or in part, the taxpayer may appeal in writing to the department's miscellaneous tax section within thirty days of the county's denial.

(ii) **Request for refund made after disposition of proceeds.** If the taxpayer submits the refund request after the county treasurer has remitted the tax to the state treasurer, the county will verify the information in the request and forward it to the department with a copy of the affidavit and any other supporting documents provided by the taxpayer. The county or the department may request additional documentation to determine whether the taxpayer qualifies for a refund.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-303 Affidavit. (1) **Introduction.** This section explains when a real estate excise tax affidavit is required for the ~~((conveyance))~~ transfer of ~~((an interest in))~~ real property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evidenced by conveyance, deed, grant, assignment, quitclaim, or any other document effectuating the transfer including, but not limited to, the following:

(a) ~~((Conveyance))~~ Transfer establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity, or in fulfillment of a community property agreement under RCW 26.16.120;

(b) ~~((Conveyance))~~ Transfer resulting from a court order;

(c) ~~((Conveyance))~~ Transfer to secure a debt;

(d) ~~((Conveyance))~~ Transfer of a taxable easement;

(e) A deed in lieu of foreclosure of a mortgage;

(f) A deed in lieu or declaration of forfeiture of a real estate contract;

(g) ~~((Conveyance))~~ Transfer to an heir in the settlement of an estate;

(h) ~~((Conveyance))~~ Transfer to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) ~~((Conveyance))~~ Transfer of development rights, water rights, or air rights;

(j) ~~((Conveyance))~~ Transfer of leasehold improvements;

(k) Boundary line adjustments; or

(l) ~~((The affidavit must be filed when))~~ Rerecording a document to correct a minor error, such as the legal description or spelling of a name.

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions including, but not limited to:

(a) ~~((Conveyance))~~ Transfer of cemetery lots or graves;

(b) ~~((Conveyance))~~ Transfer for assignment or release of security, stated on the face of the instrument:

(i) To secure or assign a debt; or

(ii) To provide or release collateral;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;

(e) A seller's assignment of deed and contract;

(f) A fulfillment deed pursuant to a real estate contract;

(g) A community property agreement under RCW 26.16.120;

(h) Purchase of an option; or

(i) An earnest money agreement.

(4) **Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in beneficial ownership," and have attached all documentation required by the department.

(5) **Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common, partners, etc., and identify the form and proportion of interest each is acquiring.

(6) **Affidavit must be complete.**

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the

case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

(7) **Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

(8) **Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department. Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement.

(9) **Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

(10) **Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of ~~((the conveyance))~~ sale.

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-304 Supplemental statements. (1) The department will provide the county with a uniform multiuse supplemental statement form for use in meeting the requirements of the following sections of this chapter:

(a) WAC 458-61A-306, ~~((Interest and penalties—))~~ Date of sale, interest, and penalties;

(b) WAC 458-61A-201, Gifts; and

(c) WAC 458-61A-213, IRS "tax deferred" exchange.

(2) The supplemental statements must be completed and distributed as required by the instructions contained on the form.

(3) Supplemental statements may be unsworn certified statements that meet the requirements set forth in RCW 9A.72.085.

WSR 14-06-067

PERMANENT RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed February 28, 2014, 3:01 p.m., effective March 31, 2014]

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

Purpose: WAC 246-933-275 Reactivation of an expired veterinary license, the rule requires that a veterinarian whose license has expired for more than three years and who has not been actively engaged in the practice of veterinary medicine must successfully complete the current North American Veterinary License Examination to reactivate the license. Current continuing education requirements of chapter 246-12 WAC, Part 2 must also be met.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 13-21-131 on October 22, 2013.

A final cost-benefit analysis is available by contacting Judy Haenke, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4947, fax (360) 236-2901, e-mail judy.haenke@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 1, 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 0, Repealed 0.

Date Adopted: December 2, 2013.

Ethan Nelson, DVM, Chair
Veterinary Board of Governors

NEW SECTION

WAC 246-933-275 Reactivation of an expired veterinary license. (1) To reactivate a veterinary license that has been expired for three years or less, the veterinarian must meet the requirements of chapter 246-12 WAC, Part 2.

(2) To reactivate a veterinary license that has been expired for more than three years, the practitioner must:

(a) Submit verification of unrestricted licensure in another state or jurisdiction; and

(b) Submit documentation of two hundred hours of active practice within each of the previous three years within that state or jurisdiction.

For purposes of this subsection, documentation of licensure and active practice in a foreign country is acceptable if there is an American Veterinary Medical Association accredited school or college of veterinary medicine in that country.

(3) To reactivate a veterinary license that has been expired for more than three years, when the veterinarian has

not held an unrestricted license and has not been in active practice, the veterinarian must:

(a) Successfully complete the current North American Veterinary Licensing Examination as provided in WAC 246-933-250(1); and

(b) Meet the continuing education requirements of WAC 246-12-040 and chapter 246-933 WAC.

WSR 14-06-068

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 28, 2014, 4:49 p.m., effective March 31, 2014]

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

Purpose: **Medicaid Expansion WACs - Phase 4**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Repealing WAC 182-514-0265; and amending WAC 182-500-0105, 182-503-0510, 182-507-0110, 182-514-0230, 182-514-0235, 182-514-0240, 182-514-0245, 182-514-0250, 182-514-0255, 182-514-0260, and 182-514-0270.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Adopted under notice filed as WSR 13-17-104 on August 21, 2013.

Changes Other than Editing from Proposed to Adopted Version:

The following changes were made from the version filed as WSR 13-17-104 on August 21, 2013:

- WAC 182-500-0105, clarified definition of "Tax filer" and "Tax dependent."
- WAC 182-503-0100, first sentence was inadvertently truncated; added wording to complete sentence.
- WAC 182-503-0100 (1) and (2)(c), added language that a person can refuse to cooperate with the agency in securing third-party benefits if the person can show that doing so would result in harm to them or their child.
- WAC 182-503-0110, added language to clarify what constitutes a "qualified" interpreter and translator; updated the contact information for the Office of Civil Rights.
- WAC 182-503-0120, made "plain talk" changes; added clarifying language regarding equal access for deaf, hard-of-hearing, deaf-blind persons, and people lacking capacity to identify their needs.

- WAC 182-503-0510 (3)(c), added pregnant minors and kidney disease to the list of "other" non-MAGI-based WAH programs.
- WAC 182-504-0130(2), clarified the time period in which a person can appeal a notice of action by the agency; eliminated reference to WAC 182-518-0005.
- WAC 182-504-0130(3), added clarifying language to explain, in more detail, the deadline requirement for a person requesting continued coverage.
- WAC 182-504-0130(4), deleted subsection (4)(b)(iii).
- WAC 182-504-0130(5), added clarifying language to explain, in more detail, when a person is not eligible for continued coverage.
- WAC 182-514-0235, clarified that the annual effective date for updated federal poverty levels is April 1; deleted wording that should have been removed when the definition of "institutional status" was deleted.
- WAC 182-514-0240 (2)(b), added clarifying information.
- WAC 182-514-0240 (2)(c), corrected errant WAC citations.
- WAC 182-514-0240 (2)(d), deleted.
- WAC 182-514-0240(8), added new subsection (8) to clarify that persons who are eligible for MAGI-based long-term care coverage are not required to participate their income or assets toward the cost of their care.
- WAC 182-514-0240(3), clarified that this section applies to all eligibility determinations, not just "initial" determinations.
- WAC 182-514-0240(5), added language to clarify that SSI-related persons who meet the eligibility criteria may qualify for institutional benefits.
- WAC 182-514-0240(7), deleted subsection (7).
- WAC 182-514-0250(4), clarified that a pregnant adult can be eligible for medically needy long-term care coverage.
- WAC 182-514-0255(2), 182-514-0260(3), 182-514-0270(2), corrected the CNIL amount; was two hundred percent, now two hundred ten percent.
- WAC 182-514-0255(5), added a reference to WAC 182-513-1395.
- WAC 182-514-0265, withdrew this section.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 12, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 12, Repealed 0.

Date Adopted: February 28, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0105 Medical assistance definitions—

T. "Tax filing terms":

(1) **"Tax filer"** means a person who expects to file a tax return.

(2) **"Tax dependent"** means a person for whom another person claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code of 1986 for a taxable year. A tax dependent may be either a qualified child or a qualified relative as defined below and under Section 152 of the Internal Revenue Code of 1986 for a taxable year.

(a) **"Qualified child"** means a child who meets the criteria to be claimed as a tax dependent based on one of the following relationships to the tax filer: Natural, adoptive, step, or foster child; natural, adoptive, step or half-sibling; or a descendant of any of the above; and meets the following criteria:

(i) The child is:

(A) Under the age of nineteen;

(B) Under the age of twenty-four and a full-time student;

or

(C) Any age and permanently or totally disabled.

(ii) The child lived in the tax filer's household for more than one-half of the year;

(iii) The child provided for less than one-half of his/her own support for the year; and

(iv) The child is not filing a joint tax return for the year unless the return is filed only as a claim for a refund of taxes.

(b) **"Qualified relative"** means a person who:

(i) Cannot be claimed as a qualifying child or the qualifying child of another tax filer;

(ii) Has lived in the tax filer's household for the full year or is related to the tax filer in one of the ways listed below and the relationship has not been ended by death or divorce:

(A) The tax filer's child, stepchild, foster child, or a descendant of any of them;

(B) A sibling, half-sibling or step-sibling;

(C) A parent, grandparent, or other direct ancestor, but not a foster parent;

(D) A niece, nephew, aunt, or uncle;

(E) In-law relationships (son, daughter, father, mother, brother or sister-in-law).

(iii) Has gross income below an annual threshold set by the Internal Revenue Service (IRS) (three thousand nine hundred dollars for tax year 2013 with some exceptions). See IRS publication 501 for more information; and

(iv) Relies on the tax filer to pay over one-half of their total support for the year.

(3) **"Nonfiler"** means a person who is not required to file a tax return and also includes those who are not required to file but choose to file for another purpose, such as to claim a reimbursement of taxes paid.

"Third party" means an entity other than the agency or the agency's designee that is or may be liable to pay all or part of the cost of health care for a (~~(medical assistance))~~ Washington apple health client.

"Third party liability (TPL)" means the legal responsibility of an identified third party or parties to pay all or part of the cost of health care for a (~~(medical assistance))~~ Washington apple health (WAH) client. A (~~(medical assistance))~~ WAH client's obligation to help establish TPL is described in WAC (~~(388-505-0540))~~ 182-503-0540.

"Title XIX" is the portion of the federal Social Security Act, 42 U.S.C. 1396, that authorizes funding to states for (~~(medical assistance))~~ health care programs. Title XIX is also called medicaid.

"Title XXI" is the portion of the federal Social Security Act, 42 U.S.C. 1397 et seq., that authorizes funding to states for the children's health insurance program(~~(Title XXI is also called))~~ (CHIP).

"Transfer of assets" means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

(1) An intentional act that changes ownership or title; or

(2) A failure to act that results in a change of ownership or title.

NEW SECTION

WAC 182-503-0100 Washington apple health—Rights and responsibilities. For the purposes of this chapter, "we" refers to the agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.

(1) If you are applying for or receiving health care coverage, you have the right to:

(a) Have your rights and responsibilities explained to you and given in writing;

(b) Be treated politely and fairly without regard to your race, color, political beliefs, national origin, religion, age, gender (including gender identity and sex stereotyping), sexual orientation, disability, honorably discharged veteran or military status, or birthplace;

(c) Ask for health care coverage using any method listed under WAC 182-503-0010 (if you ask us for a receipt or confirmation, we will provide one to you);

(d) Get help completing your application if you ask for it;

(e) Have an application processed promptly and no later than the timelines described in WAC 182-503-0060;

(f) Have at least ten calendar days to give the agency or its designee information needed to determine eligibility and be given more time if asked for;

(g) Have personal information kept confidential; we may share information with other state and federal agencies for purposes of eligibility and enrollment in Washington apple health;

(h) Get written notice, in most cases, at least ten calendar days before the agency or its designee denies, terminates, or changes coverage;

(i) Ask for an appeal if you disagree with a decision we make. You can also ask a supervisor or administrator to

review our decision or action without affecting your right to a fair hearing;

(j) Ask for and get interpreter or translator services at no cost and without delay;

(k) Ask for voter registration assistance;

(l) Refuse to speak to an investigator if we audit your case. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for health care coverage;

(m) Get equal access services under WAC 182-503-0120 if you are eligible;

(n) Ask for support enforcement services through the division of child support; and

(o) Refuse to cooperate with us in identifying, using, or collecting third-party benefits (such as medical support) if you fear, and can verify, that your cooperating with us could result in serious physical or emotional harm to you, your children, or a child in your care. Verification may include one of the following:

(i) A statement you sign, outlining your fears and concerns;

(ii) Civil or criminal court orders (such as domestic violence protection orders, restraining orders, and no-contact orders);

(iii) Medical, police, or court reports; or

(iv) Written statement from clergy, friends, relatives, neighbors, or co-workers.

(2) You are responsible to:

(a) Report changes in your household or family circumstances as required under WAC 182-504-0105 and 182-504-0110;

(b) Give us any information or proof needed to determine eligibility. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(c) Assign the right to medical support as described in WAC 182-505-0540, unless you can submit verification (which may include one of the items listed in subsection (1)(o) of this section) that your cooperating with us could result in serious physical or emotional harm to you, your children, or a child in your care;

(d) Complete renewals when asked;

(e) Apply for and make a reasonable effort to get potential income from other sources when available;

(f) Give medical providers information needed to bill us for health care services; and

(g) Cooperate with quality assurance or post enrollment review staff when asked.

NEW SECTION

WAC 182-503-0110 Washington apple health—Limited-English proficient (LEP) services. (1) We provide interpreter and translation services (limited-English proficient or LEP services) free of charge to you if you have limited ability to read, write, and/or speak English. Interpreter services are those used for oral communication between two parties who do not speak the same language. Translation services are those used for written communication.

(2) We provide LEP services in your primary language.

(a) A primary language is the language you tell us that you wish to use when communicating with us. You may designate at least one primary language for oral communications and at least one primary language for written communications, and you may designate a different primary language for oral and for written communications.

(b) We note your primary languages in a record available to the agency, its designee, and health benefit exchange employees.

(3) We can provide LEP services through bilingual workers and/or contracted interpreters and translators who are expected to be competent. We consider a bilingual worker or a contracted interpreter or translator to be competent if he or she is:

(a) Certified for interpreting and/or translating in the language by the language testing and certification program of the department of social and health services;

(b) Certified or otherwise determined to be competent for interpreting and/or translating in the language by an association or organization with a regional or national reputation for certifying or determining the competence of interpreters and/or translators; or

(c) Determined competent for interpreting and/or translating in the language by us, taking into account his or her:

(i) Demonstrated proficiency in both English and the other language;

(ii) Orientation and training that includes the skills and ethics of interpreting;

(iii) Fundamental knowledge in both languages of any specialized terms or concepts peculiar to Washington apple health;

(iv) Sensitivity to cultural differences; and

(v) Demonstrated ability to convey information accurately in both languages.

(4) We provide notice of the availability of LEP services on printed applications and notices, in the Washington healthplanfinder web site, and during contact with persons who appear to need LEP services.

(5) LEP services include:

(a) Spoken language interpreter (oral) services in person, over the telephone, or through other simultaneous audio or visual transmission (if available); and

(b) Translation of our forms, letters, and other text-based materials, whether printed in hard-copy or stored and presented by computer. These include, but are not limited to:

(i) Our pamphlets, brochures, and other informational material that describe our services and your health care rights and responsibilities;

(ii) Our applications and other forms you need to complete and/or sign; and

(iii) Notices of our actions affecting your eligibility for health care coverage.

(c) Direct provision of services by our bilingual employees.

(6) We provide interpreter services and translated documents in a prompt manner that allows the timely processing of your eligibility for health care coverage within time frames defined in WAC 182-503-0060, 182-503-0035, and 182-504-0125.

(7) If you believe that we have discriminated against you on the basis of race, color, national origin, birthplace, or another protected status, you may file a complaint with the U.S. Department of Health and Human Services at <http://www.hhs.gov/ocr/civilrights/complaints> or Regional Manager, Office of Civil Rights, U.S. Department of Health and Human Services, 2201 Sixth Ave. – M/S: RX-11, Seattle, WA 98121-1831 (voice phone 800-368-1019, fax 206-615-2297, TDD 800-537-7697).

NEW SECTION

WAC 182-503-0120 Washington apple health—Equal access services. (1) When you have a mental, neurological, cognitive, physical or sensory impairment, or limitation that prevents you from receiving health care coverage, we provide services to help you apply for, maintain, and understand the health care coverage options available and eligibility decisions we make. These services are called equal access (EA) services.

(2) We provide EA services on an ongoing basis to ensure that you are able to maintain health care coverage and access to services we provide. EA services include, but are not limited to:

- (a) Helping you to:
 - (i) Apply for or renew coverage;
 - (ii) Complete and submit forms;
 - (iii) Give us information to determine or continue your eligibility;
 - (iv) Ask for continued coverage;
 - (v) Ask for reinstated (restarted) coverage after your coverage ends; and
 - (vi) Ask for and participate in a hearing.
- (b) Giving you additional time, when needed, for you to give us information before we reduce or end your health care coverage;
- (c) Explaining our decision to change, reduce, end, or deny your health care coverage;
- (d) Working with your authorized representative, if you have one, and giving that person copies of notices and letters we send you; and
- (e) Providing you the services of a sign language interpreter/transliterater who is certified by the Registry of Interpreters for the Deaf at the appropriate level of certification.
 - (i) These services may include in-person sign language interpreter services, relay interpreter services, and video interpreter services, as well as other services; we decide which services to offer you based on your communication needs and preferences.
 - (ii) We offer these services as a reasonable accommodation, free of charge, if you are deaf, hard-of-hearing, or a deaf-blind person who uses sign language to communicate.
- (f) Not taking adverse action in your case, or automatically reinstating your coverage for up to three months after the adverse action was taken, if we determine that your impairment or limitation was the cause of your failure to follow through on something you need to do to get or keep your Washington apple health coverage, such as:

- (i) Applying for or renewing coverage;
- (ii) Completing and submitting forms;

(ii) Giving us information to determine or continue your eligibility;

(iv) Asking for continued or reinstated coverage; or

(v) Asking for and participating in a hearing.

(3) We inform you of your right to EA services listed in subsection (2) of this section:

(a) On printed applications and notices, including the printed rights and responsibilities form;

(b) In the Washington healthplanfinder web site, including the electronic rights and responsibilities form; and

(c) During contact with us.

(4) We provide you the EA services listed in subsection (2) of this section if you ask for EA services, you are receiving services through the aging and long-term support administration, or we determine that you would benefit from EA services. We determine you would benefit from EA services if you:

(a) Appear to have or claim to have any impairment or limitation described in subsection (1) of this section;

(b) Have a developmental disability;

(c) Are disabled by alcohol or drug addiction;

(d) Are unable to read or write in any language;

(e) Appear to have limitations in your ability to communicate, understand, remember, process information, exercise judgment and make decisions, perform routine tasks, or relate appropriately with others (whether or not you have a disability) that may prevent you from understanding the nature of EA services or affect your ability to access our programs; or

(f) Are a minor not residing with your parents.

(5) If we determine that you are eligible for EA services, we develop and document an EA plan appropriate to your needs. The plan may be updated or changed at any time based on your request or a change in your needs.

(6) You may at any time refuse the EA services offered to you.

(7) We reinstate your coverage when:

(a) We end coverage because we were unable to determine if you continue to qualify; and

(b) You provide proof that you are still qualified for coverage within twenty calendar days from when we ended your coverage. We restore your coverage retroactive to the first of the month so there is no break in your coverage.

(8) If you believe that we have discriminated against you on the basis of a disability or another protected status, the person may file a complaint with the U.S. Department of Health and Human Services at <http://www.hhs.gov/ocr/civilrights/complaints> or Region Manager, Office for Civil Rights, U.S. Department of Health and Human Services, 2201 Sixth Ave. – M/S: RX-11, Seattle, WA 98121-1831 (voice phone 800-368-1019, fax 206-615-2297, TDD 800-537-7697).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-503-0510 ((How a client is determined "related to" a categorical program.)) Washington apple health—Program summary. ((1) A person is related to the supplemental security income (SSI) program if they are:

(a) Aged, blind, or disabled as defined in chapter 388-475 WAC; or

(b) Considered as eligible for SSI under chapter 388-475 WAC; or

(c) Children meeting the requirements of WAC 388-505-0210(5).

(2) A person or family is considered to be related to the temporary assistance for needy families (TANF) program if they:

(a) Meet the program requirements for the TANF cash assistance programs or the requirements of WAC 388-505-0220; or

(b) Would meet such requirements except that the assistance unit's countable income exceeds the TANF program standards in WAC 388-478-0065.

(3) Persons related to SSI or to TANF are eligible for categorically needy (CN) or medically needy (MN) medical coverage if they meet the other eligibility criteria for these medical programs. See chapters 388-475, 388-505 and 388-519 WAC for these eligibility criteria.

(4) Persons related to SSI or to TANF and who receive the related CN medical coverage have redetermination rights as described in WAC 388-503-0505(6-)). (1) The agency categorizes Washington apple health (WAH) programs into three groups based on the income methodology used to determine eligibility:

(a) Those that use a modified adjusted gross income (MAGI)-based methodology described in WAC 182-509-0300, called MAGI-based WAH programs;

(b) Those that use an income methodology other than MAGI, called non-MAGI-based WAH programs, which include:

(i) Supplemental security income (SSI)-related WAH programs;

(ii) Temporary assistance for needy families (TANF)-related WAH programs; and

(iii) Other WAH programs not based on MAGI, SSI, or TANF methodologies.

(c) Those that provide coverage based on a specific status or entitlement in federal rule and not on countable income, called deemed eligible WAH programs.

(2) MAGI-based WAH programs include the following:

(a) WAH parent and caretaker relative program described in WAC 182-505-0240;

(b) MAGI-based WAH adult medical program described in WAC 182-505-0250, for which the scope of coverage is called the alternative benefits plan (ABP) described in WAC 182-500-0010;

(c) WAH for pregnant women program described in WAC 182-505-0115;

(d) WAH for kids program described in WAC 182-505-0210 (3)(a);

(e) Premium-based WAH for kids described in WAC 182-505-0215;

(f) WAH long-term care for children and adults described in chapter 182-514 WAC; and

(g) WAH alien emergency medical program described in WAC 182-507-0110 through 182-507-0125 when the person is eligible based on criteria for a MAGI-based WAH program.

(3) Non-MAGI-based WAH programs include the following:

(a) SSI-related programs which use the income methodologies of the SSI program (except where the agency has adopted more liberal rules than SSI) described in chapter 182-512 WAC to determine eligibility:

(i) WAH for workers with disabilities (HWD) described in chapter 182-511 WAC;

(ii) WAH SSI-related programs described in chapters 182-512 and 182-519 WAC;

(iii) WAH long-term care and hospice programs described in chapters 182-513 and 182-515 WAC;

(iv) WAH medicare savings programs described in chapter 182-517 WAC; and

(v) WAH alien emergency medical (AEM) programs described in WAC 182-507-0110 and 182-507-0125 when the person meets the age, blindness or disability criteria specified in WAC 182-512-0050.

(b) TANF-related programs which use the income methodologies based on the TANF cash program described in WAC 388-450-0170 to determine eligibility, with variations as specified in WAC 182-509-0001(5) and program specific rules:

(i) WAH refugee medical assistance (RMA) program described in WAC 182-507-0130; and

(ii) WAH medically needy (MN) coverage for pregnant women and children who do not meet SSI-related criteria.

(c) Other programs:

(i) WAH breast and cervical cancer program described in WAC 182-505-0120;

(ii) WAH TAKE CHARGE program described in WAC 182-532-0720;

(iii) WAH medical care services described in WAC 182-508-0005;

(iv) WAH for pregnant minors described in WAC 182-505-0117; and

(v) WAH kidney disease program described in chapter 182-540 WAC.

(4) Deemed eligible WAH programs include:

(a) WAH SSI medical program described in chapter 182-510 WAC, or a person who meets the medicaid eligibility criteria in 1619b of the Social Security Act;

(b) WAH newborn medical program described in WAC 182-505-0210(2);

(c) WAH foster care program described in WAC 182-505-0211;

(d) WAH medical extension program described in WAC 182-523-0100; and

(e) WAH family planning extension described in WAC 182-505-0115(5).

(5) A person is eligible for categorically needy (CN) health care coverage when the household's countable income is at or below the categorically needy income level (CNIL) for the specific program.

(6) If income is above the CNIL, a person is eligible for the MN program if the person is:

(a) A child;

(b) A pregnant woman; or

(c) SSI-related (aged sixty-five, blind or disabled).

(7) MN health care coverage is not available to parents, caretaker relatives, or adults unless they are eligible under subsection (6) of this section.

(8) A person who is eligible for the WAH MAGI-based adult program listed in subsection (2)(b) of this section is eligible for ABP health care coverage as defined in WAC 182-500-0010. Such a person may apply for more comprehensive coverage through another WAH program at any time.

(9) For the other specific program requirements a person must meet to qualify for WAH, see chapters 182-503 through 182-527 WAC.

NEW SECTION

WAC 182-504-0130 Washington apple health—Continued coverage pending an appeal. (1) If you disagree with a Washington apple health (WAH) decision that we (the agency or its designee) made, you have the right to appeal under RCW 74.09.741. The appeal rules are found in chapter 182-526 WAC.

(2) If you appeal a WAH decision on or before the tenth day after the date the person receives the written notice of the WAH decision or before the effective date of the WAH decision, your WAH coverage will continue until the appeals process ends, unless otherwise specified in this section. This is called continued coverage.

(3) We will treat the fifth day after the date on the notice as the date you received the notice; however, if you show that you received the notice more than five days after the date on the notice, we will use the actual date you received the notice for counting the ten-day appeal period for the purpose of providing continued coverage. If the tenth day falls on a week-end or holiday, you have until the next business day to appeal and still be able to receive continued coverage.

(4) You receive continued coverage through the end of the month an administrative hearing decision is sent to you unless:

(a) An administrative law judge or our presiding officer serves an order ending continued coverage; or

(b) You:

(i) Tell us in writing that you do not want continued coverage; or

(ii) Withdraw your appeal in writing or at an administrative proceeding.

(5) You cannot get continued coverage when a change in your WAH coverage is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change. You may get continued coverage while appealing a change in your WAH coverage that is a result of a mass change if:

(a) There is a question about whether you are in the class of applicants or recipients being affected by the mass change; or

(b) The mass change is not the only reason for the change in your WAH coverage.

(6) If you are getting WAH medically needy coverage, then you are not eligible for continued coverage beyond the end of the original certification period described in WAC 182-504-0020.

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0110 Washington apple health—Alien medical programs. (1) To qualify for an alien medical program (AMP) a person must:

(a) Be ineligible for ~~((medicaid or other medicaid agency medical))~~ federally funded Washington apple health (WAH) programs due to the citizenship/alien status requirements described in WAC ~~((388-424-0010))~~ 182-503-0535;

(b) Meet the requirements described in WAC 182-507-0115, 182-507-0120, or 182-507-0125; and

(c) Meet all categorical and financial eligibility criteria for one of the following programs, except for the Social Security number or citizenship/alien status requirements:

(i) ~~((WAC 388-475-0050, for))~~ An SSI-related ((person)) medical program described in chapters 182-511 and 182-512 WAC;

(ii) ~~((WAC 182-505-0240, for family medical programs;))~~ A MAGI-based program referred to in WAC 182-503-0510; or

(iii) ~~((WAC 182-505-0210, for a child under the age of nineteen;~~

~~(iv) WAC 182-505-0115, for a pregnant woman;~~

~~(v) WAC 388-462-0020, for))~~ The breast and cervical cancer treatment program for women described in WAC 182-505-0120; or

~~((vi) WAC 182-523-0100, for))~~ (iv) A medical extension(s) described in WAC 182-523-0100.

(2) AMP medically needy (MN) health care coverage is available only for children, ~~((adults age sixty-five or over, or))~~ pregnant women and persons who meet ~~((SSI disability))~~ SSI-related criteria. See WAC ~~((388-519-0100))~~ 182-519-0100 for MN eligibility and ~~((388-519-0110))~~ WAC 182-519-0110 for spending down excess income under the MN program.

(3) The agency or its designee does not consider a person's date of arrival in the United States when determining eligibility for AMP.

(4) For non-MAGI-based programs, the agency or its designee does not consider a sponsor's income and resources when determining eligibility for AMP, unless the sponsor makes the income or resources available. Sponsor deeming does not apply to MAGI-based programs.

(5) A person is not eligible for AMP if that person entered the state specifically to obtain medical care.

(6) A person who the agency or its designee determines is eligible for AMP may be eligible for retroactive coverage as described in WAC ~~((388-416-0015))~~ 182-504-0005.

(7) Once the agency or its designee determines financial and categorical eligibility for AMP, the agency or its designee then determines whether a person meets the requirements described in WAC 182-507-0115, 182-507-0120, or 182-507-0125.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0230 Washington apple health—MAGI-based long-term care ((for families and children)) program. (1) The sections that follow describe the eligibility

requirements for ~~((institutional medical benefits for parents and))~~ the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care program for children ((who are not aged, blind or disabled,)) and adults who are admitted for a long-term stay to a medical institution, an inpatient psychiatric facility or an institution for mental diseases (IMD):

(a) WAC ~~((388-505-0235))~~ 182-514-0235 Definitions;

(b) WAC ~~((388-505-0240))~~ 182-514-0240 General eligibility ~~((for family institutional medical coverage))~~ requirements for the WAH MAGI-based long-term care program;

(c) WAC ~~((388-505-0245))~~ 182-514-0245 Resource eligibility for ~~((family institutional medical coverage))~~ WAH MAGI-based long-term care program;

(d) WAC ~~((388-505-0250 Eligibility for family institutional medical for individuals))~~ 182-514-0250 WAH MAGI-based long-term care programs for adults twenty-one years of age or older;

(e) WAC ~~((388-505-0255 Eligibility for family institutional medical for individuals))~~ 182-514-0255 WAH MAGI-based long-term care program for young adults nineteen and twenty years of age;

(f) WAC ~~((388-505-0260 Eligibility for family institutional medical))~~ 182-514-0260 WAH MAGI-based long-term care program for children eighteen years of age or younger;

(g) WAC ~~((388-505-0265))~~ 182-514-0265 How the ~~((department))~~ agency or its designee determines how much of an institutionalized ~~((individual's))~~ person's income must be paid towards the cost of care for the WAH MAGI-based long-term care program; and

(h) WAC ~~((388-505-0270))~~ 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by ~~((medicaid))~~ Washington apple health.

(2) ~~((Individuals who are already eligible for))~~ Recipients of a noninstitutional ((family or)) WAH children's ((medical)) program ((when they are admitted for long-term care)) as described in WAC 182-505-0210 or 182-505-0211 do not need to submit a new application for ((institutional medical)) long-term care coverage when admitted to an institution. The ((department)) agency or its designee treats ((their)) the admittance to the ((facility)) institution as a change of circumstances and determines ((their)) eligibility based upon the anticipated length of stay ~~((at the facility)).~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0235 Definitions. The following terms are used in WAC ~~((388-505-0230))~~ 182-514-0230 through ~~((388-505-0270))~~ 182-514-0270:

~~((**"Categorically needy income level (CNIL)"**—The standard used by the department to determine eligibility under a categorically needy medicaid program.))~~

"Categorically needy (CN) medical" - Full scope of care medical benefits. CN medical may be either federally funded under Title XIX of the Social Security Act or state-funded.

~~((**"Categorically needy (CN) medicaid"**—Federally funded full scope of care medical benefits under Title XIX of the Social Security Act.))~~

"Federal benefit rate (FBR)" - The payment standard set by the Social Security administration for recipients of supplemental security income (SSI). This standard is adjusted annually in January. Institutional standards and effective date can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardsna.shtml>.

"Federal poverty level" - The income standards published annually by the federal government in the Federal Register in the first quarter and effective annually on April 1st as found at <http://aspe.hhs.gov/poverty/index.shtml>. ~~((The income standards change on April first every year.~~

~~((**"Institution for mental diseases (IMD)"**—A hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse are also considered an IMD.~~

~~((**"Institutional status"**—An individual meets institutional status when he or she is admitted to a medical institution, inpatient psychiatric facility, or IMD for a period of thirty days or longer. The time period is ninety days or longer for individuals seventeen years of age and younger who are admitted to an inpatient psychiatric facility or institution for mental diseases. Institutional status is described in WAC 388-513-1320.))~~

"Legal dependent" - A minor child, seventeen years of age and younger, and an individual eighteen years of age and older claimed as a dependent for income tax purposes; or a parent of either the applicant or the applicant's spouse claimed as a dependent for income tax purposes; or the brother or sister (including half and adoptive siblings) claimed by either the applicant or the applicant's spouse as a dependent for income tax purposes.

~~((**"Medical institution"** ((—A medical facility that provides twenty-four hour supervision and skilled nursing care. Facilities which meet this definition include:~~

~~((1) Hospitals;~~

~~((2) Nursing homes or the nursing home section of a state veteran's facility;~~

~~((3) Hospice care centers;~~

~~((4) An intermediate care facility for the mentally retarded (ICF/MR); or~~

~~((5) A residential habilitation center (RHC))~~ see WAC 182-500-0050.

"Medically needy income level (MNIL)" - The standard used by the ~~((department))~~ agency to determine eligibility under the medically needy medicaid program. The effective MNIL standards are described in WAC ~~((388-478-0070))~~ 182-519-0050.

"Medically needy (MN) ((medicaid))" ~~((—Federally funded medical coverage under Title XIX of the Social Security Act. MN coverage has a more limited scope of care than CN coverage))~~ see WAC 182-500-0070.

"Personal needs allowance (PNA)" - An amount designated to cover the expenses of an individual's clothing and personal incidentals while living in a medical institution, inpatient psychiatric facility, or institution for mental diseases. PNA standards are found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartsbfile.shtml>.

("Psychiatric facility" — Designated long-term inpatient psychiatric residential treatment facilities, state psychiatric hospitals, designated distinct psychiatric units, and medicare-certified distinct units in acute care hospitals.)

"Spendedown" ((The amount of medical expenses an individual is required to incur prior to medical benefits being authorized. Spendedown is described in WAC 388-519-0100 and 388-519-0110)) see WAC 182-500-0100.

"Title XIX" ((The portion of the federal Social Security Act, 42 U.S.C. 1396, that authorizes grants to states for medical assistance programs. Title XIX is also called medic-aid)) see WAC 182-500-0105.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0240 Washington apple health—General eligibility requirements for ((family institutional medical coverage)) MAGI-based long-term care program. (1) This section applies to ((all individuals applying)) applicants for long-term care (LTC) services under the ((family institutional medical)) Washington apple health (WAH) modified adjusted gross income (MAGI)-based LTC program. Additional rules may apply based upon ((an individual's)) a person's age at the time he or she applies for ((long-term care)) LTC services and whether the facility the ((individual)) person is admitted to is a medical institution, inpatient psychiatric facility, or an institution for mental diseases (IMD). Additional rules are described in WAC ((388-505-0245)) 182-514-0245 through ((388-505-0265)) 182-514-0265.

(2) ((Individuals must meet)) The following requirements apply to ((qualify)) be eligible for ((family institutional)) WAH MAGI-based LTC coverage under this section:

(a) Institutional status described in WAC ((388-513-1320)) 182-513-1320. ((An individual)) A person meets institutional status if he or she is admitted to:

(i) A medical institution and resides, or is likely to reside, there for thirty days or longer, regardless of age;

(ii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for thirty days or longer and is eighteen through twenty years of age; or

(iii) An inpatient psychiatric facility or IMD and resides, or is likely to reside, there for ninety days or longer and is seventeen years of age or younger.

(b) General eligibility requirements described in WAC ((388-503-0505)) 182-503-0505 (with the exception that subsections (3)(c) and (d) of that section do not apply to ((individuals)) noncitizen applicants who are eligible under one of the WAH alien ((emergency)) medical ((AEM)) programs described in chapter 182-507 WAC) and the person meets the program requirements of one of the following:

(i) ((Be a parent of, or a relative caring for, an eligible dependent child and meet the program requirements under:

(A) A family medical program described in WAC 388-505-0220;

(B) A transitional family medical program described in WAC 388-523-0100; or

(C) The temporary assistance for needy families (TANF) cash assistance program.

(ii) Be a child and meet the program requirements under apple health for kids as described in WAC 388-505-0210;

(iii) Be a pregnant woman and meet the program requirements for a pregnancy medical program as described in WAC 388-462-0015;

(iv) Meet the)) WAH for parents and caretaker relatives as described in WAC 182-505-0240, including anyone who receives extended health care coverage as described in WAC 182-523-0100;

(ii) WAH for kids as described in WAC 182-505-0210 (with the exception that for MAGI-based LTC services, a person is considered a child through the age of twenty-one);

(iii) WAH for adults as described in WAC 182-505-0250;

(iv) WAH for pregnant women as described in WAC 182-505-0115; or

(v) WAH alien ((emergency)) medical ((AEM)) program ((requirements)) as described in WAC ((388-438-0110)) 182-507-0110 (with the exception that for ((family long-term care)) MAGI-based LTC services, ((AEM)) alien medical coverage may be authorized for children through twenty-one years of age) and:

(A) Have a qualifying emergency condition; and

(B) For payment for ((long-term care)) LTC services and room and board costs in the institution, request prior authorization from the ((department's medical consultant)) aging and long-term support administration (AL TSA) if the ((individual)) person is admitted to a ((medical institution under hospice or is admitted to a)) nursing facility.

((v) Be an individual nineteen through twenty years of age but not eligible under subsections (i) through (iv) of this section.

(e) Resource requirements described in WAC 388-505-0245;

((d)) (c) Have countable income below the applicable standard described in WAC ((388-505-0250(4), 388-505-0255(3) or 388-505-0260(4));

(e) Contribute income remaining after the post eligibility process described in WAC 388-505-0265 towards the cost of care in the facility; and

(f)) 182-514-0250(4), 182-514-0255(3), or 182-514-0260(4); and

(d) Be assessed as needing nursing facility level of care as described in WAC 388-106-0355 if the admission is to a nursing facility. (This does not apply to nursing facility admissions under the hospice program.)

(3) Once the ((department)) agency or its designee determines ((an individual)) a person meets institutional status, it does not count the income of parent(s), a spouse, or dependent child(ren) when determining countable income. ((The department counts the following as the individual's income:

(a) Income received by the individual in his or her own name;

(b) Funds given to him or her by another individual towards meeting his or her needs; and

(c) Current child support received on behalf of the individual by his or her parents.

(4) Individuals eligible for a cash grant under the temporary assistance for needy families (TANF) program can remain eligible for a cash payment and the categorically needy (CN) medicaid program while in the institution. The expected length of stay in the institution may impact the amount of the TANF payment.

(a) When the institutionalized individual is expected to return to the home within one hundred and eighty days, the department considers this to be a temporary absence from the home and the individual remains eligible for their full TANF grant. Rules defining a temporary absence are described in WAC 388-454-0015.

(b) When the department determines that the institutionalized individual's stay in the facility is likely to exceed one hundred and eighty days, the department reduces his or her share of the TANF grant to the personal needs allowance (PNA) described in WAC 388-478-0040. This is also referred to as the clothing, personal maintenance and necessary incidentals (CPI) amount.

(5) Individuals)) Only income received by the person in his or her own name is counted for eligibility determination.

(4) A person who ((are)) is not a United States citizen((s)) or a qualified alien((s-do)) does not need to provide or apply for a Social Security number or meet the citizenship requirements under WAC ((388-424-0010 (1) or (2))) 182-503-0535 as long as the requirements in subsection (2) of this section are met.

((6) Individuals who are)) (5) A person who meets the federal aged, blind or disabled ((under federal)) criteria may qualify for institutional benefits with income of up to three hundred percent of the federal benefit rate (FBR). Rules relating to institutional eligibility for an aged, blind or disabled ((individuals)) person are described in WAC ((388-513-1315)) 182-513-1315. A person who is SSI-related and who meets the eligibility criteria described in WAC 182-513-1316 may qualify for institutional benefits.

((7)) (6) If ((an individual)) a person does not meet institutional status, the ((department)) agency or its designee determines his or her eligibility for a noninstitutional WAH medical program. ((An individual)) A person who is determined eligible for CN or medically needy (MN) coverage under a noninstitutional program who is admitted to a nursing facility for less than thirty days is approved for coverage for the nursing facility room and board costs, as long as the ((individual)) person is assessed by ((the department)) ALTA as meeting nursing home level of care as described in WAC 388-106-0355.

(7) A person who is found eligible for the MAGI-based LTC program is not required to participate income or assets toward the cost of care in the post-eligibility treatment-of-income process that applies to an SSI-related applicant.

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0245 Washington apple health—Resource eligibility for ((family institutional medical coverage)) MAGI-based long-term care program. ((1) The department does not restrict or limit resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility, any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.

(2) For individuals nineteen years of age or older, there is a one thousand dollar countable resource limit for new applicants for family medical coverage not meeting the additional resource exclusion of WAC 388-470-0026, and all of the following apply:

(a) In order to determine which resources it must count, the department follows rules in WAC 388-470-0026, 388-470-0045 (with the exception of subsection (3) relating to primary residence), 388-470-0060, and 388-470-0070.

(b) Applicants and current categorically needy (CN) or medically needy (MN) medical assistance clients receiving long-term care services under the family institutional medical program are subject to transfer of asset regulations as described in WAC 388-513-1363 through 388-513-1366.

(c) Individuals who apply for long-term care services on or after May 1, 2006, who have an equity interest greater than five hundred thousand dollars in their primary residence are not eligible for long-term care services. This does not apply if the individual's spouse or blind, disabled or dependent child under twenty-one years of age is lawfully residing in the primary residence. Individuals who are denied or terminated from long-term care services due to excess home equity may apply for an undue hardship waiver as described in WAC 388-513-1367.

(d) Once an individual has been determined eligible for any family medical program, the department does not consider any subsequent increase in that individual's resources after the month of application, as described in WAC 388-470-0026. Subsequent increases in a family's resources are not applied towards the cost of care in any month in which the resources have exceeded the eligibility standard.

(e) When both spouses of a legally married couple are institutionalized, the department determines resource eligibility for each spouse separately, as if each were a single individual.

(f) When only one spouse in a legally married couple applies for family institutional coverage, the rules in WAC 388-513-1350 (8) through (13) apply.

(g) For countable resources over one thousand dollars that are not otherwise excluded by WAC 388-470-0026:

(i) The department reduces the excess resources in an amount equal to medical expenses incurred by the institutionalized individual, such as:

(A) Premiums, deductibles, coinsurance or copayments for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medical plan; and

~~(C) Necessary medical care recognized under state law, but incurred prior to medicaid eligibility.~~

~~(ii) Medical expenses that the department uses to reduce excess resources must not:~~

~~(A) Be the responsibility of a third party payer;~~

~~(B) Have been used to satisfy a previous spenddown liability;~~

~~(C) Have been previously used to reduce excess resources;~~

~~(D) Have been used to reduce client responsibility toward cost of care;~~

~~(E) Have been incurred during a transfer of asset penalty; or~~

~~(F) Have been written off by the medical provider (the individual must be financially liable for the expense).~~

~~(h) If an individual has excess resources remaining, after using incurred medical expenses to reduce those resources, the department uses the following calculations to determine if an individual is eligible for family institutional medical coverage under the CN or MN program:~~

~~(i) If countable income is below the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the state medicaid rate, the individual is eligible for family institutional medical coverage under the CN program.~~

~~(ii) If countable income is below the CN income standard, but the combination of countable income plus excess resources is above the monthly cost of care at the state medicaid rate, the individual is not eligible for family institutional medical coverage.~~

~~(iii) If countable income is over the CN income standard, and the combination of countable income plus excess resources is below the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.)~~

~~(iv) If countable income is over the CN income standard, but the combination of countable income plus excess resources is higher than the monthly cost of care at the institution's private rate plus the amount of any recurring medical expenses for institutional services, the individual is not eligible for family institutional coverage under the MN program. (MN coverage applies only to individuals twenty years of age or younger.))~~

~~(1) There is no resource test for applicants or recipients of the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care (LTC) program.~~

~~(2) The transfer of asset evaluation described in WAC 182-513-1363 does not apply to applicants or recipients who are eligible under the WAH MAGI-based LTC program.~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0250 ((Eligibility for family institutional medical for individuals)) Washington apple health—MAGI-based long-term care program for adults age twenty-one ((years of age)) or older. (1) ((Individuals))

A person twenty-one years of age or older must meet the requirements in WAC ((388-505-0240)) 182-505-0250 to qualify for ((family institutional medical)) Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care (LTC) coverage under this section.

~~(2) ((Individuals, twenty-one through sixty-four years of age who are admitted to an institution for mental diseases (IMD) are not eligible for coverage under this section. Individuals who are voluntarily admitted to a psychiatric hospital may be eligible for coverage under the psychiatric indigent inpatient program described in WAC 388-865-0217.~~

~~(3) Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess amount towards his or her cost of care as described in WAC 388-505-0265(6).~~

~~(4)) The categorically needy income level (CNIL) for ((individuals who qualify for family institutional medical) health care coverage under this section is ((the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's)) one hundred thirty-three percent of the federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible.~~

~~((5)) (3) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.~~

~~(4) With the exception of an institutionalized pregnant woman, if the ((individual's)) person's income exceeds the standards to be eligible under ((a categorically needy (CN) medicaid family)) the WAH MAGI-based CN long-term care program, he or she is not eligible for ((coverage under the)) medically needy ((MN) medicaid program.~~

~~(6) Individuals eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265)) coverage under this section.~~

~~(5) A person, age twenty-one through sixty-four years of age who is admitted to an institution for mental diseases (IMD) is not eligible for coverage under this section.~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0255 ((Eligibility for family institutional medical for individuals)) Washington apple health—MAGI-based long-term care program for young adults nineteen and twenty years of age. (1) ((Individuals)) A person nineteen ((and)) or twenty years of age must meet the requirements in WAC ((388-505-0240)) 182-505-0210 to qualify for ((family institutional medical coverage)) the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care (LTC) coverage under this section.

~~(2) ((Rules governing resources are described in WAC 388-505-0245. However, if an applicant has countable resources over the standard described in WAC 388-505-0245, he or she may spend down any excess resources over~~

the standard by applying the excess amount towards his or her cost of care as described in WAC 388-505-0265(6).

~~(3)) The categorically needy income level (CNIL) ((for individuals who qualify for family institutional medical coverage under this section is the temporary assistance for needy families (TANF) one person payment standard based on the requirement to pay shelter costs described in WAC 388-478-0020. An individual's countable income must be at or below this amount to be eligible.~~

~~(4)) for health care coverage under this section is two hundred ten percent of the federal poverty level. A person's countable income (after a standard five percentage point income disregard) must be at or below this amount to be eligible.~~

~~(3) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.~~

~~(4) The agency or its designee approves CN health care coverage under this section for twelve calendar months.~~

~~(5) If ((an individual's) a person's countable income exceeds the standard described in subsection (3) of this section, the ((department) agency or its designee determines whether ((he or she) the person is eligible for coverage under the WAH institutional medically needy (MN) ((medicaid) program described in WAC 182-513-1395.~~

~~((a) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.~~

~~(b) If the individual's countable income exceeds the state monthly cost of care but is under the private cost of care plus the amount of any recurring medical expenses for institutional services, he or she may be required to spend down their income as described in WAC 388-519-0110.~~

~~(c) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.~~

~~(5)) (6) If ((an individual) the person is a medicaid applicant or ((current medical assistance client) recipient in the month of his or her twenty-first birthday and receives active inpatient psychiatric or inpatient chemical dependency treatment which extends beyond his or her twenty-first birthday, the ((department) agency or its designee approves or continues WAH CN or MN ((medicaid) health care coverage until the date the ((individual) person is discharged from the facility or until his or her twenty-second birthday, whichever occurs first.~~

~~((6) Individuals eligible under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC 388-505-0265.)~~

AMENDATORY SECTION (Amending WSR 12-02-034, filed 12/29/11, effective 1/1/12)

WAC 182-514-0260 ((Eligibility for family institutional medical)) Washington apple health—MAGI-based long-term care coverage for children eighteen years of age or younger. (1) ((Individuals)) Children eighteen years of age or younger must meet the requirements in WAC ((388-

505-0240)) 182-514-0240 to qualify for ((family institutional medical coverage)) the Washington apple health (WAH) modified adjusted gross income (MAGI)-based long-term care (LTC) coverage under this section.

(2) When ((an individual)) a child eighteen years of age or younger is eligible for the premium-based ((categorically needy (CN) coverage under apple health)) WAH for kids program as described in WAC ((388-505-0210(4))) 182-505-0210, the ((department)) agency or its designee redetermines his or her eligibility using the provisions of this section so that the ((individual)) child's family is not required to pay the premium.

~~(3) ((The department does not restrict or limit the resources available to individuals eighteen years of age or younger when determining eligibility for family institutional medical coverage. The department does not consider, or count towards eligibility any resources owned by the individual in this age category, or any resources owned by the individual's parent(s), spouse, or child(ren), if applicable.~~

~~(4)) The categorically needy income level (CNIL) for ((individuals who qualify for family institutional medical)) WAH LTC coverage under this section is two hundred ten percent of the federal poverty level ((income standard. Once the department determines an individual meets institutional status, it does not count the income of a parent(s), spouse, or dependent children (if applicable) when determining the individual's countable income)) (after a standard five percentage point income disregard).~~

(4) Countable income for categorically needy (CN) coverage under this section is determined using the MAGI methodologies described in chapter 182-509 WAC.

(5) The ((department)) agency or its designee approves CN ((medical)) health care coverage under this section for twelve calendar months. If ((an individual)) the child is discharged from the facility before the end of his or her certification period, ((he or she)) the child remains continuously eligible for CN ((medical)) health care coverage through the end of the original certification date, unless he or she ages out of the program, moves out of state, is incarcerated, or dies.

(6) If ((an individual)) a child is not eligible for CN ((medical)) health care coverage under this section, the ((department)) agency or its designee determines ((his or her)) the child's eligibility for health care coverage under the WAH institutional medically needy (MN) program described in WAC 182-513-1395.

~~((a)) (7) MN coverage is only available for ((an individual)) a child who meets the citizenship requirements under WAC ((388-424-0010 (1) or (2))) 182-503-0535.~~

~~((b) Individuals with countable income below the state monthly cost of care in the facility are eligible for MN without spenddown.~~

~~(c) If the individual's countable income exceeds the state monthly cost of care, but is under the private monthly cost of care plus the amount of any recurring medical expenses for institutional services, the department may require the individual to spend down his or her income as described in WAC 388-519-0110.~~

~~(d) If the individual's countable income exceeds the private monthly cost of care plus the amount of any recurring~~

medical expenses for institutional services, he or she is not eligible for family institutional medical coverage.

~~(7))~~ (8) The facility where the ~~((individual))~~ child resides may submit an application on the ~~((individual's))~~ child's behalf and may act as an authorized representative ~~((for the individual))~~ if the ~~((individual))~~ child is:

(a) In a court ordered, out-of-home placement under chapter 13.34 RCW; or

(b) Involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW.

~~((8-Individuals))~~ (9) Children who are eligible for ~~((family institutional medical))~~ WAH MAGI-based long-term care coverage under the provisions of this section may be required to contribute a portion of their income towards the cost of care as described in WAC ~~((388-505-0265))~~ 182-514-0265.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-514-0270 When an involuntary commitment to Eastern or Western State Hospital is covered by medicaid. (1) ~~((Individuals))~~ A person who is admitted to Eastern or Western State Hospital for inpatient psychiatric treatment ~~((may qualify))~~ is eligible for categorically needy (CN) ~~((medicaid))~~ health care coverage ~~((and aged, blind, disabled (ABD) cash benefits to cover their personal needs allowance (PNA)))~~ in limited circumstances.

(2) To be eligible under this program, ~~((individuals))~~ a person must:

(a) Be ~~((eighteen through))~~ twenty years of age or younger, or sixty-five years of age or older;

(b) Meet institutional status under WAC ~~((388-513-1320))~~ 182-513-1320;

(c) Be involuntarily committed to an inpatient treatment program by a court order under chapter 71.34 RCW;

(d) ~~((Meet the general eligibility requirements for the ABD cash program as described in WAC 388-400-0060;~~

~~((e)))~~ Have countable income below ~~((the payment standard described in WAC 388-478-0040; and~~

~~((f))~~ Have countable resources below one thousand dollars. Individuals eligible under the provisions of this section may not apply excess resources towards the cost of care to become eligible. An individual with resources over the standard is not eligible for assistance under this section);

(i) Two hundred ten percent of the federal poverty level if age twenty years or younger; or

(ii) The SSI-related CN income level if age sixty-five years or older and have countable resources below the standard described in WAC 182-512-0010.

(3) ~~((ABD clients))~~ A person who receives active psychiatric treatment in Eastern or Western State Hospital at the time of ~~((their))~~ his or her ~~twenty-first birthday continues to be eligible for~~ ~~((medicaid))~~ CN health care coverage until the date ~~((they are))~~ he or she is discharged from the facility or until ~~((their))~~ the person's ~~twenty-second birthday, whichever occurs first.~~

(4) A person between the age of twenty-one and sixty-five, with the exception of subsection (3) of this section, is

not eligible for federally funded health care coverage through Washington apple health.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-514-0265 How the department determines how much of an institutionalized individual's income must be paid towards the cost of care.

WSR 14-06-069

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-28—Filed March 3, 2014, 10:04 a.m., effective April 3, 2014]

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

Purpose: This rule extends the deadline for filings through 2016 for issuers to not substitute essential health benefits that differ from a benefit or benefits in the benchmark plan within a category in individual and small group health plans.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-877.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Adopted under notice filed as WSR 14-03-128 on January 22, 2014.

A final cost-benefit analysis is available by contacting Kate Reynolds, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7170, fax (360) 586-3109, e-mail kater@oic.wa.gov.

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

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

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

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

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

Date Adopted: March 3, 2014.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-15-025, filed 7/9/13, effective 7/10/13)

WAC 284-43-877 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2014, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-878, 284-43-879, and 284-43-880.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2014, until December 31, ((2015)) 2016, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) For plan or policy years beginning on or after January 1, ((2015)) 2017, an issuer may substitute benefits to the extent that the actuarial value of the benefits in the category to which the substituted benefit is classified remains substantially equal to the EHB-benchmark plan.

(c) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-878, 284-43-879, and 284-43-880 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted

from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered provider-type services, and not a benefit for purposes of the essential health benefits package.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Unless an age based reference limitation is specifically included in the base-benchmark plan or a supplemental base-benchmark plan for a category set forth in WAC 284-43-878, 284-43-879, or 284-443-880, an issuer's scope of coverage for those categories of benefits must cover both pediatric and adult populations.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation and gender identity or in the application of Section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008).

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted as reference based limitations pursuant to WAC 284-43-878, 284-43-879, and 284-43-880.

WSR 14-06-093

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

(Behavioral Health and Service Integration Administration)

[Filed March 4, 2014, 4:32 p.m., effective April 4, 2014]

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

Purpose: To adopt a new section that describes individual treatment services and the staff qualifications required of individuals who provide these outpatient mental health services; to amend sections in order to update and clarify information regarding behavioral health agency staff requirements, documentation requirements, off-site assessments, and requirements when an individual is transferred to another service provider; to remove a reference to the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) which ended on December 31, 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 388-877A-0100, 388-877A-0110, 388-877B-0320, 388-877B-0420, and 388-877B-0500.

Statutory Authority for Adoption: RCW 43.20A.550, 70.02.050(3), 70.96A.040(4), 70.96A.155, [70.96A].157, 71.24.035 (5)(m), 74.04.050(1), 74.08.090, chapters 70.02 and 71.24 RCW.

Adopted under notice filed as WSR 14-01-107 on December 18, 2012 [2013].

Changes Other than Editing from Proposed to Adopted Version: WAC 388-877A-0138(1) Mental health professional (MHP) who has documented ...;

(2) Person under the supervision of an MHP (the MHP must meet the requirements in (1) of this section);

(3) Clinician who is licensed by ...;

~~(3)~~ (4) Licensure candidate under the supervision of...

WAC 388-877B-0500(9) An agency that offers off-site assessment services must meet the requirements in WAC 388-877B-0300(9).

A final cost-benefit analysis is available by contacting Kathy Sayre, 4500 10th Avenue S.E., Lacey, WA 98503, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 5, Repealed 0.

Date Adopted: March 4, 2014.

Kevin Quigley
Secretary

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0100 Outpatient mental health services—General. The rules in this section apply to behavioral health agencies that provide outpatient mental health services. The definitions in WAC 388-877-0200 also apply to outpatient mental health services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Outpatient mental health services are intended to improve and/or reduce symptoms, and resolve situational disturbances for individuals in the areas of relational, occupational and/or vocational concerns.

(2) Outpatient mental health services include:

(a) Individual treatment services (see WAC 388-877A-0138);

(b) Brief intervention treatment services (see WAC 388-877A-0140);

~~((b))~~ (c) Group therapy services (see WAC 388-877A-0150);

~~((c))~~ (d) Family therapy services (see WAC 388-877A-0155);

~~((d))~~ (e) Case management services (see WAC 388-877A-0170);

~~((e))~~ (f) The optional mental health services described in (3) of this subsection; and

~~((f))~~ (g) The recovery support services described in (4) of this subsection.

(3) A behavioral health agency certified for outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental health services require additional program-specific certification by the department's division of behavioral health and recovery and include the following:

(a) Psychiatric medication services (see WAC 388-877A-0180);

(b) Day support services (see WAC 388-877A-0190);

(c) Less restrictive alternative (LRA) support services (see WAC 388-877A-0195); and

(d) Services provided in a residential treatment facility (see WAC 388-877A-0197).

(4) A behavioral health agency certified for outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following:

(a) Employment services (see WAC 388-877A-0330);

(b) Peer support services (see WAC 388-877A-0340);

(c) Wraparound facilitation services (see WAC 388-877A-0350); ~~(and)~~

(d) Medication support services (see WAC 388-877A-0360); and

(e) Applied behavior analysis (ABA) services (see WAC 388-877A-00370).

(5) An agency providing outpatient mental health services to individuals must:

(a) Be licensed by the department as a behavioral health agency.

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC.

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Applicable program-specific requirements for each outpatient mental health service provided, and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and

(iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-0600 through 388-865-0640.

(6) At the verbal or written request of the individual, the agency must, if applicable:

(a) Include the individual's family members, significant others, and other relevant treatment providers in the services provided by the agency; and

(b) Document the request in the individual's clinical record.

(7) If an individual has a crisis plan, the crisis plan must be:

(a) Placed in the individual's clinical record; and

(b) Made available to the following, subject to state and federal confidentiality rules and laws:

(i) Designated mental health professionals;

(ii) Crisis team members; and

(iii) Voluntary and involuntary inpatient evaluation and treatment facilities.

(8) An agency that provides services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided.

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(9) An agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual and staff member safety; and

(b) For the purpose of emergency communication, and as required by RCW 71.05.710, provide a wireless telephone, or comparable device, to any mental health professional who makes home visits to individuals.

(10) An agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) Be certified to provide the type of mental health service offered at each off-site location; and

(d) Ensure the mental health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0110 Outpatient mental health services—Agency staff requirements. In addition to meeting the agency administration and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing outpatient mental health services must ensure:

(1) ~~((AH))~~ Each outpatient mental health ((services are)) service is provided by((, or under the supervision of, a mental health professional;)) qualified staff members who meet the following for their scope of practice and services provided:

(a) Professional standards, including documented coursework, continuing education and/or training;

(b) Clinical supervision requirements; and

(c) Licensure and/or credentialing requirements.

(2) Each staff member working directly with an individual receiving mental health services receives:

(a) Clinical supervision from a mental health professional who has received fifteen hours of training in clinical supervision approved by department of health; and

(b) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(3) Staff access to consultation with a psychiatrist or a physician who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.

NEW SECTION

WAC 388-877A-0138 Outpatient mental health services—Individual treatment services. Individual treatment services are services designed to assist an individual in attaining the goals identified in the individual service plan. The treatment services are conducted with the individual and any natural supports as identified by the individual. An agency providing individual treatment services must ensure treatment is provided by a:

(1) Mental health professional (MHP) who has documented coursework, continuing education, and/or training that specifically address individual therapy theories and techniques;

(2) Person under the supervision of an MHP (the MHP must meet the requirements in (1) of this section);

(3) Clinician who is licensed by department of health to practice independently; or

(4) Licensure candidate under the supervision of an approved supervisor, as defined in chapter 246-809 WAC, for their respective license.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0320 Chemical dependency outpatient treatment services—Clinical record content and documentation. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing chemical dependency outpatient treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(c) Documentation that the initial individual service plan was completed before treatment services are received.

~~((+))~~ (d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

~~((+))~~ (e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and
(ii) The diagnostic assessment statement and other assessment information to include:

- (A) Documentation of the HIV/AIDS intervention.
(B) Tuberculosis (TB) screen or test result.
(C) A record of the individual's detoxification and treatment history.
(D) The reason for the individual's transfer.
(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.
(F) A discharge summary and continuing care plan.
(f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

~~((e))~~ (g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

- (i) Determine the appropriate recommendation for care and finalize a continuing care plan.
(ii) Assist the individual in making contact with necessary agencies or services.
(iii) Provide and document the individual was provided with a copy of the plan.

~~((f))~~ (h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

- (a) Be personalized to the individual's unique treatment needs;
(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:
(i) All substance use needing treatment, including tobacco, if necessary;
(ii) The individual's bio-psychosocial problems;
(iii) Treatment goals;
(iv) Estimated dates or conditions for completion of each treatment goal; and
(v) Approaches to resolve the problem.
(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter.

(e) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0420 Chemical dependency opiate substitution treatment services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-

0640, an agency providing chemical dependency opiate substitution treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opiate substitution treatment and take appropriate action.

(c) Documentation that the agency:

- (i) Referred the individual to self-help group(s).
(ii) Addressed the individual's vocational, educational, and employment needs; and
(iii) Encouraged family participation.
(d) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(e) Documentation that the individual service plan was completed before the individual received treatment services.

(f) Documentation that the individual service plan was reviewed:

- (i) Once every month, for the first ninety days in treatment;
(ii) Once every three months, for every two years of continued enrollment in treatment; and
(iii) Once every six months, after the second year of continued enrollment in treatment.

(g) Documentation that individual or group counseling sessions were provided:

- (i) Once every week, for the first ninety days:
(A) For a new individual in treatment;
(B) For an individual readmitted more than ninety days since the most recent discharge from opiate substitution treatment.

(ii) Once every week, for the first month, for an individual readmitted within ninety days since the most recent discharge from opiate substitution treatment; and

(iii) Once every month, for an individual transferring from another opiate substitution treatment program, when the individual had received treatment for at least ninety days.

(h) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(i) Documentation when an individual refuses to provide a drug testing specimen sample or refuses to initial the log containing the sample number. The refusal is considered a positive drug screen specimen.

(j) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results.

(k) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(l) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and
(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.
(B) Tuberculosis (TB) screen or test result.
(C) A record of the individual's detoxification and treatment history.
(D) The reason for the individual's transfer.
(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(m) Documentation that a staff member(s) met with the individual at the time of discharge from the agency, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.
(ii) Assist the individual in making contact with necessary agencies or services.
(iii) Provide and document the individual was provided a copy of the plan.

~~((n))~~ (n) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress towards each individual service plan goal.

~~((o))~~ (o) Documentation of all medical services. See WAC 388-877B-0440 and 388-877B-0450, regarding program physician responsibility and medication management.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;
 (b) Include individual needs identified in the diagnostic and periodic reviews, addressing:
 (i) All substance use needing treatment, including tobacco, if necessary;
 (ii) The individual's bio-psychosocial problems;
 (iii) The treatment goals;
 (iv) Estimated dates or conditions for completion of each treatment goal; and
 (v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0500 Chemical dependency assessment services—General. The rules in WAC 388-877B-0500 through 388-877B-0550 apply to behavioral health agencies that provide chemical dependency assessment services. The

definitions in WAC 388-877-0200 also apply to chemical dependency assessment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Chemical dependency assessment services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(2) Chemical dependency assessment services include:

(a) Assessment only services; and

(b) Driving under the influence (DUI) assessment services.

(3) A behavioral health agency certified for assessment only services may choose to provide optional program-specific DUI assessment services (see WAC 388-877B-0550). Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(4) An agency providing assessment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0500 through 388-877B-0550.

(5) An agency providing assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620.

(6) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(7) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(8) An agency providing ((~~Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) and~~) driving under the influence (DUI) assessment services must meet the additional program-specific standards in WAC 388-877B-0550.

(9) An agency that offers off-site assessment services must meet the requirements in WAC 388-877B-0300(9).

WSR 14-06-094

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

(Behavioral Health and Service Integration Administration)

[Filed March 4, 2014, 4:43 p.m., effective April 4, 2014]

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

Purpose: The department repealed WAC 388-865-0469 Applied behavior analysis (ABA) services, filed on May 29, 2013, under WSR 13-12-026, and replaced it with WAC 388-877A-0370 Recovery support services requiring program-specific certification—Applied behavior analysis (ABA) services. This rule contains the licensure, certification, and staffing requirements for agencies providing ABA services to assist children with autism spectrum disorders. WAC 388-865-0400, 388-865-0405, 388-865-0420, 388-865-0425, and 388-865-0460 are also being repealed because the requirements in these sections are now included in chapters 388-877 and 388-877A WAC. The new rule ensures the continued implementation of the requirements of a settlement agreement resulting from *Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-0072-RAJ. The rule also ensures the continued provision of minimum standards for agencies to obtain and maintain licensure from DSHS so that licensed agencies may contract with HCA to deliver ABA services to eligible individuals. HCA has adopted rules in Title 182 WAC to implement this settlement agreement.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-865-0400, 388-865-0405, 388-865-0420, 388-865-0425, 388-865-0460, and 388-865-0469.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.08.090, chapters 70.02, 71.24 RCW.

Other Authority: *Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-00742-RAJ.

Adopted under notice filed as WSR 14-01-106 on December 18, 2013.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-877A-0370 (1)(a) Assist children for which ~~there is evidence ABA is effective~~ ABA services have been determined to be medically necessary; WAC 388-877A-0370 (1)(b)(v) Vocational; ~~and or~~; WAC 388-877A-0370 (3)(g)(i) Referrals to and assessments by Centers of Excellence (COE) for evaluations and orders ~~to be performed by healthcare professionals licensed under chapters 18.71,~~

~~18.71A, 18.79, and 18.83 RCW~~; WAC 388-877A-0370 (4)(c) Be comprehensive and ~~incorporate~~ document treatment being; WAC 388-877A-0370 (7)(a) Supervises the therapy assistant; (i) For a minimum of five percent of the total direct care provided by the therapy assistant per week (for example, one hour of direct supervision per twenty hours of direct care); and (ii) in accordance; WAC 388-877A-0370 (7)(e) Meets at least [...] makes changes ~~accordingly~~ to the ABA therapy treatment plan as indicated by the individual's progress and/or response.

A final cost-benefit analysis is available by contacting Kathy Sayre, 4500 10th Avenue S.E., Lacey, WA 98503, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 6.

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 0, Repealed 6.

Date Adopted: February 27, 2014.

Katherine I. Vasquez
Rules Manager

NEW SECTION

WAC 388-877A-0370 Recovery support services requiring program-specific certification—Applied behavior analysis (ABA) services. Applied behavior analysis (ABA) services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery.

(1) ABA services:

(a) Assist children and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which ABA services have been determined to be medically necessary; and

(b) Support learning, skill development, and assistance in any one or more of the following areas or domains:

- (i) Social;
- (ii) Behavior;
- (iii) Adaptive;
- (iv) Motor;
- (v) Vocational; or
- (vi) Cognitive.

(2) An agency providing ABA services must meet the:

(a) General requirements in chapter 388-877 WAC for behavioral health services administrative requirements;

(b) General requirements in WAC 388-877A-0300 for recovery support services requiring program-specific certification;

(c) Specific agency staff requirements in WAC 388-877A-0310; and

(d) Specific clinical record content and documentation requirements in WAC 388-877-640 and 388-877A-0320.

(3) The health care authority (HCA) administers rules in chapter 182-531 WAC for ABA services requirements. The rules in chapter 182-531 WAC include:

(a) Definitions that apply to ABA services;

(b) Program and clinical eligibility requirements;

(c) Prior authorization and recertification requirements;

(d) Specific ABA provider requirements;

(e) Covered and noncovered services;

(f) Billing requirements; and

(g) Requirements for:

(i) Referrals to and assessments by Centers of Excellence (COE) for evaluations and orders; and

(ii) ABA assessments and individualized ABA therapy treatment plans.

(4) The ABA therapy treatment plan must:

(a) Be developed and maintained by a lead behavior analysis therapist (LBAT) (see (5) of this section);

(b) Identify the services to be delivered by the LBAT and the therapy assistant, if the agency employs a therapy assistant (see (6) and (7) of this section);

(c) Be comprehensive and document treatment being provided by other health care professionals; and

(d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.

(5) An agency must employ a lead behavior analysis therapist (LBAT).

(a) To qualify as an LBAT, an individual must meet the professional requirements in chapter 182-531 WAC.

(b) The agency must ensure the LBAT meets other applicable requirements in chapter 182-531 WAC.

(6) An agency may choose to employ a therapy assistant.

(a) To qualify as a therapy assistant, an individual must meet the professional requirements in chapter 182-531 WAC.

(b) The agency must ensure the therapy assistant meets other applicable requirements in chapter 182-531 WAC.

(7) If the agency employs a therapy assistant(s), the agency must ensure the LBAT:

(a) Supervises the therapy assistant:

(i) For a minimum of five percent of the total direct care provided by the therapy assistant per week (for example, one hour of direct supervision per twenty hours of direct care); and

(ii) In accordance with agency policies and procedures.

(b) Meets the requirements in this section;

(c) Completes a review of an individual's ABA therapy treatment plan with the therapy assistant before services are provided;

(d) Assures the therapy assistant delivers services according to the individual's ABA therapy treatment plan; and

(e) Meets at least every two weeks with the therapy assistant and documents review of the individual's progress and/or response to the treatment, and makes changes to the

ABA therapy treatment plan as indicated by the individual's progress and/or response.

(8) To maintain department program-specific certification to provide ABA services, an agency must continue to ensure the requirements in this section are met.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-865-0400 Community support service providers.

WAC 388-865-0405 Competency requirements for staff.

WAC 388-865-0420 Intake evaluation.

WAC 388-865-0425 Individual service plan.

WAC 388-865-0460 Behavioral, counseling and psychotherapy services—Additional standards.

WAC 388-865-0469 Applied behavior analysis (ABA) services.

WSR 14-06-107

PERMANENT RULES

OFFICE OF THE

STATE TREASURER

(State Finance Committee)

[Filed March 5, 2014, 10:33 a.m., effective April 5, 2014]

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

Purpose: The purpose of the proposed rules is to update and amend the administrative rules relating to the school bond guarantee program. The administrative rules relating to this program have not been amended since the creation of the program in 2000. The proposed amended rules will clarify the eligibility requirements placed on school districts for participation in the program and will update outdated information. In order to allow the office of the state treasurer to fulfill its guarantee obligations, the amended rules clarify and extend to school districts the notification process required when a county treasurer, acting as treasurer for a school district, is unable to make a debt service payment when due.

Citation of Existing Rules Affected by this Order: Amending chapter 210-02 WAC.

Statutory Authority for Adoption: RCW 39.98.040.

Adopted under notice filed as WSR 14-04-068 on January 29, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 14, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 14, Repealed 5.

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

Date Adopted: March 5, 2014.

Ellen Evans
Deputy Treasurer
for Debt Management

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-010 Definitions. For purposes of this rule, the following definitions shall apply:

"**Act**" means the Washington State School District Credit Enhancement Program Act, pursuant to chapter 39.98 RCW.

"**Application**" means an application requesting the state treasurer to issue a certificate of eligibility pursuant to RCW 39.98.040.

"**Authorized district official**" means ~~(the chairperson of the board, the superintendent, or business manager for the school district, or other designee of the board, as designated)~~ any individual designated as such by resolution provided for in WAC 210-02-020.

"**Bond**" means any voted general obligation bond issued by a school district holding a certificate issued pursuant to the act, and any general obligation bond issued by a school district holding a certificate issued pursuant to the act to refund outstanding voted general obligation bonds of that school district.

"**Capital projects fund**" means the fund created pursuant to RCW 28A.320.330.

"**Certificate of eligibility**" means a certificate issued by the state treasurer pursuant to RCW 39.98.040.

~~("Credit enhancement program" means the school district bond guarantee program established by the act.)~~

"**County assessor**" means the county assessor(s) in the county or counties in which the requesting school district is located.

"**County treasurer**" means the county treasurer of the requesting school district.

~~("Fiscally solvent," when used for the purposes of any certification required by the act and these rules with respect to the financial condition of a school district seeking to participate in the guarantee program, means that, in the opinion of the person making such certification after giving due consideration to:~~

~~• The principal and interest requirements of all outstanding voted general obligation bonds of the school district and of all outstanding bonds issued to refund voted general obligation bonds of the school district;~~

~~• The school district's past record of collecting voter-approved excess property taxes and reasonable expectations concerning future collections of voter-approved excess property taxes as required to meet those principal and interest requirements; and~~

~~• Such additional financial circumstances, if any, of the school district that such person considers to be material, it is reasonably expected that the school district will be able to satisfy all principal and interest requirements of bonds guaranteed and proposed to be guaranteed by the state under the guarantee program.)~~

"**Guarantee program**" means the Washington state school district credit enhancement program established by the act.

"**Nationally recognized bond counsel firm**" means a bond counsel firm listed in the most recent publication of *The Bond Buyer's Municipal Market Place*.

"**Paying agent**" means the paying agent selected, from time to time, for a bond issue pursuant to state law.

"**School district**" or "**district**" means any school district or its successor under the laws of the state.

"**State**" means the state of Washington.

~~((Terms not otherwise defined shall have the meanings ascribed to them in the act.))~~

~~((APPLYING TO THE PROGRAM))~~

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-020 ((Request) Application for certificate of eligibility. School districts may ~~((request))~~ apply for a certificate of eligibility at any time during the year by filing the ~~((request))~~ application with the state treasurer. Such ~~((requests))~~ an application, however, must be submitted to the state treasurer no less than thirty days prior to sale of bonds for which the guarantee, if granted, will apply. ~~((Requests))~~ Applications, and all other written communications pursuant to the guarantee program, shall be addressed to the ~~((Debt Management Division))~~ School Bond Guarantee Program, Office of the State Treasurer, Legislative Building, 2nd Floor, P.O. Box 40200, Olympia, Washington 98504-0200. The ~~((request))~~ application shall include:

((*) (1) The name, county, and district number (if applicable) of the requesting school district;

((*) (2) The name of the authorized district official for the requesting school district;

((*) (3) The name of the underwriter, if known, financial advisor (if any) and bond counsel assigned to the financing of the requesting school district to which the guarantee will apply;

((*) (4) The mailing address, phone number, fax number, and e-mail address (if applicable) of the requesting school district;

~~((A statement of whether any of the school district's previously issued debt is covered by the guarantee program;~~

*) (5) A copy of the district's ballot proposition resolution, showing details of the special election (date, amount, ballot title) at which the bonds were ~~((or are expected to be))~~ approved by the voters;

((*) (6) The not-to-exceed amount the district is currently requesting be guaranteed pursuant to its application;

(7) An allocation report in the form provided by the state treasurer, identifying, by ballot issue, the principal amount of any bonds previously issued pursuant to the ballot proposi-

tion resolution(s) authorizing the bonds, plus any net original issue premium associated with such previously issued bonds that was deposited in the capital projects fund and any remaining authority to issue bonds pursuant to such ballot proposition resolution(s):

(8) A copy of the resolution passed by the ~~((requesting))~~ school district's board of directors (which may be the same resolution as the district's ballot proposition resolution) authorizing the ~~((request))~~ application for a certificate of eligibility;

~~((★))~~ (9) A certificate signed by an authorized district official:

~~((-))~~ (a) Stating whether the ~~((requesting))~~ school district has any bonds, the principal of or interest on which has been paid by the state under the act, and for which there remain outstanding any payment obligations of the district to the state;

~~((-))~~ (b) Stating that the ~~((requesting))~~ school district is, and will remain, in compliance with these administrative rules as currently set forth or later amended; and

~~((-))~~ (c) Attesting to the accuracy and completeness of the materials provided.

~~((★))~~ (10) A nonrefundable application processing fee of one hundred dollars; and

~~((★))~~ (11) Any additional materials that may be required by the office of the state treasurer in support of the ~~((request))~~ application for participation in the guarantee program.

In addition to the above requirements, any application that includes bonds to be refunded must also provide a copy of the ballot resolution(s) relating to each series of bonds to be refunded.

~~((STATE REVIEW AND APPROVAL UNDER THE PROGRAM))~~

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-030 Review of ~~((request))~~ application for certificate of eligibility. Upon receipt of ~~((a request))~~ an application for a certificate of eligibility, the state treasurer ~~((shall))~~ will determine whether all items listed in WAC 210-02-020 have been provided and will notify the district no later than five business days after receipt if the application is incomplete.

In determining the school district's eligibility under the guarantee program, the office of the state treasurer may request additional information from the school district, as well as from any other person or entity ~~((that collects information pertaining to an evaluation that the requesting school district is fiscally solvent)).~~

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-040 Issuance of certificate of eligibility. Upon determining that a school district is eligible to participate in the guarantee program, the state treasurer ~~((shall))~~ will issue a certificate of eligibility to the school district ~~((no later~~

~~than one business day prior to the bond sale)).~~ The certificate of eligibility shall:

~~((★))~~ (1) Evidence the school district's immediate qualification for the guarantee program ~~((for each bond issue contemplated for guarantee under the act));~~

~~((★))~~ (2) Be valid for one year from the date of its issuance; and

~~((★))~~ (3) Be ~~((applied only to the))~~ valid only for those bonds approved under the certified special election(s) specified by the school district in its ~~((request))~~ application for a certificate of eligibility.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-050 Denial of eligibility/determination of ineligibility. The state treasurer may deny a school district's ~~((request))~~ application for a certificate of eligibility and issue a determination of ineligibility pursuant to RCW 39.98.040, if:

~~((★))~~ (1) The school district fails to meet the provisions outlined in the act or any of the requirements outlined in ~~((this))~~ these rules; or

~~((The state treasurer may also deny a school district's request for a certificate of eligibility and issue a determination of ineligibility pursuant to RCW 39.98.040, if))~~

(2) The state has ever paid, pursuant to the guarantee program, any principal of or interest on any of the school district's bonds; and~~((-~~

~~★))~~ (a) The associated payment obligations of the state are not satisfied; or

~~((★))~~ (b) The state treasurer ~~((or))~~ and the state superintendent of public instruction are unable to certify, in writing, that the school district is fiscally solvent.

The state treasurer may deny a district's application at his or her sole discretion.

NEW SECTION

WAC 210-02-055 Determination of fiscal solvency. "Fiscally solvent" when used for the purposes of any certification required by the act and these rules with respect to the financial condition of a school district seeking to participate in the guarantee program, means that, in the opinion of the person making such determination after giving due consideration to:

(1) The principal and interest requirements of all outstanding voted general obligation bonds of the school district and of all outstanding bonds issued to refund voted general obligation bonds of the school district;

(2) The school district's past record of collecting voter-approved excess property taxes and reasonable expectations concerning future collections of voter-approved excess property taxes as required to meet those principal and interest requirements; and

(3) Such additional financial circumstances, if any, of the school district that such person considers to be material, it is reasonably expected that the school district will be able to satisfy all principal and interest requirements of bonds guaranteed and proposed to be guaranteed by the state under the guarantee program.

~~((USING THE CERTIFICATE TO ISSUE BONDS))~~

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-060 ~~((Using the certificate of eligibility to obtain the state guarantee.))~~ **Information to be provided to the state treasurer before issuance of a final certificate.** The school district shall provide a copy of the final official statement for the bonds to which the guarantee was applied, promptly upon its publication. The school district shall provide to the state treasurer at the time of closing:

(*) (1) A copy of the bond resolution as adopted by the board of directors of the school district, or a bond purchase agreement that states the final terms of the bonds;

~~((A copy of the final official statement for the bonds to which the guarantee was applied, promptly upon its publication;~~

*) (2) An allocation report, identifying by ballot issue, the principal amount of any bonds issued pursuant to the ballot proposition resolution(s) authorizing the bonds, plus any net original issue premium associated with such issued bonds that was deposited in the capital projects fund and any remaining authority to issue bonds pursuant to the ballot proposition resolution(s); and

(3) A letter addressed to the state treasurer signed by the school district's nationally recognized bond counsel firm stating that the state treasurer may rely upon such firm's approving legal opinion with respect to the bonds as if that opinion were addressed to the state treasurer.

If all of the above information has been received, on the date of the bond closing, the state treasurer will provide a certificate evidencing the state's guarantee for use by the school district that reflects its compliance with these requirements.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-080 Reference to guarantee in school district bond documents. School districts ~~((with a valid))~~ that issue bonds under a certificate of eligibility, ((and that have complied with WAC 210-02-060 and all other sections of this rule,)) shall evidence the state's guarantee of the school district's bonds ~~((by including a description of the state's guarantee))~~ in a form to be provided by the state treasurer and placed:

(*) (1) On the cover of the school district's preliminary official statement(s) and official statement(s), or other offering document(s), for the applicable bond(s); ~~((and~~

*) (2) On the face of the school district's applicable bond(s); and

(3) As an appendix within the official statement(s), or other offering document(s), for the applicable bond(s).

~~((The description of the state's guarantee supplied by))~~ The state treasurer will provide, and any school district relying on the state's guarantee must ((be used in its entirety and may not be modified or amended)) use the description of the state's guarantee in the school district's offering document. The description must be used in its entirety and may not be modified or amended.

Any modification or amendment may result in a denial of future applications for eligibility by the district. It is incumbent upon each district to check the state treasurer's web site for the most current description.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-090 Ratings. The office of the state treasurer will undertake to have the Washington school bond guarantee program rated by at least one of the following: Standard & Poor's, Moody's Investors Service, ((and)) or Fitch ((HBCA)) Ratings. Any school district proposing to issue bonds under the guarantee program may:

(*) (1) Engage, at its own expense, one or more of the rating agencies to apply the rating of the guarantee program to its bonds; and

(*) (2) At its discretion, and at its own expense, choose to obtain an underlying rating on the bonds.

~~((REPAYMENT OF SCHOOL DISTRICT DEBT ISSUED UNDER THE PROGRAM))~~**~~((STATE PAYMENT ON BONDS))~~**NEW SECTION

WAC 210-02-115 Notification by district of insufficient funds. At least seven business days before a scheduled debt service payment is due, a district that has issued bonds under a certificate of eligibility must confirm that sufficient funds will be available to make the scheduled debt service payment. If the district determines that insufficient funds are available to make the scheduled debt service payment, the district must notify the office of the state treasurer at least seven business days prior to its due date. Such notice shall be made to the office of the state treasurer as follows:

(1) By telephone: 360-902-9000; and

(2) By e-mail: SchoolBondGuarantee@tre.wa.gov.

Failure to make this notification may result in a denial of future applications for eligibility.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-120 County treasurer notice to state treasurer of insufficient funds. ~~((A))~~ Upon determining that a timely transfer of all required funds to the paying agent for scheduled debt service payments on guaranteed bonds cannot be made, the county treasurer ((who is unable to transfer to the paying agent funds required to make scheduled debt service payments on guaranteed bonds of a school district on or prior to the payment date, due to the lack of adequate funds,)) shall immediately provide notice to the state treasurer and to the paying agent pursuant to RCW 39.98.050. Such notice shall be made to the office of the state treasurer as follows:

(*) (1) By telephone: ~~((360-902-9050))~~ 360-902-9000; and

(*) (2) By facsimile: ~~((360))~~ 360-902-9045 or by e-mail: SchoolBondGuarantee@tre.wa.gov; and

~~((*) (3) By first class mail: Attn: ((Deputy Treasurer, Debt Management Division)) School Bond Guarantee Program, Office of the State Treasurer, Legislative Building, 2nd Floor, P.O. Box 40200, Olympia, Washington 98504-0200.~~

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-130 Paying agent notice to state treasurer of insufficient funds. If sufficient funds are not transferred to the paying agent at the time or times required to make scheduled debt service payments on guaranteed bonds of a school district, the paying agent shall immediately notify the state treasurer as follows:

~~((*) (1) By telephone: ((360) 902-9050)) 360-902-9000; ((and~~

~~*) (2) By facsimile: ((360)) 360-902-9045 or by e-mail: SchoolBondGuarantee@tre.wa.gov; and~~

~~((*) (3) By first class mail: Attn: ((Deputy Treasurer, Debt Management Division)) School Bond Guarantee Program, Office of the State Treasurer, Legislative Building, 2nd Floor, P.O. Box 40200, Olympia, Washington 98504-0200.~~

~~((SCHOOL DISTRICT REPAYMENT TO STATE))~~

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-150 Repayment to the state by school districts. Each school district is responsible for paying in full the principal of and interest on its bonds guaranteed by the state under the guarantee program. The state treasurer shall recover from the district any funds paid by the state on behalf of a school district under the guarantee program ~~((in a manner consistent with chapter 39.98 RCW))~~ along with any interest or penalties by any means authorized pursuant to the act or any other method permitted by law.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-160 Interest on school district obligations to state. The state treasurer ~~((will))~~ may charge interest in connection with the recovery of funds under chapter 39.98 RCW. Any interest charged will be in a manner consistent with chapter 39.98 RCW. ~~((The interest charged will be what the funds used to make the guarantee payment would otherwise earn in the state treasury.))~~ Interest will be determined after taking certain factors into account such as: The circumstances of any prior draws by the district on the state, market interest and penalty rates, and the cost of funds or opportunity cost of investments.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-170 Penalty for state payment under guarantee program. ~~((In addition to charging interest,))~~ The state treasurer may, after taking into account the circumstances giving rise to the failure of the district to make payments on its bonds in a timely manner, impose a penalty ((on

~~a school district for which the state made a payment under the guarantee program, which penalty shall not be more than five percent of the amount paid by the state pursuant to its guarantee for each instance in which a payment by the state is made. Any penalty imposed will be)) consistent with ((chapter 39.98)) RCW 39.98.060.~~

~~((OTHER))~~

NEW SECTION

WAC 210-02-195 Failure to comply with this chapter. Failure to comply with the provisions of this chapter may result in denial of a future application for eligibility under the guarantee program.

AMENDATORY SECTION (Amending WSR 00-11-023, filed 5/9/00, effective 6/9/00)

WAC 210-02-200 Exceptions. The state treasurer may, in his or her discretion, waive any or all provisions of this ~~((rule))~~ chapter to the extent provided by law.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 210-02-070	Guarantee final upon issuance.
WAC 210-02-100	County assessor to levy taxes.
WAC 210-02-110	County treasurer to collect taxes and transfer money to paying agent.
WAC 210-02-140	Payment by the state treasurer for bonds issued under the act.
WAC 210-02-190	Restructure/revision of tax collection.

WSR 14-06-108

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed March 5, 2014, 11:02 a.m., effective April 5, 2014]

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

Purpose: The board learned that how the one thousand foot buffer is measured under the rules adopted by the board on October 16, 2013, differs from the way the federal government measures the one thousand foot buffer. The board needs to change the way the board will measure the one thousand foot buffer to be consistent with the federal government.

Citation of Existing Rules Affected by this Order: Amending WAC 314-55-050.

Statutory Authority for Adoption: RCW 60.50.342 [69.50.342] and 69.50.345.

Adopted under notice filed as WSR 14-03-030 on January 8, 2014.

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 0, Repealed 0.

Date Adopted: March 5, 2014.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license. Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the board has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured ~~((along the most direct route over or across established public walks, streets, or other pub-~~

~~lic passageway between))~~ as the shortest straight line distance from the property line of the proposed building/business location to the ((perimeter of the grounds)) property line of the entities listed below:

(a) Elementary or secondary school;

(b) Playground;

(c) Recreation center or facility;

(d) Child care center;

(e) Public park;

(f) Public transit center;

(g) Library; or

(h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.

(12) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(13) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

(14) The operating plan does not demonstrate, to the satisfaction of the board, the applicant is qualified for a license.

(15) Failure to operate in accordance with the board approved operating plan.

(16) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

WSR 14-06-109

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed March 5, 2014, 11:03 a.m., effective April 5, 2014]

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

Purpose: This rule making is a result of a stakeholder petition for rule making. This rule making would allow wine that was originally produced at a Washington domestic winery and subsequently removed to an out-of-state regional distribution center to be returned to Washington for distribution without being physically trucked to the producing winery before being delivered to the appointed Washington wine distributor.

Citation of Existing Rules Affected by this Order: Amending WAC 314-24-070.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 14-03-031 on January 8, 2014.

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

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

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

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

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

Date Adopted: March 5, 2014.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 12-24-091, filed 12/5/12, effective 1/5/13)

WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in RCW 66.24.140, or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1), and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced and bottled in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity, a licensed wine distributor or bonded wine warehouse.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery (~~(returning)~~), a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must keep on file for audit purposes clear source records (shipping documents, etc.) with reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).