

WSR 14-05-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed February 18, 2014, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-078.

Title of Rule and Other Identifying Information: Changes to most sections in chapter 388-823 WAC, Division of developmental disabilities intake and determination of developmental disabilities. Following is a complete list of WAC sections to be amended or added through this proposed rule making.

SECTIONS BEING AMENDED: WAC 388-823-0010 Definitions, 388-823-0020 How do I become a client of the division of developmental disabilities?, 388-823-0050 Must I be a resident of the state of Washington?, 388-823-0080 Who determines that I have a developmental disability?, 388-823-0090 How long will it take to complete a determination of my eligibility?, 388-823-0100 What is the effective date that I become an eligible client of DDD?, 388-823-0105 How will DDD notify me of the results of my eligibility determination?, 388-823-0200 What evidence do I need to substantiate "mental retardation" as an eligible condition?, 388-823-0210 If I have mental retardation, how do I meet the definition of substantial limitations in adaptive functioning?, 388-823-0300 What evidence do I need to substantiate "cerebral palsy" as an eligible condition?, 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0400 What evidence do I need to substantiate "epilepsy" as an eligible condition?, 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0500 What evidence do I need to substantiate "autism" as an eligible condition?, 388-823-0510 If I have autism, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0600 What evidence do I need to substantiate "another neurological condition" as an eligible condition?, 388-823-0610 If I have another neurological condition, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0920 What sections of the ICAP does DDD or a designee contracted with DDD complete and score?, 388-823-0930 How does DDD or a designee contracted with DDD administer the ICAP?, 388-823-0940 What happens if DDD or a designee contracted with DDD cannot identify a qualified respondent?, 388-823-1000 Once I become an eligible DDD client, is there a time limit to my eligibility?, 388-823-1005 When does my eligibility as a DDD client expire?, 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability?, 388-823-1015 What is the definition of "DDD paid services" in WAC 388-823-1010(3)?, 388-823-1020 Can DDD terminate my eligibility if I no longer am a resident of the state of Washington?, 388-823-1030 How will I know that my eligibility is expiring or is due for review?, 388-823-1060 How will DDD notify me of its decision?, 388-823-1070 What are my appeal rights to a department decision that I do not have a developmental disability?, 388-

823-1080 If DDD decides that I do not have a developmental disability, how soon can I reapply for another decision?, 388-823-1090 If I am already eligible, how do these new rules affect me?, 388-823-1095 What are my rights as a DDD client? and 388-823-1100 How do I complain to DDD about my services or treatment?; NEW SECTIONS: WAC 388-823-0015 How does the state of Washington define developmental disability?, 388-823-0025 Who can apply for DDA eligibility determination?, 388-823-0055 Who is responsible for obtaining the documentation needed to make my eligibility determination?, 388-823-0075 What if I do not have written evidence that my disability began before my eighteenth birthday?, 388-823-0115 If I am eligible to be a client of DDA, will I receive DDA services?, 388-823-0720 What evidence do I need of my FSIQ?, 388-823-0730 If I have more than one FSIQ score, what criteria will DDA use to select the FSIQ for determining eligibility?, 388-823-0740 What evidence do I need of my adaptive skills limitations?, 388-823-0750 If I have more than one adaptive test score, what criteria will DDA use to select the adaptive test for determining eligibility?, 388-823-0760 What evidence do I need to show my need for direct physical assistance? and 388-823-0770 What evidence do I need of developmental delays?; and SECTIONS BEING REPEALED: WAC 388-823-0030 Will I receive paid services if DDD decides that I have a developmental disability?, 388-823-0040 What is a developmental disability?, 388-823-0060 How do I apply to become a client of DDD?, 388-823-0070 Who can apply for an eligibility determination?, 388-823-0110 Who is responsible for obtaining the documentation needed to make this eligibility determination?, 388-823-0120 Will my diagnosis of a developmental disability qualify me for DDD eligibility?, 388-823-0130 Can I be eligible for DDD if my disability occurs on or after my eighteenth birthday?, 388-823-0140 What if I do not have written evidence that my disability began before my eighteenth birthday?, 388-823-0150 Which rules define a developmental disability if I am a child under the age of six?, 388-823-0160 Which rules define a developmental disability if I am age six through nine?, 388-823-0170 Which rules define a developmental disability if I am age ten or older?, 388-823-0215 What evidence do I need of my FSIQ?, 388-823-0220 If am too intellectually impaired to complete a standardized IQ test, how do I meet the criteria under mental retardation?, 388-823-0230 If I have more than one FSIQ score, what criteria will DDD use to select the FSIQ score for determining eligibility?, 388-823-0320 What evidence do I need of my need for direct physical assistance with activities of daily living?, 388-823-0330 How can I document my need for direct physical assistance?, 388-823-0420 What evidence do I need to substitute adaptive functioning limitations for the eligible conditions of epilepsy, autism and other conditions similar to mental retardation?, 388-823-0515 What evidence do I need to substantiate adaptive functioning limitations for the condition of autism?, 388-823-0615 What evidence do I need to substantiate adaptive functioning limitations for another neurological condition?, 388-823-0700 How do I meet the definition for an "other condition" similar to mental retardation?, 388-823-0710 What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation?, 388-823-0800 Which eligible develop-

mental disability conditions apply at what age?, 388-823-0810 If I am a child under age ten, what evidence do I need to meet the definition for an "other condition" similar to mental retardation?, 388-823-0820 If I am a child under age ten with an eligible condition under the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0830 If I am a child under age ten with an eligible condition based on developmental delays, how do I meet the definition of substantial limitations to adaptive functioning?, 388-823-0840 If I am a child under age ten, how many areas of developmental delays meet the definition of substantial limitations to adaptive functioning?, 388-823-0850 What developmental evaluations or assessments will be acceptable for determining developmental delay?, 388-823-0900 What are the qualifying scores for inventory of client and agency planning broad independence for each age?, 388-823-1040 What happens if I do not reapply for eligibility before my eligibility expiration date?, and 388-823-1050 What happens if I do not respond to a request for information to review my eligibility?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 8, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 9, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on April 8, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by March 11, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The primary purposes for these changes are to clarify rules which determine whether an individual meets the requirements for developmental disabilities administration (DDA) eligibility. Overall changes in organization and language have been made to reduce confusion for DDA applicants and DDA clients. Amendments align eligibility requirements for Autism with the Diagnostic and Statistical Manual - Fifth Edition (DSM-5). Furthermore, combining the categories of "another neurological" and "other condition" eliminate confusion between the WAC and RCW language.

Amendments to this chapter may change eligibility requirements for some individuals applying for services from DDA. In addition housekeeping changes will be made such as WAC and RCW references, division of developmental disabilities to DDA, and mental retardation to intellectual disability.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: Chapter 71A.16 RCW, Eligibility for services.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Linda Lunsford, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3440.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The department of social and health services' DDA is proposing amendments to chapter 388-823 WAC, Division of developmental disabilities intake and determination of developmental disabilities.

The purpose of this chapter is to: Proposed amendments to this chapter are necessary to clarify rules which determine whether an individual meets the requirements for DDA eligibility. Overall changes in organization and language are needed to reduce confusion for DDA applicants. Amendments will also align eligibility requirements for Autism with the Diagnostic and Statistical Manual - Fifth Edition (DSM-5). Furthermore, combining the categories of "another neurological" and "other condition" will eliminate any confusion between the WAC and RCW language.

Amendments to this chapter may change eligibility requirements for some individuals applying for services from DDA. In addition, housekeeping changes will be made such as WAC and RCW references and division of developmental disabilities to DDA.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The WAC chapter changes related to DDA determination of developmental disabilities will not have a disproportionate economic impact on small businesses. The department has reviewed the proposed revisions of these rules and how they might affect small businesses and found no relation to changes and costs to small business.

INDUSTRY ANALYSIS: These rules have been updated to reflect current terminology, intellectual scales, aligning eligibility requirements of Autism with the Diagnostic and Statistical Manual - Fifth Edition (DSM-5) and basic housekeeping changes such as WAC and RCW references and related links [links]. These changes are being made to bring our DDA eligibility determination rules up to date with no intent of changing them for the purpose of increasing or decreasing the number of persons who may be eligible for services from DDA.

While we recognize some individuals may not be eligible under the new rules we also recognize others may be eligible. However, we do not anticipate the number of those eligible will significantly change.

INVOLVEMENT OF SMALL BUSINESSES: Prior to the revision of this chapter, DDA sent notices out to our WAC mailing list explaining our intent to make updates and inviting participation. The mailing list includes individuals, businesses, stakeholder groups, and legal representatives.

During the revision of these rules DDA staff met and worked with advocates who wanted to be part of these

changes. Those work groups included a wide representation including small business owners.

COST OF COMPLIANCE: Under chapter 19.85 RCW, DDA has considered annual costs to small businesses and concluded there will be no impact of fifty dollars or more per client.

GENERAL COSTS: DDA analysis revealed that there are no significant costs imposed by the proposed amendments.

Disproportionate Economic Impact Analysis: None.

Mitigating Costs: Not applicable.

Benefits for Proposed Rules: See above.

JOBS CREATED OR LOST: Not applicable.

CONCLUSION: DDA has given careful consideration to the impact of proposed rules in chapter 388-823 WAC, Division of Developmental Disabilities Intake and Determination of Developmental Disabilities. To comply with the Regulatory Fairness Act, chapter 19.85 RCW, DDA has analyzed impacts on small businesses and has concluded that if there is any impact it will be minimal.

Please contact Linda Lunsford at (360) 725-3440 if you have any questions.

A copy of the statement may be obtained by contacting Alan McMullen, DDA, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, mcmular@dshs.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis is required for these proposed changes.

February 13, 2014
Katherine I. Vasquez
Rules Coordinator

Chapter 388-823 WAC

DEVELOPMENTAL DISABILITIES ADMINISTRATION INTAKE AND ELIGIBILITY DETERMINATION

APPLYING FOR A DEVELOPMENTAL DISABILITIES ADMINISTRATION ELIGIBILITY DETERMINATION

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0010 Definitions. The following definitions apply to this chapter:

"ABAS-II" means adaptive behavior assessment system-second edition, which is a comprehensive, norm-referenced assessment of adaptive behavior and skills of individuals from birth through age 89.

"CAS" means the DAS-Naglieri cognitive assessment system, a clinical instrument for assessing intelligence based on a battery of cognitive tasks. The test is used for children ages five through seventeen years eleven months.

"Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the ~~((division of))~~ developmental disabilities administration (DDA).

"C-TONI" means the comprehensive test of nonverbal intelligence, a battery of six subtests, designed to measure different aspects of nonverbal intellectual abilities from ages six to eighteen years eleven months.

"DAS" means differential ability scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.

"DDA" means the developmental disabilities administration, an administration within department of social and health services.

~~((("DDD" means the division of developmental disabilities, a division within the aging and disability services administration, department of social and health services.))~~

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

~~((("Division" means the division of developmental disabilities.))~~

"Documentation" means written information that provides support for certain claims, such as diagnoses, test scores, or residency for the purpose of establishing DDA eligibility.

"DSM-IV-TR" means the diagnostic and statistical manual of mental disorders, fourth edition, text revision.

"DSM-5" means the diagnostic and statistical manual of mental disorders, fifth edition.

"Eligible" means that DDA has determined that you have a ((developmental disability that meets all of the requirements in this chapter for a specific)) condition that meets all of the requirements for a developmental disability as set forth in this chapter.

"ESIT" means early support for infants and toddlers, a program administered by the department of early learning.

"Expiration date" means a specific date that your eligibility as a client of ~~((DDD))~~ DDA and all services paid by ~~((DDD))~~ DDA will stop.

"FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for ~~((DDD))~~ DDA eligibility.

"Functional limitation" means a reduced ability or lack of ability to perform an action or activity in the manner or within the range considered to be normal.

"ICAP" means the inventory for client and agency planning. This is a standardized assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. The goal is to get a snapshot of his/her ability.

~~((("IMR" means an institution for the mentally retarded, per chapter 388-835 WAC or chapter 388-837 WAC.))~~

"K-ABC" means Kaufman assessment battery for children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

"Leiter-R" means Leiter international performance scale - revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.

"MPC" means medicaid personal care and is the provision of medically necessary personal care tasks as defined in chapter 388-106 WAC.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Non-verbal" means that you do not possess sufficient verbal skills to complete a standard intellectual test.

"NSA" means necessary supplemental accommodations, which are services provided to you if you have a mental, neurological, physical, or sensory impairment or other problems that prevent you from getting program benefits in the same way that an unimpaired person would get them.

"Review" means (~~DDD~~) DDA must (~~redetermine~~) determine that (~~you still have~~) a current client of DDA still meets all of the requirements for a developmental disability (~~(according to the rules that are in place at the time of the review)~~) as set forth in this chapter.

"RHC" means (~~(one of five)~~) a residential habilitation (~~(centers)~~) center operated by the (~~(division: Lakeland Village, Yakima Valley School, Fircrest, Rainier School, and Francis Haddon Morgan Center)~~) DDA.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by (~~(the division)~~) DDA.

"Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.

"Termination" means an action taken by (~~DDD~~) DDA that stops your (~~DDD~~) DDA eligibility and services paid by (~~DDD~~) DDA. If your DDA eligibility is terminated your DDA authorized services will also be terminated. If you remain eligible for MPC and you are under the age of eighteen DDA will continue to authorize this service. If you are eighteen or older medicaid personal care will be authorized by the aging and long-term support administration.

"VABS" means Vineland adaptive behavior scales, which is an assessment to measure adaptive behavior in children from birth but under age eighteen years, nine months and in adults with low functioning in four separate domains: Communication, daily living skills, socialization, and motor skills.

"Wechsler" means the Wechsler intelligence scale, which is an individually administered 11-subtest measure of an individual's capacity for intelligent behavior. The Wechsler has both a verbal scale and a performance scale. The Wechsler is used with individuals at least age three years

but under age seventy-four years. The verbal scale can be used alone with individuals who have visual or motor impairments, and the performance scale can be used alone with individuals who cannot adequately understand or produce spoken language. There are three Wechsler intelligence scales, dependent upon the age of the individual:

- (~~(The)~~) Wechsler preschool and primary scale of intelligence - (~~(revised (WPPSI-R))~~) fourth edition (WPPSI-IV), for children at least age three years but under age seven years;

- (~~(The)~~) Wechsler intelligence scale for children - (~~(third)~~) fourth edition, (~~(WISC-III)~~) (WISC-IV), for children at least age six years but under age sixteen years; and

- (~~(The)~~) Wechsler adult intelligence scale - (~~(revised (WAIS-R))~~) fourth edition (WAIS-IV), for individuals at least age sixteen years but under age seventy-four years.

"WJ III(r)" means the Woodcock-Johnson(r) III, a test which is designed to provide a co-normed set of tests for measuring general intellectual ability, specific cognitive abilities, scholastic aptitude, oral language, and academic achievement. The WJ III(r) is used for ages two and up.

NEW SECTION

WAC 388-823-0015 How does the state of Washington define developmental disability? The state of Washington defines developmental disability in RCW 71A.10.020(4).

(1) To qualify for DDA you must have a diagnosed condition of intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDA to be closely related to intellectual disability or requiring treatment similar to that required for individuals with intellectual disability which:

- (a) Originates prior to age eighteen;
- (b) Is expected to continue indefinitely; and
- (c) Results in substantial limitations.

(2) In addition to the requirements listed in (1) above, you must meet the other requirements contained in this chapter.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0020 How do I become a client of the (~~(division of)~~) developmental disabilities administration? You become a client of the (~~(division of)~~) developmental disabilities (~~(DDD)~~) administration (DDA) if you apply for eligibility with (~~DDD~~) DDA and (~~DDD~~) DDA determines that you (~~(have a "developmental disability")~~) meet all eligibility criteria required to establish a developmental disability as defined in this chapter.

(1) You apply to become a client of DDA by calling the regional DDA office or a local DDA office and requesting a DDA eligibility packet be sent to you. You may also download and print the eligibility packet at <http://dshs.wa.gov/ddd/eligible.shtml>.

(2) You must complete and return the required forms, along with all supporting documentation that you have, to address any disability indicated in the eligibility packet.

NEW SECTION

WAC 388-823-0025 Who can apply for DDA eligibility determination? (1) You must be a resident of the state of Washington, as described in WAC 388-823-0050, to apply for an eligibility determination.

(2) The following individuals can apply for DDA eligibility:

(a) A parent or legal representative must apply on behalf of a child under the age of eighteen years;

(b) If there is a legal guardian of an applicant age eighteen years or older, the legal guardian must apply on behalf of the adult applicant; or

(c) If there is no legal guardian of an adult applicant age eighteen years or older, the adult applicant can apply on his/her own behalf.

(3) A request for eligibility determination requires the signature of the applicant or their legal representative. With the consent of the applicant, any person, agency, or advocate may assist with the application process.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0050 (~~Must I be~~) For DDA eligibility, who is considered to be a resident of the state of Washington? (~~When you apply for eligibility with DDD, you must be a resident of the state of Washington. Proof of residency includes:~~

~~(1) The receipt of medicaid or other benefits from the department of social and health services that require residency as a condition of eligibility; or~~

~~(2) Documentation that shows you live in the state of Washington, or, if you are a child under the age of eighteen, documentation that shows your parent or legal guardian lives in the state of Washington))~~ (1) You must live in the state of Washington to apply or continue to be a client of DDA. If you are a child under the age of eighteen, your primary custodian or legal guardian must also live in the state of Washington.

Proof that you live in the state of Washington may include documentation such as a lease agreement, school records, or mail addressed to you. Such documentation will not be considered proof of residency if you have been denied medicaid or other benefits due to failure to meet residency requirements under WAC 388-468-0005

(2) DDA will not process your request for determination of eligibility or will terminate your eligibility if you do not live in the state of Washington.

NEW SECTION

WAC 388-823-0055 Who is responsible for obtaining the documentation needed to make my eligibility determination? You are responsible to provide all of the information required by DDA to make a determination.

(1) If you provide DDA with a signed consent form and the sources for obtaining the documentation DDA may be able to assist you in obtaining records. Evidence required to make an eligibility determination includes, but is not limited to:

(a) School psychologist and/or licensed psychologist evaluations and reports,

(b) Evidence of medical diagnoses by a licensed physician,

(c) Cognitive and adaptive skills test results and accompanying reports, and

(d) Mental health records.

(2) DDA will not pay for the purchase of diagnostic assessments, intelligence quotient (IQ) testing, or adaptive skills testing.

(3) If DDA determines that you have a qualifying condition and your records do not include an adaptive skills assessment per WAC 388-823-0710 administered within the past 36 months, DDA may administer the inventory of client and agency planning (ICAP) to determine your level of adaptive functioning to meet the substantial limitation requirement. DDA will administer the ICAP at no expense to you.

NEW SECTION

WAC 388-823-0075 What if I do not have written evidence that my disability began before my eighteenth birthday? (1) If there is no documentation available about your early developmental history, educational history, illnesses, or injuries, DDA may accept verbal information from your family or others who knew you prior to the age of eighteen to verify that your disability began prior to age eighteen.

The information must be specific and reliable, and it cannot substitute for documentation that could be obtained with reasonable diligence.

(2) Additional evidence of your eligible condition and the resulting substantial limitations is still required.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0080 (~~Who determines that I have a developmental disability~~) How does DDA determine whether I meet eligibility criteria? (~~DDD~~) DDA determines if you (~~have a developmental disability as defined in this chapter after reviewing all documentation received by the division~~) meet eligibility criteria as defined in this chapter by reviewing all information that has been submitted.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0090 How long will it take to complete a determination of my eligibility? (~~(1) Once DDD receives sufficient documentation to determine you eligible, DDD~~) DDA has thirty days from receipt of the final piece of documentation to make the determination of eligibility.

~~((2))~~ (1) If (~~DDD~~) DDA has received all requested documentation (~~but~~) and it is (~~insufficient~~) sufficient to establish eligibility, (~~DDD~~) DDA will make a determination of (~~ineligibility~~) eligibility and send you written notice of (~~denial of~~) eligibility.

(2) If DDA has received all requested documentation but it is insufficient to establish eligibility, DDA will make a determination of ineligibility and send you written notice of denial of eligibility.

(3) If ~~((DDD))~~ DDA has insufficient information to determine you eligible ~~((but))~~ and has not received all of the requested documentation, ~~((DDD))~~ DDA may deny your eligibility after ninety days from the date of application. Rules governing reapplying for eligibility are in WAC 388-823-1080.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0100 What is the effective date ~~((that I become an eligible client of DDD))~~ of my eligibility determination? (1) If ~~((DDD))~~ DDA receives sufficient information to substantiate your ~~((DDD))~~ DDA eligibility, the effective date of your eligibility as a ~~((DDD))~~ DDA client is the date of receipt of the final piece of documentation.

(2) ~~((Paid-DDD))~~ DDA services cannot begin before the effective date of your ~~((DDD))~~ DDA eligibility.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0105 How will ~~((DDD))~~ DDA notify me of the results of my eligibility determination? ~~((DDD))~~ DDA will send you written notification of the final determination of your eligibility per WAC 388-825-100.

(1) If you are not eligible, the written notice will explain why you are not eligible, explain your appeal rights to this decision, and provide you with ~~((a fair))~~ an administrative hearing request form.

(2) If you are eligible, the written notice will include:

- (a) Your eligibility condition(s);
- (b) The effective date of your eligibility;
- (c) The expiration date or review date of your eligibility, if applicable; and
- (d) The name and phone number of your ~~((assigned case manager))~~ DDA primary contact.

NEW SECTION

WAC 388-823-0115 If I am eligible to be a client of DDA, will I receive DDA services? If DDA determines that you are eligible to be a client of DDA, your access to services as a DDA client depends on your meeting eligibility requirements for the specific service. DDA paid services are described in WAC 388-825-057.

DETERMINATION OF ELIGIBILITY INTELLECTUAL DISABILITY

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0200 ~~((What evidence))~~ How do I ~~((need to substantiate "mental retardation"))~~ show that I have intellectual disability as an eligible condition? ~~((Evidence that you have an eligible condition under "mental retardation" requires a diagnosis of mental retardation by a licensed psychologist, or a finding of mental retardation by a certified school psychologist or a diagnosis of Down syndrome by a licensed physician.~~

~~((1) This diagnosis is based on documentation of a life-long condition originating before age eighteen.~~

~~((2) The condition results in significantly below average intellectual and adaptive skills functioning that will not improve with treatment, instruction or skill acquisition.~~

~~((3) A diagnosis or finding of mental retardation by the examining psychologist must include an evaluation of adaptive functioning that includes the use of a standardized adaptive behavior scale indicating adaptive functioning that is more than two standard deviations below the mean, in at least two of the following areas: Communication, self care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety.)) In order to be considered for eligibility under the condition of intellectual disability you must be age four or older and have a diagnosis of mental retardation as specified in the DSM-IV-TR or intellectual disability as specified in the DSM-5. This diagnosis must meet the following criteria:~~

(1) The diagnosis must be made by a licensed psychologist, or be a finding of intellectual disability by a Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) An acceptable diagnostic report includes documentation of all three diagnostic criteria specified in the DSM-IV-TR or DSM-5.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0210 If I have ~~((mental retardation))~~ intellectual disability, how do I meet the definition of substantial limitations ~~((in adaptive functioning))~~? ~~((+))~~ If you meet the definition of mental retardation in WAC 388-823-0200, you must have substantial limitations in adaptive functioning of two standard deviations below the mean and a full-scale intelligence quotient (FSIQ) of more than two standard deviations below the mean.

~~((2) The substantial limitation in adaptive functioning must reflect your current condition.)) If you have an eligible condition of intellectual disability, in order to meet the definition of substantial limitations you must have:~~

(1) Documentation of a full-scale intelligence quotient (FSIQ) score of more than two standard deviations below the mean per WAC 388-823-0720, and subject to all of WAC 388-823-0720 and WAC 388-823-0730, and

(2) Documentation of an adaptive skills test score of more than two standard deviations below the mean as described in WAC 388-823-0710 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

CEREBRAL PALSY

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0300 ~~((What evidence))~~ How do I ~~((need to substantiate "cerebral palsy"))~~ show that I have cerebral palsy as an eligible condition? ~~((Evidence that you have an eligible))~~ In order to be considered for eligibility

under the condition ((under "cerebral palsy" requires a diagnosis by a licensed physician of cerebral palsy, quadriplegia, hemiplegia, or diplegia with symptoms that:

(1) Existed prior to age three; and

(2) Impair control of movement.)) of cerebral palsy you must be age four or older and have a diagnosis by a licensed physician of cerebral palsy or similar brain damage which causes, quadriplegia, hemiplegia, or diplegia, with evidence of onset prior to age three.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations ((to adaptive functioning))? If you have an eligible condition of cerebral palsy, in order to meet the definition of substantial limitations ((of adaptive functioning is)), you must demonstrate the need for direct physical assistance ((on a daily basis)), per WAC 388-823-0760, with two or more of the following activities as a result of your condition:

- (1) Toileting;
- (2) Bathing;
- (3) Eating;
- (4) Dressing;
- (5) Mobility; or
- (6) Communication.

EPILEPSY

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0400 ((What evidence)) How do I ((need to substantiate "epilepsy")) show that I have epilepsy as an eligible condition? ((Evidence of an eligible condition under "epilepsy" requires a diagnosis of a neurological condition that produces brief disturbances in the normal electrical functions of the brain resulting in)) In order to be considered for eligibility under the condition of epilepsy you must be age four or older and have a diagnosis of epilepsy or a neurological condition that produces seizures.

(1) ((This condition requires a diagnosis of)) You must show evidence that your epilepsy or seizure disorder ((that)) originated prior to age eighteen and is expected to continue indefinitely.

(2) The diagnosis must be made by a board certified neurologist and be ((based on)) supported with documentation of medical history ((and)) with neurological testing.

(3) You must provide confirmation from your physician or neurologist that your seizures are currently uncontrolled and ongoing or recurring and cannot be controlled by medication.

((4) DDD will not consider your seizures uncontrolled or ongoing if it is documented or reported that you refuse to take medications.

(5) Your seizures must make you physically incapacitated, requiring direct physical assistance for one or more activities as defined in WAC 388-823-0310 and 388-823-0320 during or following seizures.))

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0410 If I have epilepsy, how do I meet the definition of substantial limitations ((to adaptive functioning))? ((A) If you have an eligible condition of epilepsy, in order to meet the definition of substantial ((limitation to)) limitations, you must have documentation of an adaptive skills test score that reflects your daily functioning ((under epilepsy is a functional assessment score)) of more than two standard deviations below the mean ((on a Vineland adaptive behavior scales (VABS), scale of independent behavior-revised (SIB-R) or inventory for client and agency planning (ICAP) assessment instrument as described in WAC 388-823-0420)) as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

AUTISM

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0500 ((What evidence)) How do I ((need to substantiate "autism")) show that I have autism as an eligible condition? ((Evidence of an eligible)) In order to be considered for eligibility under the condition ((under "autism" requires)) of autism you must be age four or older and have a diagnosis by a qualified professional ((of autism or autistic disorder per 299.00 in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) that is expected to continue indefinitely, and evidence of onset before age three-)) which meets the conditions in (1) or (2), as well as (3), (4), and (5) below:

(1) ((The)) Autistic disorder 299.00 per the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR), or

(2) Autism spectrum disorder 299.00 per the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5), with a severity level of 2 or 3 in both columns of the severity level scale.

(3) The condition is expected to continue indefinitely with evidence of onset before age three.

(4) An acceptable diagnostic report includes documentation of all diagnostic criteria specified in the DSM-IV-TR or DSM-5.

(5) DDA will accept a diagnosis from any of the following professionals ((are qualified to give this diagnosis)):

(a) Board ((eligible)) certified neurologist;

(b) Board ((eligible)) certified psychiatrist;

(c) Licensed psychologist; ((or))

(d) Advanced registered nurse practitioner (ARNP) associated with an autism center or developmental center; or

(e) Board certified developmental and behavioral pediatrician.

((2) The evidence provided by a diagnosing professional in subsection (1) above exhibits a total of six or more of the following diagnostic criteria listed in the current DSM-IV-TR for Autistic Disorder 299.00:

(a) Two or more qualitative impairments in social interactions;

(b) One or more qualitative impairments in communication; and

(c) One or more impairments in restricted repetitive and stereotypical patterns or behavior, interests, and activities.

(3) A checklist of diagnostic criteria follows:

DSM-IV-TR Diagnostic Criteria required for Autism	Check if present
1. Qualitative impairment in social interaction	
a. Marked impairment in the use of multiple non-verbal behaviors	
b. Failure to develop peer relationships appropriate to developmental level	
c. A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people	
d. Lack of social or emotional reciprocity	
2. Qualitative impairment in communication	
a. Delay in the development of spoken language without nonverbal compensation	
b. In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others	
c. Stereotyped and repetitive use of language or idiosyncratic use of language	
d. Lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level	
3. Restricted repetitive and stereotyped patterns of behavior, interests, and activities	
a. Encompassing preoccupation with stereotyped and restricted patterns of interest that is abnormal in either intensity or focus	
b. Apparently inflexible adherence to specific, nonfunctional routines or rituals	
c. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)	
d. Persistent occupation with parts of objects	
TOTAL))	

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0510 **If I have autism, how do I meet the definition of substantial limitations ((to adaptive functioning))?** ((A)) If you have an eligible condition of autism, in order to meet the definition of substantial ((limitation of adaptive functioning for the condition of autism is the presence of adaptive functioning impairment as described in WAC 388-823-0515)) limitations you must meet the criteria in (1) and (2) below:

(1) Documentation of an adaptive skills test score of more than two standard deviations below the mean as described in WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750, and

(2) If your diagnosis is autism spectrum disorder per the DSM-5, documentation of a FSIQ of more than one standard deviation below the mean as described in WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730.

(a) If you have a FSIQ score of one standard deviation below the mean or higher as described in WAC 388-823-0720, you may present additional documentation described in (i) or (ii) below, signed by the diagnosing professional, which shows that you meet the criteria for autistic disorder 299.00 per the DSM-IV-TR:

(i) A completed autistic disorder confirmation form (available from DDA), or

(ii) Other documentation that provides the same information as required on the autistic disorder confirmation form.

(b) If you are unable to complete a FSIQ test, you may provide a statement by the diagnosing professional that your condition is so severe that you are unable to demonstrate the minimal skills required to complete testing.

ANOTHER NEUROLOGICAL OR OTHER CONDITION SIMILAR TO INTELLECTUAL DISABILITY

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0600 ((What evidence)) How do I ((need to substantiate "another neurological condition" as an eligible condition)) show that I have another neurological or other condition similar to intellectual disability? ((Evidence of an eligible condition under "another neurological condition" requires a diagnosis by a licensed physician of an impairment of the central nervous system involving the brain and/or spinal cord that meets all of the following:

- (1) Originated before age eighteen;
- (2) Results in both physical disability and intellectual impairment;
- (3) Is expected to continue indefinitely; and
- (4) Is not attributable to a mental illness or psychiatric disorder.) In order to be considered for eligibility under the category of another neurological or other condition similar to intellectual disability you must meet one of the three criteria below:

(1) You are age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that is known by reputable authorities to cause intellectual and adaptive skills deficits. Your condition meets all of the following:

- (a) Originated before age eighteen;
- (b) Is expected to continue indefinitely without improvement;
- (c) Is other than intellectual disability, autism, cerebral palsy, or epilepsy;
- (d) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; and
- (e) Has resulted in substantial functional limitations.

(2) You are under the age of eighteen and are eligible for DSHS-paid in-home nursing through the medically intensive children program defined in WAC 182-551-3000.

(3) You are under the age of ten and have one or more developmental delays.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial limitations ((to adaptive functioning))? ((Substantial limitations to adaptive functioning for the condition of another neurological condition require both intellectual impairment and the need for direct physical assistance with activities of daily living per WAC 388-823-0615 (1) and (2) below.)) If you have an eligible condition of another neurological or other condition similar to intellectual disability, in order to meet the definition of substantial limitations you must have impairments in both intellectual abilities and adaptive skills which are separate from any impairment due to an unrelated mental illness, or emotional, social or behavioral disorder.

(1) For WAC 388-823-0600(1) evidence of substantial functional limitations requires documentation of (a) and (b) below:

(a) For impairment in intellectual abilities, either (i) or (ii) or (iii) below:

(i) A FSIQ score of more than 1.5 standard deviations below the mean as described in WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730; or

(ii) If you are under the age of twenty, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or

(iii) A statement by a licensed physician, a licensed psychologist, or a school psychologist that your condition is so severe that you are unable to demonstrate the minimal skills required to complete testing for a FSIQ.

(b) For impairment in adaptive skills, a score of more than two standard deviations below the mean per WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) For WAC 388-823-0600(2) you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the medically intensive children program offered through DDA and defined in WAC 182-551-3000.

(3) For WAC 388-823-0600(3) evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:

(a) You are under the age of three and have one or more developmental delays per WAC 388-823-0770, or

(b) You are under the age of three and meet the ESIT eligibility requirements, or

(c) You are under the age of ten and have three or more developmental delays per WAC 388-823-0770.

EVIDENCE VERIFICATION REQUIREMENTS

NEW SECTION

WAC 388-823-0720 What evidence do I need of my FSIQ? Evidence of a qualifying FSIQ is derived from one of the tests listed in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at more than 1.5 standard deviations	Qualifying score at more than 1 standard deviation
Stanford-Binet 4th edition or earlier editions	67 or less	75 or less	83 or less
Stanford-Binet 5th edition	69 or less	77 or less	84 or less
Wechsler intelligence scales (Wechsler)	69 or less	77 or less	84 or less
Differential abilities scale (DAS)	69 or less	77 or less	84 or less
Kaufman assessment battery for children (K-ABC)	69 or less	77 or less	84 or less
Das-Naglieri cognitive assessment system (CAS)	69 or less	77 or less	84 or less
Woodcock-Johnson-III test of cognitive abilities (WJ III(r))	69 or less	77 or less	84 or less

(1) The test must be administered by a licensed psychologist or Washington certified school psychologist or other school psychologist certified by the National Association of School Psychologists.

(2) The FSIQ score cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your intellectual impairment, measured by a FSIQ test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, clear and convincing in light of all the evidence, and from a source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

(3) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.

(4) If you have a significant hearing impairment, English is not your primary language, or you are non-verbal your FSIQ may be estimated using one of the tests shown in the table below.

Assessment	Qualifying score at more than 2 standard deviations	Qualifying score at 1.5 or more standard deviations	Qualifying score more than 1 standard deviation
Wechsler intelligence scales (WISC, WAIS)	69 or less on the performance scale, or, on both the perceptual reasoning index and processing speed index	77 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index	84 or less on the performance scale, or, on both the perceptual reasoning index and the processing speed index
Leiter international performance scale-revised (Leiter-R)	69 or less	77 or less	84 or less
Comprehensive test of nonverbal intelligence (C-TONI)	69 or less on full scale (NVIQ)	77 or less on full scale (NVIQ)	84 or less on full scale (NVIQ)
Kaufman assessment battery for children (K-ABC)	Nonverbal scale index of 69 or less	Nonverbal scale index of 77 or less	Nonverbal scale index of 84 or less

(5) If you are over the age of 13 at the time of your determination you must have a valid FSIQ obtained at age thirteen or older.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-823-0730 If I have more than one FSIQ score, what criteria will DDA use to select the FSIQ for determining eligibility? (1) If you have more than one FSIQ, DDA will review the pattern of FSIQ scores.

(a) If the variation among these scores is no more than five points, DDA will accept the score obtained closest to but below age eighteen.

(b) If there are differences among the FSIQ scores of more than five points, DDA will review the pattern and attempt to determine reasons for the fluctuations to ensure that the most reliable and accurate FSIQ score is used. DDA will use the most current FSIQ obtained below age eighteen, provided the FSIQ is a result of your developmental disability.

(2) DDA will exclude any FSIQ score attributable to a condition or impairment that began on or after your eighteenth birthday.

NEW SECTION

WAC 388-823-0740 What evidence do I need of my adaptive skills limitations? (1) Evidence of substantial limitations of adaptive functioning requires a qualifying score completed in the past thirty-six months on one of the tests shown in the table below:

Assessment	Qualifying Score
Vineland adaptive behavior scales (VABS)	An adaptive behavior composite score of 69 or less
Scales of independent behavior - revised (SIB-R)	A broad independence standard score of 69 or less
Adaptive behavior assessment system- second edition (ABAD-II)	An adaptive behavior composite score of 69 or less
Inventory for client and agency planning (ICAP)	A broad independence standard score of 69 or less

(a) Tests must be administered and scored by professionals who have a background in individual assessment, human development and behavior, and tests and measurements, as well as an understanding of individuals with disabilities.

(b) Tests must be administered following the instructions for the specific test used.

(c) Department staff or designee contracted with DDA must administer the ICAP.

(d) DDA will administer or arrange for the administration of the ICAP only if results from one of the other acceptable tests are not available.

(2) The adaptive test score cannot be a result of an unrelated mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen.

(a) If you are dually diagnosed with a qualifying condition and mental illness, other psychiatric condition, or other illness or injury, you must provide acceptable documentation that your adaptive functioning impairment, measured by an adaptive skills test, would meet the requirements for DDA eligibility without the influence of the mental illness, other psychiatric condition, or other illness or injury.

(b) "Acceptable documentation" means written reports or statements that are directly related to the subject at issue, clear and convincing in light of all the evidence, and from a

source of appropriate authority. The determination of whether a document is acceptable is made by DDA.

(c) If no documentation is provided or DDA determines that the documentation is not acceptable DDA will deny eligibility. The determination may be challenged through an administrative appeal.

NEW SECTION

WAC 388-823-0750 If I have more than one adaptive test score, what criteria will DDA use to select the adaptive test for determining eligibility? If you have more than one adaptive test score during the thirty-six months prior to your determination, DDA will accept the test score obtained closest to the date of review or application providing it is a valid score and reflects adaptive functioning due to your developmental disability.

NEW SECTION

WAC 388-823-0760 What evidence do I need to show my need for direct physical assistance? (1) The need for direct physical assistance with activities of daily living is due to your impaired motor control and means:

(a) You need the presence and physical assistance of another person on a daily basis to be able to communicate and be understood by any other person.

(i) If you are able to communicate through a communication device you will be considered independent in communication.

(ii) You must require more than "setting up" of the communication device.

(b) You need direct physical assistance from another person on a daily basis with toileting, bathing, eating, dressing, or mobility.

(i) You require more than "setting up" the task to enable you to perform the task independently.

(ii) You must require direct physical assistance for more than transferring in and out of wheelchair, in and out of the bath or shower, and/or on and off of the toilet.

(iii) Your ability to be mobile is your ability to move yourself from place to place, not your ability to walk. For instance, if you can transfer in and out of a wheelchair and are independently mobile in a wheelchair, you do not meet the requirement for direct physical assistance with mobility.

(2) Any of the following can be used as documentation of your direct physical assistance needs:

(a) The comprehensive assessment reporting evaluation (CARE) tool or other department assessments that measure direct assistance needs in the areas specified above;

(b) Assessments and reports from educational or health-care professionals that are current and consistent with your current functioning;

(c) In the absence of professional reports or assessments, DDA may document its own observation of your direct assistance needs along with reported information by family and others familiar with you.

NEW SECTION

WAC 388-823-0770 What evidence do I need of developmental delays? (1) Evidence of substantial functional limitations requires developmental delays of at least 1.5 standard deviations or twenty-five percent or more of the chronological age in one or more of the following developmental areas based on an assessment current within the past 12 months:

(a) Physical skills (fine or gross motor);

(b) Self help/adaptive skills;

(c) Expressive or receptive communication, including American sign language;

(d) Social/emotional skills; and

(e) Cognitive, academic, or problem solving skills.

(2) The number of areas in which you are required to have delays to meet the evidence is specific to your age.

(3) Tools used to determine developmental delays must be diagnostic assessments that are designed to measure the developmental areas in section (1) above and are appropriate to the age of the child being tested.

(4) The assessment must be administered by one of the following professionals qualified to administer the assessment of developmental areas:

(a) Licensed physician;

(b) Licensed psychologist or certified school psychologist;

(c) Speech language pathologist;

(d) Audiologist;

(e) Registered occupational therapist;

(f) Licensed physical therapist;

(g) Registered nurse;

(h) Certified teacher;

(i) Masters level social worker; or

(j) Orientation and mobility specialist.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0920 What sections of the ICAP does ~~((DD))~~ DDA or a designee contracted with ~~((DD))~~ DDA complete and score? (1) ~~((DD))~~ DDA or a designee contracted with ~~((DD))~~ DDA completes the adaptive behavior portion of the ICAP.

(2) There is a computer generated broad independence score of your motor skills, personal living skills, social and communication skills, and community living skills, based on your age.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0930 How does ~~((DD))~~ DDA or a designee contracted with ~~((DD))~~ DDA administer the ICAP? (1) ~~((DD))~~ DDA or a designee contracted with ~~((DD))~~ DDA completes the adaptive section of the ICAP by interviewing a qualified respondent who has known you for at least three months and who sees you on a day-to-day basis. You cannot be the respondent for your own ICAP.

(2) ~~((DD))~~ DDA or a designee contracted with ~~((DD))~~ DDA will choose the respondent and may interview

more than one respondent to ensure that information is complete and accurate.

(3) ~~((DDD))~~ DDA or a designee contracted with ~~((DDD))~~ DDA will ask you to demonstrate some of the skills in order to evaluate what skills you are able to perform. ~~((DDD))~~ DDA or a designee contracted with ~~((DDD))~~ DDA cannot administer the ICAP if no respondent is identified and available.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-0940 What happens if ~~((DDD))~~ DDA or a designee contracted with ~~((DDD))~~ DDA cannot identify a qualified respondent? If you and ~~((DDD))~~ DDA or a designee contracted with ~~((DDD))~~ DDA cannot identify a qualified respondent for the ICAP, ~~((DDD))~~ DDA or a designee contracted with ~~((DDD))~~ DDA will not be able to administer the ICAP or determine you eligible under any conditions that require an ICAP.

ELIGIBILITY EXPIRATION, REVIEWS, AND REAPPLICATION

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1000 Once I become an eligible ~~((DDD))~~ DDA client, is there a time limit to my eligibility? While ~~((DDD))~~ DDA has the authority to review your eligibility at any time, your eligibility as a ~~((DDD))~~ DDA client will expire or have required reviews as indicated in WAC 388-823-1005 and 388-823-1010.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1005 When does my eligibility as a ~~((DDD))~~ DDA client expire? (1) If you are determined eligible prior to age ~~((four))~~ three, your eligibility expires on your fourth birthday.

~~((a) DDD will notify you at least ninety days before your eligibility expiration date.~~

~~((b) You must reapply for eligibility with DDD.))~~

(2) If you are determined ~~((or redetermined))~~ eligible at age three but under age ten ~~((per WAC 388-823-0810 through 388-823-0850.))~~ under developmental delays or Down syndrome your eligibility expires on your tenth birthday.

~~((a) DDD will notify you at least ninety days before your eligibility expiration date.~~

~~((b) You must reapply for eligibility with DDD.~~

~~((3) If your eligibility determination was prior to July 2005 under developmental delays, Down syndrome, or medically intensive program and you are age four or older as of June 30, 2005, your eligibility expires on your tenth birthday.~~

~~((a) DDD will notify you at least ninety days before of your eligibility expiration date.~~

~~((b) You must reapply for eligibility with DDD.))~~ (3) If you are determined eligible under another neurological or other condition similar to intellectual disability and have used

academic delays as evidence of your substantial limitations, your eligibility expires on your twentieth birthday.

(4) If your eligibility determination ~~((was made after July 2005 and))~~ is based solely ~~((due to))~~ on your need for nursing through the medically intensive children program, your eligibility expires when you are no longer eligible for the program ~~((but no later than))~~ or your eighteenth birthday, whichever comes first.

~~((a) DDD))~~ (5) DDA will notify you at least ~~((ninety days))~~ six months before your ~~((eighteenth birthday))~~ eligibility expiration date.

~~((b) You))~~ (6) If your eligibility expires you must reapply ~~((for))~~ in order to maintain eligibility with ~~((DDD))~~ DDA.

(7) If you fail to reapply before your expiration date or if DDA receives your reapplication less than sixty (60) days prior your expiration date and DDA does not have sufficient time to make an eligibility determination by the date of expiration, DDA eligibility will expire and your DDA paid services will stop.

(a) If DDA determines you eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible pursuant to WAC 388-823-0100.

(b) If DDA determines you eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.

(8) This expiration of eligibility takes effect even if DDA is unable to locate you to provide written notification that eligibility is expiring.

(9) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1010 When will ~~((DDD))~~ DDA review my eligibility to determine if I continue to ~~((have a developmental disability))~~ meet the eligibility requirements for DDA? (1) ~~((Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.~~

~~((2) Your))~~ DDA will review your eligibility ~~((will be reviewed))~~ at age ~~((seventeen))~~ nineteen with termination occurring no sooner than your ~~((eighteenth))~~ twentieth birthday if your most current eligibility determination was at sixteen or younger under ~~((mental retardation))~~ intellectual disability, cerebral palsy, epilepsy, autism, or another neurological ~~((condition.))~~ or other condition similar to ~~((mental retardation))~~ intellectual disability.

~~((3) DDD))~~ (2) DDA will review your eligibility prior to the initial authorization of any paid service from ~~((DDD))~~ DDA when you are not currently receiving paid services and~~((:~~

(a) You) you are age ~~((eighteen))~~ nineteen or older and your most current eligibility determination ~~((is more than twenty four months old; or~~

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is)) was made prior to ((July)) June 1, 2005.

~~((4- DDD))~~ (3) DDA will review your eligibility if ~~((DDD))~~ DDA discovers:

(a) Your eligibility determination was made in error; or
 (b) The evidence used to make your most recent eligibility determination (~~(completed in 1992 or later)~~) appears to be insufficient, in error, or fraudulent; or

~~((b))~~ (c) New diagnostic information becomes available that does not support your current eligibility (~~(and you are under the age of eighteen)~~) determination.

(4) If DDA requires additional information to make a determination of eligibility during a review and you do not respond to the request for additional information, DDA will terminate your eligibility and any DDA services you are receiving either:

(a) On your twentieth birthday if the review is because you will be turning twenty; or

(b) Ninety days after DDA requests the information if the review is because you have requested a paid service.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1015 What is the definition of "~~((DDD))~~ DDA paid services" in WAC ~~((388-823-1010 (3)))~~ 388-823-1010(2)? (~~DDD~~ paid services are defined by one or more of the following:

~~((4))~~ Authorization of a paid service within the last ninety days as evidenced by a social services (~~(payment system (SSPS))~~) authorization in the DSHS payment system, a county authorization for day program services, a (~~(waiver plan of care approving a DDD paid service, or)~~) DDA individual service plan approving a DDA service or program, residence in a SOLA, RHC, or (~~(HMR (authorization of a state supplementary payment through SSPS does not meet the definition of a DDD paid service);~~

~~(2)~~ Authorization of family support services within the last twelve months;

~~(3)~~ Documentation) ICF/ID, or documentation of (~~DDD~~) DDA approval of your absence from (~~DDD~~) DDA paid services for more than ninety days with available funding for your planned return to services.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1020 Can ~~((DDD))~~ DDA terminate my eligibility if I no longer am a resident of the state of Washington? (~~DDD~~) DDA will terminate your eligibility if you lose residency in the state of Washington as defined in WAC 388-823-0050.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1030 How will I know that my eligibility is expiring or is due for review? If your eligibility has a required expiration or review date, (~~DDD~~) DDA will send you prior written notification with reapplication or review information.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1060 How will ~~((DDD))~~ DDA notify me of its decision? (~~DDD~~) DDA will notify you and your (~~(legal representative or one other responsible party)~~) NSA representative, if required, in writing of its determination of eligibility, ineligibility, or expiration of eligibility per WAC 388-825-100.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1070 What are my appeal rights to a department decision that I ~~((do not have a developmental disability))~~ am not eligible to be a client of DDA? Your appeal rights to a department decision that you are not eligible to be a (~~DDD~~) DDA client because you do not (~~(have))~~ meet the requirements for a developmental disability as outlined in this WAC chapter are limited to those described in WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1080 If ~~((DDD))~~ DDA decides that I do not ~~((have a developmental disability, how soon))~~ meet the requirements for eligibility, can I reapply for another decision? If (~~DDD~~) DDA decides that you do not (~~(have a developmental disability))~~ meet the requirements for eligibility, as defined in this chapter, (you may reapply) DDA will only accept a new application if:

(1) Your eligibility was terminated because (~~DDD~~) DDA could not locate you and you have subsequently contacted (~~DDD~~) DDA;

(2) Your eligibility was terminated because you lost residency in the state of Washington and you have reestablished residency;

(3) You have additional or new information relevant to the determination that (~~DDD~~) DDA did not review for the previous determination of eligibility (~~(or~~

~~(4) DDD denied or terminated your eligibility based solely on your ICAP score and it has been more than twenty-four months since your last ICAP).~~

(a) The only acceptable new information considered is diagnostic information, FSIQ tests, or adaptive skills tests.

(b) DDA will only accept adaptive skills tests as new information if you provide evidence that your prior scores were invalid or if you provide evidence of a loss of functioning related to your qualifying condition

(c) DDA will not administer an ICAP if you have a previous, valid ICAP or adaptive skills test score that is current within the past thirty-six months.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1090 If I am already eligible, how do these new rules affect me? If you are an eligible (~~DDD~~) DDA client on the effective date of these rules, you continue to be an eligible (~~DDD~~) DDA client but you are subject to

the expiration and required eligibility reviews per WAC 388-823-1000 through 388-823-1050.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1095 What are my rights as a ~~(DDD)~~ DDA client? As a ~~(DDD)~~ DDA client, you have the following rights:

- (1) The right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;
- (2) The right to appeal any decision by ~~(DDD)~~ DDA that denies, reduces, or terminates your eligibility, your services or your choice of provider;
- (3) The right to receive only those services you agree to;
- (4) The right to meet with and talk privately with your friends and family;
- (5) The right to personal privacy and confidentiality of your personal and other records;
- (6) The right to choose activities, schedules, and health care that meet your needs;
- (7) The right to be free from discrimination because of your race, color, creed, national origin, religion, sex, age, disability, marital status, gender identity, or sexual orientation;
- (8) The right to set your own rules in your home and to know what rules your providers have when you are living in their house or working in their facility;
- (9) The right to request information regarding services that may be available from ~~(DDD)~~ DDA;
- (10) The right to know what your doctor wants you to do or take and to help plan how that will happen;
- (11) The right to be free from unnecessary medication, restraints and restrictions;
- (12) The right to vote and help people get elected to office;
- (13) The right to complain and not to have someone "get even";
- (14) The right to have your provider listen to your concerns including those about the behavior of other people where you live;
- (15) The right to receive help from an advocate;
- (16) The right to manage your money or choose other persons to assist you;
- (17) The right to be part of the community;
- (18) The right to make choices about your life;
- (19) The right to wear your clothes and hair the way you want;
- (20) The right to work and be paid for the work you do; and
- (21) The right to decide whether or not to participate in research after the research has been explained to you, and after you or your guardian gives written consent for you to participate in the research~~(-)~~.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-12-130, filed 6/1/05, effective 7/2/05)

WAC 388-823-1100 How do I complain to ~~(DDD)~~ DDA about my services or treatment? If you have a complaint or grievance about your services or treatment, follow these steps in this order:

- (1) First, contact your case resource manager or social worker by phone, in writing, e-mail, or in person and explain your problem.
- (2) If you are not happy with the results from speaking with your case resource manager or social worker, you may ask to speak with their supervisor.
- (3) If steps (1) and (2) do not solve your problem, you submit your complaint in writing to the regional office.
- (4) If you do not reach a solution with the regional office, you can request that your complaint be forwarded to the ~~(DDD)~~ DDA headquarters in Olympia.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-823-0030 Will I receive paid services if DDD decides that I have a developmental disability?
- WAC 388-823-0040 What is a developmental disability?
- WAC 388-823-0060 How do I apply to become a client of DDD?
- WAC 388-823-0070 Who can apply for an eligibility determination?
- WAC 388-823-0110 Who is responsible for obtaining the documentation needed to make this eligibility determination?
- WAC 388-823-0120 Will my diagnosis of a developmental disability qualify me for DDD eligibility?
- WAC 388-823-0130 Can I be eligible for DDD if my disability occurs on or after my eighteenth birthday?
- WAC 388-823-0140 What if I do not have written evidence that my disability began before my eighteenth birthday?
- WAC 388-823-0150 Which rules define a developmental disability if I am a child under the age of six?
- WAC 388-823-0160 Which rules define a developmental disability if I am age six through nine?
- WAC 388-823-0170 Which rules define a developmental disability if i am age ten or older?
- WAC 388-823-0215 What evidence do I need of my FSIQ?

- WAC 388-823-0220 If am too intellectually impaired to complete a standardized IQ test, how do I meet the criteria under mental retardation?
- WAC 388-823-0230 If I have more than one FSIQ score, what criteria will DDD use to select the FSIQ score for determining eligibility?
- WAC 388-823-0320 What evidence do I need of my need for direct physical assistance with activities of daily living?
- WAC 388-823-0330 How can I document my need for direct physical assistance?
- WAC 388-823-0420 What evidence do I need to substitute adaptive functioning limitations for the eligible conditions of epilepsy, autism and other conditions similar to mental retardation?
- WAC 388-823-0515 What evidence do I need to substantiate adaptive functioning limitations for the condition of autism?
- WAC 388-823-0615 What evidence do I need to substantiate adaptive functioning limitations for another neurological condition?
- WAC 388-823-0700 How do I meet the definition for an "other condition" similar to mental retardation?
- WAC 388-823-0710 What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation?
- WAC 388-823-0800 Which eligible developmental disability conditions apply at what age?
- WAC 388-823-0810 If I am a child under age ten, what evidence do I need to meet the definition for an "other condition" similar to mental retardation?
- WAC 388-823-0820 If I am a child under age ten with an eligible condition under the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial limitations to adaptive functioning?
- WAC 388-823-0830 If I am a child under age ten with an eligible condition based on developmental delays, how do I meet the definition of substantial limitations to adaptive functioning?
- WAC 388-823-0840 If I am a child under age ten, how many areas of developmental delays meet the definition of substantial limitations to adaptive functioning?
- WAC 388-823-0850 What developmental evaluations or assessments will be acceptable for determining developmental delay?
- WAC 388-823-0900 What are the qualifying scores for inventory of client and agency planning broad independence for each age?
- WAC 388-823-1040 What happens if I do not reapply for eligibility before my eligibility expiration date?
- WAC 388-823-1050 What happens if I do not respond to a request for information to review my eligibility?

WSR 14-07-018**PROPOSED RULES****LOWER COLUMBIA COLLEGE**

[Filed March 7, 2014, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-064.

Title of Rule and Other Identifying Information: WAC 132M-300-001 Nondiscrimination and antiharassment policy; and repealing WAC 132M-300-010 Grievance procedure.

Hearing Location(s): Lower Columbia College, Heritage Room, Administration Building, Room 100, 1600 Maple Street, Longview, WA 98632, on May 21, 2014, at 5:00 p.m.

Date of Intended Adoption: May 21, 2014.

Submit Written Comments to: Kendra Sprague, HR, Lower Columbia College, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, e-mail ksprague@lcc.ctc.edu, fax (360) 442-2129, by May 14, 2014.

Assistance for Persons with Disabilities: Contact Kendra Sprague by May 19, 2014, TTY (360) 442-2344 or (360) 442-2121.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update of the existing policy to bring the code into alignment with the current laws regarding violence against women and discrimination/harassment. The grievance procedure is being repealed and will be replaced by an administrative procedure reflecting current procedures.

Reasons Supporting Proposal: To update discrimination and harassment policy.

Statutory Authority for Adoption: RCW 28B.50.140 and 42.56.040.

Statute Being Implemented: RCW 28B.50.140 and 42.56.040.

Rule is necessary because of federal law, Violence Against Women Act and Title IX of the Civil Rights Act of 1964.

Name of Proponent: Lower Columbia College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kendra Sprague, 1600 Maple Street, HR – ADM, Longview, WA 98632, (360) 442-2121

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will not impact any entity other than Lower Columbia College.

A cost-benefit analysis is not required under RCW 34.05.328. There is no significant economic impact.

March 7, 2014
Kendra Sprague
Director of HR
and Legal Affairs

AMENDATORY SECTION (Amending WSR 92-09-092, filed 4/17/92, effective 5/18/92)

WAC 132M-300-001 ((Statement of) Nondiscrimination and antiharassment policy. ~~((Lower Columbia College is covered by Title IX of the Education Amendments of 1972 prohibiting sex discrimination in education and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination on the basis of handicap. It is the policy of Lower Columbia College to provide equal opportunity in all areas of admission, education, application for employment, and employment regardless of sex or handicap status.~~

~~It is also the policy of Lower Columbia College to provide an environment in which members of the college community can work or study free from sexual harassment or sexual intimidation. Sexual harassment is a form of sex discrimination. As such, it is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.~~

~~Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:~~

~~(1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or academic advancement or standing; and/or~~

~~(2) Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; and/or~~

~~(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or academic environment.)~~ The college provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war as required by Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, Age Discrimination in Employment Act of 1967, RCW 49.60.030 and their implementing regulations.

Prohibited gender based discrimination includes sexual harassment.

Harassment is defined as a form of discrimination consisting of physical or verbal conduct that:

(1) Denigrates or shows hostility toward an individual because of their race, creed, color, religion, national or ethnic origin, parental status or families with children, marital status, sex (gender), sexual orientation, gender identity or expression, age, genetic information, veteran or military status, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or any other prohibited basis; and

(2) Is sufficiently severe or pervasive so as to substantially interfere with the individual's employment, education or access to college programs, activities and opportunities.

Sexual Harassment is defined, for the purposes of this policy as follows: Unwelcome sexual advances, requests for sexual favors, and other unwelcome conduct of a sexual nature where:

(a) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education; or

(b) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or

(c) such unwelcome conduct is sufficiently severe or pervasive, has the effect of substantially interfering with an individual's educational or work performance, or creating an intimidating, hostile, or offensive educational environment.

Sexual violence is a form of sexual harassment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132M-300-010 Grievance procedure.

WSR 14-07-029 PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 10, 2014, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-066.

Title of Rule and Other Identifying Information: Amendments to chapter 392-400 WAC, Pupils.

Revisions to RCW 28A.600.015, 28A.600.020, 28A.600.022.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Annex Conference Room, 234 8th Avenue, Olympia, WA 98501, on May 5, 2014, at 10:00 a.m. - 12:00 noon.

Date of Intended Adoption: May 7, 2014.

Submit Written Comments to: Mike Donlin, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail mike.donlin@k12.wa.us, fax (360) 664-3575, by May 5, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by May 1, 2014, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESSB 5946 and subsequent revisions to RCW 28A.600.015, 28A.600.020, and new RCW 28A.600.022 mandate changes in rules impacting suspensions and expulsions, and impose new requirements on timelines and definitions. The new or revised rules are designed to ensure that the required suspension and expulsion changes are put into effect and made available to the entire school community.

Reasons Supporting Proposal: The proposed changes are required and defined by, and limited to the requirements of ESSB 5946 and revisions to RCW 28A.600.015, 28A.600.020, and new RCW 28A.600.022, and which impose new requirements on timelines and definitions around discretionary student discipline suspensions and expulsions.

Statutory Authority for Adoption: RCW 28A.600.015.

Statute Being Implemented: ESSB 5946.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: OSPI recommends adoption of the proposed rules. The proposed rules address requirements of ESSB 5946, revisions to RCW 28A.600.15 [28A.600.015], 28A.600.020, and new RCW 28A.600.022 which mandate changes in rules impacting suspensions and expulsions, imposing new requirements on timelines and definitions. The new or revised rules are designed to ensure compliance and understanding of the definition, and delineated timelines and processes for discretionary suspension and expulsion as mandated in ESSB 5946 and the noted RCWs.

Name of Proponent: Greg Williamson, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mike Donlin, OSPI, Olympia, (360) 725-6044; and Enforcement: Randy Dorn and Dan Newell, OSPI, Olympia, (360) 725-6175.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

March 10, 2014

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-200 Purpose and application. The purpose of this chapter is to implement RCW 28A.600.015 by prescribing the substantive and procedural due process rights of students served by any program or activity conducted by or in behalf of a common school district: Provided, That the enforcement of rules promulgated by the Washington inter-scholastic activity association and like organizations that govern the participation of students in interschool activities, and appeals in connection therewith, shall be governed by

rules of the organization that have been adopted pursuant to RCW 28A.600.200. The procedures and standards set forth in this chapter and those adopted by a school district in conformance with this chapter shall govern the imposition of corrective action (~~(or punishment)~~) (i.e., discipline, suspension, and expulsion) upon any student by a school district and its agents.

The provisions of this chapter are intended to establish the minimum procedural and substantive due process rights of students. School districts are free to establish additional due process requirements and limitations and shall do so as necessary to accommodate the constitutional rights of students as now or hereafter established.

For rules regarding student conduct which supplement this chapter see chapter 392-145 WAC governing the operation of school buses, particularly WAC 392-145-015(4) regarding the responsibility of bus drivers and certificated staff members who accompany students for the behavior of students, and WAC 392-145-035 regarding the duty to adopt and post rules, including rules of conduct, governing school bus passengers.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-205 Definitions. As used in this chapter the term: (1) "Discipline" shall mean all forms of corrective action (~~(or punishment)~~) other than suspension and expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided, That the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or in behalf of a school district.

(2) "Suspension" shall mean a denial of attendance (other than for the balance of the immediate class period for "discipline" purposes) at any single subject or class, or at any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to or entry upon real and personal property that is owned, leased, rented, or controlled by the school district.

(3) "Short-term suspension" shall mean a suspension for any portion of a calendar day up to and not exceeding ten consecutive school days.

(4) "Long-term suspension" shall mean a suspension which exceeds a "short-term suspension" as defined in subsection (3) of this section.

(5) "Expulsion" shall mean a denial of attendance at any single subject or class or at any full schedule of subjects or classes for ~~((an indefinite))~~ a period of time up to but not longer than one calendar year from the time of corrective action. An expulsion also may include a denial of admission to or entry upon real and personal property that is owned, leased, rented, or controlled by the school district.

(6) "Emergency expulsion" shall mean the immediate expulsion of a student by a school district superintendent or a designee of the superintendent. The superintendent or designee must have good and sufficient reason to believe that the student's presence poses an immediate and continuing danger

to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school.

(7) "School business day" shall mean any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays, upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(8) "School day" shall mean a calendar day except school holidays on which students enrolled in the school district are afforded the opportunity to be engaged in educational activity which is planned, supervised, and conducted by or under the supervision of the school district certificated staff, and on which day all or any portion of the students enrolled in the program actually participate in such educational activity.

(9) "Reengagement meeting" shall mean a meeting held between the school district and the student and parent and/or guardian to discuss how to return a long-term suspended or expelled student to an education setting as soon as possible. Reengagement meetings should take place within twenty days of the student's long-term suspension or expulsion, but no later than five days before the student's enrollment. Reengagement meetings shall not take the place of a petition for readmission.

(10) "Reengagement plan" shall mean a written plan developed between a school district and a student and his/her parent or guardian that considers the following:

(a) Shortening the length of time that the student is suspended or expelled;

(b) Other forms of corrective action;

(c) Supportive interventions that aid the student's academic success;

(d) Supportive interventions that keep the student engaged in school and on track to graduate;

(e) The plan should be tailored to the student's individual circumstances, including consideration of the incident that led to the student's suspension and expulsion;

(f) The plan should be written in a language that parents can understand.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-210 Student responsibilities and duties. The mission of the common school system is to provide learning experience which will assist all students to develop skills, competencies, and attitudes that are fundamental to an individual's achievement as a responsible, contributing citizen. In order to maintain and advance this mission, it shall be the responsibility and duty of each student to pursue his/her course of studies, comply with written rules of a common school district which are adopted pursuant to and in compliance with WAC 392-400-225 and RCW 28A.600-010, and submit to reasonable corrective action (~~(or punishment)~~) imposed by a school district and its agents for viola-

tion(s) of such rules. The provisions of this chapter do not lessen the foregoing responsibilities and duties of each student. This chapter is intended to assure that corrective action (~~(or punishment)~~) is imposed for just cause and in a fair and just manner.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-215 Student rights. In addition to other rights established by law, each student served by or in behalf of a common school district shall possess the following substantive rights, and no school district shall limit these rights except for good and sufficient cause:

(1) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of (~~(national origin, race, religion, economic status, sex, pregnancy, marital status, previous arrest, previous incarceration, or a physical, mental or sensory handicap)~~) sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal.

(2) All students possess the constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have their schools free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(3) All students possess the constitutional right to be secure in their persons, papers, and effects against unreasonable searches and seizures.

(4) All students shall have the right to be free from unlawful interference in their pursuit of an education while in the custody of a common school district.

(5) No student shall be deprived of the right to an equal educational opportunity in whole or in part by a school district without due process of law.

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the constitution and the laws of the state of Washington or the rights retained by the people.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-220 Student disciplinary boards—Establishment at option of school district—Functions. The board of directors of any school district may authorize the establishment of one or more student disciplinary boards composed of students, teachers, administrators, or parents, or any combination thereof. Disciplinary boards may be authorized to prescribe reasonable discipline and may recommend, but not prescribe, suspension or expulsion to the appropriate school authority. Such school authority shall be granted the power to set aside or modify any such prescription or recommendation. In addition, disciplinary boards may be authorized to periodically review rules of the school district defining the types of misconduct for which corrective action (~~(or~~

~~punishment~~)) may be imposed and to recommend amendments thereto to the board of directors.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-235 Discipline—Conditions and limitations. Discipline may be imposed upon any student for violation of the rules of the school district that have been established pursuant to WAC 180-400-225, subject to the following limitations and conditions and the grievance procedure set forth in WAC 392-400-240:

(1) No form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirements.

(2) A student's academic grade or credit in a particular subject or course may be adversely affected by reason of tardiness or absences only to the extent and upon the basis that:

(a) The student's attendance and/or participation is related to the instructional objectives or goals of the particular subject or course~~(s)~~; and

(b) The student's attendance and/or participation has been identified by the teacher pursuant to policy of the school district as a basis for grading, in whole or in part, in the particular subject or course.

(3) Corporal punishment which is defined as any act which willfully inflicts or willfully causes the infliction of physical pain on a student is prohibited.

Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school employee or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students and school staff or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; ~~or~~

(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects~~(s)~~;

~~(d) Physical restraint or the use of aversive therapy as part of a behavior management program in a student's individual education program which has been signed by the parent and is carried out according to district procedures in compliance with WAC 392-171-800, et seq).~~

(4) Nothing herein shall be construed as limiting or otherwise modifying provisions governing aversive interventions set forth in WAC 392-172A-03120 through 392-172A-03135.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-245 Short-term suspension—Conditions and limitations. A short-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 392-400-250, and the grievance procedures set forth in WAC 392-400-255:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a short-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions ~~((and/or punishment))~~ which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action ~~((and/or punishment))~~ is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) short-term suspension is not established as the corrective action ~~((or punishment))~~ for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a short term unless another form of corrective action ~~((or punishment))~~ reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to short-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers may grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action ~~((or punishment))~~ has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct through the use of other forms of corrective action ~~((and/or punishment))~~, as to warrant an immediate resort to short-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to short-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action ~~((or punishment))~~ reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school

without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to short-term suspensions for more than a total of ten school days during any single semester or trimester as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

(6) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

(a) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades(~~(s)~~); or

(b) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(7) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-250 Short-term suspension—Prior conference required—Notice to parent. (1) Prior to the short-term suspension of any student a conference shall be conducted with the student as follows:

(a) An oral or written notice of the alleged misconduct and violation(s) of school district rules shall be provided to the student(~~(s)~~);

(b) An oral or written explanation of the evidence in support of the allegation(s) shall be provided to the student(~~(s)~~);

(c) An oral or written explanation of the corrective action (~~(or punishment)~~) which may be imposed shall be provided to the student(~~(s)~~); and

(d) The student shall be provided the opportunity to present his/her explanation.

(2) In the event a short-term suspension is to exceed one calendar day the parent(s) or guardian(s) of the student shall be notified of the reason for the student's suspension and the duration of the suspension orally and/or by letter deposited in the United States mail as soon as reasonably possible. The notice shall also inform the parent or guardian of the right to an informal conference pursuant to WAC 392-400-255 and that the suspension may possibly be reduced as a result of such conference.

(3) All short-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-260 Long-term suspension—Conditions and limitations. A long-term suspension may be imposed upon a student for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions and the notice requirements set forth in WAC 392-400-265 and the hearing requirements set forth in WAC 392-400-270:

(1) The nature and circumstances of the violation must be considered and must reasonably warrant a long-term suspension and the length of the suspension imposed. This requirement does not preclude school districts (that is, the boards of directors of school districts) from establishing the nature and extent of the corrective actions (~~(and/or punishments)~~) which, as a general rule, must be imposed as a consequence of proscribed misconduct. Such advance notice to students is advisable, and the imposition of such preestablished corrective action (~~(and/or punishment)~~) is permissible as long as (a) disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, and (b) long-term suspension is not established as the corrective action (~~(or punishment)~~) for a student's first time offense other than for offenses involving exceptional misconduct as defined in subsection (2) of this section.

(2) As a general rule, no student shall be suspended for a long term unless another form of corrective action (~~(or punishment)~~) reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating and/or exceptional circumstances, notwithstanding the fact prior alternative corrective action (~~(or punishment)~~) has not been imposed upon the student(s) involved. For the purpose of this rule, "exceptional misconduct" means misconduct other than absenteeism which a school district has judged following consultation with an ad hoc citizens committee to (a) be of such frequent occurrence, notwithstanding past attempts of district personnel to control such misconduct

through the use of other forms of corrective action (~~and/or punishment~~), as to warrant an immediate resort to long-term suspension, and/or (b) be so serious in nature and/or so serious in terms of the disruptive effect upon the operation of the school(s) as to warrant an immediate resort to long-term suspension (for example, misconduct judged by a school district to be the same or of the same nature as a violation of the state's drug or controlled substances laws). The ad hoc citizens committee required by this section shall be composed of three or more persons chosen by the school district or the administrative designee(s) of the district, and shall be constituted with the intent and purpose of representing various socioeconomic, minority and majority populations of the school district to the extent deemed practical.

(3) No student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be suspended by reason, in whole or part, of one or more unexcused absences unless the school district has first imposed an alternative corrective action (~~or punishment~~) reasonably calculated to modify his or her conduct and, in addition:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

(4) Kindergarten through grade four—No student in grades kindergarten through four shall be subject to long-term suspension during any single semester or trimester, as the case may be, and no loss of academic grades or credit shall be imposed by reason of the suspension of such a student.

(5) Grade five and above program—No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one semester or trimester, as the case may be, during the same school year.

(6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

(7) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-265 Long-term suspension—Notice of hearing—Waiver of hearing. (1) Prior to the long-term suspension of a student, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and to his or her parent(s) or guardian(s). The notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible((-););

(b) Specify the alleged misconduct and the school district rule(s) alleged to have been violated((-););

(c) Set forth the corrective action (~~or punishment~~) proposed((-););

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s)((-);); and

(e) Set forth the facts that:

(i) A written (or "oral" if provided for by school district policy) request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing((-);); and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed long-term suspension may be imposed by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule of the school district.

(3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed long-term suspension may be imposed.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-270 Long-term suspension—Prehearing and hearing process. (1) If a request for a hearing is received pursuant to WAC 180-40-265 within the required three school business days, the school district shall schedule a hearing to commence within three school business days

after the date upon which the request for a hearing was received.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing~~((;))~~;

(b) Be represented by legal counsel~~((;))~~;

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or~~((;))~~

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness~~((;))~~;

(d) Present his or her explanation of the alleged misconduct~~((;))~~; and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the nature and duration of the long-term suspension or lesser form or corrective action ~~((or punishment))~~ to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s).

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-275 Expulsion—Conditions and limitations. A student may be expelled for violation of school district rules adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the notice requirements set forth in WAC 392-400-280, and the hearing requirements set forth in WAC 392-400-285:

(1) The nature and circumstances of the violation must reasonably warrant the harshness of expulsion.

(2) No student shall be expelled unless other forms of corrective action ~~((or punishment))~~ reasonably calculated to modify his or her conduct have failed or unless there is good reason to believe that other forms of corrective action ~~((or punishment))~~ would fail if employed.

(3) An expulsion may not be for an indefinite period of time. An expulsion may not exceed one calendar year from the date of the corrective action unless:

(a) The school petitions the district superintendent for an extension; and

(b) The district superintendent authorizes the extension in compliance with the superintendent of public instruction's rules adopted for this purpose.

(4) The district shall make reasonable efforts to assist students and parents/families in returning to an educational setting prior to and no later than the end date of the corrective action.

(5) In addition to the alternative corrective action requirement of subsection (2) of this section, no student subject to compulsory attendance pursuant to chapter 28A.225 RCW, as now or hereafter amended, shall be expelled by reason, in whole or part, of one or more unexcused absences unless the school district has also first:

(a) Provided notice to the student's parent(s) or guardian(s) or custodial parent(s) in writing in English or, if different, the primary language of the parent(s), guardian(s) or custodial parent(s) that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;

(b) Scheduled a conference or conferences with the parent(s) or guardian(s) or custodial parent(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, the analysis to determine by appropriate means whether the student should be made a focus of concern for placement in a special education or other special program designed for his/her educational success; and

(c) Taken steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and, where possible, discussed with the student, parent(s), guardian(s) or custodial parent(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.

~~((4))~~ (6) Once a student has been expelled in compliance with this chapter the expulsion shall be brought to the attention of appropriate local and state authorities including, but not limited to, juvenile authorities acting pursuant to chapter 13.04 RCW in order that such authorities may address the student's educational needs.

~~((5))~~ (7) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

~~((6))~~ (8) All expulsions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-280 Expulsion—Notice of hearing—Waiver of hearing. (1) Prior to the expulsion of a student, written notice of an opportunity for a hearing shall be delivered in person or by certified mail to the student and to his or her parent(s) or guardian(s). The notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible(=);

(b) Specify the alleged misconduct and the school district rule(s) or policy alleged to have been violated(=);

(c) Set forth the corrective action (~~(or punishment)~~) proposed(=);

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s)(=); and

(e) Set forth the facts that:

(i) A written (or "oral" if provided for by school district policy) request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the third school business day after receipt of the notice of opportunity for a hearing(=); and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the proposed expulsion may be imposed by the school district without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule or policy of the school district.

(3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the proposed expulsion may be imposed.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-285 Expulsion—Prehearing and hearing process. (1) If a request for a hearing is received pursuant to WAC 392-400-280 within the required three school business days, the school district shall schedule a hearing to commence within three school business days after the date upon which the request for a hearing was received.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing(=);

(b) Be represented by legal counsel(=);

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or(=)

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness(=);

(d) Present his or her explanation of the alleged misconduct(=); and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence which the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) A written decision setting forth the findings of fact, conclusions, and the expulsion or lesser form of corrective action (~~(or punishment)~~) to be imposed, if any, shall be provided to the student's legal counsel or, if none, to the student and his or her parent(s) or guardian(s).

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-400-290 Emergency removal from a class, subject, or activity. (1) Notwithstanding any other provision of this chapter, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the building principal or a designated school authority: Provided, That the teacher or administrator has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the student's school. The removal from classes, subjects, or activities shall continue only until(=

~~(a) The danger or threat ceases, or~~

~~(b) The principal or designated school authority acts to impose discipline, impose a short-term suspension, initiate a long-term suspension or an expulsion, or impose an emergency expulsion, pursuant to this chapter)) the danger or threat ceases, or until the end of the school day following the student's removal, whichever occurs first.~~

(2) The principal or school authority shall meet with the student as soon as reasonably possible following the student's removal and take or initiate appropriate corrective action (~~(or~~

~~punishment~~). In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the next school day. Prior to or at the time any such student is returned to the class(es), subject(s), or activity(ies), the principal or school authority shall notify the teacher or administrator who removed the student therefrom of the action which has been taken or initiated.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-295 Emergency expulsion—Limitations. Notwithstanding any other provision of this chapter, a student may be expelled immediately by a school district superintendent or a designee of the superintendent in emergency situations: Provided, That the superintendent or designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion ~~((shall continue until rescinded by the superintendent or his or her designee, or until modified or reversed pursuant to the hearing provisions set forth in WAC 392-400-305 or the appeal provisions set forth in WAC 392-400-315))~~ must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school. A school district must provide notice and due process rights if it converts the emergency expulsion to another form of corrective action.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-300 Emergency expulsion—Notice of hearing—Waiver of hearing right. (1) The student and his or her parent(s) or guardian(s) shall be notified of the emergency expulsion of the student and of their opportunity for a hearing either (a) by hand delivering written notice to the student's parent(s) or guardian(s) ~~((within twenty-four hours of the expulsion and documenting))~~ by the end of the school day following the student's emergency removal from classes, subjects, or activities pursuant to WAC 392-400-290. School districts must document delivery of the notice by obtaining ((his or her signature)) the signature of the parent(s) or guardian(s) acknowledging receipt or the written certification of the person making the delivery, or (b) by certified letter(s) deposited in the United States mail((-within twenty-four hours of the expulsion: Provided, That if the emergency expulsion is based upon a failure to comply with the state immunization law (see chapter 392-380 WAC), the notice must be received by the student's parent(s) or guardian(s) prior to the emergency expulsion of the student regardless of the method of delivery)) by the end of the school day following the student's emergency removal from classes, subjects, or activities pursuant to WAC 392-400-290. In addition, if the notice is by certified letter, reasonable attempts shall be made to notify the student and his or her parent(s) or guardian(s) by telephone or in person as soon as reasonably possible. Such written and oral notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English~~((, to the extent feasible,))~~;

(b) Specify the alleged ~~((reason(s) for the emergency expulsion,))~~ reasons that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process;

(c) Set forth the ~~((corrective action or punishment taken and proposed,))~~ date on which the emergency expulsion will end;

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s) as soon as reasonably possible~~((;))~~; and

(e) Set forth the facts that:

(i) A written ~~((or "oral" ((if provided for by school district policy)))~~ request for a hearing must be received by the school district employee designated, or by his or her office, on or before the expiration of the ~~((tenth))~~ third school business day after receipt of the notice of opportunity for a hearing~~((;))~~; and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived, and the emergency expulsion may be ~~((continued))~~ imposed, as deemed necessary ~~((by the school district))~~, for up to ten school days from the date of the emergency removal from school without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within ~~((ten))~~ three school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school district employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing ~~((and may be accepted))~~ or orally ((if expressly provided for and allowed by rule of the school district)).

(3) If a request for a hearing is not received within the required ~~((ten))~~ three school business day period, the school district may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the emergency expulsion may be ~~((continued))~~ imposed, as deemed necessary ~~((by the school district))~~, for a period of up to ten school days from the date of the emergency removal from school.

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-305 Emergency expulsion—Prehearing and hearing process. (1) If a request for a hearing within the required ~~((ten))~~ three school business days is received pursuant to WAC 392-400-300, the school district shall immediately schedule and give notice of a hearing to commence as soon as reasonably possible and in no case later than the ~~((third))~~ second school business day after receipt of the request for hearing.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing~~((:));~~

(b) Be represented by legal counsel~~((:));~~

(c) Question and confront witnesses, unless a school district witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school district. The evidence submitted by the school district must at a minimum establish either:

(i) That the district made a reasonable effort to produce the witness and is unable to do so; or~~((:));~~

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible district official(s) or the student of retaliation against the student if he or she appears as a witness~~((:));~~

(d) Present his or her explanation of the alleged misconduct~~((:));~~ and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school district assigned to present the district's case shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) Within one school business day after the date upon which the hearing concludes, ~~((a decision as to))~~ the person(s) hearing the case shall issue a decision regarding whether ((or not)) the emergency expulsion shall ((be continued shall be rendered, and the student's legal counsel or, if none, the student and his or her parent(s) or guardian(s) shall be notified thereof)) continue. The school district shall provide notice of the decision to the student and the student's parent(s), guardian(s), and legal counsel, if any, by depositing a certified letter in the United States mail. The decision shall set forth the findings of fact, the conclusions (including a conclusion as to whether ((or not the emergency situation)) the immediate and continuing danger to the student, other students, or school personnel, or immediate and continuing threat of substantial disruption of the educational process, giving rise to the emergency expulsion ((continues)) has terminated), and whether ((or not)) the emergency expulsion shall be ((continued or a lesser)) converted to another form of corrective action ((or punishment is to be imposed.

~~(7) An emergency expulsion may be continued following the hearing on the basis that the emergency situation continues and/or as corrective action or punishment for the action(s) giving rise to the emergency expulsion in the first instance).~~

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-310 Appeals—Long-term suspension and expulsion. Appeals from decisions rendered pursuant to WAC 392-400-270, 392-400-285 and 392-400-305 which impose either a long-term suspension or an expulsion upon a student shall be governed as follows:

(1) Any school district board of directors may delegate its authority to hear and decide long-term suspension and expulsion appeals to a school district disciplinary appeal council established by the board. School district disciplinary appeal councils shall be appointed by the school district board of directors for fixed terms and shall consist of not less than three persons.

(2) If the case was not heard and decided by the school district board of directors or school district disciplinary appeal council, the student and his or her parent(s) or guardian(s) shall have the right to appeal the decision to the board of directors or the disciplinary appeal council. Notice indicating that the student or his or her parent(s) or guardian(s) desire to appeal the decision shall be provided to either the office of the school district superintendent or to the office of the person who rendered the decision within three school business days after the date of receipt of the decision. The notice of appeal shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule or policy of the district.

(3) If an appeal is not taken to the board of directors or disciplinary appeal council within the required three school business day period, the suspension or expulsion decided upon may be imposed as of the calendar day following expiration of the three school business day period.

(4) If a timely appeal is taken to the board of directors or disciplinary appeal council, the suspension or expulsion may be imposed during the appeal period subject to the following conditions and limitations:

(a) A long-term suspension or nonemergency expulsion may be imposed during the appeal period for no more than ten consecutive school days or until the appeal is decided, whichever is the shortest period;

~~(b) ((An emergency expulsion may be continued during the appeal period for so long as the student continues to pose an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process of the student's school;~~

~~((e)))~~ Any days that a student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student's suspension or expulsion and shall not limit or extend the term of the student's suspension or expulsion; and

~~((d)))~~ (c) Any student subjected to a temporary suspension who returns to school before the appeal is decided shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the suspension if:

(i) Such assignments or tests have a substantial effect upon the student's semester or trimester grade or grades; or

(ii) Failure to complete such assignments or tests would preclude the student from receiving credit for the course or courses.

(5) An appeal from any decision of a school board or disciplinary appeal council to impose or to affirm the imposition of a long-term suspension or an expulsion shall be to the courts. Whether or not the decision of a school board or disciplinary appeal council shall be postponed pending an appeal to superior court shall be discretionary with the school board or disciplinary appeal council except as ordered otherwise by a court.

NEW SECTION

WAC 392-400-410 Appeal for extension of a one-year expulsion. When warranted because of risk to the public health and safety, the principal or the principal's designee may petition the district's superintendent for authorization to exceed the one calendar year limitation on an expulsion. The superintendent may exercise his/her discretion to grant the petition in limited circumstances, on a case-by-case basis, so long as there is evidence that, if the student were to return at or before one calendar year, he/she would pose a risk to public health or safety.

(1) The petition to exceed the one-year limit shall include, at least, the following:

(a) A detailed description of the student's misconduct, the school rules which were violated, and the public health and/or safety concerns of the district;

(b) A detailed description of the student's academic, attendance, and discipline history, if any;

(c) A description of the lesser forms of corrective actions which were considered and reasons why those were rejected;

(d) A description of all alternative learning experiences, vocational programs, and/or other educational services which may be available to the student;

(e) The proposed extended length of the expulsion;

(f) Identification of special education services or accommodations pursuant to Section 504 of the Rehabilitation Act of 1973, if appropriate; and

(g) A proposed schedule of reengagement meetings.

(2) Designated staff shall submit the petition at any time after entry of a due process hearing decision upholding a one-year expulsion and prior to the end of that expulsion.

(3) A copy of the petition shall be delivered in person or by certified mail to the student and his/her parent(s)/guardian(s).

(4) The petition shall be provided in the predominant language of the student and/or parent(s)/guardian(s) who speak a language, other than English, whenever possible.

(5) The student and/or parent(s)/guardian(s) may submit a written or verbal response to the petition within ten school business days of the recorded receipt of the petition.

(6) Within eleven school business days, but no later than twenty school business days of the date of the petition's recorded delivery to the student/parent(s)/guardian(s), the district superintendent shall issue a written decision indicating whether the petition is granted or denied. The written decision shall also include a description of all rights and procedures for appeal.

(7) If the petition is granted, within ten school business days of the receipt of the decision, the student and/or parent(s)/guardian(s) may appeal the decision to the district's

school board in accordance with WAC 392-400-310 and 392-400-315.

Annually, all school districts shall report the number of petitions submitted, approved and denied to the office of the superintendent of public instruction.

NEW SECTION

WAC 392-400-420 Reengagement meetings and plans. (1) School districts should make efforts to have suspended or expelled students return to an educational setting as soon as possible. School districts should convene a meeting with the student and the student's parents or guardians within twenty days of the student's long-term suspension or expulsion, but no later than five days before the student's enrollment, to discuss a plan to reengage the student in a school program.

(2) In developing a reengagement plan, school districts should consider shortening the length of time that the student is suspended or expelled, other forms of corrective action, and supportive interventions that aid in the student's academic success and keep the student engaged and on track to graduate. School districts must create a reengagement plan tailored to the student's individual circumstances, including consideration of the incident that led to the student's long-term suspension or expulsion. The plan should aid the student in taking the necessary steps to remedy the situation that led to the student's suspension or expulsion.

(3) Any reengagement meetings conducted by the school district involving the suspended or expelled student and his or her parents or guardians are not intended to replace a petition for readmission.

WSR 14-07-030

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 10, 2014, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-23-017.

Title of Rule and Other Identifying Information: WAC 308-15-150 Geologist licensing services.

Hearing Location(s): Department of Licensing (DOL), Business and Professions, 405 Black Lake Boulevard, Building 2, Room 2105, Olympia, WA 98502, on April 24, 2014, at 9:00 a.m.

Date of Intended Adoption: April 25, 2014.

Submit Written Comments to: Grace Hamilton, P.O. Box 9045, Olympia, WA 98507, e-mail architects@dol.wa.gov, fax (360) 570-7098, by April 23, 2014.

Assistance for Persons with Disabilities: Contact Autumn Dryden by April 23, 2014, TTY (360) 664-0116 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will extend a fee suspension in an effort to maintain a balanced budget for the geologist licensing program. The current temporary suspension expires on July 1, 2014.

Reasons Supporting Proposal: This program is required to be self-supporting and operates out of a dedicated fund. Revenue currently being generated to cover the cost of the program is sufficient with the fee suspension in place. This trend is expected to continue over the next couple of years. The suspended fees would have a positive impact on new applicants and existing licensees. This proposed rule amendment is supported by the industry.

Statutory Authority for Adoption: RCW 18.220.040.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Grace Hamilton, 405 Black Lake Boulevard, Building 2, Olympia, (360) 664-6652; Implementation and Enforcement: Lorin Doyle, 405 Black Lake Boulevard, Building 2, Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No negative economic impact to applicants or licensees.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. No negative economic impact of applicants or licensees.

March 10, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-08-054, filed 4/5/11, effective 7/1/11)

WAC 308-15-150 Fees. (1) **Suspension of fees.** Effective July 1, ((2014)) 2014, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Renewal Fees

Annual renewal fee for geologist	\$40.00
Annual renewal for each specialty	\$50.00
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$80.00
Annual renewal fee for each specialty, with late fee (if paid ninety days or more after due date)	\$100.00

The fees set forth in this section shall revert back to the fee amounts shown in WAC 308-15-150 on July 1, ((2014)) 2016.

(2) **Fees.**

Type of Fee	Amount
Application fees - includes initial license	
Application fee for geologist (applying by examination)	\$100.00
Application fee for each specialty (applying by examination)	\$100.00

Type of Fee	Amount
Application fee for geologist (applying by reciprocity)	\$200.00
Application fee for each specialty (applying by reciprocity)	\$150.00
Examination fees	
Fees for the fundamentals of geology and practice of geology examinations are submitted directly to ASBOG	
Administration fee for reexamination	\$65.00
Specialty examination (hydrogeologist or engineering geologist exam)	\$300.00
Renewal fees	
Annual renewal fee for geologist	\$100.00
Annual renewal fee for each specialty	\$85.00
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$200.00
Annual renewal for each specialty, with late fee (if paid ninety days or more after due date)	\$170.00
Miscellaneous fees	
Duplicate license or wall certificate . . .	\$25.00
Certification of license records to other jurisdictions.	\$45.00
Proctor examination for another jurisdiction	\$100.00

WSR 14-07-036
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed March 11, 2014, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-101.

Title of Rule and Other Identifying Information: WAC 182-550-5450 Supplemental distributions to approved trauma service centers.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 23, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th

Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on April 22, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 14, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule to match State Plan Amendment 13-15, which makes trauma hospitals eligible to receive supplemental payments for trauma care services they provided to managed care enrollees.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, Olympia, Washington 98504-2716, (360) 725-1346; Implementation and Enforcement: Mary O'Hare, Olympia, Washington 98504-5500, (360) 725-9820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

March 11, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-17-017, filed 8/9/13, effective 9/9/13)

WAC 182-550-5450 Supplemental distributions to approved trauma service centers. (1) The trauma care fund (TCF) is an amount appropriated to the medicaid agency each state fiscal year (SFY), at the legislature's sole discretion, for the purpose of supplementing the agency's payments to eligible trauma service centers for providing qualified trauma services to medicaid clients.

(2) ~~((The agency makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.))~~ Encounter data, for trauma care provided to medicaid clients enrolled in an agency-contracted managed care organization, may be included when calculating supplemental distributions from the TCF, so long as the beginning dates of service for trauma care are on and after July 1, 2013.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable rules;

(c) Meet the billing requirements in this section and other applicable rules;

(d) Submit all information the agency requires to monitor the program; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) Allocated into five payment pools. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing the agency's qualifying payments to each eligible hospital since the beginning of the service year ~~((and expressing))~~. This amount is then expressed as a percentage of the agency's total payments to all eligible hospitals for qualifying services provided during the service year-to-date. For TCF purposes, service year is defined as the SFY. Each hospital's qualifying payment percentage for the service year-to-date is multiplied by the available amount for the service year-to-date, and then the agency subtracts what has been allocated to each hospital for the service year-to-date to determine the portion of the current payment pool to be paid to each qualifying hospital. Eligible hospitals and qualifying payments are described in (a)(i) through (iii) of this subsection. Qualifying payments are the agency's payments to:

(i) Level I, Level II, and Level III trauma service centers for qualified medicaid trauma cases since the beginning of the service year. The agency determines the countable payment for trauma care provided to medicaid clients based on date of service, not date of payment;

(ii) The Level I, Level II, and Level III hospitals for trauma cases transferred to these facilities since the beginning of the service year. A Level I, Level II, or Level III hospital that receives a transferred trauma case from any lower level hospital is eligible for ~~((the))~~ an enhanced payment, regardless of the client's injury severity score (ISS); and

(iii) Level II and Level III hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in (b) of this subsection) transferred by these hospitals since the beginning of the service year to a trauma service center with a higher designation level.

(b) Paid only for a medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of (c) of this subsection.

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) ~~((The))~~ The hospital is designated or recognized by DOH as an approved Level II or Level III adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or (ii) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level IV or Level V trauma service center does not qualify for supplemental distributions for trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in (b) of this subsection.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the agency to:

(i) Trauma service centers designated or recognized as Level IV or Level V;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level III trauma service center; or

(iii) Any facility for follow-up services related to the qualifying trauma incident but provided to the client after the client has been discharged from the initial hospitalization for the qualifying injury.

(5) Distributions for an SFY are paid as follows:

(a) The first supplemental distribution from the TCF is made three to six months after the SFY begins;

(b) Subsequent distributions are made approximately every two to four months after the first distribution is made, except as described in (c) of this subsection;

(c) The final distribution from the TCF for an SFY is:

(i) Made one year after the end of the SFY;

(ii) Limited to the remaining balance of the agency's TCF appropriation for that SFY; and

(iii) Distributed based on each eligible hospital's percentage share of the total payments made by the agency to all designated trauma service centers for qualified trauma services provided during the relevant SFY.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) ~~((The agency considers a provider's request for a trauma claim adjustment only if the adjustment request is received by the agency within three hundred sixty-five calendar days from the date of the initial trauma service.))~~ At its discretion, and with sufficient public notice, the agency may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary program needs;

(b) The agency considers a provider's request for a trauma claim adjustment only if the adjustment request is received by the agency within three hundred sixty-five calendar days from the date of the initial trauma service;

(c) Except as provided in (a) of this subsection, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the agency as specified in WAC 182-502-0150(3). See WAC 182-502-0150 (11) and (12) for other time limits applicable to TCF claims;

~~((e))~~ (d) All claims and claim adjustments are subject to federal and state audit and review requirements; and

~~((f))~~ (e) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the agency in any SFY cannot exceed the amount appropriated by the legislature for that SFY. The agency has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

WSR 14-07-041
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed March 12, 2014, 11:33 a.m.]

Supplemental Notice to WSR 14-04-064.

Preproposal statement of inquiry was filed as WSR 13-07-028.

Title of Rule and Other Identifying Information: Revisions to current rules in chapter 314-55 WAC, Marijuana licenses, application process, requirements and reporting.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on April 23, 2014, at 10:00 a.m.

Date of Intended Adoption: April 30, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 23, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by April 23, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are to further clarify current rules implementing I-502 and include additional requirements for marijuana retail licensees as well as marijuana processor and producer licensees.

Reasons Supporting Proposal: Requests from marijuana license applicants of all types indicated a need for further clarification for this new industry in the state of Washington.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.342, 69.50.345.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328.

March 12, 2014

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana pro-

ducer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is limited to two million square feet. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 – Less than two thousand square feet;
- (b) Tier 2 – Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 – Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

- (a) Outdoor or greenhouse grows – One and one-quarter of a year's harvest; or
- (b) Indoor grows – Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? (1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) A marijuana processor is allowed to blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana to create an infused edible product. To reduce the risk to public health, food defined as potentially hazardous food in WAC 246-215-0115(88) may not be infused with marijuana. These foods are potentially hazardous as they require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. The board may designate other food items that may not be infused with marijuana. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(4) The recipe for any food infused with marijuana to make an edible product must be kept on file at the marijuana producer's licensed premises and made available for inspection by the WSLCB or their designee.

(5) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

~~((4))~~ (6) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

~~((5))~~ (7) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

~~((6))~~ (8) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

~~((7))~~ (9) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(10) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below their acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may not accept a return of product that has been opened.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-084 Production of marijuana. Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(1) ~~(Materials listed or registered by the Washington state department of agriculture (WSDA) or Organic Materials Review Institute (OMRI) as allowable for use in organic production, processing, and handling under the U.S. Department of Agriculture's national organics standards, also called the~~

~~National Organic Program (NOP), consistent with requirements at 7 C.F.R. Part 205.~~

~~(2))~~ (2)) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.

~~((3))~~ (2) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.

~~((4))~~ (3) Potting soil and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-085 What are the transportation requirements for a marijuana licensee? (1) **Notification of shipment.** Upon transporting any marijuana or marijuana product, a producer, processor ~~((ø))~~, retailer, or certified third-party testing lab shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, information about the transporting vehicle, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete printed transport manifest on a form provided by the board containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the marijuana licensee ~~((ø))~~, an employee of the licensee, or a certified testing lab may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor or producer.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana or marijuana-infused products.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-092 What if a marijuana licensee fails to report or pay, or reports or pays late? (1) If a marijuana licensee does not submit its monthly reports and payment(s) to the board as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day

of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day. Absent a postmark, the date received at the liquor control board or authorized designee, will be used to assess the penalty of two percent per month on payments received after the twentieth day of the month following the month of sale.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the board to suspend or revoke a marijuana license.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in ~~((a spark free))~~ an environment with proper ventilation, ((and follow all applicable local fire, safety and building codes in processing and the storage of the solvents)) controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO₂ gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch ~~((and follow all applicable local fire, safety and building codes in processing and the storage of the solvents))~~. The CO₂ must be of at least ninety-nine percent purity.

(4) Professional grade closed loop systems used by processors must be commercially manufactured and built to codes of recognized and generally accepted good engineering practices, such as:

(a) The American Society of Mechanical Engineers (ASME);

(b) American National Standards Institute (ANSI);

(c) Underwriters Laboratories (UL); or

(d) The American Society for Testing and Materials (ASTM).

(5) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) Title 296 WAC;

(b) National Fire Protection Association (NFPA) standards;

(c) International Building Code (IBC);

(d) International Fire Code (IFC); and

(e) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(6) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

~~((5))~~ (7) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

~~((6))~~ (8) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

~~((7))~~ (9) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50-348.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana or marijuana product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana or other marijuana-infused product the customer is considering purchasing.

(4) Usable marijuana and marijuana-infused products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

(7) Marijuana-infused products meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamper-proof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be (~~either~~) provided the usable marijuana and sample jar (~~or destroyed by the retailer after use in the manner described in WAC 314-55-097 and noted in the traceability system~~).

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) **All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:**

- (a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";
- (b) "There may be health risks associated with consumption of this product";
- (c) "Should not be used by women that are pregnant or breast feeding";
- (d) "For use only by adults twenty-one and older. Keep out of reach of children";
- (e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
- (f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

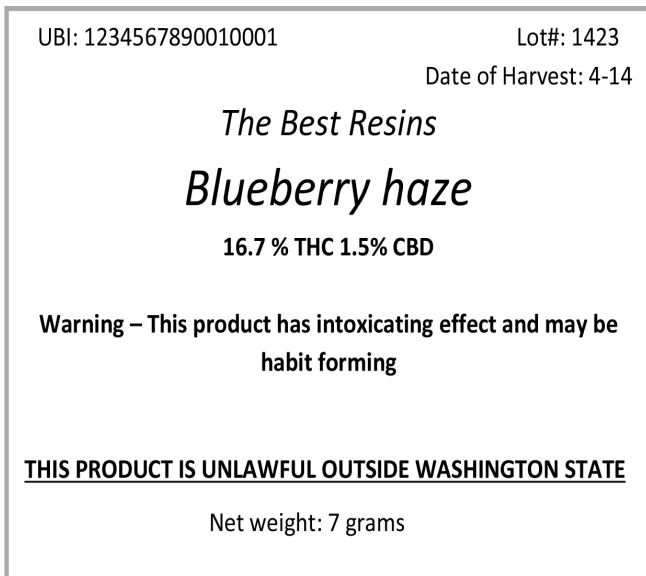
(12) **All marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:**

- (a) "There may be health risks associated with consumption of this product";
- (b) "This product is infused with marijuana or active compounds of marijuana";
- (c) "Should not be used by women that are pregnant or breast feeding";
- (d) "For use only by adults twenty-one and older. Keep out of reach of children";
- (e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";
- (f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours";
- (g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and
- (h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) Labels affixed to the container or package containing usable marijuana sold at retail must include:

- (a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;
- (b) Lot number;
- (c) Concentration of THC, THCA, CBD, including a total of active cannabinoids (potency profile);
- (d) Net weight in ounces and grams or volume as appropriate;
- (e) Warnings that state: "This product has intoxicating effects and may be habit forming";
- (f) Statement that "This product may be unlawful outside of Washington state";
- (g) Date of harvest((-)); and
- (h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(14) Sample label mock up for a container or package containing usable marijuana sold at retail with required information:



(15) Labels affixed to the container or package containing marijuana-infused products sold at retail must include:

- (a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;
- (b) Lot numbers of all base marijuana used to create the extract;
- (c) Batch number;
- (d) Date manufactured;
- (e) Best by date;
- (f) Products meant to be eaten or swallowed, recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;
- (g) Net weight in ounces and grams, or volume as appropriate;
- (h) List of all ingredients and any allergens;

(i) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.";

(j) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

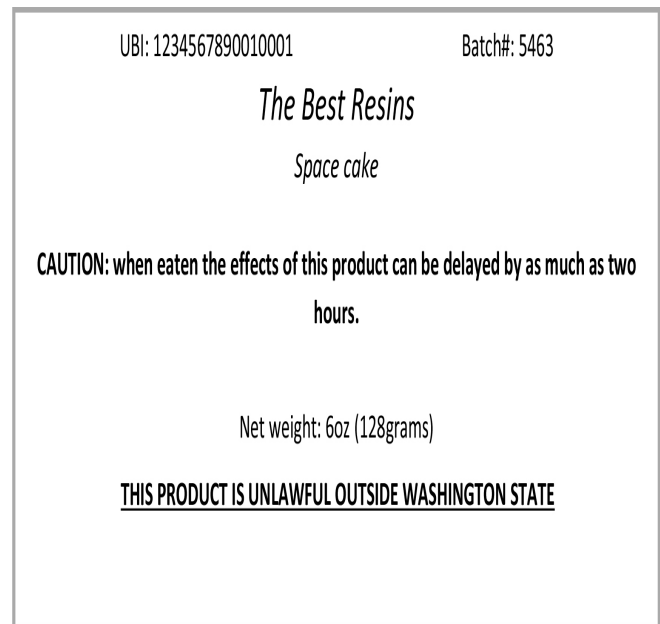
(k) Warnings that state: "This product has intoxicating effects and may be habit forming";

(l) Statement that "This product may be unlawful outside of Washington state";

(m) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(16) Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:

(Front of label)



(Back of label)

Manufactured at: 111 Old Hwy Rd., Mytown, WA on 1/14/14 Best by 2/1/14

INGREDIENTS: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, Strawberries,**CONTAINS ALLERGENS:** Milk, Wheat,

Serving size: 10 MG of THC

This product contains 10 servings and a total of 100 MG of THC

Warning- This product has intoxicating effects and may be habit forming**WSR 14-07-049****PROPOSED RULES****DEPARTMENT OF HEALTH**

(Board of Denture Technology)

[Filed March 13, 2014, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-033.

Title of Rule and Other Identifying Information: WAC 246-812-240 Nonorthodontic removable oral devices and 246-812-250 Teeth whitening services, endorsements to denturist license. Creating new sections to specify the endorsement process, and the education and training standards for nonorthodontic removable oral devices and teeth whitening services.

Hearing Location(s): Department of Health, Town Center 3, Room 224, 243 Israel Road S.E., Tumwater, WA 98501, on April 25, 2014, at 10:30 a.m.

Date of Intended Adoption: April 25, 2014.

Submit Written Comments to: Vicki Brown, Program Manager, Health Professions and Facilities, Board of Denturists, P.O. Box 47852, Olympia, WA 98504-7852, e-mail [web site] <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 18, 2014.

Assistance for Persons with Disabilities: Contact Vicki Brown by April 18, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1271 (chapter 172, Laws of 2013) allows denturists to provide nonorthodontic removable oral devices and teeth whitening services with required education. Rule making is necessary to align the existing rules with the new legislation. The proposed rules: Establish a process to receive an endorsement on a den-

turist license; establish the level of education and training required prior to denturists providing these services; requires board approval of programs and curriculum [curricula]; and establishes what will be accepted as evidence of adequate education and training. In addition, the proposed rules will require the denturist to provide the patient with written and verbal information and answer any questions related to teeth whitening trays and teeth whitening solutions and will require the denturist to obtain and retain written patient consent on a board approved form for teeth whitening services.

Reasons Supporting Proposal: SHB 1271, codified as RCW 18.30.160 directs the board to adopt rules that specify the education and training necessary prior to providing non-orthodontic removable oral devices and teeth whitening services.

The proposed rules implement the statute by providing a process and establishing the education and training requirements necessary to obtain an endorsement to a denturist license in order to provide teeth whitening services and non-orthodontic removable oral devices.

Statutory Authority for Adoption: Chapter 18.30 RCW, SHB 1271 (chapter 172, Laws of 2013).

Statute Being Implemented: Chapter 18.30 RCW, SHB 1271 (chapter 172, Laws of 2013).

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

Name of Proponent: Board of denturists, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Vicki Brown, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, Program Manager, Health Professions/Facilities, Board of Denturists, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail vicki.brown@doh.wa.gov.

March 12, 2014

Trina Castle

Executive Director

NEW SECTION

WAC 246-812-240 Nonorthodontic removable oral devices. (1) A licensed denturist may provide nonorthodontic removable oral devices after completing and receiving an endorsement to his or her denturist license.

(2) Nonorthodontic removable oral devices are limited to:

(a) Bruxism devices also known as occlusal splints, occlusal bite guard, bruxism appliance, bite plate, and night guard;

(b) Sports mouth guards;

(c) Removable cosmetic appliances, regardless of whether the patient is missing teeth; and

(d) Snoring devices, but only after a physician has ruled out snoring associated with sleep breathing disorders to include obstructive sleep apnea.

(3) To qualify for an endorsement an applicant must complete the following education and training in nonorthodontic removable oral devices:

(a) A minimum of four hours of instruction in snore guards and sleep apnea; and

(b) A minimum of two hours in bruxism devices, sports mouth guards, and removable cosmetic appliances.

(4) Nonorthodontic removable oral devices education and training must be obtained through a board-approved program, or course curriculum.

(a) The curriculum must include training on each subject listed under subsection (2)(a) through (d) of this section.

(b) A presenter must submit the training curriculum to the board for review and approval.

(c) The board may review previously approved curriculums as necessary or as determined by the board.

(5) To receive a nonorthodontic removable oral devices endorsement, the applicant must provide evidence of successfully completing the education and training requirements in this section by submitting to the board:

(a) A declaration approved by the board that verifies proof of completion of education and training signed and dated by both the presenter and the dentist; or

(b) A declaration that the education and training was included in a board-approved educational program.

NEW SECTION

WAC 246-812-250 Teeth whitening services. (1) A licensed dentist may provide teeth whitening services after completing and receiving an endorsement to his or her dentist license.

(2) Teeth whitening services include:

(a) Fabricating whitening trays;

(b) Providing nonprescription strength whitening solutions with over-the-counter equivalent concentrations; and

(c) Providing required follow-up care and instructions for use of the trays and solutions at home.

(3) To qualify for an endorsement an applicant must complete a minimum of two hours of instruction in teeth whitening services.

(4) Education and training in instruction in teeth whitening services must be obtained through a board-approved program or course curriculum.

(a) A presenter must submit the training curriculum to the board for review and approval.

(b) The board may review previously approved curriculums as necessary or as determined by the board.

(5) To receive an endorsement for teeth whitening services, the applicant must provide evidence of successfully completing the education and training requirement in this section by submitting to the board:

(a) A declaration approved by the board that verifies proof of completion of education and training signed and dated by both the presenter and the dentist; or

(b) A declaration that the education and training was included in a board-approved educational program.

(6) A dentist providing teeth whitening services to patients shall provide the patient with written and verbal information and answer any questions related to teeth whitening trays and teeth whitening solutions including:

(a) Procedure;

(b) Alternatives; and

(c) Risks.

(7) The dentist shall obtain written patient consent on a form approved by the board for the procedure(s) and retain the signed form in the patient record.

WSR 14-07-065

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed March 17, 2014, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-116.

Title of Rule and Other Identifying Information: Amends WAC 181-82-105 and 181-82-110 to reflect change in assignment requirements for districts. Removes compliance and waiver rules with guidance and reporting rules. Adds new section on reporting.

Hearing Location(s): Trac Center, 6600 Burden Boulevard, Pasco, WA 99301, on May 15, 2014, at 8:30.

Date of Intended Adoption: May 15, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 8, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by May 8, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes the policy related to district requirements for assigning teachers. Eliminates compliance requirements and replaces with guidance for districts from the professional educator standards board (PESB). PESB will report on the number of students in classes with endorsed teachers that match the course requirements established by the office of superintendent of public instruction.

Reasons Supporting Proposal: Improves policy for teacher assignment.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

March 17, 2014
David Brenna
Senior Policy Analyst

NEW SECTION

WAC 181-82-100 Professional educator standards board annual teacher assignment reporting. (1) Beginning September 1, 2014, the professional educator standards board shall annually make publicly available:

(a) A report on the number of students in courses assigned to a teacher of record with or without a matching endorsement appropriate to that course by district and state-wide.

(b) Publish and update a board-approved table of teaching certificate endorsements appropriate for assignment to each state-approved course code.

(2) No later than September 1, 2017, the professional educator standards board shall adopt performance targets related to teacher assignments match to state course codes and report annually to the house of representatives and senate education committees of the Washington state legislature those districts failing to meet these targets.

AMENDATORY SECTION (Amending WSR 08-12-056, filed 6/2/08, effective 7/3/08)

WAC 181-82-105 Assignment of classroom teachers within districts. In addition to holding teaching permits or certificates as required by WAC 180-16-220(2), the assignment of classroom teachers in the basic program of education shall comply with the following:

(1) Classroom teachers with standard or unendorsed continuing teacher certificates may be assigned to ~~((any grade or))~~ subject areas for which certification is required.

(2) Classroom teachers with initial, residency, endorsed continuing, or professional teacher certificates ~~((may be))~~ are best assigned ~~((only))~~ to the ~~((specified grades and specified subject areas stated as))~~ courses with course codes that, according to the table published by the professional educator standards board, match with an endorsement((s upon)) on their respective certificates or permits.

(3) ~~((Classroom teachers with initial, residency, endorsed continuing, or professional teacher certificates who have an elementary education endorsement may be assigned to teach any subject in grades K-8.~~

(4) Any certificated teacher who has completed twenty-four quarter hours (sixteen semester hours) of academic study in a content area that will be offered in grades four through nine may be assigned to that course even if the teacher does not hold an endorsement in that area.

(5) Any certificated teacher may be assigned to a middle school or junior high school block program, which for the purpose of this section shall be defined as the same teacher assigned to teach two or more subject areas to the same group

of students, if the teacher has an endorsement in one of the subject areas and has completed or will complete within one year nine quarter hours in each of the other subject areas.

~~((6) Upon determination by school districts that teachers have the competencies to be effective teachers in alternative settings, individuals with initial, residency, endorsed continuing, or professional teacher certificates may be assigned to teach in alternative schools.~~

~~((7) Any certificated teacher may be assigned to courses offered in basic education subject areas not included with the list of endorsements specified in WAC 181-82A-202.~~

~~((8) Any certificated teacher may be assigned to serve as a substitute classroom teacher at any grade level or in any subject area for a period not to exceed thirty consecutive school days in any one assignment.~~

~~((9) Any certificated person holding a limited certificate as specified in WAC 181-79A-230 or a career and technical education certificate as specified in chapter 181-77 WAC may be assigned as per the provisions of such section or chapter.~~

~~((10))~~ If a teacher is assigned to provide special education, then the district must also comply with chapter 329-172A WAC ((392-172-200 and 392-172-202)).

~~((11(a) For the purpose of this section, the term "specified subject areas" shall mean courses or classes with the same subject area title as specified by the classroom teacher's endorsement and courses or classes which the board of directors of the district, using the endorsement related assignment table published by the professional educator standards board as a nonbinding guideline, determines to substantially include the same subject area as the endorsement — e.g., a classroom teacher with a health endorsement may be assigned to any course, regardless of course title, which substantially includes health as the subject area.~~

~~((b) The endorsement related assignment table published by the professional educator standards board may not be changed without prior professional educator standards board approval. Endorsement related assigned classroom teachers must be evaluated annually specific to the assignment and achieve a satisfactory rating to continue in the assignment.~~

~~((12) Exceptions to the assignment requirements of subsection (1) of this section must comply with WAC 181-82-110.~~

~~((13) School district compliance with this section shall be subject to the state staff review process specified in WAC 180-16-195(2).))~~

~~((4) The endorsement to course code table may be changed by the PESB.~~

AMENDATORY SECTION (Amending WSR 12-16-107, filed 8/1/12, effective 9/1/12)

WAC 181-82-110 ~~((Exceptions to classroom teacher assignment policy.))~~ School district response and support for nonmatched endorsements to course assignment of teachers. ~~((Exceptions to the classroom teacher assignment policy specified in WAC 181-82-105 shall be limited to the following:~~

~~((1) Upon determination by school districts that teachers have the competencies to be effective teachers in areas other~~

than their endorsed areas.)) Individuals with initial, residency, endorsed continuing, or professional teacher certificates who have completed provisional status with a school district under RCW 28A.405.220 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

~~((a))~~ (1) A designated representative of the district and any such teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

~~((b))~~ (2) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

~~((c))~~ (3) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned(;

~~(d) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 180-16-195. Included in the report shall be the number of teachers in out-of-endorsement assignments and the specific assistance being given to the teachers; and~~

~~(e) Teachers providing instruction to a cohort of students in two consecutive years may be assigned subject to (b), (c), and (d) of this subsection, provided they are properly endorsed in at least one of the two years they instruct the cohort class.~~

~~(2) Teachers with initial, residency, endorsed continuing, or professional teacher certificates who have not completed provisional status with a school district under RCW 28A.405.220 may be assigned to one out-of-endorsement assignment for a maximum of two periods (not more than forty percent full-time equivalent) a day. Conditions described in subsection (1)(a) through (d) of this section shall apply to teachers so assigned.~~

~~(3) After August 31, 2000, a teacher who has completed twenty-four quarter credit hours (sixteen semester credit hours) of course work applicable to a special education endorsement shall be eligible for a waiver from the special education office which will allow that person to be employed as a special education teacher. All remaining requirements shall be completed within five years of service as a special education teacher. Teachers who hold certificates endorsed in special education or who have received waivers from the special education office prior to September 1, 2000, shall not be affected by the requirements of this subsection.~~

~~(4) After September 1, 2009, a teacher who has completed eighteen quarter credit hours (twelve semester credit hours) of course work applicable to an endorsement, other than special education for which subsection (3) of this section applies, shall be eligible for a conditional waiver from the professional educator standards board. Approved conditional waivers will allow a teacher to be employed in the subject matter area for which they do not hold the endorsement as long as they verify enrollment in an endorsement program within six months of their assignment and attain the full endorsement within four years. Application for a conditional~~

~~waiver shall be made by both teachers and districts to the professional educator standards board)).~~

WSR 14-07-068

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 17, 2014, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-093.

Title of Rule and Other Identifying Information: WAC 246-358-990 Temporary worker housing fees and 246-361-990 Cherry harvest camps fees, amendments to reduce the licensing fee amount and revise the fee structure.

Hearing Location(s): Department of Health, Town Center 2 (TC2), Conference Room 158, 111 Israel Road, Tumwater, WA, on April 23, 2014, at 1:00 p.m.

Date of Intended Adoption: May 5, 2014.

Submit Written Comments to: Debra Fisher, P.O. Box 47852, Tumwater, WA 98504-7852, e-mail [web site] <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by April 23, 2014.

Assistance for Persons with Disabilities: Contact Debra Fisher by April 18, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule reduces licensing fees and revises the fee structure. The proposed rule reduces the existing fee from \$9 per occupant to a proposed set fee of \$50 plus \$4 per occupant. The proposed fee and structure are for both initial applications and annual renewal.

Reasons Supporting Proposal: In 2012, the legislature provided the department with one-time, supplemental funding for the department to temporarily reduce fees and conduct an evaluation of the program to consider fee amount and structure. As a result of the evaluation and through implementation of program efficiencies the department has determined that the proposed fee reduction will support current program activities.

Statutory Authority for Adoption: RCW 43.70.340 and chapter 70.114A RCW.

Statute Being Implemented: RCW 43.70.340 and chapter 70.114A RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Debra Fisher, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2942.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi) of the Administrative Procedure Act, a cost-benefit analysis is not required

for rules that set or adjust fees or rates pursuant to legislative standards.

March 17, 2014
 John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 11-13-124, filed 6/22/11, effective 7/23/11)

WAC 246-358-990 Fees. (1) ~~((License))~~ **Licensing fee.** ~~((The license fee covers initial licenses and renewals, and includes on-site surveys. An operator must submit to the department an annual license fee for))~~ An operator shall submit to the department of health a licensing fee according to Table 1 of this section prior to the department of health issuing a temporary worker housing (TWH) operating license. Except as provided in subsection (2) of this section, the licensing fee consists of two portions:

(a) An administrative portion according to Table 1 of this section; and

(b) A facility portion, based on the maximum occupancy of the TWH, according to Table 1 of this section. For purposes of ((licensing)) this section, maximum occupancy is the ((total)) greatest number of occupants that ((the amount of space and fixtures of the temporary worker housing (TWH) can support)) reside in the TWH during the calendar year.

(2) ~~((Technical assistance fee. An operator may be charged for each technical assistance visit conducted by the department when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990 Table 1, Part G.))~~ **Minimum licensing fee.** The minimum licensing fee is ninety dollars.

(3) **Late fees.** The department of health may charge a late fee ((may be charged)) according to Table 1 of this section in addition to the licensing fee when:

(a) ~~((The initial))~~ For a new license, the application and licensing fee((, as required by WAC 246-358-025(2)),) are not received by the department of health at least forty-five days prior to the new TWH opening operation date;

(b) ~~((The renewal))~~ For a previously licensed TWH, the application and licensing fee((, as required by WAC 246-358-025(2)),) are not received by the department of health by February twenty-eighth of the year the operator intends to operate the TWH ((renewal due date)).

(4) ~~((TWH civil fine. An operator may be assessed a civil fine for failure or refusal to obtain a license prior to occupancy of TWH. Civil fines for TWH are provided for in RCW 43.70.335.~~

~~((5))~~ **Refunds.**

(a) The department of health will refund fees paid by the operator if:

(i) The operator submits a written request to the department of health for a refund; and

(ii) The operator provides documentation to the department of health that the ((housing)) TWH was not occupied during the license period.

(b) The department of health will refund two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no preoccupancy ((survey)) inspection has been performed by the department of health.

(c) The department of health will refund one-third of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a preoccupancy ((survey)) inspection has been performed by the department of health.

(d) The department of health will not refund applicant licensing fees under the following conditions:

(i) The department of health has performed more than one on-site ((survey)) inspection for any purpose; or

(ii) One year has elapsed since a license application was received by the department of health, but no license was issued because the applicant failed to complete requirements for licensure.

(5) **Technical assistance fee.** The department of health may charge an operator for each technical assistance visit conducted by the department of health when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990, Table 1.

(6) **TWH civil fine.** The department of health may assess an operator a civil fine according to RCW 43.70.335.

Table 1
Fees, Regular Temporary Worker Housing

((Fee Type))	Fee
License fee	\$9 per occupant, at maximum occupancy (\$90 minimum fee)
Late fee	(\$100)

Fee Type	Administrative Portion	Facility Portion
Licensing	\$50	\$4 per occupant, at maximum occupancy
	(\$90 minimum total fee)	
Late	\$100 (Late fees are in addition to licensing fees)	

AMENDATORY SECTION (Amending WSR 11-13-124, filed 6/22/11, effective 7/23/11)

WAC 246-361-990 Fees for cherry harvest camps. (1) ~~((License))~~ **Licensing fee.** ~~((The license fee covers initial licenses and renewals, and includes on-site surveys. An operator must submit to the department an annual license fee for))~~ An operator shall submit to the department of health a licensing fee according to Table 1 of this section prior to the department of health issuing a temporary worker housing (TWH) operating license. Except as provided in subsection (2) of this section, the licensing fee consists of two portions:

(a) An administrative portion according to Table 1 of this section; and

(b) A facility portion, based on the maximum occupancy of the TWH, according to Table 1 of this section. For purposes of ((licensing)) this section, maximum occupancy is the ((total)) greatest number of occupants that ((the amount of space and fixtures of the temporary worker housing (TWH) can support)) reside in the TWH during the calendar year.

(2) ~~((Technical assistance fee. An operator may be charged for each technical assistance visit conducted by the~~

department when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990 Table 1, Part G.) **Minimum licensing fee.** The minimum licensing fee is ninety dollars.

(3) **Late fees.** The department of health may charge a late fee (~~may be charged~~) according to Table 1 of this section in addition to the licensing fee when:

(a) For a new license, the initial application and licensing fee (~~as required by WAC 246-361-025(2);~~) are not received by the department of health at least forty-five days prior to the new TWH opening operation date;

(b) ~~(The renewal)~~ For a previously licensed TWH, the application and licensing fee (~~as required by WAC 246-361-025(2);~~) are not received by the department (~~by the TWH renewal due date~~) of health by February twenty-eighth of the year the operator intends to operate the TWH.

(4) ~~(TWH civil fine.~~ An operator may be assessed a civil fine for failure or refusal to obtain a license prior to occupancy of TWH. Civil fines for TWH are provided for in RCW 43.70.335.

~~(5))~~ **Refunds.**

(a) The department of health will refund fees paid by the operator if:

(i) The operator submits a written request to the department of health for a refund; and

(ii) The operator provides documentation to the department of health that the ~~(housing)~~ TWH was not occupied during the license period.

(b) The department of health will refund two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no preoccupancy ~~(survey)~~ inspection has been performed by the department of health.

(c) The department of health will refund one-third of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a preoccupancy ~~(survey)~~ inspection has been performed by the department of health.

(d) The department of health will not refund applicant licensing fees under the following conditions:

(i) The department of health has performed more than one on-site ~~(survey)~~ inspection for any purpose; or

(ii) One year has elapsed since a license application was received by the department of health, but no license was issued because the applicant failed to complete requirements for licensure.

(5) **Technical assistance fee.** The department of health may charge an operator for each technical assistance visit conducted by the department of health when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990, Table 1.

(6) **TWH civil fine.** The department of health may assess an operator a civil fine according to RCW 43.70.335.

Table 1
Fees, Cherry Harvest Camps

((Fee Type	Fee
License fee	\$9 per occupant, at maximum occupancy (\$90 minimum fee)
Late fee	\$100))

Fee Type	Administrative Portion	Facility Portion
Licensing	\$50	\$4 per occupant, at maximum occupancy
	(\$90 minimum total fee)	
Late	\$100 (Late fees are in addition to licensing fees)	

WSR 14-07-083
WITHDRAWAL OF PROPOSED RULES
HEALTH CARE AUTHORITY
(By the Code Reviser's Office)
[Filed March 18, 2014, 8:26 a.m.]

WAC 182-12-200 and 182-12-265, proposed by the health care authority in WSR 13-18-051, appearing in issue 13-18 of the Washington State Register, which was distributed on September 18, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 14-07-084
PROPOSED RULES
WASHINGTON STATE UNIVERSITY
[Filed March 18, 2014, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-129.

Title of Rule and Other Identifying Information: Chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): Lighty 403, WSU Pullman, Pullman, Washington, on April 22, 2014, at 4:00 p.m.

Date of Intended Adoption: May 9, 2014.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by April 22, 2014.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by April 18, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update, edit, and clarify the standards of conduct for students. Changes in federal law, specifically the 2013 reauthorization of and amendments to the Violence Against Women Act of 1994, 42 U.S.C. Section 13925, require updates to this chapter.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is necessary because of federal law, 42 U.S.C. 13925.

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Adam Jussel, Director, Student Standards and Accountability, Lighty Services 260, Pullman, WA 99164-1064, (509) 335-4532 or Kimberly Anderson, Director, Office for Equal Opportunity, French Administration 225, Pullman, WA 99164-1022, (509) 335-8288; Implementation: Melynda Huskey, Assistant Vice-President and Dean of Students, Office of the Dean of Students, French Administration 134, Pullman, WA 99164-1013, (509) 335-2193; and Enforcement: John Fraire, Vice-President, Student Affairs and Enrollment, Lighty Services 360, Pullman, WA 99164-1066, (509) 335-5900.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

March 18, 2014

Ralph T. Jenks, Director
Procedures, Records, and Forms
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-200 Jurisdiction of the ~~((university))~~ standards of conduct for students. The ~~((university))~~ standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. Each student is responsible and accountable for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. Definitions from these standards are incorporated into the Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of university objectives.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-204 Abuse of self or others. Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including one's self including, but not limited to, domestic or intimate partner violence.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-220 Discrimination and discriminatory harassment. ~~((Discrimination on the basis of race, color, religion, ancestry, national or ethnic origin, age, gender, marital status, veteran status, sexual orientation, gender identity, or mental, physical, or sensory disability is prohibited in conformity with federal and state laws.))~~ Discrimination or discriminatory harassment on the basis of race; sex/gender; sexual orientation; gender identity/expression; religion; age; color; creed; national or ethnic origin; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); marital status; genetic information; and/or status as an honorably discharged veteran or member of the military; and as defined in Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-221 Sexual misconduct. (1) Sexual misconduct is ~~((any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism))~~ an egregious form of sex discrimination/sexual harassment. A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation. Sexual misconduct includes sexual assault and other sexual violence.

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, ~~((there are))~~ actual words or conduct ~~((demonstrating freely given agreement to sexual activity-silence))~~ demonstrate clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or ~~((blackmail))~~ coercion is threatened or used to procure compliance with the sexual activity~~((-or))~~.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another. When an individual makes it clear through words or actions that he or she does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(c) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or con-

sequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if she or he cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or he or she lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.

(4) Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses explained above. Examples of sexual exploitation may include, but are not limited to:

(a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;

(b) Invading another person's sexual privacy;

(c) Prostituting another person;

(d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;

(e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;

(f) Exposing one's intimate parts in nonconsensual circumstances;

(g) Sexually based stalking and/or bullying.

(5) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-222 Harassment (other than sexual harassment or discriminatory harassment). Harassment is conduct by any means that is severe, persistent, or pervasive, ((or persistent,)) and is of such a nature that it would cause a reasonable person in the victim's position substantial emotional distress and undermine his or her ability to work, study, or participate in his or her regular life activities or participate in the activities of the university, ((and)) and/or actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the university.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-223 Stalking. ~~((Intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property. This))~~ (1) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for his or her safety or the safety of others;

(b) Fear for harm to his or her property or the property of others; or

(c) Suffer substantial emotional distress.

(2) Stalking includes, but is not limited to, conduct occurring in person, electronically, or through a third party.

NEW SECTION

WAC 504-26-227 Sexual harassment. Sexual harassment includes behavior defined in Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

NEW SECTION

WAC 504-26-230 Retaliation. Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under the standards of conduct for students (this chapter). Retaliatory behavior includes action or threat of action that could negatively affect another's employment, education, reputation, or other interest. It also includes retaliation as defined in Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

WSR 14-07-087

PROPOSED RULES

GAMBLING COMMISSION

[Filed March 18, 2014, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-057.

Title of Rule and Other Identifying Information: Amending WAC 230-15-025 Hours of play, 230-15-111 Destruction and disposal of gambling chips, 230-15-335 Internal controls, 230-15-430 Internal control requirements, 230-15-465 Dealing all house-banked card games from a dealing shoe, 230-15-505 Selling gambling chips to players, 230-15-565 Access and entrance to cashier's cage, 230-15-575 Separate imprest bank allowed for nonhouse-banked card games, 230-15-580 Accepting checks at the cashier's cage, 230-15-380 Seeding a player-supported jackpot, 230-15-385 Collecting funds for a player-supported jackpot, 230-15-480 Commission on winning hands, 230-15-250 Recordkeeping for card tournaments, 230-15-355 Counting procedures for fees, 230-15-400 Accounting for player-supported jackpot funds, 230-

15-530 Completing the credit process, 230-15-560 Operating the cashier's cage and 230-15-620 Concluding the count; and repealing 230-15-570 Cashier's cage bank requirements.

Hearing Location(s): Comfort Inn Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on May 8 or 9, 2014, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: May 8 or 9, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by May 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Commission staff regularly evaluates our regulatory processes to ensure it adds value and that we do not place unnecessary burdens on individuals or organizations by eliminating duplication already required in the Washington Administrative Code (WAC), ensuring consistency between licensees, and allowing for maximum flexibility by each business. This is in line with one of our agency goals of "Anticipating and responding to the evolving gambling industry."

As part of our regulatory reform process, staff made changes to the Class F and class house-banked internal control templates, made changes to the Class F and class house-banked card room daily control records packets, and reviewed our card room rules for areas that created extra burdens on staff and licensees without contributing significantly to our mission of protecting the public. We identified the areas listed below.

WAC 230-15-025, card room licensees would only be required to obtain an initial approval from staff to operate during the hours of 2 a.m. – 6 a.m. After the initial approval, licensees could change their hours without sending in an additional request. Licensees will still inform staff of changes in operating hours by including it in their internal controls. There were fifty requests to change card room operating hours between 2 a.m. and 6 a.m. for 2011 – 2013. Commission staff consulted with the local police department and liquor control board for each request. All requests were approved. Language regarding having a licensed card room employee on duty and in the card game area at all times during the hours of operation of a Class E, Class F, or house-banked card games was removed from this rule because it's already required under WAC 230-15-005.

WAC 230-15-111, removes requirements for specific procedures for destroying chips (that are damaged or worn). Licensees are required to use commission recordkeeping forms to account for chips that are destroyed. Submitting procedures is unnecessary.

WAC 230-15-335, removes requirement for Class F card room to include items in their internal controls that are already addressed by other rules and included as part of commission required recordkeeping (fee collection and card and chip inventory).

WAC 230-15-430, removes items that are very general in nature, addressed in other rules, or may be areas where licensees would have procedures but are not regulatory concerns.

WAC 230-15-465, provides an exception to the requirement that house-banked card games must be dealt from a dealing shoe or shuffling device. Allows single and double deck card games to be dealt by hand.

WAC 230-15-505, removes specific chip selling procedures from rule. Licensees are required to develop their own procedures and include [them] in their internal controls.

WAC 230-15-565, removes requirement to keep in the accounting department names of person with access to cage.

WAC 230-15-575, added definition of "imprest" to rule. It was removed from rules with the repeal of WAC 230-15-570 (see below).

WAC 230-15-580, allows checks to be accepted at poker podium. Removes requirement for checks to be stamped "for deposit only" and takes out specific procedures for accepting traveler's checks.

Repeal WAC 230-15-570, house-banked card room operators would be allowed to operate their cashier's cage on a float basis without getting approval from commission staff.

WAC 230-15-380 Seeding a player-supported jackpot, there has been a \$5,000 limit on the amount licensees can start a player-supported jackpot (PSJ) with since 1996. The rule was later revised to clarify licensees could also replenish the PSJ with up to \$5,000 [at] a time as funds are depleted. Staff has determined there is no regulatory need for the limit. Licensees are using their own funds for the PSJ and are later able to recoup their contribution as PSJ funds are collected from the pots. Licensees are required to use detailed records that show how much money was seeded, collected from pots, and recouped by licensees. The proposed rule change removes the \$5,000 limit on the amount licensees can start (seed) a PSJ with or replenish a PSJ that was [has] been won.

WAC 230-15-385 Collecting funds for a player-supported jackpot, there was originally a \$1 limit on the amount that could be collected from a pot to fund a PSJ. The rule changed in January 2006 to raise the limit to \$2. Staff does not believe a limit is necessary. The amount collected is typically based on the size of the pot - \$1 for the first \$10 and \$2 if the pot reaches \$20. The market place will determine what it should be. If a card room attempts to take too large of an amount from the pot to fund the PSJ, players will not continue to play. The proposed rule change removes the \$2 limit on the amount licensees can collect from the pot to fund a PSJ.

WAC 230-15-480 Commission on winning hands, a limited number of approved house-banked card games allow the house to collect a commission on winning hands (Mini-Baccarat, Pai Gow, and Super Pan 9 including variations of these). Most card rooms are not currently taking a commission on Pai Gow. Staff does not believe a limit is necessary. The market place will determine what it should be. If a card room attempts to take too large of a commission, players will not play. The proposed rule change removes the five percent commission limit that may be taken by licensees on winning hands.

In the process of completing the card room rules review, staff found several minor instances where language in the rule was different than the recordkeeping packets. Changes are being proposed in the following rules to correct this.

WAC 230-15-250 Recordkeeping for card tournaments, changed daily control sheet to card tournament summary. Changed record of participants to summary of participants, entry fees, and buy-ins. Clarified gross gambling receipts are total tournament entry fees.

WAC 230-15-355 Counting procedures for fees, changed count slip to card game control slip.

WAC 230-15-400 Accounting for player-supported jackpot funds, changed PSJ fund accrual record to PSJ prize fund accrual record.

WAC 230-15-530 Completing the credit process, changed request for credit slip to credit slip.

WAC 230-15-560 Operating the cashier's cage, changed cashier's count sheet to cage inventory count sheet.

WAC 230-15-620 Concluding the count, changed original master game report to master game report. The record was a two part form. Now it's only one.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule changes would not impose additional costs on any licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

March 18, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-09-056, filed 4/14/08, effective 7/1/08)

WAC 230-15-025 Hours of play. (1) Licensees ~~((must not))~~ may only allow the use of their premises for card playing between the hours of 2:00 a.m. and 6:00 a.m. ~~((unless we approve different hours))~~ with written approval from us.

(2) ~~((Licensees may request, in writing, different hours of operation. Once the request is received))~~ After we have received a written request, we will consult with the local law enforcement agency ((having)) with jurisdiction over the licensee's business and with other state agencies involved in regulation of the business. ((We may allow licensees to adjust closing hours, but licensees must:))

(3) After you have received written approval to operate between the hours of 2:00 a.m. and 6:00 p.m. you may change your hours of operation without further approval from us. Class F and house-banked card rooms must include their hours of operation in their internal controls.

(4) You must also meet the following requirements:

(a) Open the food and/or drink business being stimulated to the public for business any time licensees are conducting card games; and

~~(b) ((Have a licensed card room employee on duty and in the licensed card game area at all times during the hours of operation of a Class E, Class F, or house-banked card games; and~~

~~(e)))~~ Observe a four-hour period of closure at the end of at least two business days a week before beginning the next period of operation; and

~~((c))~~ (c) Comply with any other terms and conditions we require.

~~((d))~~ (5) We may deny the request for extended hours or revoke hours already approved if:

(a) The local law enforcement agency or a state agency objects; or

(b) We determine that the licensee has violated any provisions of chapter 9.46 RCW, any other commission rule, or any of the terms ~~((set forth in subsection (1) of this section))~~ of our approval.

~~((f))~~ (6) Licensees must submit all objections to revocations of operating hours in writing.

~~((g))~~ (7) If requested, we allow the licensee an opportunity for a brief adjudicative proceeding (BAP) before denying or revoking the licensee's authorization for extended card game hours. An administrative law judge hears the BAP, under the provisions of Title 230 WAC and chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-15-111 Destruction and disposal of gambling chips. ~~((Licensees must submit internal controls to us outlining the procedures for destroying or disposing of gambling logo chips.~~

~~(1) Licensees' internal controls must set out the method for destroying logo chips that are damaged or worn. The internal controls must include, at least:~~

~~(a) That chips must be destroyed or mutilated in such a way that they are unusable for play; and~~

~~(b) The two departments, one of which must be the accounting department, that will be responsible for overseeing chip destruction; and~~

~~(c) Only licensed employees may perform chip destruction.~~

~~(2))~~ (1) Licensees must record all gambling chips they destroyed on a chip destruction log in the format we require.

~~((3))~~ (2) If a card room closes, the licensee or former licensee must:

(a) Sell or otherwise transfer gambling equipment to a licensed manufacturer or distributor; or

(b) Destroy the chips according to ~~((the))~~ their established ~~((internal controls))~~ procedures and provide the chip destruction log to us.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-250 Recordkeeping for card tournaments. (1) Card game licensees must keep tournament records in the format we require.

(2) On the ~~((daily control sheet))~~ card tournament summary for the first day of a tournament, card game licensees must include the total gross gambling receipts (total tournament entry fees) and attach it to the ~~((record))~~ summary of participants, entry fees, and buy-ins.

(3) Class F licensees must attach the tournament records to the daily card game records for the date they awarded the majority of the prizes in the tournament.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-335 Internal controls. Class F licensees must establish internal controls that ensure gambling activities are closely controlled and operated fairly.

(1) The internal controls must require, at a minimum:

(a) Trained personnel; and

(b) Segregation of duties for all employees involved in the operation~~((; and~~

~~((e) Fee collection and funds safeguarding procedures; and~~

~~((d) Playing card and chip inventory)).~~

(2) Licensees must inform their card room employees of the internal controls related to the employees' respective areas of responsibility.

(3) Licensees and all card room employees must follow the internal controls at all times.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-355 Counting procedures for fees. (1) We do not require Class F licensees using the drop box method to collect fees to have a separate count room if they have a secure location to count and they meet all other commission requirements for surveillance and counting procedures in WAC 230-15-275. Class F licensees must:

(a) Conduct the count at a specific time that licensees have reported to us; and

(b) Count all fees at least once every twenty-four hours; and

(c) Have at least two card room employees count and record the amount on the ~~((count))~~ card game control slip for each drop box; and

(d) Make an entry in the daily card room record for each type of fee collected at each table. Licensees must retain card game control slips for each table with the daily records.

(2) If Class F licensees using the drop box method do not have a secure location to conduct the count, they must meet the count room requirements of WAC 230-15-605.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-380 Seeding a player-supported jackpot. Class F or house-banked licensees may:

(1) ~~((Provide up to five thousand dollars seed money from house funds to start a PSJ. Licensees must issue))~~ Seed a PSJ and replenish the PSJ when depleted by issuing a check or ((make)) making an electronic bank transfer from the licensee's business account ((for the seed money to the PSJ account to start the prize fund)); and

(2) ~~((Licensees may replenish the PSJ as funds are depleted with up to five thousand dollars at a time; and~~

~~((3))~~ Recover seed money by having the custodian issue a check or make an electronic bank transfer from the PSJ account to the licensee's business account.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-385 Collecting funds for a player-supported jackpot. Class F or house-banked licensees may collect ~~((up to two dollars per hand or game))~~ funds from the pot for each player-supported jackpot. Licensees:

(1) Must keep these funds separate from all other fees; and

(2) Must use either the chip rack or drop box method to collect these funds.

AMENDATORY SECTION (Amending WSR 10-11-087, filed 5/17/10, effective 7/1/10)

WAC 230-15-400 Accounting for player-supported jackpot funds. Class F or house-banked licensees must:

(1) Maintain a separate bank account in a bank, mutual savings bank, or credit union in Washington state for holding player-supported jackpot (PSJ) funds; and

(2) Deposit only funds from PSJs into the account; and

(3) Not make payouts from the PSJ funds until licensees have first deposited the funds in the PSJ account. However, licensees may pay out prizes won during the gambling day and deduct administrative expenses before licensees deposit the funds; and

(4) Transfer or deposit the PSJ funds into the PSJ account or with an armored car service no later than the second banking day after the close of business; and

(5) Identify all deposits or transfers of PSJ funds by the type of PSJ fund and date of collection. Licensees must keep the validated deposit receipts or transfer information as a part of their required daily records or have online access to their player-supported jackpot bank accounts; and

(6) Transfer the amount from the PSJ account to the cage or general account before the end of the month if PSJ prizes are paid from the cage or general account. The licensee must keep the transfer information as part of the written records; and

(7) Reconcile the account balance in their bank statement to the PSJ prize balance on their PSJ prize fund accrual record each month. "Reconcile" means the licensee must compare the two balances, resolve any differences, and doc-

ument the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records.

AMENDATORY SECTION (Amending WSR 07-10-034, filed 4/24/07, effective 1/1/08)

WAC 230-15-430 Internal control requirements.

General accountability requirements.

(1) House-banked card game licensees must have a system of internal controls including, at least:

(a) **Accounting controls** - Include the licensee's plan, procedures, and records concerned with the safeguarding of assets and the reliability of financial records. Licensees must design these controls to provide reasonable assurance that:

~~(i) Transactions are executed with management's general and specific authorization; and~~

~~(ii) Transactions are recorded so that financial statements are prepared in conformity with generally accepted accounting principles (GAAP), and so that accountability for assets is maintained; and~~

~~((iii) Access to assets is permitted only with management's authorization; and~~

~~(iv) Records are compared with existing assets at least annually and appropriate action is taken within five working days to correct any differences; and))~~

(b) **Administrative controls** - Include, at least, the ~~((licensee's plan, procedures, and records outlining decision-making processes that lead to authorization of transactions. These must provide for:~~

~~(i) Competent personnel with an understanding of internal control procedures; and~~

~~(ii) segregation of incompatible functions so that no employee is in a position to commit and conceal errors or wrongdoings in the normal course of his or her duties.~~

Designating a general manager.

(2) The owner, partners, or board of directors for the licensee must designate an individual with overall responsibility for the business, called the "general manager." The general manager may also perform the duties of a gambling operations department manager; and

Establish separate departments or functions.

(3) Licensees must establish separate departments or functions which must be independent from each other. At a minimum, these must include:

- (a) Surveillance;
- (b) Security;
- (c) Gambling; and
- (d) Accounting.

Surveillance department requirements.

(4) The surveillance department manager must ensure that surveillance employees follow all requirements of the surveillance WACs, including, at least:

- (a) Closely and clandestinely observing the operation of the card games, the cashier's cage, and count room; and
- (b) ~~((Recording video and audio of the activities in the count room; and~~

~~(e)) Monitoring for cheating, theft, embezzlement, and other illegal activities on the licensed premises; and~~

~~((d)) (c) Recording video of unusual or suspected illegal activities; and~~

~~((e)) (d) Notifying appropriate supervisors and us, within three working days, when they detect cheating, theft, embezzlement, or other illegal activities related to gambling; and~~

~~((f)) (e) Giving our agents or law enforcement personnel immediate access to the surveillance room((; and~~

~~(g) Ensuring that each dealer is evaluated to determine if he or she follows all required dealer procedures set out in the house-banked card game licensee's approved internal controls; and~~

~~(h) Documenting procedures about how winning wagers, jackpots, or bonus pay-outs will be verified; and~~

~~(i) Ensuring that all surveillance employees have demonstrated a knowledge of:~~

~~(i) Operating surveillance systems; and~~

~~(ii) Rules of play and procedures for the games being played; and~~

~~(iii) Overall procedures relating to the duties of all employees of the house-banked card room, including dealers, shift managers, floor supervisors, cage cashiers and count team members)).~~

Security department requirements.

(5) The security department manager must ensure that security employees control~~((; (a))~~ the transfer of cash and chips to and from the gambling tables, cage, and count room~~((; and~~

~~(b) Dealing shoes and new and used cards, when not in use or when held in evidence; and~~

~~(c) Disposing of or destroying used cards and dealing shoes, and observing accounting department employees when they destroy damaged chips when removed from service)).~~

Gambling operations department requirements.

(6) The gambling operations department manager, or general manager, is responsible for house-banked card games and must ensure that~~((; (a))~~ the dealers operate card games at assigned gambling tables~~((; and~~

~~(b) Cards and dealing shoes are properly accounted for when in use on the gambling floor; and~~

~~(c) There is adequate supervision on the business premises)).~~

Accounting department requirements.

(7) The accounting department must be supervised by a person who reports directly to the general manager. The accounting department must, at least:

(a) Implement and monitor accounting controls; and

(b) Control processes in the count room and cashier's cage; and

(c) Supervise the count room personnel and cashier's cage personnel; and

(d) Control the inventory of unused forms; and

(e) Reconcile the used and unused forms; and

(f) Prepare, control, and store records and data we require ~~(= and~~

~~(g) Oversee, with the help of the security department, the destruction of damaged chips removed from service)).~~

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-465 Dealing all house-banked card games from a dealing shoe. House-banked card game licensees must deal all house-banked card games from a dealing shoe or a shuffling device we have approved with the exception of single and double deck card games which may be dealt by hand.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-480 Commissions on winning hands. The only direct or indirect fee (commission) licensees may collect is a ~~((maximum of five percent))~~ percentage from a winning hand in house-banked card games.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-505 Selling gambling chips to players. House-banked card game licensees must accurately account for all chips and cash when they sell chips to players. Licensees must sell chips only at the gambling table. ~~((The dealer must:~~

~~(1) Spread the cash on the top of the gambling table so that the player, floor supervisor, and surveillance have a full view of the sale;~~

~~(2) Announce the amount loudly enough to be heard by the player and the floor supervisor assigned to the table;~~

~~(3) Have the floor supervisor verify all cash sales of one hundred dollars or more;~~

~~(4) Prove the denomination and the number of chips to the player, floor supervisor, and surveillance before giving the chips to the player. Licensees must include their method for proving chips in their internal controls; and~~

~~(5) After giving the chips to the player, immediately remove the cash from the table top and put it in the drop box attached to the table.))~~

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-530 Completing the credit process.

Requesting credit.

(1) The floor supervisor must prepare a request for credit to authorize the cage to prepare a credit slip for removing gambling chips and coin to the cashier's cage.

(2) The floor supervisor and a security department employee must sign the request for credit slip at the gambling table from which the gambling chips and coin are being removed.

Transporting requests for credit.

(3) A security department employee verifies the chips and coin to the request for credit and then transports the original of the request for credit and the gambling chips or coin removed from the gambling table directly to the cashier's cage.

(4) The dealer must place the duplicate copy of the request for credit face up on the gambling table. The form must not be removed until a credit slip is received from the cashier's cage.

Filling a request for credit.

(5) The cashier must prepare a credit slip in the format we require whenever gambling chips or coin are removed from the gambling tables to the cashier's cage.

(6) The cashier must compare the request for credit to the chips or coin and sign the credit slip.

(7) A security department employee must compare and verify the request for credit to the credit slip and sign the credit slip.

(8) A security department employee must transport the credit slip to the gambling table.

(9) The cashier retains the original of the request for credit.

Receiving the credit.

(10) On receiving the request for credit slip, the dealer and the floor supervisor verify the amount of the credit slip and sign the credit slip.

(11) After the dealer and floor supervisor sign the credit slip, the security department employee must observe that the dealer immediately places the duplicate credit slip and the duplicate request for credit in the drop box attached to the gambling table from which the gambling chips or coin were removed.

(12) The security department employee must return the original credit slip to the cashier's cage. The cage cashiers must keep together and control the original of the credit slip and request for credit.

(13) If an error is made on the credit slip, the cage cashier must write "VOID" on the original and duplicate of the slip and sign the slip.

(14) At the end of the day or shift, the cage cashier must forward all slips to either:

(a) The count team for agreement with the duplicate of the credit slip and duplicate of the request for credit removed from the drop box. After the count, all credit slips and requests for credit must be forwarded to the accounting department for agreement with the triplicate; or

(b) The accounting department for agreement with the duplicate credit slip and duplicate request for credit slip removed from the drop box and the triplicate of the ~~((request for))~~ credit slip.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-560 Operating the cashier's cage. (1) House-banked card game licensees must have a cashier's cage used for securing and accounting for all chips and mon-

eyes in the card room portion of the business premises. Licensees must ensure that their cage cashiers, at least:

(a) Maintain the cage inventory including currency, coin, player checks, gambling chips, forms, documents, and records normally associated with the operation of a cage; and

(b) Receive gambling chips, cash, checks, and other cash equivalents from players in exchange for currency or coin or for check consolidations, total or partial redemptions, or substitutions; and

(c) Receive cash or chips from the count room; and

(d) Perform functions necessary to ensure accurate accountability of funds and chips consistent with these requirements, including, at least:

(i) Reconciling the total closing inventory with the total opening inventory; and

(ii) Receiving request for fill slips in exchange for issuing fill slips and requested chips or coin; and

(iii) Receiving chips or coins removed from gambling tables in exchange for issuing a credit slip; and

(iv) Receiving documents with signatures that ensure the effective segregation of duties; and

(v) Counting and recording the face value of each cage inventory item on a ~~((cashier's))~~ cage inventory count sheet, along with the total opening and closing inventories, at the end of each of their outgoing shifts; and

(vi) Signing, at their incoming and outgoing shift, ~~((the cashier's count sheet and))~~ the cage inventory count sheet, attesting to accuracy of the count; and

(vii) Preparing the overall cage reconciliation and accounting records; and

(viii) Forwarding, at the conclusion of the daily gambling activity, copies of the ~~((cashier's count sheet,))~~ cage inventory count sheet ~~((;))~~ and related documents to the accounting department for reconciling the agreement of opening and closing inventories, notification of error slips, and the agreement of amounts on other forms, records, and documents recording transactions.

(2) Licensees may sell merchandise items out of the cashier's cage as long as they have a separate bank and receiving system for the sale and accounting of these items.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-565 Access and entrance to cashier's cage. (1) House-banked card game licensees must limit entry to the cashier's cage to authorized personnel. ~~((Licensees must place on file with the accounting department the names of all persons:~~

~~(a) Authorized to enter the cage; and~~

~~(b) Who have the combination, keys, or the mechanism to open the locks to the entrance of the cage; and~~

~~(c) Who have the ability to operate the alarm systems.))~~

(2) Licensees must keep a sign-in log in the format we require of all persons accessing the cashier's cage.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-575 Separate imprest bank allowed for nonhouse-banked card games. House-banked card game

licensees operating both house-banked and nonhouse-banked games may sell chips for poker games through an imprest bank other than the cashier's cage. "Imprest bank" means the bank must replenish funds on a regular basis to maintain exactly the amount of outgoing cash, chips, or coin (expenditures) minus the amount of funds added. The bank must be located within the cashier's cage or another location approved in the internal controls.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-580 Accepting checks at the cashier's cage. (1) House-banked card game licensees may accept checks from players as explained in WAC 230-06-005 and must meet the following additional requirements:

(a) Licensees may only accept checks from players at the cashier's cage or poker podium; and

(b) Before cashing the check, the cage cashier must examine the player's identification to confirm the player's identity; and

(c) The cage cashier must:

~~((i) Endorse the check "for deposit only" to the licensee's bank account; and~~

~~((ii))~~ Initial the check; and

~~((iii))~~ (ii) Date and time stamp the check; and

~~((iv))~~ (iii) Verify that the player is not listed on the daily returned check report. If licensees use a check guarantee and collection service, the licensee may disregard this subsection; and

~~((v))~~ (iv) Exchange the check for currency and coin in the amount for which the check is drawn, minus any applicable fees; and

~~((vi))~~ (v) Forward all player checks to the main bank cashier.

(2) ~~((Before accepting a traveler's check from a player, the cage cashier must:~~

~~(a) Require the player to countersign the traveler's check in the cashier's presence; and~~

~~(b) Compare the countersignature with the original signature on the traveler's check; and~~

~~(c) Examine the traveler's check for any signs of tampering, forgery, or alteration; and~~

~~(d) Perform any other procedures that the issuer of the traveler's check requires in order to indemnify the acceptor against loss.~~

~~((3))~~ Licensees must deposit all checks received into their bank account, within two banking days after receipt. Checks deposited to an armored car service within two banking days meet this requirement.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-620 Concluding the count. (1) After the count team finishes their count, the cage cashier or accounting department employee must verify the contents of the drop boxes.

(2) In the presence of the count team and before looking at the master game report, the verifier must recount the cash, either manually or mechanically.

(3) The verifier must sign the master game report verifying that the cash count is accurate.

(4) Each count team member must sign the report attesting to the accuracy of the information recorded.

(5) After the report is signed, the ((original)) master game report must be taken directly to the accounting department, along with the requests for fills, the fill slips, the requests for credit, the credit slips, and the table inventory slips removed from drop boxes. The cage cashiers must not be allowed access to any of these records.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-15-570 Cashier's cage bank requirements.

WSR 14-07-100
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 18, 2014, 3:33 p.m.]

The department of labor and industries would like to withdraw the proposal for WAC 296-304-0911 Head protection from WSR 13-22-063 which was filed on November 4, 2013. This WAC proposal was not intended to be filed with WSR 13-22-063. This WAC proposal was already adopted with WSR 14-03-013.

If you have any questions, please contact Suchi Sharma, rules coordinator at (360) 902-6744.

Suchi Sharma
Senior Policy Advisor
and Rules Coordinator

WSR 14-07-101
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 18, 2014, 5:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-117, 13-15-122, 13-15-121, and 12-08-063.

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-0200 WorkFirst—Activities, 388-310-0800 WorkFirst—Support services, 388-400-0005 Who is eligible for temporary assistance for needy families?, 388-400-0010 Who is eligible for state family assistance?, 388-406-0010 How do I apply for cash assistance or Basic Food benefits? and 388-406-0055 When do my benefits start?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at

<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), or April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division is proposing to amend the above WACs to add completion of a WorkFirst orientation as a condition of eligibility for individuals applying for TANF/SFA who will be required to participate in WorkFirst activities once TANF/SFA is approved.

Amendments made to WAC 388-406-0055 When do my benefits start?, are being proposed to remove medical reference and to support the creation of the new housing and essential needs (hen) referral program. The proposed amendments regarding medical references and HEN referral are already in place via emergency rule making (WSR 14-02-096) and are being added to this proposal for permanent adoption.

Reasons Supporting Proposal: These proposed amendments are necessary to implement the new WorkFirst orientation as identified in the governor's proposed 2014 supplemental budget. The proposed amendments to WAC 388-406-0055 When do my benefits start?, are necessary as the health care authority (HCA) has recodified medical assistance programs under Title 182 WAC to comply with 2E2SHB 1738, Laws of 2011, which designated HCA as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. Accordingly, the department must eliminate corresponding rules and medical references under Title 388 WAC. Finally, proposed amendments made to WAC 388-406-0055 support the creation of the new HEN referral program. This change is necessary to comply with SHB 2069, chapter 10, Laws of 2013.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, and 41.05.021.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, and 41.05.021.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leslie Kozak, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4589.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under

RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to . . . rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

March 13, 2104 [2014]
Katherine I. Vasquez
Rules Manager

AMENDATORY SECTION (Amending WSR 12-12-031, filed 5/29/12, effective 7/1/12)

WAC 388-310-0200 WorkFirst—Activities. (1) Who is required to participate in WorkFirst activities?

(a) You are required to participate in the WorkFirst activities in your individual responsibility plan, and become what is called a "mandatory participant," if you(~~(=~~
(+)) are receiving TANF or SFA cash assistance because you are pregnant or the parent or adult in the home(~~(= and~~
(ii) Are not exempt. For exemptions see WAC 388-310-0300 and 388-310-0350)).

(b) Mandatory participants may be exempt from participation under WAC 388-310-0300 and 388-310-0350.

(c) Participation is voluntary for all other WorkFirst participants (those who no longer receive or have never received TANF or SFA cash assistance).

~~((e) If you are a mandatory participant who was suspended from WorkFirst participation under RCW 74.08A.260 (8)(a), the department will restore your participation requirements between July 1, 2012 and June 30, 2013 in a priority order, beginning with participants who are closest to reaching their TANF time limit.))~~

(2) What activities do I participate in when I enter the WorkFirst program?

When you enter the WorkFirst program, you will participate in one or more of the following activities (which are described in more detail in other sections of this chapter):

- (a) Paid employment (see WAC 388-310-0400 (2)(a) and 388-310-1500);
- (b) Self employment (see WAC 388-310-1700);
- (c) Job search (see WAC 388-310-0600);
- (d) Community jobs (see WAC 388-310-1300)
- (e) Work experience (see WAC 388-310-1100);
- (f) On-the-job training (see WAC 388-310-1200);
- (g) Vocational educational training (see WAC 388-310-1000);
- (h) Basic education activities (see WAC 388-310-0900);
- (i) Job skills training (see WAC 388-310-1050);
- (j) Community service (see WAC 388-310-1400);
- (k) Activities provided by tribal governments for tribal members and other American Indians (see WAC 388-310-1400(1) and 388-310-1900);
- (l) Other activities identified by your case manager on your individual responsibility plan that will help you with situations such as drug and/or alcohol abuse, homelessness, or mental health issues; and/or
- (m) Activities identified by your case manager on your individual responsibility plan to help you cope with family violence as defined in WAC 388-61-001; and/or
- (n) Up to ten hours of financial literacy activities to help you become self-sufficient and financially stable.

(3) If I am a mandatory participant, how much time must I spend doing WorkFirst activities?

If you are a mandatory participant, you will be required to participate in the activities in your individual responsibility plan, and may be required to participate full time, working, looking for work or preparing for work. You might be required to participate in more than one part-time activity at the same time that adds up to full time participation. You will have an individual responsibility plan (described in WAC 388-310-0500) that includes the specific activities and requirements of your participation.

(4) What activities do I participate in after I get a job?

You may be required to participate in other activities, such as job search or training once you are working twenty hours or more a week in a paid unsubsidized job, to bring your participation up to full time.

You may also engage in activities if you are working full time and want to get a better job.

AMENDATORY SECTION (Amending WSR 13-02-048, filed 12/24/12, effective 2/1/13)

WAC 388-310-0800 WorkFirst—Support services. (1) Who can get support services?

People who can get support services include:

- (a) WorkFirst participants who receive a TANF cash grant;
- (b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);
- (c) TANF/SFA applicants as needed to meet the Work-First orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);
- (d) Unmarried or pregnant minors who are income eligible to receive TANF and are:
 - (i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or
 - (ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.

~~((+))~~ (e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

(2) Why do I receive support services?

Although not an entitlement, you may receive support services for the following reasons:

- (a) To help you participate in work and WorkFirst activities that lead to independence.
- (b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.
- (c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 170-290 WAC describes the rules for this child care assistance program.)

(3) What type of support services may I receive and what limits apply?

There is a limit of three thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support services you may receive. Some types of support services have dollar limit restrictions.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.

- Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x		
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x		
Professional, trade, association, union and bonds		x		
Relocation related to employment (can include rent, housing, and deposits)		x		
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x		
Car repair needed to restore car to operable condition		x	x	
License/fees		x	x	
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	
Transportation allotment		x	x	
Counseling		x	x	x
Educational expenses		x		x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x

(4) What are the other requirements to receive support services?

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

(5) What happens to my support services if I do not participate as required?

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

AMENDATORY SECTION (Amending WSR 11-22-042, filed 10/27/11, effective 12/1/11)

WAC 388-400-0005 Who is eligible for temporary assistance for needy families? (1) You can get temporary assistance for needy families (TANF), if you:

- (a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;
- (b) Meet the citizenship/alien status requirements of WAC 388-424-0010;
- (c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;
- (d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;
- (e) Meet TANF/SFA:
- (i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC; and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

(i) Prove who is the father of children applying for or getting TANF or SFA; and

(ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you apply for TANF, have not received TANF or SFA within the past thirty days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

(3) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

~~((3))~~ (4) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

~~((4))~~ (5) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005; or

(d) If the child lives with a parent who provides care for the child, that adult cannot have been permanently disqualified from receiving TANF/SFA due to noncompliance sanction as defined in WAC 388-310-1600.

~~((5))~~ (6) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

~~((6))~~ (7) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

AMENDATORY SECTION (Amending WSR 11-16-056, filed 7/29/11, effective 8/29/11)

WAC 388-400-0010 Who is eligible for state family assistance? (1) To be eligible for state family assistance (SFA), aliens must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are a nonqualified alien as defined in WAC 388-424-0001, who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(c) You are a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005; or

(e) You are a pregnant woman who has been convicted of misrepresenting their residence in order to receive benefits from two or more states at the same time.

(3) If you apply for SFA, have not received SFA within the past thirty days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-406-0010 How do I apply for cash assistance or Basic Food benefits? (1) You can apply for cash assistance or Basic Food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) If your entire assistance unit (AU) gets or is applying for supplemental security income (SSI), your AU can file an application for Basic Food at the local Social Security administration district office (SSADO).

(3) If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason, a legal guardian, caretaker, or authorized representative can apply for you.

(4) You can apply for cash assistance or Basic Food with just one application form.

(5) If you apply for benefits at a local office, we accept your application on the same day you come in. If you apply at an office that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it.

(6) We accept your application for benefits if it has at least:

(a) For cash assistance, the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be handwritten, electronic or digital as defined by the department, or a mark if witnessed by another person.

(b) For Basic Food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);

(c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030; ~~((and))~~

(d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible; and

(e) Complete the WorkFirst orientation if required under WAC 388-400-0005(2) or 388-400-0010(3).

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-406-0055 When do my benefits start? The date we approve your application affects the amount of benefits you get. If you are eligible for:

(1) ~~TANF or SFA~~ cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day ~~((for TANF, SFA, PWA, or RCA));~~ or

(c) Once you have completed the WorkFirst orientation if required under WAC 388-400-0005(2) or 388-400-0010(3), back to the date we received all other information needed to determine eligibility.

(2) PWA or RCA cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the thirtieth day.

(3) ABD cash assistance, your benefits start:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the forty-fifth day ~~((for aged, blind, or disabled (ABD) cash assistance))~~ unless:

(i) You are confined in a Washington state public institution as defined in WAC 388-406-0005 (6)(a) on the forty-fifth day, in which case your benefits will start on the date you are released from confinement; or

(ii) You are approved for ABD cash assistance at the time of your ~~((medical care services (MCS)))~~ housing and essential needs (HEN) referral incapacity review as described in WAC ~~((182-508-0160))~~ 388-447-0110, in which case your benefits will start on the date you provided sufficient medical evidence to establish disability as defined in WAC 388-449-0001.

~~((2))~~ (4) Basic Food, your benefits start from the date you applied unless:

(a) You are recertified for Basic Food. If you are recertified for Basic Food, we determine the date your benefits start under WAC 388-434-0010;

(b) You applied for Basic Food while living in an institution. If you apply for Basic Food while living in an institution, the date you are released from the institution determines your start date as follows. If you are expected to leave the institution:

(i) Within thirty days of the date we receive your application, your benefits start on the date you leave the institution; or

(ii) More than thirty days from the date we receive your application, we deny your application for Basic Food. You may apply for Basic Food again when your date of release from the institution is closer.

(c) We were unable to process your application within thirty days because of a delay on your part. If you caused the delay, but submit required verification by the end of the second thirty-day period, we approve your benefits starting the date you provide the required verification. We start your benefits from this date even if we denied your application for Basic Food.

(d) We initially denied your application for Basic Food and your assistance unit (AU) becomes categorically eligible (CE) within sixty days from the date you applied. If your AU becoming CE under WAC 388-414-0001 makes you eligible for Basic Food, the date we approve Basic Food is the date your AU became CE.

(e) You are approved for transitional food assistance under chapter 388-489 WAC. We determine the date transitional benefits start as described under WAC 388-489-0015.

(f) You receive transitional food assistance with people you used to live with, and are now approved to receive Basic Food in a different assistance unit:

(i) We must give the other assistance unit ten days notice as described under WAC 388-458-0025 before we remove you from the transitional food assistance benefits.

(ii) Your Basic Food benefits start the first of the month after we remove you from the transitional benefits. For example, if we remove you from transitional benefits on November 30th, you are eligible for Basic Food on December 1st.

~~((3) Medical assistance, the date your benefits start is stated in chapter 388-416 WAC.~~

~~(4) For long-term care, the date your services start is stated in WAC 388-106-0045.)~~

WSR 14-07-102

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-22—Filed March 19, 2014, 7:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-092.

Title of Rule and Other Identifying Information: Health coverage issuer provider network formation, adequacy, and filing and approval standards.

Hearing Location(s): Office of the Insurance Commissioner, Training Room (TR-120), 5000 Capitol Boulevard S.E., Tumwater, WA, on April 22, 2014, at 9:00 a.m.

Date of Intended Adoption: April 23, 2014.

Submit Written Comments to: Kate Reynolds, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by April 21, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by April 21, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on the significant changes in health care delivery and access to care that will occur after January 1, 2014, due to health care reform, the commissioner determined that updating regulations is reasonable and necessary. Both qualified health plans and health plans offered outside of the exchange must have networks that at a minimum ensure access to covered services without unreasonable delay and address the specific needs of the populations served. Clarification of the provider network criteria in these areas is needed to support issuer filings. Issuers will benefit from written guidance regarding the commissioner's review standards for provider networks in general and the inclusion of essential community providers in networks for qualified health plans. The proposed rule also includes requirements for provider directories and creates a more transparent process for the building and maintenance of provider networks.

Reasons Supporting Proposal: The current provider network regulations were adopted prior to the passage of the Affordable Care Act.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. 156.230, 45 C.F.R. 156.235, 45 C.F.R. 156.245.

Rule is necessary because of federal law, 45 C.F.R. 156.230, 45 C.F.R. 156.235, 45 C.F.R. 156.245.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kate Reynolds, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7170; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kate Reynolds, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7170, fax (360) 586-3535, e-mail rulescoordinator@oic.wa.gov.

March 19, 2014

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-23-005, filed 11/7/12, effective 11/20/12)

WAC 284-43-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services under the auspices of the applicable health plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" or "enrollee" means an individual covered by a health plan including ~~(an enrollee)~~ a subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" has the meaning set forth in RCW 48.43.005.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly pro-

viding services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" has the meaning set forth in RCW 48.43.005.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020(~~, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010))~~)).

(15) "Issuer" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(16) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((16))~~ (17) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. §1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. §450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. §47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. §1603(29).

(18) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

~~((17))~~ (19) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

~~((18))~~ (20) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

~~((19))~~ (21) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

~~((20))~~ (22) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for ~~((carriers))~~ issuers offering more than one health plan may be smaller in number

than the total number of participating providers and facilities for all plans offered by the carrier.

~~((21))~~ (23) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology*, published by the American Medical Association.

~~((22))~~ (24) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or sub-contractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

~~((23))~~ (25) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

~~((24))~~ (26) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

~~((25))~~ (27) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

~~((26))~~ (28) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((27))~~ (29) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

~~((28))~~ (30) "Service area" means the geographic area or areas within the state where a specific health plan is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(31) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005 (33) comprising from one to fifty eligible employees.

~~((29))~~ (32) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

~~((30))~~ (33) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

AMENDATORY SECTION (Amending WSR 01-03-033, filed 1/9/01, effective 7/1/01)

WAC 284-43-200 Network (~~adequacy~~) access—
General standards. (1) ~~((A health carrier shall))~~ An issuer must maintain each ((plan)) provider network for each health plan in a manner that is sufficient in numbers and types of providers and facilities to assure that, to the extent feasible based on the number and type of providers and facilities in the service area, all health plan services provided to ((covered persons)) enrollees will be accessible in a timely manner appropriate for the enrollee's condition. An issuer must demonstrate that for each health plan's defined service area, a comprehensive range of primary, specialty, institutional, and ancillary services are readily available without unreasonable delay to all enrollees and that emergency services are accessible twenty-four hours per day, seven days per week without unreasonable delay.

(2) ~~Each ((covered person shall)) enrollee must have adequate choice among ((each type of)) health care providers, including those ((types of providers who)) providers which must be included in the network under WAC 284-43-205, and for qualified health plans and qualified stand-alone dental plans, under WAC 284-43-222. ((In the case of emergency services, covered persons shall have access twenty-four hours per day, seven days per week. The carrier's))~~

(3) An issuer's service area ((shall)) must not be created in a manner designed to discriminate or that results in discrimination against persons because of age, gender, gender identity, sexual orientation, disability, national origin, sex, family structure, ethnicity, race, health condition, employment status, or socioeconomic status((Each carrier shall ensure that its networks will meet these requirements by the end of the first year of initial operation of the network and at all times thereafter)).

~~((2))~~ (4) An issuer must establish sufficiency and adequacy of choice ((may be established by the carrier with reference to any reasonable criteria used by the carrier, including but not limited to: Provider-covered person ratios by specialty, primary care provider-covered person ratios, geographic accessibility, waiting times for appointments with participating providers, hours of operation, and the volume of technological and specialty services available to serve the needs of covered persons requiring technologically advanced or specialty care. Evidence of carrier compliance with network adequacy standards that are substantially similar to those standards established by state agency health care purchasers (e.g., the state health care authority and the department of social and health services) and by private managed care accreditation organizations may be used to demonstrate sufficiency. At a minimum, a carrier will be held accountable for meeting those standards described under WAC 284-43-220.

(3) ~~In any case where the health carrier has an absence of or an insufficient number or type of participating providers or facilities to provide a particular covered health care service, the carrier shall ensure through referral by the primary care provider or otherwise that the covered person obtains the covered service from a provider or facility within reasonable proximity of the covered person at no greater cost to the covered person than if the service were obtained from network~~

providers and facilities, or shall make other arrangements acceptable to the commissioner.

(4) The health carrier shall) of providers based on the number and type of providers and facilities necessary within the service area for the plan to meet the access requirements set forth in this subchapter. Where an issuer establishes medical necessity or other prior authorization procedures, the issuer must ensure sufficient qualified staff is available to provide timely prior authorization decisions on an appropriate basis, without delays detrimental to the health of enrollees.

(5) In any case where the issuer has an absence of or an insufficient number or type of participating providers or facilities to provide a particular covered health care service, the issuer must ensure through referral by the primary care provider or otherwise that the enrollee obtains the covered service from a provider or facility within reasonable proximity of the enrollee at no greater cost to the enrollee than if the service were obtained from network providers and facilities. An issuer must satisfy this obligation even if an alternate access delivery request is filed and pending commissioner approval.

An issuer may use facilities in neighboring service areas to satisfy a network access standard if one of the following types of facilities is not in the service area, or if the issuer can provide substantial evidence of good faith efforts on its part to contract with the facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the facility. This applies to the following types of facilities:

(a) Tertiary hospitals;

(b) Pediatric community hospitals;

(c) Specialty or limited hospitals, such as burn units, rehabilitative hospitals, orthopedic hospitals, and cancer care hospitals;

(d) Neonatal intensive care units; and

(e) Facilities providing transplant services, including those that provide solid organ, bone marrow, and stem cell transplants.

(6) An issuer must establish and maintain adequate arrangements to ensure reasonable proximity of network providers and facilities to the business or personal residence of ((covered persons. Health carriers shall)) enrollees, and located so as to not result in unreasonable barriers to accessibility. Issuers must make reasonable efforts to include providers and facilities in networks in a manner that limits the amount of travel required to obtain covered benefits. ((For example, a carrier should not require travel of thirty miles or more when a provider who meets carrier standards is available for inclusion in the network and practices within five miles of enrollees.

In determining whether a health carrier has complied with this provision, the commissioner will give due consideration to the relative availability of health care providers or facilities in the service area under consideration and to the standards established by state agency health care purchasers. Relative availability includes the willingness of providers or facilities in the service area to contract with the carrier under reasonable terms and conditions.

(5) A health carrier shall monitor, on an ongoing basis, the ability and clinical capacity of its network providers and facilities to furnish health plan services to covered persons.

(6) Beginning July 1, 2000, the health carrier shall disclose to covered persons))

(7) A single case provider reimbursement agreement must be used only to address unique situations that typically occur out-of-network and out-of-service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in the network and do not support a determination of network access.

(8) An issuer must disclose to enrollees that limitations or restrictions on access to participating providers and facilities may arise from the health service referral and authorization practices of ((participating providers and facilities. The carrier shall provide instructions to covered persons as to how they can receive details about such practices from their primary care provider or through other formally established processes. For example, a covered person relying on such instructions or processes could discover if the choice of a particular primary care provider would result in the covered person's inability to obtain a referral to certain other participating providers.

(7)) the issuer. A description of the health plan's referral and authorization practices, including information about how to contact customer service for guidance, must be set forth as an introduction or preamble to the provider directory for a health plan. In the alternative, the description of referral and authorization practices may be included in the summary of benefits and explanation of coverage for the health plan.

(9) To provide adequate choice to ((covered persons)) enrollees who are American Indians/Alaska Natives, each health ((carrier shall)) issuer must maintain arrangements that ensure that American Indians/Alaska Natives who are ((covered persons)) enrollees have access to covered medical and behavioral health services provided by Indian health care ((services and facilities that are part of the Indian health system)) providers.

((Carriers shall)) Issuers must ensure that such ((covered persons)) enrollees may obtain covered medical and behavioral health services from the Indian health ((system)) care provider at no greater cost to the ((covered person)) enrollee than if the service were obtained from network providers and facilities, even if the Indian health care provider is not a contracted provider. ((Carriers)) Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system. Nothing in this subsection prohibits ((a carrier)) an issuer from limiting coverage to those health services that meet ((carrier)) issuer standards for medical necessity, care management, and claims administration or from limiting payment to that amount payable if the health service were obtained from a network provider or facility.

(10) An issuer must have a demonstrable method and contracting strategy to ensure that contracting hospitals in a plan's service area have the capacity to serve the entire enrollee population based on normal utilization.

(11) At a minimum, an issuer's provider network must adequately provide for mental health and substance use disorder treatment, including behavioral health therapy.

(a) Adequate networks include crisis intervention and stabilization, psychiatric inpatient hospital services, including voluntary psychiatric inpatient services, and services from mental health providers. There must be mental health providers of sufficient number and type to provide diagnosis and medically necessary treatment of conditions covered by the plan through providers acting within their scope of license and scope of competence established by education, training, and experience to diagnose and treat conditions found in the most recent version of the *Diagnostic and Statistical Manual of Medical Disorders* or other recognized diagnostic manual or standard.

(b) An issuer must establish a reasonable standard for the number and geographic distribution of mental health providers who can treat serious mental illness of an adult and serious emotional disturbances of a child, taking into account the various types of mental health practitioners acting within the scope of their licensure.

The issuer must measure the adequacy of the mental health network against this standard at least twice a year, and file an action plan with the commissioner if the standard is not met.

(c) Emergency mental health services, including crisis intervention and crisis stabilization services, must be included in an issuer's provider network.

(d) An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal utilization patterns.

(e) An issuer must ensure that an enrollee can identify information about mental health services and substance use disorder treatment including benefits, providers, coverage, and other relevant information by calling a customer service representative during normal business hours.

(12) The provider network must include preventative and wellness services, including chronic disease management and smoking cessation services as defined in RCW 48.43.005 (37) and WAC 284-43-878(9). If these services are provided through a quit-line or help-line, the issuer must ensure that when follow-up services are medically necessary, the enrollee will have access to sufficient information to access those services within the service area. Contracts with quit-line or help-line services are subject to the same conditions and terms as other provider contracts under this section.

(13) For the essential health benefits category of ambulatory patient services, as defined in WAC 284-43-878(1), an issuer's network is adequate if:

(a) The issuer establishes a network that affords enrollee access to urgent appointments without prior authorization within forty-eight hours, or with prior authorization, within ninety-six hours of the referring provider's referral.

(b) For primary care providers the following must be demonstrated:

(i) The ratio of enrollee to primary care provider within the issuer's service area as a whole meets or exceeds the average ratio for Washington state for the prior plan year;

(ii) The network includes such numbers and distribution that eighty percent of enrollees within the service area are within thirty miles of a sufficient number of primary care providers in an urban area and within sixty miles of a sufficient

number of primary care providers in a rural area from either their residence or work; and

(iii) Enrollees have access to an appointment, for other than preventive services, with their primary care provider within ten business days of requesting one.

(c) For specialists:

(i) The issuer documents the distribution of specialists in the network for the service area in relation to the population distribution within the service area; and

(ii) The issuer establishes that when an enrollee is referred to a specialist, the enrollee has access to an appointment with such a specialist within fifteen business days for nonurgent services.

(d) For preventive care services, and periodic follow-up care including, but not limited to, standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac or mental health conditions, and laboratory and radiological or imaging monitoring for recurrence of disease, the issuer permits scheduling such services in advance, consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of his or her practice.

(14) The network access requirements in this subchapter apply to stand-alone dental plans offered through the exchange or where a stand-alone dental plan is offered outside of the exchange for the purpose of providing the essential health benefit category of pediatric oral benefits. All such stand-alone dental plans must ensure that all covered services to enrollees will be accessible in a timely manner appropriate for the enrollee's conditions.

(a) An issuer of such stand-alone dental plans must demonstrate that, for the dental plan's defined service area, all services required under WAC 284-43-879(3) are available to all enrollees without unreasonable delay.

(b) Dental networks for pediatric oral services must be sufficient for the enrollee population in the service area based on expected utilization.

(15) Issuers must meet all requirements of this subsection for all provider networks. An alternate access delivery request under WAC 284-43-201 may be proposed only if:

(a) There are sufficient numbers and types of providers or facilities in the service area to meet the standards under this subchapter but the issuer is unable to contract with sufficient providers or facilities to meet the network standards in this subchapter; or

(b) An issuer's provider network has been previously approved under this section, and a provider or facility type subsequently becomes unavailable within a health plan's service area; or

(c) A county has a population that is fifty thousand or fewer, and the county is the sole service area for the plan, and the issuer chooses to propose an alternative access delivery system for that county; or

(d) A qualified health plan issuer is unable to meet the standards for inclusion of essential community providers, as provided under WAC 284-43-222 (3)(d) and (4).

(16) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

NEW SECTION**WAC 284-43-201 Alternate access delivery request.**

(1) Where an issuer's network meets one or more of the criteria in WAC 284-43-200 (15)(a) through (d), the issuer may submit an alternate access delivery request for the commissioner's review and approval. The alternate access delivery request must be made using the Alternate Access Delivery Request Form C, as provided in WAC 284-43-220 (3)(d).

(a) An alternate access delivery system must provide enrollees with access to medically necessary care on a reasonable basis without detriment to their health.

(b) The issuer must ensure that the enrollee obtains all covered services in the alternate access delivery system at no greater cost to the enrollee than if the service was obtained from network providers or facilities or must make other arrangements acceptable to the commissioner.

(i) Copayments and deductible requirements must apply to alternate access delivery systems at the same level they are applied to in-network services.

(ii) The alternate access delivery system may result in issuer payment of billed charges to ensure network access.

(c) An issuer must demonstrate in its alternate access delivery request a reasonable basis for not meeting a standard as part of its filing for approval of an alternate access delivery system, and include an explanation of why the alternate access delivery system provides a sufficient number or type of the provider or facility to which the standard applies to enrollees.

(d) An issuer must demonstrate a plan and practice to assist enrollees to locate providers and facilities in neighboring service areas in a manner that assures both availability and accessibility. Enrollees must be able to obtain health care services from a provider or facility within the closest reasonable proximity of the enrollee in a timely manner appropriate for the enrollee's health needs.

Alternate access delivery systems include, but are not limited to, such provider network strategies as use of out-of-state and out of county or service area providers, and exceptions to network standards based on rural locations in the service area.

(2) The commissioner will not approve an alternate access delivery system unless the issuer provides substantial evidence of good faith efforts on its part to contract with providers or facilities, and can demonstrate that there is not an available provider or facility with which the issuer can contract to meet provider network standards under WAC 284-43-200.

(a) Such evidence of good faith efforts to contract, where required, will be submitted as part of the issuer's Alternate Access Delivery Request Form C submission, as described in WAC 284-43-220 (3)(d).

(b) Evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(3) The practice of entering into a single case provider reimbursement agreement with a provider or facility in relation to a specific enrollee's condition or treatment requirements is not an alternate access delivery system for purposes of establishing an adequate provider network. A single case

provider reimbursement agreement must be used only to address unique situations that typically occur out of network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in a network for the whole population of enrollees under a plan, and do not support a determination of network access.

(4) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

NEW SECTION**WAC 284-43-203 Use of subcontracted networks. (1)**

The primary contractor with each provider and facility in an issuer's network must be specifically identified in network report filings with the commissioner. An issuer may use subcontracted networks as part of a provider network for a service area, subject to the following requirements:

(a) An issuer must not elect to use less than one hundred percent of the subcontracted network or networks in its service area.

(b) An issuer may use a combination of directly contracting with providers and use of a subcontracted network in the same service area.

(2) Upon request by the commissioner, an issuer must produce an executed copy of its agreement with a subcontracted network, and certify to the commissioner that there is reasonable assurance the providers listed as part of the subcontracted network are under enforceable contracts with the subcontractor. The contract with the subcontracted network's administrator must provide the issuer with the ability to require providers to conform to the requirements in chapter 284-43 WAC, subchapter B.

(3) If an issuer permits a facility or provider to delegate functions, the issuer must require the facility or provider to:

(a) Include the requirements of this subchapter in its contracting documents with the subcontractor, including providing the commissioner with access to any pertinent information related to the contract during the contract term, for up to ten years from the final date of the contract period, and in certain instances, where required by federal or state law, periods in excess of ten years;

(b) Provide the issuer with the right to approve, suspend or terminate any such arrangement.

(4) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

NEW SECTION

WAC 284-43-204 Provider directories. (1) Provider directories must be updated at least monthly, and must be offered to accommodate individuals with limited-English proficiency or disabilities. An issuer must post the current provider directory for each health plan online, and must make printed copy of the current directory available to an enrollee upon request as required under RCW 48.43.510 (1)(g).

(2) For each health plan, the associated provider directory must include the following information for each provider:

(a) The specialty area or areas for which the provider is licensed to practice and included in the network;

(b) Any in-network institutional affiliation of the provider, such as hospitals where the provider has admitting privileges or provider groups with which a provider is a member;

(c) Whether the provider may be accessed without referral;

(d) Any languages, other than English, spoken by the provider.

(3) An issuer must include in its electronic posting of a health plan's provider directory a notation of any primary care, chiropractor, women's health care provider, or pediatrician whose practice is closed to new patients.

(4) If an issuer maintains more than one provider network, its posted provider directory or directories must make it reasonably clear to an enrollee which network applies to which health plan.

(5) Information about any available telemedicine services must be included and specifically described.

(6) Information about any available interpreter services, communication and language assistance services, and accessibility of the physical facility must be identified in the directory, and the mechanism by which an enrollee may access such services.

(7) An issuer must include information about the network status of emergency providers as required by WAC 284-43-252.

(8) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

AMENDATORY SECTION (Amending WSR 99-16-036, filed 7/28/99, effective 8/28/99)

WAC 284-43-205 Every category of health care providers. (1) ~~((To effectuate the requirement of RCW 48.43.045 that health plans provide coverage for treatments and services by every category of provider, health carriers shall)) Issuers must not exclude any category of providers licensed by the state of Washington who provide health care services or care within the scope of their practice for ~~((conditions covered by basic health plan (BHP) services as defined by RCW 48.43.005(4). If the BHP covers the condition, the carrier may)) services covered as essential health benefits, as defined in WAC 284-43-878 and RCW 48.43.715, for individual and small group plans; and as covered by the basic health plan, as defined in RCW 48.43.005(4), for plans other than individual and small group.~~~~

For individual and small group plans, the issuer must not exclude a category of provider who is licensed to provide services for that condition, and is acting within the scope of practice, unless such services would not meet the ~~((carrier's)) issuer's standards pursuant to RCW 48.43.045 (1)((b)) (a). For example, ~~((if the BHP provides coverage for)) if the issuer covers outpatient treatment of lower back pain as part of the essential health benefits, any category of provider that provides cost-effective and clinically efficacious outpatient treatment for lower back pain within its scope of practice and otherwise abides by standards pursuant to RCW 48.43.045 (1)((b) may)) (a) must not be excluded from the network.~~~~

(2) RCW 48.43.045 (1)((b)) (a) permits ~~((health carriers)) issuers to require providers to abide by certain standards. These standards may not be used in a manner designed to exclude categories of providers unreasonably. For example, ~~((health carriers may)) issuers must not decide that a particular category of provider can never render any cost-effective or clinically efficacious services and thereby exclude that category of provider completely from health plans on that basis. ~~((However, health carriers may determine that particular services for particular conditions by particular categories of providers are not cost-effective or clinically efficacious, and may exclude such services from coverage or reimbursement under a health plan. Any such determinations must be supported by relevant information or evidence of the type usually considered and relied upon in making determinations of cost-effectiveness or clinical efficacy.))~~~~~~

(3) Health plans are not prohibited by this section from placing reasonable limits on individual services rendered by specific categories of providers based on relevant information or evidence of the type usually considered and relied upon in making determinations of cost-effectiveness or clinical efficacy. However, health plans ~~((may)) must not contain unreasonable limits, and ~~((may)) must not include limits on the type of provider permitted to render the covered service unless such limits comply with RCW 48.43.045 (1)((b)) (a).~~~~

(4) This section does not prohibit health plans from using restricted networks. ~~((Health carriers)) Issuers offering plans with restricted networks may select the individual providers in any category of provider with whom they will contract or whom they will reimburse. ~~((A health carrier)) An issuer is not required by RCW 48.43.045 or this section to accede to a request by any individual provider for inclusion in any network for any health plan.~~~~

(a) Health plan(s) networks that use "gatekeepers" or "medical homes" for access to specialist providers may use them for access to specified categories of providers.

(b) For purposes of this section:

(i) "Gatekeeper" means requiring a referral from a primary care or direct access provider or practitioner to access specialty or in-patient services.

(ii) "Medical home" means a team based health care delivery model for patient centered primary care that provides comprehensive and continuous medical care to patients with the goal of obtaining maximized health outcomes as modified and updated by the Agency for Healthcare Research and Quality, the U.S. Department of Health and Human Services (HRSA), and other state and federal agencies.

(5) ~~((Health carriers may)) Issuers must not offer coverage for health services for certain categories of providers solely as a separately priced optional benefit.~~

(6) The insurance commissioner may grant reasonable temporary extensions of time for implementation of RCW 48.43.045 or this section, or any part thereof, for good cause shown.

~~((7) All health carriers and their plans, provider contracts, networks and operations shall conform to the provisions of this section WAC 284-43-205, by January 1, 2000.))~~

AMENDATORY SECTION (Amending WSR 11-07-015, filed 3/8/11, effective 4/8/11)

WAC 284-43-220 Network reports—Format. ~~((Each health carrier must file with the commissioner a Provider Network Form A and a Network Enrollment Form B.))~~ (1) An issuer must submit its provider network materials to the commissioner for approval prior to or at the time it files a newly offered health plan.

(a) For individual and small groups, the submission must occur when the issuer files its plan under WAC 284-170-870. For groups other than individual and small, the submission must occur when the issuer files a new health plan and as required in this section.

(b) The commissioner may extend the time for filing for good cause shown.

(c) For plan year 2015 only, the commissioner will permit a safe harbor standard. An issuer, who can not meet the submission requirements in (e) and (f) of this subsection, will be determined to meet the requirements of those subsections even if the submissions are incomplete, provided that the issuer:

(i) Identifies specifically each map required under subsection (3)(e)(i) of this section, or Access Plan component required under subsection (3)(f) of this section which has not been included in whole or part;

(ii) Explains the specific reason each map or component has not been included; and

(iii) Sets forth the issuer's plan to complete the filing, including the date(s) by which each incomplete map and component will be completed and filed.

(2) Unless indicated otherwise, the issuer's reports must be submitted electronically and completed consistent with the posted submission instructions on the commissioner's web site, using the required formats.

(3) For plan years beginning January 1, 2015, an issuer must submit the following specific documents and data to the commissioner to document network access:

(a) **Provider Network Form A.** ~~((A carrier))~~ An issuer must file ~~((an electronic))~~ a report of all participating providers by network.

~~((This report must contain all data items shown in Provider Network Form A prescribed by and available from the commissioner. Updated reports must be filed each month.))~~

(i) The Provider Network Form A must be submitted for each network being reviewed for network access. A network may be used by more than one plan.

(ii) An issuer must indicate whether a provider is an essential community provider as instructed in the commissioner's Provider Network Form A instructions.

(iii) An issuer must submit an updated, accurate Provider Network Form A on a monthly basis by the 5th of each month for each network and when a material change in the network occurs as described in subchapter B.

(iv) Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describe(s) changes in the provider network.

~~((2))~~ (b) **Provider directory certification.** An issuer must submit at the time of each Provider Network Form A submission a certification that the provider directory posted

on the issuer's web site is specific to each plan, accurate as of the last date of the prior month. A certification signed by an officer of the issuer must confirm that the provider directory contains only providers and facilities with which the issuer has a signed contract that is in effect on the date of the certification.

~~((By March 31, 2004, and every year thereafter, a carrier must prepare an electronic report showing the total number of covered persons who were entitled to health care services during each month of the year, excluding nonresidents. A separate))~~ The Network Enrollment Form B report provides the commissioner with an issuer's count of total covered lives for the prior year, during each month of the year, for each health plan by county.

(i) The report must be ~~((filed))~~ submitted for each network ~~((by line of business))~~ as a separate report. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

~~((3))~~ (ii) An issuer must file this report by March 31st of each year.

(d) **Alternate Access Delivery Request Form C.** For plan years that begin on or after January 1, 2015, alternate access delivery requests must be submitted when an issuer's network meets one or more of the criteria in WAC 284-43-200 (15)(a) through (d). Alternate access delivery requests must be submitted to the commissioner using the Alternate Access Delivery Request Form C.

(i) The Alternate Access Delivery Request Form C submission must address the following areas, and may include other additional information as requested by the commissioner:

(A) A description of the specific issues the alternate access delivery system is intended to address, accompanied by supporting data describing how the alternate access delivery system ensures that enrollees have reasonable access to sufficient providers, by number and type, for covered services;

(B) A description and schedule of cost-sharing requirements for providers that fall under the alternate access delivery system;

(C) The issuer's proposed method of noting on its provider directory how an enrollee can access provider types under the alternate access delivery system;

(D) The issuer's marketing plan to accommodate the time period that the alternate access delivery system is in effect, and specifically describe how it impacts current and future enrollment and for what period of time;

(ii) Provider Network Form A and Network Enrollment Form B submissions are required in relation to an alternate access delivery system on the basis described in subsections (1) and (2) of this section.

(iii) If a network becomes unable to meet the network access standards after approval but prior to the health product's effective date, an alternate access delivery request must include a timeline to bring the network into full compliance with this subchapter.

(e) Geographic Network Reports.

(i) The geographic mapping criteria outlined below are minimum requirements and will be considered in conjunction with the standards set forth in WAC 284-43-200 and 284-43-222. One map for each of the following provider types must be submitted:

(A) Hospital and emergency services. Map must identify provider locations, and demonstrate that each enrollee in the service area has access within thirty minutes in an urban area and sixty minutes in a rural area from either their residence or workplace to general hospital facilities including emergency services.

(B) Primary care providers. Map must demonstrate that eighty percent of the enrollees in the service area have access within thirty miles in an urban area and sixty miles in a rural area from either their residence or workplace to a primary care provider with an open practice. The provider type selected must have a license under Title 18 RCW that includes primary care services in the scope of license.

(C) Mental health providers. For general mental health providers, such as licensed psychiatrists, psychologists, social workers, and mental health nurse practitioners, the map must demonstrate that eighty percent of the enrollees in the service area have access to a mental health provider within thirty miles in an urban area and sixty miles in a rural area from either their residence or workplace. For specialty mental health providers, the map must demonstrate that eighty percent of the enrollees have access to the following types of service provider or facility: Evaluation and treatment, voluntary and involuntary inpatient mental health and substance use disorder treatment, outpatient mental health and substance use disorder treatment, and behavioral therapy. If one of the types of specialty providers is not available as required above, the issuer must propose an alternate access delivery system to meet this requirement.

(D) Pediatric services. For general pediatric services, the map must demonstrate that eighty percent of the covered children in the service area have access to a pediatrician or other provider whose license under Title 18 RCW includes pediatric services in the scope of license. This access must be within thirty miles in an urban area and sixty miles in a rural area of their family or placement residence. For specialty pediatric services, the map must demonstrate that eighty percent of covered children in the service area have access to pediatric specialty care within sixty miles in an urban area and ninety miles in a rural area of their family or placement residence. The pediatric specialty types include, but are not limited to, nephrology, pulmonology, rheumatology, hematology-oncology, perinatal medicine, neurodevelopmental disabilities, cardiology, endocrinology, and gastroenterology.

(E) Specialty services. An issuer must provide one map for the service area for each area of specialty found on the American Board of Medical Specialties list of approved medical specialty boards. The map must demonstrate that eighty percent of the enrollees in the service area have access to an adequate number of providers and facilities in each specialty. Subspecialties are subsumed on each map.

(F) Therapy services. An issuer must provide one map that demonstrates that eighty percent of the enrollees have

access to the following types of providers within thirty miles in an urban area and sixty miles in a rural area of their residence or workplace: Chiropractor, rehabilitative service providers and habilitative service providers.

(G) Home health, hospice, vision, and dental providers. An issuer must provide one map that identifies each provider or facility to which an enrollee has access in the service area for home health care, hospice, vision, and pediatric oral coverage, including allied dental professionals, dental therapist, dentists, and orthodontists.

(H) Covered pharmacy dispensing services. An issuer must provide one map that demonstrates the geographic distribution of the pharmacy dispensing service within the service area. If a pharmacy benefit manager is used by the issuer, the issuer must establish that the specifically contracted pharmacy locations within the service area are available to enrollees through the pharmacy benefit manager.

(I) Essential community providers. An issuer must provide one map that demonstrates the geographic distribution of essential community providers, by type of provider or facility, within the service area. This requirement applies only to qualified health plans as certified in RCW 43.71.065.

(ii) Each report must include the provider data points on each map, title the map as to the provider type or facility type it represents, include the network identification number the map applies to, and the name of each county included on the report.

(iii) For plan years beginning January 1, 2015, and every year thereafter, an issuer must submit reports as required in this subsection (1) to the commissioner for review and approval, or when an alternate access delivery request is submitted.

(f) Access Plan. An issuer must establish an access plan specific to each health plan that describes the issuer's strategy, policies, and procedures necessary to establishing, maintaining, and administering an adequate network.

(i) At a minimum, the issuer's policies and procedures referenced in the access plan must address:

(A) Referral of enrollees out-of-network, including criteria for determining when an out-of-network referral is required or appropriate;

(B) Copayment and coinsurance determination standards for enrollees accessing care out-of-network;

(C) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of specialists and hospitals to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees;

(D) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(E) Standard hours of operation, and after-hours, for prior authorization, consumer and provider assistance, and claims adjudication;

(F) Triage and screening arrangements for prior authorization requests;

(G) Prior authorization processes that enrollees must follow, including the responsibilities and scope of use of nonlicensed staff to handle enrollee calls about prior authorization;

(H) Specific procedures and materials used to address the needs of enrollees with limited-English proficiency and literacy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(I) Assessment of the health status of the population of enrollees or prospective enrollees, including incorporation of the findings of local public health community assessments, and standardized outcome measures, and use of the assessment data and findings to develop network or networks in the service area;

(J) Notification to enrollees regarding personal health information privacy rights and restrictions, termination of a provider from the network, and maintaining continuity of care for enrollees when there is a material change in the provider network, insolvency of the issuer, or other cessation of operations;

(K) Processes for corrective action for providers related to the provider's licensure, prior authorization, referral and access compliance. The process must include remedies to address insufficient access to appointments or services.

(ii) An access plan applicable to each product, must be filed with every Geographic Network Report, when the issuer seeks initial certification of the network, submits its annual rate filing to the commissioner for review and approval, or when an alternative access delivery request is required due to a material change in the network.

(iii) The current access plan, with all associated data sets, policies and procedures, must be made available to the commissioner upon request, and a summary of the access plan's associated procedures must be made available to the public upon request.

(4) For purposes of this section((: (a) "Line of business" means either individual, small group or large group coverage;

(b) "Network" means the group of participating providers and facilities providing health care services to a particular line of business-)), "urban area" means:

(a) A county with a density of ninety persons per square mile; or

(b) An area with a twenty-five mile radius around an incorporated city with a population of more than thirty thousand.

NEW SECTION

WAC 284-43-221 Essential community providers for exchange plans—Definition. "Essential community provider" means providers listed on the Centers for Medicare and Medicaid Services Non-Exhaustive List of Essential Community Providers. This list includes providers and facilities that have demonstrated service to medicaid, low-income, and medically underserved populations in addition to those that meet the federal minimum standard, which includes:

(1) Hospitals and providers who participate in the federal 340B Drug Pricing Program;

(2) Disproportionate share hospitals, as designated annually;

(3) Those eligible for Section 1927 Nominal Drug Pricing;

(4) Those whose patient mix is at least thirty percent medicaid or medicaid expansion patients who have approved applications for the Electronic Medical Record Incentive Program;

(5) State licensed community clinics or health centers or community clinics exempt from licensure;

(6) Indian health care providers as defined in WAC 284-43-130(17);

(7) Long-term care facilities in which the average residency rate is fifty percent or more eligible for medicaid during the preceding calendar year;

(8) School-based health centers as referenced for funding in Sec. 4101 of Title IV of ACA;

(9) Providers identified as essential community providers by the U.S. Department of Health and Human Services through subregulatory guidance or bulletins;

(10) Facilities or providers who waive charges or charge for services on a sliding scale based on income and that do not restrict access or services because of a client's financial limitations;

(11) Title X Family Planning Clinics and Title X look-alike Family Planning Clinics;

(12) Rural based or free health centers as identified on the Rural Health Clinic and the Washington Free Clinic Association web sites; and

(13) Federal qualified health centers (FQHC) or FQHC look-alikes.

NEW SECTION

WAC 284-43-222 Essential community providers for exchange plans—Network access. (1) An issuer must include essential community providers in its provider network for qualified health plans and qualified stand-alone dental plans in compliance with this section and as defined in WAC 284-43-221.

(2) An issuer must include a sufficient number and type of essential community providers in its provider network to provide reasonable access to the medically underserved or low-income in the service area, unless the issuer can provide substantial evidence of good faith efforts on its part to contract with the providers or facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(3) The following minimum standards apply to establish adequate qualified health plan inclusion of essential community providers:

(a) Each issuer must demonstrate that at least thirty percent of available primary care providers, pediatricians, and hospitals that meet the definition of an essential community provider in each plan's service area participate in the provider network;

(b) The issuer's provider network must include access to one hundred percent of Indian health care providers in a service area, as defined in WAC 284-43-130(17), such that qualified enrollees obtain all covered services at no greater cost than if the service was obtained from network providers or facilities;

(c) Within a service area, fifty percent of rural health clinics located outside an area defined as urban by the 2010 Census must be included in the issuer's provider network;

(d) For essential community provider categories of which only one or two exist in the state, an issuer must demonstrate a good faith effort to contract with that provider or providers for inclusion in its network, which will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider;

(e) For qualified health plans that include pediatric oral services or qualified dental plans, thirty percent of essential community providers in the service area for pediatric oral services must be included in each issuer's provider network;

(f) Ninety percent of all federally qualified health centers and FQHC look-alike facilities in the service area must be included in each issuer's provider network;

(g) At least one essential community provider hospital per county in the service area must be included in each issuer's provider network;

(h) At least fifteen percent of all providers participating in the 340B program in the service area, balanced between hospital and nonhospital entities, must be included in the issuer's provider network;

(i) By 2016, at least seventy-five percent of all school-based health centers in the service area must be included in the issuer's network.

(4) An issuer must, at the request of a school-based health center or group of school-based health centers, offer to contract with such a center or centers to reimburse covered health care services delivered to enrollees under an issuer's health plan.

(a) If a contract is not entered into, the issuer must provide substantial evidence of good faith efforts on its part to contract with a school-based health center or group of school-based health centers. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(b) "School-based health center" means a school-based location for the delivery of health services, often operated as a partnership of schools and community health organizations, which can include issuers, which provide on-site medical and mental health services through a team of medical and mental health professionals to school-aged children and adolescents.

(5) An issuer must, at the request of an Indian health care provider, offer to contract with such a provider to reimburse covered health care services delivered to qualified enrollees under an issuer's health plan.

(a) Issuers are encouraged to use the current version of the Washington State Indian Health Plan Addendum, as posted on <http://www.aihc-wa.com>, to supplement the existing provider contracts when contracting with an Indian health care provider.

(b) If an Indian health care provider requests a contract and a contract is not entered into, the issuer must provide substantial evidence of good faith efforts on its part to contract with the Indian health care provider. Such evidence of good faith efforts to contract will include documentation about the

efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(6) These requirements do not apply to integrated delivery systems pursuant to RCW 43.71.065.

NEW SECTION

WAC 284-43-229 Tiered provider networks. (1) "Tiered provider network" means a network that identifies and groups providers and facilities into specific groups to which different provider reimbursement, enrollee cost-sharing, or provider access requirements, or any combination thereof, apply as a means to manage cost, utilization, quality, or to otherwise incentivize enrollee or provider behavior.

(a) An issuer may use a term other than tiered network as long as the term is not misleading or susceptible to confusion with a specific licensee designation, such as accountable care organization.

(b) An issuer must not use tiered networks to limit access to certain categories of providers or facilities.

(2) When an issuer's contracts include the placement of providers or facilities in tiers, and the network design results in cost differentials for enrollees, the issuer must disclose to enrollees at the time of enrollment the cost difference and the basis for the issuer's placement of providers or facilities in one tier or another.

(3) The lowest cost-sharing tier of a tiered network must provide enrollees with adequate access and choice among health care providers and facilities for essential health benefits as set forth in WAC 284-43-878, 284-43-879, and 284-43-880.

(4) Cost-sharing differentials between tiers must not be imposed on an enrollee if the sole provider or facility type or category required to deliver a covered service is not available to the enrollee in the lowest cost tier of the network.

(a) All enrollees must have reasonable access to providers and facilities at the lowest cost tier of cost-sharing.

(b) Variations in cost-sharing between tiers must be reasonable in relation to the premium rate charged.

(5) An issuer must include with the Provider Compensation Agreement the metrics and methodology used to assign participating providers and facilities to tiers. An issuer must be able to demonstrate to the commissioner's satisfaction that its assignment of providers and facilities to tiers, when based on a rating system, is consistent with the issuer's placement methodology.

(a) When an issuer revises or amends a quality, cost-efficiency or tiering program related to its provider network, it must provide notice to affected providers and facilities of the proposed change sixty days before notifying the public of the program. The notice must explain the methodology and data, if any, used for particular providers and facilities and include information on provider appeal rights as stated in the provider agreement.

(b) An issuer must make its physician cost profile available to providers and facilities under a tiered network, including the written criteria by which the provider's performance is measured.

(6) An issuer's provider and facility ranking program, and the criteria used to assign providers and facilities to dif-

ferent tiers, must not be described in advertising or plan documents so as to deceive consumers as to issuer rating practices and their affect on available benefits. When a tiered network is used, an issuer must provide detailed information on its web site and if requested, make available in paper form information about the tiered network including, but not limited to:

(a) The providers and facilities participating in the tiered network;

(b) The selection criteria, if any, used to place the providers and facilities, but not including the results of applying those selection criteria to a particular provider or facility;

(c) The potential for providers and facilities to move from one tier to another at any time; and

(d) The tier in which each participating provider or facility is assigned.

(7) For any health plan in effect on a tiered network's reassignment date, an issuer must make a good faith effort to provide information to affected enrollees at least sixty days before the reassignment takes effect. This information includes, but is not limited to, the procedure the enrollee must follow to choose an alternate provider or facility to obtain treatment at the same cost-sharing level. The specific classes of enrollees to whom notice must be sent are:

(a) Patients of a reassigned primary care provider if their primary care provider is reassigned to a higher cost-sharing level;

(b) A patient in the second or third trimester of pregnancy if a care provider or facility in connection with her pregnancy is reassigned to a higher cost-sharing level;

(c) A terminally ill patient if a provider or facility in connection with the illness is reassigned to a higher cost-sharing level; and

(d) Patients under active treatment for cancer or hematologic disorders, if the provider or facility that is delivering the care is reassigned to a higher cost-sharing level.

NEW SECTION

WAC 284-43-230 Assessment of access. (1) The commissioner will assess whether an issuer's provider network access meets the requirements of WAC 284-43-200, 284-43-201, and 284-43-205 such that all health plan services to enrollees will be accessible in a timely manner appropriate for the enrollee's condition. Factors considered by the commissioner will include the following:

(a) The location of the participating providers and facilities;

(b) The location of employers or enrollees in the health plan;

(c) The range of services offered by providers and facilities for the health plan;

(d) Health plan provisions that recognize and provide for extraordinary medical needs of enrollees that cannot be adequately treated by the network's participating providers and facilities;

(e) The number of enrollees within each service area living in certain types of institutions or who have chronic, severe, or disabling medical conditions, as determined by the population the issuer is covering and the benefits provided;

(f) The availability of specific types of providers who deliver medically necessary services to enrollees under the supervision of a provider licensed under Title 18 RCW;

(g) The availability within the service area of facilities under Titles 70 and 71 RCW;

(h) Accreditation as to network access by a national accreditation organization including, but not limited to, the National Committee for Quality Assurance (NCQA), the Joint Commission, Accreditation Association of Ambulatory Health Care (AAAHC), or URAC.

(2) In determining whether an issuer has complied with the provisions of WAC 284-43-200, the commissioner will give due consideration to the relative availability of health care providers or facilities in the service area under consideration and to the standards established by state agency health care purchasers. Relative availability includes the willingness of providers or facilities in the service area to contract with the issuer under reasonable terms and conditions.

(3) If the commissioner determines that an issuer's proposed or current network for a health plan is not adequate, the commissioner may, for good cause shown, permit the issuer to propose changes sufficient to make the network adequate within a sixty-day period of time. The proposal must include a mechanism to ensure that new enrollees have access to an open primary care provider within ten business days of enrolling in the plan while the proposed changes are being implemented. This requirement is in addition to such enforcement action as is otherwise permitted under Title 48 RCW.

AMENDATORY SECTION (Amending WSR 00-04-034, filed 1/24/00, effective 2/24/00)

WAC 284-43-250 ((Health carrier) Issuer standards for women's right to directly access certain health care practitioners for women's health care services. (1)(a) "Women's health care services" ~~((is defined to))~~ means organized services to provide health care to women, inclusive of the women's preventive services required by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. The services include, but ((need)) are not ((be)) limited to, maternity care, reproductive health services, gynecological care, general examination, and preventive care as medically appropriate, and medically appropriate follow-up visits for these services. ((General examinations, preventive care, and medically appropriate follow-up care are limited to services related to maternity, reproductive health services, gynecological care, or other health services that are particular to women, such as breast examinations.)) Women's health care services also include any appropriate health care service for other health problems, discovered and treated during the course of a visit to a women's health care practitioner for a women's health care service, which is within the practitioner's scope of practice. For purposes of determining a woman's right to directly access health services covered by the plan, maternity care, reproductive health, and preventive services include ~~((;))~~ Contraceptive services, testing and treatment for sexually transmitted diseases, pregnancy termination, breast-feeding, and complications of pregnancy.

(b) ~~((A carrier may))~~ An issuer must not exclude or limit access to covered women's health care services offered by a particular type of women's health care provider, practitioner, or facility in a manner that would unreasonably restrict access to that type of provider, practitioner, or facility or covered service. For example, ~~((a carrier may))~~ an issuer must not impose a limitation on maternity services that would require all child birth to occur in a hospital attended by a physician, ~~thus((-))~~ preventing a woman from choosing between and using the birthing services of an advanced registered nurse practitioner ~~((specialist in midwifery))~~, a certified midwife, or a licensed midwife.

(c) ~~((A carrier may))~~ An issuer must not impose notification or prior authorization requirements upon women's health care practitioners, providers, and facilities who render women's health care services or upon women who directly access such services unless such requirements are imposed upon other providers offering similar types of service. For example, ~~((a carrier may))~~ an issuer must not require a directly accessed women's health care practitioner to notify the plan within seven days of providing direct women's health care services if a primary care provider would not also be required to provide seven-day notice to the ~~((carrier))~~ issuer for the same or similar service.

(2) ~~((A health carrier shall))~~ An issuer must not deny coverage for medically appropriate laboratory services, imaging services, diagnostic services, or prescriptions for pharmaceutical or medical supplies, which are ordered by a directly accessed women's health care practitioner, and which are within the practitioner's scope of practice, if such services would be covered when provided by another type of health care practitioner. ~~((A health carrier shall))~~ An issuer must not require authorization by another type of health care practitioner for these services. For example, if the ~~((carrier))~~ issuer would cover a prescription if the prescription had been written by the primary care provider, the ~~((carrier shall))~~ issuer must cover the prescription written by the directly accessed women's health care practitioner.

(3)(a) All ~~((health carriers shall))~~ issuers must permit each female ~~((policyholder, subscriber, enrolled participant, or beneficiary of carrier policies, plans, and programs written, amended, or renewed after July 23, 1995.))~~ enrollee of a health plan to directly access ~~((the types of women's health care practitioners identified in RCW 48.42.100(2).))~~ providers or practitioners for appropriate covered women's health care services without prior referral from another health care practitioner.

(b) ~~((Beginning July 1, 2000.))~~ An issuer may limit direct access ~~((may be limited))~~ to those women's health care practitioners who have signed participating provider agreements with the ~~((carrier))~~ issuer for a specific ~~((benefit))~~ health plan network. Irrespective of the financial arrangements ~~((a carrier))~~ an issuer may have with participating providers, ~~((a carrier))~~ an issuer may not limit and ~~((shall))~~ must not permit a network provider to limit access to a subset of participating women's health care practitioners within the network. Such an impermissible limitation might arise when a primary care provider's group practice receives a capitation payment for comprehensive care to ~~((a covered person))~~ an enrollee and then represents to the ~~((covered person))~~

enrollee that only those gynecologists in the primary care provider's clinic are available for direct access. Nothing in this subsection ~~((shall))~~ must be interpreted to prohibit ~~((a carrier))~~ an issuer from contracting with a provider to render limited health care services.

(c) Every ~~((carrier shall))~~ issuer must include in each provider network~~((s))~~ a sufficient number of each type of practitioner included in the definition of women's health care practitioners in RCW 48.42.100(2). A "sufficient number" means enough to reasonably ensure that enrollees can exercise their right of direct access within their service area, based on the number of providers with women's health care service in the scope of their license, and the number of enrollees. An issuer must demonstrate the basis on which it determined the sufficiency of the number and type of providers under this section.

(d) ~~((Beginning July 1, 2000.))~~ A woman's right to directly access practitioners for health care services, as provided under RCW 48.42.100, includes the right to obtain appropriate women's health care services ordered by the practitioner from a participating facility used by the practitioner.

(4) To inform enrollees of their rights under RCW 48.42.100, all ~~((health carriers shall))~~ issuers must include in enrollee handbooks a written explanation of a woman's right to directly access ~~((women's health care practitioners for))~~ covered women's health care services. Enrollee handbooks ~~((shall))~~ must include information regarding any limitations to direct access, including, but not limited to:

(a) Limited direct access based on a benefit plan's closed network of practitioners, if appropriate; and

(b) The ~~((carrier's))~~ issuer's right to limit coverage to medically necessary and appropriate women's health care services.

(5) No ~~((carrier))~~ issuer shall impose cost-sharing, such as copayments or deductibles, for directly accessed women's health care services, that are not required for access to health care practitioners acting as primary care providers.

NEW SECTION

WAC 284-43-252 Hospital emergency service departments and practice groups. Enrollees must have access to emergency services twenty-four hours per day, seven days per week. An issuer must make good faith attempts to contract with provider groups offering services within hospital emergency departments, if the hospital is included in its network. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider groups. If the issuer is unsuccessful in contracting with provider groups offering services within contracted hospital emergency departments, the issuer's provider directory must prominently note that while the hospital's emergency department is contracted, the providers within the department are not.

AMENDATORY SECTION (Amending WSR 99-21-016, filed 10/11/99, effective 11/11/99)

WAC 284-43-331 Effective date. (1) All participating provider and facility contracts entered into after the effective

date of these rules (~~(shall)~~) must comply with these rules no later than (~~(July 1, 2000)~~) January 1, 2015.

(2) Participating provider and facility contracts entered into prior to the effective date of these rules (~~(shall)~~) must be amended upon renewal to comply with these rules, and all such contracts (~~(shall)~~) must conform to these provisions no later than January 1, (~~(2001)~~) 2015. The commissioner may extend the January 1, (~~(2001)~~) 2015, deadline for (~~(a health carrier)~~) an issuer for an additional (~~(six months)~~) one year, if the (~~(health carrier)~~) issuer makes a written request. That request must explain how a good faith effort at compliance has been made, provide the specific reasons the deadline cannot be met, and state the date the (~~(health carrier)~~) issuer expects to be in compliance (no more than (~~(six months)~~) one year beyond January 1, (~~(2001)~~) 2015).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-43-340 Effective date.

WSR 14-07-105
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-15—Filed March 19, 2014,
7:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-110.

Title of Rule and Other Identifying Information: Filing of title insurance rates.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on April 22, 2014, at 1:30 p.m.

Date of Intended Adoption: April 23, 2014.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by April 21, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by April 21, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will:

1. Identify the information that title insurers and title insurance agents must submit to the statistical reporting agent designated by the commissioner and the process for submitting the information.

2. Establish how the costs and expenses of the statistical reporting agent and any examination of the statistical reporting agent will be apportioned by and among the title insurers and title insurance agents.

3. Amend the existing rules regarding information required for the filing of rates for title insurance under RCW 48.29.147.

4. Amend the existing rules regarding the standards that title insurance rate filings must satisfy under RCW 48.29.-147.

5. Amend the existing rule establishing a date by which title insurers must file every manual of rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings, under RCW 48.29.143 and 48.29.147.

Reasons Supporting Proposal: The 2013 legislature enacted RCW 48.29.017 (HB 1035) which provides that title insurers and their agents must report financial information to a statistical reporting agent for the use in preparation of their title insurance rates filed with the commissioner. The statute also provides that the costs of the statistical reporting agent and any examination of the statistical reporting agent by the commissioner will be paid for by the title insurers and title insurance agents.

Statutory Authority for Adoption: RCW 48.02.060, 48.29.005, 48.29.017, and 48.29.140.

Statute Being Implemented: RCW 48.03.060(6), 48.29.-017, 48.29.140, and 48.29.147.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation: Lee Barclay, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7115; and Enforcement: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Although this proposed rule will affect businesses that are defined as small under chapter 19.85 RCW the costs [that] will be incurred by these businesses are almost entirely mandated by HB 1035 (2013) as enacted. The few remaining costs that may be incurred as a result of this proposed rule are projected to be below the threshold of "minor costs" found in chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

March 19, 2014
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-010 Finding and purpose. Title insurance protects against financial loss from defects in insured titles of real property. Losses from title insurance policies are not the primary cost to title insurers and title insurance agents. The primary costs incurred by title insurers and title insurance agents are maintenance of tract indexes and research to find title defects before the policies are issued. Title insurance is regulated differently than property and casualty insurance because loss ratios for title insurance are

relatively low and expense ratios are fairly high. To implement and administer chapter 48.29 RCW, the commissioner needs detailed information about the costs underlying title insurance policies to regulate rates and ensure consumers are offered fair and equitable premiums. The purpose of this chapter is to adopt rules that establish:

- (1) Standards for determining whether a premium rate complies with RCW 48.29.143;
- (2) Standards and procedures that apply to RCW 48.29.-147;
- (3) The date after which title insurers must use rates that have been filed and approved under RCW 48.29.147; ~~((and))~~
- (4) Information and data that must be reported to the statistical reporting agent designated by the commissioner;
- (5) The allocation of the costs and expenses of the statistical reporting agent among the title insurers and title insurance agents;
- (6) The apportionment of the expense of the examination of the statistical reporting agent among the title insurers and title insurance agents;
- (7) The duties and obligations of the statistical reporting agent;
- (8) The information and manner in which the statistical reporting agent must file the information received from the title insurers and title insurance agents with the commissioner, title insurers, and title insurance agents; and
- (9) Requirements for submitting all rate filings through SERFF.

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-020 Definitions. The definitions in this section apply to this chapter:

"Commitment" means the same as in RCW 48.29.010 (3)(c).

"Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Date filed" means the date a complete filing has been received and accepted by the commissioner.

"Filer" means a person, organization or other entity that files title insurance rates with the commissioner for a title insurer.

"NAIC" means the National Association of Insurance Commissioners.

"Nonresidential policies" means title insurance policies on properties that are not "residential policies" as defined below.

"Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

- (a) Requests clarification, documentation or other information;
- (b) Explains errors or omissions in the filing; or
- (c) Disapproves the filing under RCW 48.29.147.

"Policy" means a title policy as defined in RCW 48.29.-010 (3)(a), and includes endorsements.

"Producer" means:

(a) A "producer of title insurance" as defined in WAC 284-29-205(8); and

(b) An "associate of producers" as defined in RCW 48.29.010 (3)(f).

"Rate" or "rates" means all classification manuals, rate and rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that title insurers must file under RCW 48.29.147.

"Residential policies" means title insurance policies that insure the title to real property having a house, individual condominium unit, mobile home permanently affixed to real estate, or other dwelling unit intended principally for the occupancy of from one to four families, but does not include multifamily structures intended for the use of five plus families, undeveloped lots, or real estate intended principally for business, commercial, industrial, religious, educational, or agricultural purposes even if some portion of the real estate is used for residential purposes.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

"Title Company Statistical Report" means the data filing forms and instructions published on the commissioner's web site at www.insurance.wa.gov and incorporated into this chapter by reference. The data form and instructions are based upon the *Title Agent Statistical Data Plan* adopted by the NAIC.

"Title insurance agent" or "agent" has the same meaning as in RCW 48.17.010(15).

"Title insurance" has the same meaning as in RCW 48.11.100.

"Title insurer" means a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW.

AMENDATORY SECTION (Amending WSR 12-15-049, filed 7/16/12, effective 8/16/12)

WAC 284-29A-030 Transition to prior approval system. (1) On and after ~~((January 1, 2014))~~ July 1, 2016, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by ~~((September 1, 2013))~~ March 1, 2016, for rates to be effective on ~~((January 1, 2014))~~ July 1, 2016. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of ~~((January 1, 2014))~~ July 1, 2016.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after ~~((January 1, 2014))~~ July 1, 2016.

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-050 Unfairly discriminatory rates. Situations in which the rates are unfairly discriminatory under RCW 48.29.143(1) include, but are not limited to:

~~(1) ((Rating rules that provide for a waiver of the cancellation fee or reduction of the cancellation fee, after a commitment has been issued, to an amount that is less than the expected average cost for the title insurer and its agents to issue a commitment in the defined geographical area covered by the rating rules;~~

~~(2))~~ Negotiation or bidding of price;

~~((3))~~ (2) Rating rules that do not have a definite charge for every bracket of coverage;

~~((4))~~ (3) Discounts not provided to all qualifying risks;

~~(and~~ ~~(5))~~ (4) Rating plans in which policies:

(a) Generating higher premiums subsidize smaller policies; or

(b) From one geographical area subsidize those from another geographical area.

~~((6))~~ (5) A title insurer's application of more than one rate schedule to similarly situated risks in a county or other defined geographical area. For example, it is unfairly discriminatory for a title insurer to use different rate schedules for business produced by different title insurance agents in a specific rating territory.

NEW SECTION

WAC 284-29A-055 Cancellation fees. (1) In many instances title insurers and title insurance agents issue title insurance commitments prior to issuing title insurance policies. Sometimes the transaction for which the title insurance commitment was issued does not close, the title insurance policy is issued by another title insurer, or the title insurance commitment is canceled. However, since no policy is issued, no title insurance premium is collected by the title insurer or title insurance agent. Therefore, any cancellation fee that title insurers and title insurance agents may collect must not be considered to be premium and thus must not be included in a title insurance rate filing.

(2) However, this shall not be construed in any manner to prohibit title insurers and title insurance agents from charging and collecting a cancellation fee or that title insurers and title insurance agents are required to provide free title commitments.

AMENDATORY SECTION (Amending WSR 10-15-092, filed 7/20/10, effective 8/20/10)

WAC 284-29A-080 Expense component of rates. (1) In support of the expense component of the rates, the title insurer must:

(a) Include estimates of expected expenses to issue title insurance policies and commitments;

(b) Exclude the expected expenses related to escrow and other activities not directly related to title insurance using an allocation based upon the income received from title insurance premiums and escrow income;

(c) Exclude the expected expenses described in WAC 284-29A-070(2); and

(d) Show how those estimates were calculated and demonstrate how those estimates are connected to the proposed rates.

(2) The expense categories that must be considered when making rates include:

(a) Employees' ~~((salaries and wages))~~ compensation;

~~((Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners))~~ Payroll taxes;

(c) Employee benefits;

(d) Contract labor;

(e) Rent, utilities, and repair;

~~((e))~~ Insurance;

~~(f))~~ Legal expense;

~~(g))~~ (f) Title plant expenses and maintenance;

(g) Abstract and search expenses;

(h) Computer and software;

(i) Business insurance;

(j) Business legal;

(k) Accounting;

(l) Licenses, taxes, and fees;

~~((h))~~ Title plant expense and maintenance;

(i) Office supplies;

(j) Depreciation;

(k) Automobile expense;

(l) Communication expense;

~~(m))~~ Education expense;

~~(n))~~ Bad debts;

~~(o))~~ Interest expense;

~~(p))~~ Employee)) (m) Marketing and sales;

(n) Travel and lodging;

~~((q))~~ (o) Employee education;

(p) Bank charges;

(q) Charge offs;

(r) Depreciation;

(s) Miscellaneous expenses;

(t) Loss and loss adjustment expense;

~~((r))~~ Accounting and auditing expense;

~~(s))~~ Public relations expense; and

~~(t))~~ (u) Federal income taxes; and

(v) Other specifically identified expenses.

(3) To support the agent commission component of rates, it is not sufficient to state the commission rate and perform calculations based on that percentage. The title insurer's rate filing must include data that supports the expense component that applies to its title insurance agents.

(4) The supporting information required under this section may ~~((aggregate))~~ include the data from:

(a) Agent reports received by the title insurer in one or more years under ((the provisions of WAC 284-29A-110)) previous regulatory requirements;

(b) The information received by the title insurer from the statistical reporting agent; and

(c) Any other relevant information.

AMENDATORY SECTION (Amending WSR 12-15-049, filed 7/16/12, effective 8/16/12)

WAC 284-29A-110 Title insurers and title insurance agents must report data to ~~((title insurers))~~ the statistical reporting agent. (1) Each title insurer and title insurance agent must report premium, policy count, and expense data by county annually to ~~((each title insurer for which it produces business in the state of Washington by April 1st))~~ the statistical reporting agent designated by the commissioner for the preceding calendar year by May 31st of each year, except as provided in subsection ~~((4))~~ (5) of this section. Every title insurer must file a Title Company Statistical Report with the statistical reporting agent even if the title insurer had no written premium from a direct branch operation during the report year. These data must be reported using the Title Company Statistical Report and following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These forms and instructions (~~(; called the Title Insurance Agent Annual Report,))~~ are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

- (a) The following title order count data:
- (i) Number of title orders opened;
 - (ii) Completed title orders in which a policy was issued; and
 - (iii) Number of title orders canceled as determined using WAC 284-29-260(10).
- (b) Number of noninsurance title products produced:
- (i) Number of searches billed to third parties; and
 - (ii) Number of searches purchased from third parties.
- (c)(i) Total settlement, escrow, or closing transactions conducted;
- (ii) Number of settlement, escrow, or closing transaction in which a title policy was not issued.
- (d) The following premium and policy count data:
- ~~((i))~~ Title insurance premiums for all of the agent's business; and
 - ~~((ii))~~ Title insurance premiums produced for the title insurer to which the report is sent;
 - ~~((iii))~~ Number of policies issued by all of the title insurers with which the agent does business; and
 - ~~((iv))~~ Number of policies issued by the title insurer to which the report is sent.
- ~~((b))~~ (i) Total number of title policies issued;
- (ii) Number of residential policies issued;
 - (iii) Number of nonresidential policies issued;
 - (iv) Number of (d)(ii) and (iii) of this subsection in which the title insurer or title insurance agent conducted the settlement, escrow, or closing of the transaction.
- (e) The following income data:
- (i) Total written premium of the title insurer;
 - (ii) Total written premium of the title insurance agent;
 - (iii) Total written premium of the title insurance agent segregated by each title insurer for which the title insurance agent is appointed;
 - (iv) Total written premium remitted to the title insurers by the title insurance agent segregated by each title insurer for which the title insurance agent is appointed;

(v) Other written premium of the title insurance agent not included in (e)(iii) of this subsection;

(vi) Settlement, escrow, and closing income;

(vii) Title examination income;

(viii) Abstract and search income;

(ix) Income from canceled orders;

(x) Investment income; and

(xi) All other income.

(f) The following expense data related to issuing title insurance policies and commitments for all of the title insurer's or title insurance agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:

(i) Employees' ((salaries and wages)) compensation;

(ii) ((Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners)) Payroll taxes;

(iii) Employee benefits;

(iv) Contract labor;

(v) Rent, utilities, and repair;

~~((v))~~ Insurance;

(vi) Legal expense;

(vii) Licenses, taxes, and fees;

~~((viii))~~ (vi) Title plant expense and maintenance;

~~((ix))~~ Office supplies;

~~((x))~~ Depreciation;

~~((xi))~~ Automobile expense;

~~((xii))~~ Communication expense;

~~((xiii))~~ Education expense;

~~((xiv))~~ Bad debts;

~~((xv))~~ Interest expense;

~~((xvi))~~ Employee) (vii) Abstract and search expenditures;

~~((viii))~~ Computer and software;

~~((ix))~~ Business insurance;

~~((x))~~ Business legal;

~~((xi))~~ Accounting;

~~((xii))~~ Licenses, taxes, and fees;

~~((xiii))~~ Marketing and sales;

~~((xiv))~~ Travel and lodging;

~~((xvii))~~ (xv) Employee education;

~~((xvi))~~ Bank charges;

~~((xvii))~~ Charge offs;

~~((xviii))~~ Depreciation;

~~((xix))~~ Miscellaneous expenses;

~~((xx))~~ Loss ((and)), loss adjustment expense((;

~~((xviii))~~ Accounting and auditing expense;

~~((xix))~~ Public relations expense; and

~~((xx))~~ loss mitigation, and underwriting expenses;

~~((xxi))~~ Federal income tax incurred;

~~((xxii))~~ Other specifically identified expenses((- (e)); and

~~((xxiii))~~ Other information required by the commissioner as specified in the Title Company Statistical Report under WAC 284-29A-110.

(g) An explanation that((;

~~((i))~~ Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and

~~((ii))~~ demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

~~((d))~~ The estimated average cost to issue a title insurance commitment.)

(3) The expense allocation between title insurance related expenses and escrow expenses shall be based upon the income received from title insurance premiums and related income and escrow income.

(4) If ~~((a title insurer))~~ the statistical reporting agent does not receive a report required under this section by ~~((April 1st))~~ May 31st of each year, the ~~((title insurer))~~ statistical reporting agent must notify the commissioner by ~~((April))~~ June 15th. This notice must include the name of the title insurer or title insurance agent that did not send the report on time.

~~((4))~~ (5) For the ~~((2011))~~ 2013 calendar year report, each title insurer and title insurance agent must submit the report to the ~~((title insurer(s)))~~ statistical reporting agent designated by the commissioner on or before ~~((April 1, 2013))~~ September 1, 2014.

NEW SECTION

WAC 284-29A-170 Duties of the statistical reporting agent. The duties of the statistical reporting agent designated by the commissioner shall include, but not be limited to, the following:

(1) If any title insurer, title insurance agent, or both, do not file their annual report required by RCW 48.29.017 and WAC 284-29A-110 by May 31st of each year, the statistical reporting agent must notify the commissioner by June 15th of any title insurers or title insurance agents, or both, that failed to file their report;

(2) Review the reports received for quality and accuracy;

(3) Ensure that title insurers and title insurance agents are reporting data similarly and consistently;

(4) In consultation with the commissioner, aggregate data to a level that would not permit any user of the aggregate data to identify data associated with any particular title insurer, title insurance agent, or title insurance transaction;

(5) In consultation with the commissioner, produce the reports of the aggregated data by areas that are similar in expenses;

(6) Prepare and submit a report of the aggregated data to the title insurers, title insurance agents, and the commissioner;

(7) File the individual reports received from the title insurers and title insurance agents with the commissioner; and

(8) Other duties as agreed to between the commissioner and the statistical reporting agent consistent with RCW 48.29.017 and this chapter.

NEW SECTION

WAC 284-29A-180 Allocation of costs and expenses, including any examination costs, of the statistical reporting agent. RCW 48.29.017(1) provides that the costs and expenses of the statistical reporting agent must be borne by all the authorized title insurers and licensed title insurance agents. RCW 48.03.060(6) provides that the expense of any examination of the statistical reporting agent must be borne

by all the authorized title insurers and licensed title insurance agents.

(1) The criteria for determining the annual cost and expenses, including any examination costs, of the statistical reporting agent shall be determined by contract between the statistical reporting agent and the commissioner. A pro rata share of the costs and expenses of the statistical reporting agent shall be charged to all authorized title insurers and licensed title insurance agents. The allocation of the costs and expenses, including any examination costs, of the statistical reporting agent among the title insurers and title insurance agents shall be based upon written premium in this state by the title insurer or title insurance agent as compared to the entire written premium for all title insurance business written in this state. The written premium shall be determined as follows:

(a) The title insurer's premium volume for this state will be the amount of written premiums for the title insurer's direct operations as reported on schedule T of the title insurer's annual financial statement for the preceding calendar year. This amount should be the same as the total of direct written premiums by the title insurer in this state as filed with the statistical reporting agent.

(b) The title insurance agent's premium volume for this state will be the amount of direct written premiums for the preceding calendar year for all underwriters from the agents report filed with the statistical reporting agent.

(2) Every title insurer and title insurance agent must pay its portion of the costs and expenses, including any examination costs, of the statistical reporting agent within thirty days of receiving the billing for the costs and expenses, including an examination of the statistical reporting agent.

(3) Failure by a title insurer or title insurance agent to pay timely its portion of the costs and expenses, including any examination costs, of the statistical reporting agent is a violation of RCW 48.29.017 or 48.03.060(6) and will subject a title insurer to disciplinary action under chapter 48.05 RCW and a title insurance agent to disciplinary action under chapter 48.17 RCW.

WSR 14-07-107

PROPOSED RULES

PENINSULA COLLEGE

[Filed March 19, 2014, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-024.

Title of Rule and Other Identifying Information: Code of student rights and responsibilities.

Hearing Location(s): Peninsula College, Cornaby Center, A-12, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, on April 22, 2014, at 2:00-3:00 p.m.

Date of Intended Adoption: May 20, 2014.

Submit Written Comments to: Pattie Fischer, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, e-mail pfischer@pencol.edu, fax (360) 417-6220, by April 22, 2014.

Assistance for Persons with Disabilities: Contact Melissa Delikat by April 15, 2014, TTY (360) 417-6339 or mdelikat@pencol.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current student rights and responsibilities rule is out-of-date; last agency filing was 2001. We are repealing chapter 132A-120 WAC and replacing it with chapter 132A-125 WAC. The new rule is needed to update misconduct and incorporate Title IX and Violence Against Women Act procedural elements. The new rule contains substantial reorganization of existing and new material.

Reasons Supporting Proposal: The proposed rules are in line with current practice and existing laws.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13) and 42.56.040.

Rule is necessary because of federal law, 42 U.S.C. Ch. 136, Subchapter III; 20 U.S.C. Sec. 1681 *et seq.*

Name of Proponent: Peninsula College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jack Huls, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, (360) 417-6231.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because it is not necessary. The proposed rule would not impose costs on businesses in industry.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 18, 2014

P. A. Fischer
Rules Coordinator

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132A-120-006 Student rights.
- WAC 132A-120-011 Student responsibilities.
- WAC 132A-120-016 Hazing.
- WAC 132A-120-021 Delegation of disciplinary authority.
- WAC 132A-120-026 Disciplinary action.
- WAC 132A-120-031 Initiation of discipline.
- WAC 132A-120-036 Appeals.
- WAC 132A-120-041 Hearing of appeals.
- WAC 132A-120-046 Summary suspension and appeals.
- WAC 132A-120-051 Student grievances.
- WAC 132A-120-056 Informal grievance procedures.
- WAC 132A-120-061 Formal grievance procedures.

Chapter 132A-125 WAC

CODE OF STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132A-125-005 Preamble. Peninsula College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share in the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the rights, privileges, and property of the college community.

NEW SECTION

WAC 132A-125-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president for student services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132A-125-015 Definitions. The following definitions shall apply for the purposes of this student conduct code:

- (1) "Business day" means a weekday, excluding weekends and college holidays.
- (2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.
- (3) "Conduct review officer" is the vice-president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.
- (4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion, are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(7) "Respondent" is the student against whom disciplinary action is initiated.

(8) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(9) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(10) "Student conduct officer" is a college administrator designated by the president or vice-president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(11) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities, as set forth in this chapter, as may be reasonably necessary.

NEW SECTION

WAC 132A-125-020 Statement of jurisdiction. The Peninsula College code of student rights and responsibilities shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual

receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 132A-125-025 Student rights. The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy that are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132A-125-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submis-

sion for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties including, failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his or her designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct that is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct that harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of violence in a dating and/or domestic relationship. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual Misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies

including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132A-125-035 Disciplinary sanctions—Terms—Conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the

college at any official function, or any forms of intercollegiate competition or representation.

NEW SECTION

WAC 132A-125-040 Initiation of disciplinary action.

(1) All disciplinary actions shall be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132A-125-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION

WAC 132A-125-045 Appeal of disciplinary action.

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings, and dismissals of disciplinary actions are final action and are not subject to appeal.

NEW SECTION

WAC 132A-125-050 Brief adjudicative proceedings authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Parking violations.¹

(2) Outstanding debts owed by students or employees.

(3) Use of college facilities.

(4) Residency determinations.

(5) Use of library - Fines.

(6) Challenges to contents of education records.

(7) Loss of eligibility for participation in institution sponsored athletic events.

(8) Student conduct appeals involving the following disciplinary actions:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands;

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner, which will bring about a prompt fair resolution of the matter.

¹ Subsections (1) through (7) and (9) of this section are the types of issues that colleges typically use a brief adjudicative proceeding to resolve and are included here merely for illustrative purposes.

NEW SECTION

WAC 132A-125-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132A-125-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to

have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132A-125-065 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 132A-125-070 Student conduct committee proceedings. (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One administrative staff member, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132A-125-075 Student conduct committee proceedings—Appeals. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in

RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing at a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline, or referral to the committee, and (b) the notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132A-125-080 Student conduct committee proceedings—Hearings and presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision;
- or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132A-125-085 Student conduct committee proceedings—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 132A-125-090 Student conduct committee proceedings—Appeal of initial decision (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132A-125-095 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges, for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices that may be bound or protected by it.

NEW SECTION

WAC 132A-125-100 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132A-125-005 through 132A-125-095. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132A-125-105 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section

(2) "Sexual misconduct" is prohibited sexual- or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking; and

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual or gender based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132A-125-110 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit, and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or condi-

tions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132A-125-115 Supplemental appeal rights. (1)

The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or
 (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132A-125-110(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) Exoneration and dismissal of the proceedings;
 (b) Disciplinary warning;
 (c) Written reprimand;
 (d) Disciplinary probation;
 (e) Suspensions of ten instructional days or less; and/or
 (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross-examine one another. All questions shall be directed to

the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

WSR 14-07-108

PROPOSED RULES

CLOVER PARK

TECHNICAL COLLEGE

[Filed March 19, 2014, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-146.

Title of Rule and Other Identifying Information: Delete chapter 495C-120 WAC, Student conduct code and replace with new chapter 495C-121 WAC, Student conduct code.

Hearing Location(s): Building 23, Room 212, 4500 Steilacoom Boulevard S.W., Lakewood, WA 98499-4004, on April 22, 2014, at 3:00 p.m.

Date of Intended Adoption: May 7, 2014.

Submit Written Comments to: Jim Tuttle, Chief Human Resources and Legal Affairs Officer, 4500 Steilacoom Boulevard S.W., Lakewood, WA 98499-4004, e-mail jim.tuttle@cptic.edu, fax (253) 589-6042, by April 20, 2014.

Assistance for Persons with Disabilities: Contact Susan Bushey by April 14, 2014, (253) 589-5542.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current student conduct code, last revised in 2002, is outdated. One reason that replacing it with a new chapter makes more sense than trying to update all of the old one is that the community

and technical college student services (S.S.) officers and the attorney general's office have developed new "model" language. Among other changes, our new chapter is intended to enhance college compliance with federal law, including Title IX and the Violence Against Women Reauthorization Act (VAWA).

While the existing rules are being replaced, not changed, the overall changes may be briefly summarized as including:

- Initial determinations on discipline will be more centralized, as will disciplinary records.
- Prohibited student conduct will be more clearly defined, and expanded to cover some additional undesirable behaviors.
- Disciplinary conditions will be added to the traditional sanctions through which the college imposes discipline.
- Two avenues for appealing discipline will be established. Appeals of more serious discipline will be heard by a student conduct committee. Lesser disciplines will be reviewed through less formal brief adjudicative proceedings.

Reasons Supporting Proposal: Overall updating is needed. Centralizing discipline functions should mean more consistency in the process. Clarifying what conduct is prohibited will mean better accountability and notification to students. Adding the option of disciplinary conditions will mean greater flexibility in providing remediation. The changed procedures and appeal rights will better comply with Title IX and VAWA.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, Title IX—20 U.S.C. §§ 1681-88; VAWA—42 U.S.C. § 13701 note; etc.

Name of Proponent: Clover Park Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tuttle and Others, Building 17, 4500 Steilacoom Boulevard S.W., Lakewood, 98499, (253) 589-5533; Implementation: Ted Broussard, Vice-President Student Services, Building 17, 4500 Steilacoom Boulevard S.W., Lakewood, 98499, (253) 589-5546; and Enforcement: Ron Wright, Building 17, 4500 Steilacoom Boulevard S.W., Lakewood, 98499, (253) 589-5766.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Such a statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to these college rules.

March 19, 2014
James R. Tuttle
Chief Human Resources
and Legal Affairs Officer

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 495C-120-010 Definitions.
- WAC 495C-120-020 Statement of purpose.
- WAC 495C-120-030 Jurisdiction.
- WAC 495C-120-040 Student misconduct.
- WAC 495C-120-041 Hazing policy.
- WAC 495C-120-045 Loss of eligibility—Student participation.
- WAC 495C-120-050 Civil disturbances.
- WAC 495C-120-060 Free movement on campus.
- WAC 495C-120-070 Right to demand identification.
- WAC 495C-120-080 Dishonesty/classroom conduct.
- WAC 495C-120-090 Campus speakers.
- WAC 495C-120-100 Distribution of information.
- WAC 495C-120-110 Commercial activities.
- WAC 495C-120-120 Disciplinary process.
- WAC 495C-120-125 Summary suspension.
- WAC 495C-120-130 Disciplinary terms.
- WAC 495C-120-135 Refunds and access.
- WAC 495C-120-140 Readmission after suspension or expulsion.
- WAC 495C-120-150 Readmission into instructional program.
- WAC 495C-120-160 Hearing procedures.
- WAC 495C-120-170 Appeals.
- WAC 495C-120-180 Reporting, recording and maintaining records.

Chapter 495C-121 WAC STUDENT CONDUCT CODE

Part 1 GENERAL PROVISIONS

NEW SECTION

WAC 495C-121-010 Definitions. The following definitions shall apply for the purposes of this student conduct code, chapter 495C-121 WAC:

(1) "College" means Clover Park Technical College, College District Twenty-nine.

(2) "College facilities" includes all campuses of the college, wherever located, and all land, buildings, vehicles, equipment, and other real and personal property which are owned, leased, used, or controlled by the college.

(3) "Committee" and "student conduct committee" means the committee which is formed under WAC 495C-

121-140 and which hears the matters specified in WAC 495C-121-110.

(4) "Conduct review officer" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving and then either reviewing or referring an appeal of student disciplinary action in accordance with WAC 495C-121-110 and following sections of this chapter. The president may reassign any and all of the conduct review officer's responsibilities as set forth in this chapter as he/she deems appropriate.

(5) "Day" means a calendar day, except that when a "business day" is specified, business day means a weekday, excluding weekends and college holidays.

(6) "Disciplinary action" is the process by which the student conduct officer, or the committee upon a referral, imposes discipline against a student for violation of WAC 495C-121-050. Disciplinary action does not include instructional decisions and actions which are under the authority of faculty members and instructional administrators, such as determinations of academic credit and grading; any such determinations, and any review or appeal of these, are outside the scope of this chapter.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal discipline, as provided in WAC 495C-121-110 through 495C-121-180.

(8) "Family Educational Rights and Privacy Act" and "FERPA" mean the law and regulations known by those names (20 U.S.C. §1232g; 34 C.F.R. Part 99).

(9) "Filing" is delivery of a document to the college official who is designated under this chapter to receive it for the purpose of review of a disciplinary action. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to that official or the official's assistant during regular office hours; or

(b) Sending the document both by first class mail postage prepaid to the official's office and by e-mail to his/her college e-mail address.

(10) "Includes" and "including" means contained as part of a larger described whole or grouping, but these terms are not a limitation and mean "but not limited to."

(11) "President" is the president of the college. The president may delegate any of his or her responsibilities under this chapter as he/she deems appropriate.

(12) "Respondent" is the student against whom disciplinary action is initiated.

(13) "Service" is the delivery of a document or copy of a document to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document both by first class and/or certified mail postage prepaid to the party's last known address and by e-mail to the e-mail address shown in the college's records.

Service is deemed complete either upon hand delivery or when the document has been both deposited in the mail and e-mailed.

(14) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw

after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(15) "Student conduct officer" is a college administrator designated by the president or vice-president of student services to be responsible for investigating allegations of student misconduct and taking disciplinary action as provided in WAC 495C-121-100. The president or vice-president of student services may reassign any of the student conduct officer's responsibilities under this chapter as he/she deems appropriate.

(16) "Vice-president of student services" is the position which reports directly to the president and which the president assigns overall operational responsibility for this chapter. The president may reassign, or the vice-president may delegate, any such responsibility as he/she deems appropriate.

NEW SECTION

WAC 495C-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.10.528 and 28B.50.140(14), delegates to the president the authority to administer student disciplinary actions and appeals. Through enactment of this chapter, the president subdelegates and/or further assigns responsibilities related to student discipline to other college officials and positions.

NEW SECTION

WAC 495C-121-030 Jurisdiction. (1) The student conduct code, chapter 495C-121 WAC, shall apply to student conduct that occurs:

(a) In or on college facilities;

(b) At or in connection with college-sponsored activities;

or

(c) Off-campus when in the judgment of the college it adversely affects the college community or the pursuit of its objectives.

(2) This chapter applies to conduct which occurs at all locations where students are engaged in college activities, including foreign or domestic travel, activities funded or sponsored by the associated students, athletic or recreational events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned activities.

(3) This chapter applies to conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. This chapter shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

(4) The college has sole discretion, on a case-by-case basis, to determine whether this student conduct code will be applied to conduct that occurs off campus.

(5) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and crim-

inal authorities for disposition. The college may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

NEW SECTION

WAC 495C-121-040 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law, rules, and college policies:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, papers, and effects against unreasonable college searches and seizures are guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of misconduct that is subject to discipline is entitled to the procedural due process set forth in this chapter.

NEW SECTION

WAC 495C-121-050 Prohibited student conduct. The college may initiate disciplinary action against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, any of the following act(s) of misconduct:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or providing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct or complete information, in response to the request or requirement of a college official or employee.

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyberstalking, cyberbullying or online harassment.** Use of electronic communications, including electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include unauthorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state, including college facilities;

(b) Any college student, official, employee, or organization; or

(c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view; and

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing.

(9) **Hazing.** Any initiation into a student organization, or any pastime or amusement engaged in with respect to such an organization, that causes, or is likely to cause, bodily danger, physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** Use, possession, delivery, sale, or being observably under the influence of marijuana, the psychoactive compounds found in marijuana, or any product containing marijuana or such compounds that is intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college facilities or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking

devices, and/or related products on or in any college facility, except that such use in a smoking shelter designated by the college or in a closed private vehicle is permitted when consistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

(b) Sexual intimidation is a type of "sexual harassment" that involves threatening or emotionally distressing conduct based on sex, including nonconsensual recording of sexual activity or distribution of such a recording.

(c) Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, and gender- or sex-based stalking. The term further includes acts of dating violence or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic.

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's policies or procedures governing the use of such time or resources.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college facilities, or unauthorized entry onto or into college facilities.

(18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, procedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.

(19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.

(20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.

(21) Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:

(a) Falsification or misrepresentation of information;

(b) Failure to obey a subpoena;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or

(f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.

(22) **Ethical violation.** Breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

NEW SECTION

WAC 495C-121-060 Disciplinary sanctions and conditions. (1) **Disciplinary sanctions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) **Disciplinary warning.** An oral statement to a student that there is a violation and that any further violation may be cause for further disciplinary action. Although verbal, the student conduct officer should make a record of the warning. The respondent cannot appeal a disciplinary warning.

(b) **Written disciplinary reprimand.** A written notice informing a student that he/she has violated one or more terms of the code of conduct and that future misconduct involving the same or similar behavior may result in the imposition of a more severe disciplinary sanction.

(c) **Disciplinary probation.** A written notice placing specific term(s) and condition(s) upon the student's continued attendance at the college. Disciplinary probation may be for a limited period of time or for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Temporary revocation of enrollment and termination of student status, for a stated period of time. The student may be prohibited from coming onto any college facility and may be subject to law enforcement action for criminal trespass for violating that prohibition. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** Revocation of enrollment and of all rights and privileges of membership in the college community, and exclusion from college facilities, without any time limitation. There will be no refund of tuition or fees for the quarter in which the action is taken. The student may be subject to law enforcement action for criminal trespass for violating that exclusion. A dismissal may be subsequently ended only by a written decision of the president, for documented good cause.

(2) **Disciplinary conditions.** Disciplinary conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction under subsection (1) of this section include:

(a) **Restitution.** Reimbursement for (i) damage to, or theft or misuse of, real or personal property or money, or (ii) injury to persons. This reimbursement may take the form of money, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation, at the student's expense, by an appropriately certified or licensed professional. The student may choose the professional within the scope of practice and with the professional credentials as specified by the college. The student must sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in the evaluation. If

the student has been suspended, the student may remain suspended until the most recent evaluation finds that the student is capable of reentering the college and complying with the college's expectations for conduct.

(c) Restrictions on activities. A student may be subjected to the following restrictions:

(i) Ineligible to hold any college office or position or any office in any student organization;

(ii) Ineligible to participate in any college activity(ies); and/or

(iii) Ineligible to represent the college outside the college community, including at any event or in any form of competition.

(d) Required activities. Assignment of appropriate tasks or responsibilities, or required attendance at an appropriate program, instructional course, or other educational activity, which may be at the student's expense.

(e) Protective or no contact order. An order directing a student to have limited or no contact with any specified student(s), college employee(s), member(s) of the college community, or college facility.

(f) Loss of state funding. A student found to have committed hazing shall forfeit any entitlement to state-funded grants, scholarships, or awards, pursuant to RCW 28B.10.902.

NEW SECTION

WAC 495C-121-070 Faculty/administrator authority regarding classroom disruption. (1) Faculty members and instructional administrators are authorized to take appropriate action to maintain order and proper conduct in the classroom and the cooperation of students in fulfilling course objectives.

(2) If a faculty member or instructional administrator determines that a student has created a disruption which makes it unreasonably difficult to maintain the learning and teaching environment or the decorum of a class or activity, he/she may suspend that student from the class or activity for up to a total of one day per day of disruption. The faculty member or administrator shall report this suspension to the student conduct officer, who shall have the option, depending on the severity, to treat the suspension as insufficient and also initiate further discipline under this chapter.

(3) The suspension of up to one day per day of disruption shall not be subject to any further appeal or review. However, any further discipline imposed by the student conduct officer shall be processed in accordance with this chapter.

(4) Any suspension initiated by a faculty member or instructional administrator under this section will not affect any student grading that is based directly on attendance.

NEW SECTION

WAC 495C-121-080 Disciplinary records. (1) Records of a disciplinary proceeding under this chapter are disciplinary records which must be maintained by the office of the vice-president of student services separately from student academic records and in accordance with applicable state records retention requirements.

(2) Disciplinary records are confidential to the extent required by applicable laws, including the Family Educational Rights and Privacy Act. To the extent permitted by such laws, the respondent, or if a minor, the student's parent, may review his/her disciplinary records, obtain a copy of such records upon payment of any lawful charges for duplication, and/or authorize disclosure of such records.

PART 2 DISCIPLINARY PROCEDURES

NEW SECTION

WAC 495C-121-100 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate possible disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the specific apparent misconduct under WAC 495C-121-050, and the range of possible disciplinary sanctions, and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may impose disciplinary sanction(s) and conditions based upon the available information.

(3) Within ten days of the scheduled initial disciplinary meeting, and after considering the information obtained by investigation and any information presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, the consequences if a student fails to satisfy any disciplinary condition(s) which are being imposed, and a notice of the respondent's appeal rights, if any, with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following actions:

(a) Terminate the proceeding, with any appropriate exoneration of the respondent or counseling or advice to the respondent. The respondent cannot appeal a termination of the proceedings;

(b) Specify misconduct under WAC 495C-121-050 which he/she finds to have occurred and impose disciplinary sanction and/or condition(s), as described in WAC 495C-121-060; or

(c) Refer the matter directly to the student conduct committee for a hearing and imposition of such disciplinary sanction and/or condition(s) as the committee deems appropriate. Such referral shall be to the attention of the chair of the committee with a copy served on the respondent.

NEW SECTION

WAC 495C-121-110 Appeals and referrals—Routing. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to file a timely notice of appeal constitutes a waiver of the right to appeal, and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) Except as provided in WAC 495C-121-230 or elsewhere in these rules, the parties to an appeal shall be the respondent and the student conduct officer.

(4) On appeal, the student conduct officer bears the burden of establishing the factual elements of the alleged misconduct by a preponderance of the evidence, i.e., that it is more likely than not that the respondent engaged in the alleged misconduct.

(5) Imposition of a disciplinary sanction and conditions shall be stayed during an appeal, except for a summary suspension that has been imposed under WAC 495C-121-190.

(6) The student conduct committee shall hear:

(a) Appeals from disciplinary suspensions in excess of ten instructional days, and any related disciplinary condition(s);

(b) Appeals from dismissals, and any related disciplinary condition(s); and

(c) Cases referred by the student conduct officer, the conduct review officer, or the president.

(7) Appeals from the following disciplinary sanctions and related disciplinary conditions shall be reviewed through a brief adjudicative proceeding:

(a) Written disciplinary reprimands, and any related disciplinary condition(s);

(b) Disciplinary probation, and any related disciplinary condition(s); and

(c) Disciplinary suspensions of ten instructional days or less, and any related disciplinary condition(s).

(8) Except as provided elsewhere in these rules, disciplinary warnings and terminations of proceedings are final actions and are not subject to appeal.

NEW SECTION

WAC 495C-121-120 Brief adjudicative proceedings—Initial hearing and decision. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he/she is a witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction to the student conduct officer.

(2) Before making a decision, the conduct review officer shall schedule an informal hearing to provide each party an opportunity (a) to be informed of the agency's view of the matter, and (b) to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the parties within ten days of the scheduled hearing. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek review under WAC 495C-121-130.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or a dismissal, he/she shall refer the matter to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495C-121-130 Brief adjudicative proceedings—Review of initial decision. (1) A party may obtain review of an initial decision by the president, by filing a written request for review with the conduct review officer within twenty-one days of service of the initial decision. That officer shall promptly forward the request to the president. If no timely request for review is filed, the initial decision shall become the final decision.

(2) The president shall not participate in any case in which he/she is a witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction.

(3) During the review, the president shall give each party an opportunity to file a written statement explaining their view of the matter and shall make any inquiries to the parties which are necessary to ascertain whether the discipline should be modified or whether the proceedings should be referred to the student conduct committee for a hearing.

(4) The president shall serve a written decision on review on all parties within twenty days of the later of the filing of the request for review or any deadline for parties' explanatory statements. A request for review may be deemed to have been denied if the president does not serve a decision within those twenty days. The decision shall include a brief statement of its reasoning. The president's decision shall be the final college action in the matter, and shall include notice of any right to request reconsideration and of the right to seek judicial review under chapter 34.05 RCW.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a dismissal or a disciplinary suspension of more than ten instructional days, he/she shall refer the matter to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495C-121-140 Student conduct committee—Formation. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between this chapter and chapter 10-08 WAC, this chapter shall control.

(2) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government to terms of up to one academic year;

(b) Two faculty members appointed by the president to terms of up to two academic years, beginning in alternating years;

(c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review

officer, appointed as chair by the president for a term of up to two academic years.

Members may be reappointed for subsequent terms. Any member may be replaced by the appointing authority for the remainder of the term for good cause shown.

(3) The faculty member or administrator appointed as chair may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(4) A member of the student conduct committee shall not participate in any case in which he/she is a party, complainant, or witness, has direct or personal interest, prejudice, or bias, or has previously provided significant advice or direction. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

(5) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

NEW SECTION

WAC 495C-121-150 Student conduct committee—Prehearing proceedings. (1) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(2) The chair may conduct prehearing conferences and/or make prehearing decisions concerning the simplification of issues, the extent and form of any discovery, issuance of protective orders, and similar procedural matters.

(3) Discovery will be available as determined by the chair and in accordance with RCW 34.05.446. Upon request, the chair shall provide reasonable assistance to a party in obtaining relevant and admissible evidence that is within the college's control.

(4) The chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline or referral to the committee, and (b) the notice of appeal. If doing so, however, the chair should remind the members that these documents are not evidence of any facts they may allege.

(5) Upon request filed at least five business days before the hearing by any party, or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) Communications between a committee member and any other nonmember hearing participant regarding any issue in the proceeding, other than communications necessary to procedural aspects of maintaining an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

NEW SECTION

WAC 495C-121-160 Student conduct committee—Hearings. (1) Upon the failure of any party to attend or participate in a hearing, the chair may either:

(a) Proceed with the hearing; or

(b) Serve a default order in accordance with RCW 34.05.440.

(2) The committee will ordinarily be advised by an assistant attorney general.

(3) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A party other than the student conduct officer may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the chair, with a copy to the student conduct officer. If such a party is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened, assistant attorney general.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee. Evidence shall be admitted or excluded in accordance with RCW 34.05.452. All testimony shall be given under oath or affirmation.

(5) The hearing will ordinarily be closed to the public, in light of the Family Educational Rights and Privacy Act. However, if all parties agree on the record to open some or all of the proceedings, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(6) The chair shall afford opportunity to all parties to present their cases, and shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(7) The chair shall assure maintenance of the record of the proceeding which is required by RCW 34.05.476. This record shall be available upon request by any party for inspection and copying, except as limited by FERPA.

NEW SECTION

WAC 495C-121-170 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration. Only evi-

dence presented at the hearing will be considered by the committee.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial order shall include:

(a) Findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of WAC 495C-121-050 were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(b) A determination on appropriate disciplinary sanction and/or disciplinary conditions, if any. The committee may affirm, reverse, modify, or supplement any disciplinary sanction and/or disciplinary condition(s) imposed by the student conduct officer.

(c) A statement that the initial order will become final unless a party seeks review of that decision in accordance with WAC 495C-121-180.

(3) The chair shall cause copies of the initial decision to be served on the parties, including any legal counsel of record. The committee chair shall also promptly transmit the record of the committee's proceedings and a copy of its decision to the president.

NEW SECTION

WAC 495C-121-180 Student conduct committee—Review of initial decision. (1) A party who is aggrieved by the committee's initial decision may obtain review of that decision by filing a notice of appeal with the president within twenty-one days after it was served on that party. If no timely notice of appeal is filed, the initial decision shall become the final decision.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged, and must contain an argument why the appeal should be granted.

(3) The president may ask for additional argument from the parties on the issues raised in the notice of appeal. The president's review will ordinarily be limited to those issues, and shall be restricted to the committee hearing record. The president shall not engage in ex parte communication with any of the parties regarding the appeal.

(4) The president shall serve a written decision on review on all parties within forty-five days after receipt of the notice of appeal. The decision shall include appropriate findings and conclusions. Unless it remands the case to the committee for further proceedings or gives a right to request reconsideration, the president's decision shall be the final college action in the matter and shall include notice of the right to seek judicial review under chapter 34.05 RCW.

NEW SECTION

WAC 495C-121-190 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college facilities and denial of access to all activities or privileges for which a respondent might otherwise be eligible,

while an investigation, disciplinary procedures, and/or an appeal are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe, i.e., there are reasonable grounds for believing, that the respondent has committed misconduct under WAC 495C-121-050 and that either:

(a) The situation involves an immediate danger to the public health, safety, or welfare which requires immediate college action; or

(b) The student's behavior poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) A summary suspension shall be effective when the respondent receives written or oral notice of that suspension. If oral notice is given, a written notification must be served on the respondent within two business days of the oral notice. The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the misconduct and specification of the provisions of WAC 495C-121-050 allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access college facilities or communicate with members of the college community. If the respondent is prohibited from entering college facilities, he/she may be given a notice against trespass which warns that his/her privilege to enter college facilities has been withdrawn, subject to any specified exceptions such as an invitation to meet with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing, and that he/she shall be considered to be trespassing and subject to arrest for criminal trespass for any violation.

(4) The hearing before the conduct review officer shall be scheduled as soon as practicable after service of the notice of summary suspension. If the respondent fails to appear at the scheduled time, the conduct review officer may order that the summary suspension remain in place. During the summary suspension hearing, the issues shall be:

(a) Whether the requirements under subsection (2) of this section are satisfied; and

(b) Whether the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or should be less restrictive in scope.

(5) As soon as practicable following the hearing, the conduct review officer shall issue, and serve on the respondent and student conduct officer, a written decision which addresses the issues at the hearing. The conduct review officer shall also provide information about the decision, to the extent legally permissible under FERPA, to all persons and offices who may be bound or protected by it.

(6) The respondent may request a de novo review of the summary suspension hearing decision by the student conduct committee. The review will be scheduled promptly. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

PART 3
SUPPLEMENTAL PROCEDURES FOR CASES
INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 495C-121-200 Supplemental definitions. The following supplemental definitions apply in student disciplinary matters involving allegations of sexual misconduct by a student:

- (1) A "complainant" is an alleged victim of sexual misconduct.
- (2) "Sexual misconduct" has the meaning ascribed to this term in WAC 495C-121-050.
- (3) "Title IX compliance officer" is the college position designated by the president as having the primary direct responsibilities related to Title IX, 20 U.S.C. §§1681-88.

NEW SECTION

WAC 495C-121-210 Supplemental sexual misconduct procedures. In student discipline matters involving allegations of sexual misconduct by a student:

- (1) Both the respondent and the complainant shall be provided the same, or substantially equivalent, procedural rights to participate. For the complainant, this includes the rights to meet with the student conduct officer during the initial disciplinary process under WAC 495C-121-100 and to appeal as provided in WAC 495C-121-230.
- (2) These rules shall supplement the foregoing student disciplinary rules in WAC 495C-121-010 through 495C-121-190. In the event of conflict between these supplemental sexual misconduct rules and the foregoing rules, these supplemental rules shall prevail.

NEW SECTION

WAC 495C-121-220 Supplemental complaint process. With respect to complaints or other reports of alleged sexual misconduct by a student:

- (1) The college's Title IX compliance officer shall investigate, or assure investigation of, complaints or other reports of alleged sexual misconduct by a student. The investigation will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for possible disciplinary action.
- (2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue the mediation at any time. Mediation shall not be used to resolve complaints involving allegations of sexual violence.
- (3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process such complaints.

(4) The student conduct officer, prior to serving a disciplinary decision under WAC 495C-121-100, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or disciplinary conditions that may be imposed.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent under WAC 495C-121-100, will serve a written notice, in compliance with FERPA, informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions which are being imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of her/his rights to appeal as stated in WAC 495C-121-230. If protective disciplinary sanctions and/or conditions are imposed, the student conduct officer shall also make a reasonable effort to have the notice served upon the complainant prior to service upon the respondent.

NEW SECTION

WAC 495C-121-230 Supplemental appeal rights. In student discipline matters involving allegations of sexual misconduct by a student:

- (1) The following actions by the student conduct officer may be appealed by the complainant:
 - (a) The dismissal of a sexual misconduct complaint; or
 - (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.
- (2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the disciplinary decision provided for in WAC 495C-121-220(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.
- (3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.
- (4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.
- (5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:
 - (a) Termination of the proceedings;
 - (b) A disciplinary warning;
 - (c) A written disciplinary reprimand;
 - (d) Disciplinary probation;
 - (e) Suspensions of ten instructional days or less; and/or
 - (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or

an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) The complainant and respondent shall not directly question or cross-examine one another in either brief adjudicative proceedings or proceedings before the committee. In proceedings before the committee, all questions shall be directed to the chair, who will act as an intermediary and pose questions on the party's behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.

(10) On the same date as the initial decision is served on the respondent under WAC 495C-121-120 or 495C-121-170, the conduct review officer or committee chair, as appropriate, will serve complainant with a written notice consistent with FERPA which states whether the allegations of sexual misconduct were found in the initial decision to have merit and describing any disciplinary sanction(s) and/or disciplinary condition(s) imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of his/her appeal rights.

(11) Complainant, as a party, may appeal the initial decision to the president, under either WAC 495C-121-130, after a brief adjudicative proceeding, or WAC 495C-121-180, after a committee proceeding.

(12) On the same date that the president serves his/her decision on review on the other parties, under WAC 495C-121-130 or 495C-121-180, he/she shall serve complainant either with that decision, if allowed under FERPA, or with a written notice consistent with FERPA which both states whether the allegations of sexual misconduct were found to have merit and describes any disciplinary sanction(s) and/or disciplinary condition(s) imposed upon the respondent for the complainant's protection. This notice shall communicate the final college action in the matter and shall include notice of the right to seek judicial review under chapter 34.05 RCW.

WSR 14-07-110
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed March 19, 2014, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-074.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?, to update the utility allowances for the Washington Basic Food program to include the standard utility allowance, limited utility allowance and the telephone utility allowance. The allowances are used when calculating Basic Food benefits.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on April 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 23, 2014.

Submit Written Comments to: DSHS rules coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., April 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by April 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?

Reasons Supporting Proposal: The proposed amendments adopt new requirements for a household to receive the standard utility allowance based on receipt of a federal LIHEAP payment and to reinstate the standard utility, limited utility and telephone utility allowances when determining Basic Food as required by the Agricultural Act of 2014 (farm bill) as enacted, Public Law 113-79 – Agriculture [Agricultural] Act of 2014.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.510.

Rule is necessary because of federal law, Agricultural [Agriculture] Reform and Risk Management Act of 2014 [2013] (farm bill) as enacted.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, CSD, ESA, 712 Pear Street, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the

department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

March 17, 2014
Katherine I. Vasquez
Rules Manager

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits? ~~((1) We use a standard utility allowance (SUA) of four hundred nine dollars instead of your actual utility costs when we determine your assistance unit's:~~

~~(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or~~

~~(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.~~

~~(2) We considered the average cost of the following utilities to determine the value of the SUA:~~

~~(a) Heating and cooling fuel such as electricity, oil, or gas;~~

~~(b) Electricity;~~

~~(c) Water and sewer;~~

~~(d) Well or septic tank installation/maintenance;~~

~~(e) Garbage/trash collection; and~~

~~(f) Telephone service.~~

~~(3) The department uses the SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.)~~ (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) For Basic Food, "utilities" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water and sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(3) We use the amounts below if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in Low Income Home Energy Assistance Act (LIHEAA) benefits each year, you get a standard utility allowance (SUA) of four hundred nine dollars.

(b) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (2) of this sec-

tion, you get a limited utility allowance (LUA) of three hundred thirty dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of sixty-five dollars.

(4) If your AU receives Basic Food on March 9, 2014, you receive the SUA through August 2014 regardless of your household's utility expenses unless you have a lapse in your Basic Food benefits.

WSR 14-07-111

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed March 19, 2014, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-134 on January 22, 2014.

Title of Rule and Other Identifying Information: The Washington department of fish and wildlife (WDFW) is considering rule amendments relating to the commercial harvest of mackerel in the coastal sardine purse seine fishery, WAC 220-44-095 Coastal sardine purse seine fishery—Harvest landing, and reporting requirements.

Hearing Location(s): WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, on April 29, 2014, at 10:00 a.m.

Date of Intended Adoption: On or after April 30, 2014.

Submit Written Comments to: Joanna Eide, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by April 22, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by April 22, 2014, TTY 1-800-833-6388 or (360) 902-2207.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will establish a jack (*Carangidae*) and mackerel (*Scombridae*) incidental catch limit of forty-five percent of total landed catch, by weight, in the directed Pacific sardine fishery. The commercial sardine purse seine limited entry program established in 2009 did not provide for the landing of jacks (*Carangidae*) and mackerels (*Scombridae*) in the directed fishery. This proposal will allow catch to include jacks (*Carangidae*) and/or mackerels (*Scombridae*). This proposal also clarifies language and improves rule structure.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorna Wargo, 48 Devonshire Road, Montesano, WA, (360) 249-1221; and Enforcement: Steven

Crown, 1111 Washington Street S.E., Olympia, WA, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

This proposed rule change will establish a jack (*Carangidae*) and mackerel (*Scombridae*) incidental limit of forty-five percent of total landed catch in the Washington coastal directed Pacific sardine purse seine fishery since legislative authority does not currently exist for a directed jack or mackerel fishery. This rule also clarifies language and improves rule structure.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: Commercial fishers and dealers will use existing and already established business operations to document catch on fish landing receipts. This rule proposal does not impose new or expand upon current requirements for reporting catch in the directed Pacific sardine fishery.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: There are no additional costs to businesses.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No, compliance with the rule will not cause lost sales or revenue for businesses. The proposed rule expands opportunity for fishers and dealers by establishing an incidental allowance for jacks (*Carangidae*) and/or mackerels (*Scombridae*) of up to forty-five percent by weight per Pacific sardine landing. The commercial Pacific sardine limited entry license program established in 2009 does not authorize the landing of jacks (*Carangidae*) and mackerels (*Scombridae*) in a directed fishery for these species; WAC only provides for the bycatch of mackerels which by definition is to be a nominal amount of the total landing. This rule proposal will increase opportunity by permitting an incidental allowance, i.e. up to forty-five percent of jacks (*Carangidae*) and/or mackerels (*Scombridae*) per Pacific sardine landing.

5. Cost Of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The proposed rule will not require any additional costs, labor, or equipment. The operations for fishers and dealers are the same whether the landed catch is comprised of one hundred percent Pacific sardine or some combination of Pacific sardine and jacks (*Carangidae*) and/or mackerels (*Scombridae*).

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: The cost of compliance to this rule change is negligible since this rule will not significantly alter the

fishery. For this reason, WDFW did not need to take steps to reduce the costs.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: WDFW routinely interacts with and receives input from affected businesses through industry meetings and informal interactions. A meeting to address this specific rule proposal is scheduled for April 29, 2014, at 10:00 a.m. at the WDFW Region 6 Office at Montesano, Washington.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed sardine fishers participating in the directed sardine fishery will be required to comply with this rule.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: Compliance with this rule will neither create jobs nor cause jobs to be lost since this rule will essentially maintain a conservative harvest of jacks (*Carangidae*) and/or mackerels (*Scombridae*) in the Pacific sardine fishery.

A copy of the statement may be obtained by contacting Joanna Eide, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2403, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

March 19, 2014

Joanna M. Eide

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-003, filed 12/23/09, effective 1/23/10)

WAC 220-44-095 Coastal sardine purse seine fishery—Harvest, landing, and reporting requirements—Gear. (1) Licensing, harvest, and reporting requirements. It is unlawful for persons fishing under a Washington sardine purse seine fishery license or temporary annual fishery permit to fail to:

(a) Carry an observer onboard for any sardine fishing trip if requested by the department;

(b) Surrender up to five hundred sardines per vessel per trip if requested by department samplers for biological information; and

(c) Complete a department-issued logbook each month in which fishing activity occurs, and submit it to the department by the 15th day of the following month.

(2) Possession, transport, and seasons.

(a) It is unlawful to possess, transport through the waters of the state, or deliver into any Washington port, Pacific sardine (*Sardinops sagax*) or other coastal pelagic species taken in violation of gear requirements and other rules published in Title 50, Part 660, Subpart I of the Code of Federal Regulations (C.F.R.). These federal regulations govern commercial fishing for coastal pelagic species in the Exclusive Economic Zone off the coasts of Washington, Oregon, and California. Where the federal regulations refer to the fishery management area, that area is interpreted to include Washington state waters coterminous with the Exclusive Economic Zone. Updates to the federal regulations are published in the Fed-

eral Register. Discrepancies or errors between the C.F.R. and Federal Register will be resolved in favor of the Federal Register. This chapter incorporates the C.F.R. by reference and is based, in part, on the C.F.R. A copy of the federal rules may be obtained by contacting (~~Lori Preuss~~) the department of fish and wildlife rules coordinator at ((360-902-2930)) 360-902-2403, or going to the U.S. Government Printing Office's GPO Access web site (www.gpoaccess.gov). State regulations that are more restrictive than the federal regulations will prevail.

(b) It is unlawful to fish for or possess Pacific sardine taken with any gear from coastal waters except during the coastal sardine fishery season ((is)) open to purse seine fishing each year ((only)) from April 1st through December 31st.

(c) It is unlawful to take Pacific sardine in state waters except for the incidental take authorized by the coastal bait-fish regulations.

~~((e))~~ (d) It is unlawful to retain any species that is taken incidental to sardine, except for anchovy, mackerel, and market squid (*Logligo opalescens*).

(e) It is unlawful to retain mackerel (*Scombridae*) or jacks (*Carangidae*) taken incidental to a lawful sardine fishery that in combination exceeds forty-five percent of the weight of the total landing.

(f) It is unlawful to fail to release any salmon encircled in the purse seine ((must be released)) prior to completion of the set((- and no salmon may be landed)) or to land or retain salmon on the fishing vessel.

~~((d))~~ (g) It is unlawful to transfer sardine catch from one fishing vessel to another.

~~((e))~~ (3) **Landing and delivery.**

(a) It is unlawful to fail to have legal purse seine gear as defined by department rule aboard ~~((the))~~ a vessel making a sardine landing.

~~((f))~~ (b) It is unlawful to fail to deliver sardine landings to a ~~((shore-side))~~ processing facility located on shore.

~~((g))~~ Once a delivery has commenced at a processing plant, all fish on board the vessel must be offloaded at that plant.

~~((h))~~ (c) It is unlawful to land fish at more than one processing facility and to fail to offload all fish onboard the vessel once the delivery commences at the time of landing.

(d) It is unlawful to deliver more than fifteen percent cumulative weight of sardines for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait used during the sardine fishery season.

~~((2))~~ License owners must designate a vessel upon issuance or renewal of the license and must be identified as either the vessel owner or primary license operator.

~~((3))~~ Persons fishing under a Washington sardine purse seine fishery license or temporary annual fishery permit must:

~~((a))~~ Carry an observer on board for any sardine fishing trip if requested by the department;

~~((b))~~ Surrender up to five hundred sardines per vessel per trip if requested by department samplers for biological information; and

~~((e))~~ Complete a department-issued logbook each month in which fishing activity occurs, and submit it to the department by the 15th day of the following month.)

(4) A violation of the reporting requirements ((under)) provided in this section is punishable ((pursuant to)) under RCW ((77.15.280)) 77.15.560, Commercial fish, shellfish harvest or delivery—Failure to report—Penalty.

(5) A violation of the gear((-)) requirements provided in this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(6) A violation of the harvest((-)) or landing requirements ((under)) provided in this section is punishable ((pursuant to)) under RCW ((77.15.520)) 77.15.550, Violation of a commercial fishing area or time—Penalty.

WSR 14-07-121

PROPOSED RULES

CLARK COLLEGE

[Filed March 19, 2014, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-083.

Title of Rule and Other Identifying Information: Repeal chapter 132N-121 WAC, Code of student conduct and new chapter 132N-125 WAC.

Hearing Location(s): Ellis Dunn Community Room, Gaiser Student Center, Clark College, 1933 Ft. Vancouver Way, Vancouver, WA 98663, on April 23, 2014, at 5:00 p.m.

Date of Intended Adoption: May 25, 2014.

Submit Written Comments to: Mr. Bob Williamson, Vice-President of Administrative Services, Clark College, Mailstop BRD 159, 1933 Ft. Vancouver Way, Vancouver, WA 98663, e-mail bwilliamson@clark.edu, fax (360) 992-2884, by April 21, 2014.

Assistance for Persons with Disabilities: Contact Tami Jacobs by April 21, 2014, TTY (360) 992-2835 or (360) 992-2580.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revision is necessary to bring the code into alignment with the federal Violence Against Women Act, reflect online, virtual environments and relevant issues (cyber-stalking, cyber-bullying and online harassment), and create a consistent process for ensuring due process.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is necessary because of federal law, Violence Against Women Act.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bob Williamson, Clark College, Mailstop BRD 159, 1933 Ft. Vancouver Way, Vancouver, WA 98663, (360) 992-2289.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required - there will be no impact on small business if the proposed code is adopted.

A cost-benefit analysis is not required under RCW 34.05.328. Costs associated with implementing and enforcing

ing these rules are already accounted for in the college's budget.

March 19, 2014
Bob Williamson
Vice-President of
Administrative Services

Chapter 132N-125 WAC

CODE OF STUDENT CONDUCT

NEW SECTION

WAC 132N-125-005 Student responsibilities. (1) Clark College provides its community and students with education and services of the highest quality. We do this in a manner which exhibits concern and sensitivity to students, faculty, staff, and others who utilize our services and facilities. It is essential that members of Clark College exhibit appropriate and conscientious behavior in dealing with others.

(2) Clark College expects all students to conduct themselves in a manner consistent with its high standards of scholarship and conduct. Student conduct, which distracts from or interferes with accomplishment of these purposes, is not acceptable. Students are expected to comply with these standards of conduct for students both on and off campus and acknowledge the college's authority to take disciplinary action.

(3) Admission to Clark College carries with it the presumption that students will conduct themselves as responsible members of the college community. This includes an expectation that students will obey the law, comply with policies, procedures and rules of the college and its departments, maintain a high standard of integrity and honesty, and respect the rights, privileges and property of other members of Clark College.

(4) It is assumed that students are and wish to be treated as adults. As such, students are responsible for their conduct. These standards of conduct for students promote Clark College's educational purposes and provide students a full understanding of their rights and responsibilities. Sanctions for violations of the standards of conduct for students will be administered under this chapter. When violations of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to proper authorities and in the case of minors, this conduct may be referred to parents or legal guardians.

NEW SECTION

WAC 132N-125-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132N-125-015 Definitions. The following definitions shall apply for the purposes of this student conduct code:

(1) "ASCC" means the associated students of Clark College as defined in the constitution of that body.

(2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(3) "Board" means the board of trustees of Community College District No. 14, state of Washington.

(4) "College" means Clark College and any other community college centers or facilities established within Washington state Community College District No. 14.

(5) "College community" means trustees, students, staff, faculty, and visitors on college-owned or controlled facilities.

(6) "College facilities" and "college facility" means and includes any and all real and personal property owned, rented, leased, or operated by the board of trustees of Washington state Community College District No. 14, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "Complainant" means any person who submits a charge alleging that a student violated the code of student conduct.

(10) "Conduct review officer" is the vice-president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(12) "Day" means a weekday, excluding weekends and college holidays.

(13) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(14) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(15) "Faculty member" and "instructor" means any employee of Community College District No. 14 who is

employed on a full-time or part-time basis as a teacher, instructor, counselor, or librarian.

(16) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(17) "The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in the chapter as may be reasonably necessary.

(18) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(19) "Respondent" is the student against whom disciplinary action is initiated.

(20) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address. It is the responsibility of each student to regularly check their official Clark College e-mail address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(21) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who have been notified of their acceptance for admission, persons who withdraw after allegedly violating the code, or persons who are not officially enrolled for a particular term but who have a continuing relationship with the college, are considered "students."

(22) "Student conduct officer" is a college administrator designated by the president or vice-president of student affairs to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(23) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

NEW SECTION

WAC 132N-125-020 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely

affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

NEW SECTION

WAC 132N-125-025 Students studying abroad. Students who participate in any college-sponsored or sanctioned international study program shall observe the following:

(1) The laws of the host country;

(2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(3) Any other agreements related to the student's study program in another country; and

(4) Clark College's standards of conduct for students.

NEW SECTION

WAC 132N-125-030 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate

and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132N-125-035 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment.

(c) Self-plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(d) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(e) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(2) **Other dishonesty.** Any other acts of dishonesty, such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college. Participation in any activity which unreasonably disrupts the operations of the college or infringes on the

rights of another member of the college community, or leads or incites another person to engage in such an activity.

(4) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons, which can be used to inflict bodily harm or to damage real or personal property is prohibited on the college campus, at any other facilities leased or operated by the college, or at any activity under the administration or sponsorship of the college. Exceptions to this policy are permitted when the weapon is used in conjunction with an approved college instructional program, is carried by duly constituted law enforcement officer, or is otherwise permitted by law.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) Alcohol, drug, and tobacco violations.

(a) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public, Clark College maintains a tobacco-free campus. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location is prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, lewd, or indecent.

(12) **Disorderly conduct.** Conduct which disrupts campus operations or the educational environment, is disturbing the peace, or assisting or encouraging another person to disturb the peace.

(13) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. Such finding is considered an aggravating factor in determining a sanction for such conduct.

(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(15) **Harassment.** Unwelcome and offensive conduct including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(16) **Retaliation.** Retaliation, intimidation, threats, or coercion against anyone who asserts a right protected by federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment, or who cooperates in an investigation.

(17) **Theft or misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy. http://www.clark.edu/student_services/computing_resources/policy.php

(18) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(19) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) **Abuse or misuse of any procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a subpoena;
- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding.
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(21) **Motor vehicles.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(23) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

NEW SECTION

WAC 132N-125-040 Trespass. The vice-president of student affairs or designee shall have the authority and power to:

- (1) Prohibit the entry, or withdraw the license or privilege of any person or group of persons to enter onto or remain on any college premises or facility; or
- (2) Give notice against trespass by any manner provided by law, to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of college premises or a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of the college premises or facility. Such power and authority may be exercised to halt any event which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any individual remaining on or reentering the college premises or facility after receiving notice that his or her license or privilege to be on that property has been revoked shall be subject to disciplinary action and/or charges of criminal trespass.

NEW SECTION

WAC 132N-125-045 Disciplinary sanctions—Terms—Conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be required. Other than college expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

- (a) Educational sanction. The college may require the student to complete an educational activity or experience

directly related to the violation committed, at the student's expense.

(b) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) Not in good standing. A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) Restitution or monetary fine. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

(e) Hold on transcript or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(f) Revocation of admission or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(g) Withholding degree. The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

(h) No trespass order. A student may be restricted from college property based on his/her misconduct.

(i) No contact order. A prohibition of direct or indirect physical, verbal, or written contact (to include electronic) with another individual or group.

HEARING PROCEDURES

NEW SECTION

WAC 132N-125-100 Initiation of disciplinary action.

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request

and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s) as described in WAC 132N-125-045.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION

WAC 132N-125-105 Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding;

(a) Suspensions of ten days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

NEW SECTION

WAC 132N-125-110 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both parties within ten days of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132N-125-115 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascer-

tain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reason for the decision and must be served on the parties within twenty-one days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty-one days after the request is submitted.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132N-125-120 Student conduct committee. (1) The student conduct committee consists of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One administrative staff member, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as a faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132N-125-125 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and

also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of the imposition of discipline, or referral to the committee, and (b) the notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless at least four days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132N-125-130 Student conduct committee hearings—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision;

or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132N-125-135 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty-one days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 132N-125-140 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132N-125-145 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

NEW SECTION

WAC 132N-125-150 Classroom misconduct and authority to suspend for no more than one day. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one instructional day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 132N-125-200 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132N-125-005 through 132N-125-145. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132N-125-205 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual- or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking; and

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132N-125-210 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the

parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant and respondent of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection is given.

NEW SECTION

WAC 132N-125-215 Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of the notice of the discipline decision provided for in WAC 132N-125-210(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a part to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct

against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
 - (b) A disciplinary warning;
 - (c) A written reprimand;
 - (d) Disciplinary probation;
 - (e) Suspensions of ten days or less; and/or
 - (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten days or an expulsion shall be reviewed by the student conduct committee.
- (7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.
- (8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.
- (9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.
- (10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.
- (11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.
- (12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

NEW SECTION

WAC 132N-125-220 Brief adjudicative proceedings—College record. The college record for brief adjudicative proceedings shall consist of any documents regarding the

matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 132N-125-225 Recordkeeping. (1) The record in a brief adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.

(2) The office of the vice-president of student affairs shall maintain records of student grievance and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the vice-president of student affairs. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g, by making a written request to the vice-president of student affairs.

(6) The college may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence or nonforcible sex offense, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) The college may not communicate a student's disciplinary record to any person or agency outside the college without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent, if the student is a minor and disciplinary action involves the use or possession of alcohol or controlled substance, or in connection with a health or safety emergency regardless if the student is a dependent or a minor, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(b) To another educational institution, upon request, where the student seeks to, intends to, or has enrolled.

(c) Information concerning registered sex offenders.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132N-121-010 Code of student conduct.

WAC 132N-121-020 Authority.

WAC 132N-121-030 Definitions.

WAC 132N-121-040 Jurisdiction.

WAC 132N-121-045 Students studying abroad.

WAC 132N-121-050 Student rights.

WAC 132N-121-060 Grounds for discipline.

WAC 132N-121-062 Academic dishonesty.

WAC 132N-121-065 Trespass.

- WAC 132N-121-070 Disciplinary sanction.
- WAC 132N-121-080 Initial disciplinary proceedings.
- WAC 132N-121-090 Appeals.
- WAC 132N-121-100 Committee on student conduct.
- WAC 132N-121-110 Hearing procedures before the committee on student conduct.
- WAC 132N-121-112 Decision by the committee on student conduct and notification.
- WAC 132N-121-120 Recordkeeping.
- WAC 132N-121-150 Summary suspension proceedings.
- WAC 132N-121-151 Appeals from summary suspension hearing.
- WAC 132N-121-500 Classroom misconduct and authority to suspend for no more than one day.