WSR 14-08-015
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2014, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-089.

Title of Rule and Other Identifying Information: WAC 390-16-063 Additional information regarding C-6 report filing - current rule clarifies who is required to disclose independent expenditures under RCW 42.17A.255 and 42.17A.260.

Hearing Location(s): Public Disclosure Commission (PDC), Evergreen Plaza Building, Room 206, 711 Capitol Way, Olympia, WA, on May 22, 2014, at 9:30 a.m.

Date of Intended Adoption: May 22, 2014.

Submit Written Comments to: Lori Anderson, by mail at P.O. Box 40908, Olympia, WA 98504-0908, or physical address at 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by May 12, 2014.

Assistance for Persons with Disabilities: Contact Nancy Coverdell by phone (360) 753-1980.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Converting PDC Interpretation 07-01, Computing Thresholds for Independent Expenditures (adopted March 22, 2007) to rule. The interpretation and proposed amendments to WAC 390-16-063 explain how to prorate and attribute independent expenditures supporting or opposing more than one candidate or ballot measure for the purposes of determining when disclosure is required and whether special sponsor identification is required for independent expenditure political advertising.

Reasons Supporting Proposal: PDC Interpretation 07-01 was adopted March 22, 2007, to provide guidance to persons who make independent expenditures regarding when disclosure is required and when special sponsor identification must be included in advertising resulting from the independent expenditure. The instructions set out in the interpretation have become the accepted practice and should be converted to rule.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Statute Being Implemented: RCW 42.17A.255, 42.17A.260, and 42.17A.320(2).

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: This rule will enact an interpretation that has been in place for seven years. No increased costs to the agency are expected.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-2737; and Enforcement: Philip Stutzman, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

March 21, 2014
Lori Anderson
Communications
and Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of Chapter 42.17A RCW to disclose an independent expenditure of one hundred dollars or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of one thousand dollars or more that is presented to the public within twenty-one days of an election, that supports or opposes a candidate or ballot measure, and that qualifies as an independent expenditure.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of $3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is $2,400 (75%) and the candidate's pro rata share is $800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs $1,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is $1,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed. Include the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005(26) must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320(2) and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form itemized information concerning its sources of funds giving in excess of two hundred fifty dollars for an electioneering communication, unless the committee received funds that were requested or designated for the communication.

((~~(2)~~)) (3) An out-of-state political committee shall report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication defined in RCW 42.17A.005.

((~~(3)~~)) (4) The sponsor of an electioneering communication shall report pursuant to RCW 42.17A.305 and commission rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

((~~(4)~~)) (5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005 shall file pursuant to RCW 42.17A.305 and commission rules regarding electioneering communications.

WSR 14-08-018
PROPOSED RULES
WHATCOM COMMUNITY COLLEGE
[Filed March 21, 2014, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-123.

Title of Rule and Other Identifying Information: Chapter 132U-300 WAC, Complaints—Discrimination, WAC 132U-300-010 Statement of policy: Complaints—Discrimination and/or harassment/intimidation complaint and 132U-300-020 Procedure—Discrimination and/or harassment/intimidation.

Hearing Location(s): Whatcom Community College, Laidlaw Center, Boardroom, 237 West Kellogg Road, Bellingham, WA 98226, on Friday, May 9, 2014, at 1:00 p.m.

Date of Intended Adoption: Friday, May 9, 2014.

Submit Written Comments to: Sheila Pennell, 237 West Kellogg Road, Bellingham, WA 98226, e-mail spennell@whatcom.ctc.edu, fax (360) 383-3071, by May 5, 2014.

Assistance for Persons with Disabilities: Contact Kerri Holferty, disability services, by May 5, 2014, TTY (360) 225-7182 or (360) 383-3043.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The senior AAG for higher education prepared model policies and procedures for WA CTCs based upon new federal regulations and best practices for discrimination and harassment.

Reasons Supporting Proposal: New Title IX and Violence Against Women Act regulations require all colleges and universities to expand the rights for victims of sexual harassment and assault.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

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: Statuatory [Statutory] language and enforcement has been recommended by the office of the attorney general.

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Sheila Pennell, LDC 205, (360) 383-3077; Implementation: Patricia Onion, LDC 205, (360) 383-3070; and Enforcement: Becky Rawlings, LDC 235, (360) 383-3404.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable - no costs involved.

March 21, 2014
Patricia Onion
Vice-President for
Educational Services

Chapter 132U-300 WAC

((~~COMPLAINTS —~~))DISCRIMINATION AND HARASSMENT

NEW SECTION

WAC 132U-300-030 Statement of policy. 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, RCW 49.60.030, and their implementing regulations. Prohibited gender-based discrimination includes sexual harassment.

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

(a) Denigrates or shows hostility toward an individual because of the 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, honorably discharged 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

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

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

(a) Submission to such conduct is made, either expressly 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, persistent or pervasive to have the effect of substantially interfering with any individual's academic or professional performance.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132U-300-010	Statement of policy: Complaints—Discrimination and/or harassment/intimidation.
WAC 132U-300-020	Complaint procedure—[Discrimination and/or harassment/intimidation].

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 14-08-019
PROPOSED RULES
WHATCOM COMMUNITY COLLEGE

[Filed March 21, 2014, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-124.

Title of Rule and Other Identifying Information: Student rights and responsibilties [responsibilities] (student conduct code), WAC 132U-125-001 through 132U-125-130. Chapter 132U-120 WAC was repealed in its entirety.

Hearing Location(s): Whatcom Community College, Laidlaw Center, Boardroom, 237 West Kellogg Road, Bellingham, WA 98226, on Friday, May 9, 2014, at 1:00 p.m.

Date of Intended Adoption: Friday, May 9, 2014, 1:00 p.m.

Submit Written Comments to: Sheila Pennell, 237 West Kellogg Road, Bellingham, WA 98226, e-mail spennell@whatcom.ctc.edu, fax (360) 383-3077, by May 5, 2014.

Assistance for Persons with Disabilities: Contact Kerri Holferty, disability services, by May 5, 2014, TTY (360) 225-7182 or (360) 383-3043.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132U-120 WAC has out-of-date definitions, jurisdiction, and procedures that must be updated and revised based upon the AAG model policies and procedures and a statewide review of best practices among community and technical colleges.

Reasons Supporting Proposal: The existing chapter 132U-120 WAC does not address the recent federal and state regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Rule is necessary because of federal law, https://www.govtrack.us/congress/bills/113/s47/text.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Statuatory [Statutory] language and enforcement has been recommended by the office of the attorney general.

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Sheila Pennell, LDC 205, (360) 383-3077; Implementation: John Taylor, KUL 107B, (360) 383-3854; and Enforcement: Patricia Onion, LDC 205, (360) 383-3070.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable - no costs involved.

March 21, 2014
Patricia Onion
Vice-President for
Educational Services

Chapter 132U-125 WAC

STUDENT RIGHTS AND RESPONSIBILITIES POLICY

STUDENT CONDUCT CODE

NEW SECTION

WAC 132U-125-001 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 132U-125-003 Purpose. Whatcom Community College, as a state supported institution of higher education, has a primary mission to contribute to the vitality of its com-

munities by providing quality education and preparing students for active citizenship in a global society. Students and college personnel share the responsibility of contributing to a learning environment that promotes academic integrity, social justice, civility, and nonviolence within a safe and supportive college community.

Enrollment in Whatcom Community College carries with it the obligation to be a responsible citizen of the college community and to treat others with respect and dignity. Each student is expected to abide by college policies and regulations along with local, state, and federal laws. The student conduct code and disciplinary procedures are implemented to support the college mission and to assist in the protection of the rights and freedoms of all members of the college community.

NEW SECTION

WAC 132U-125-005 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, study abroad, 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 132U-125-010 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, leased, or controlled by the college.

(3) "Conduct review officer" is the vice-president of 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 business 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) 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) "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.

(8) "Respondent" is the student against whom disciplinary action is initiated.

(9) "Service" is the process by which a document is officially delivered to a person. Unless otherwise provided, service upon a person shall be accomplished by:

(a) Hand delivery of the document to a person; or

(b) Sending the document by e-mail or by certified or first class mail to the person's last known address.

Service is deemed complete upon the hand delivery of the document, or upon the date the document is e-mailed or post-marked by the mail service.

(10) "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."

(11) "Student conduct officer" is a college administrator designated by the president or vice-president of student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president of 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.

(12) "Summons" is the contact by the college to arrange the disciplinary meeting or hearing. This contact may be by telephone, e-mail, in person, or by certified mail.

NEW SECTION

WAC 132U-125-015 Statement of student rights. As members of the academic community, students are encour-

aged 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.

(3) **Student participation in college governance.**

(a) Whatcom Community College recognizes the special role that students have in the development and maintenance of student programs.

(b) The college provides opportunities for students to participate in college governance, including the formulation of college policies and procedures relevant to students, through representation by the Associated Students of Whatcom Community College (ASWCC).

(c) Students are also appointed, according to the ASWCC constitution and bylaws, to serve on a variety of college committees.

NEW SECTION

WAC 132U-125-020 Student responsibilities and prohibited conduct. As members of the Whatcom Community College community, students have an obligation to demonstrate academic and personal honesty and integrity. Students are expected to respect individual rights, recognize their impact on others, and take responsibility for their actions.

Students may be subject to disciplinary action for any activity that unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community. Students are prohibited from engaging in any unlawful conduct and may be subject to criminal or civil prosecution. The college may apply disciplinary proceedings for student conduct on or off the college premises that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives. The college may carry out these disciplinary proceedings prior to, simultaneous to, or following civil or criminal proceedings in court.

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 submission 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.** 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, services, 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 or under college jurisdiction, whether or not actually conducted or sponsored by the college.

(4) **Assault or intimidation.** 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 involves 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 stalker 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; or

(c) Any other person or organization, or 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.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons. No person or group may use or enter onto Whatcom Community College grounds or facilities, owned or leased, while having in their possession firearms or other dangerous weapons, even if licensed to do so. An exception shall be made for commissioned police officers and other law enforcement officers as 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 appearance of being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage on college premises, with the exception of sanctioned events, approved by the president or designee, and in compliance with state law.

(b) **Marijuana.** The appearance of being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, on college premises. 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 the appearance of 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.** The use of 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, water pipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is disorderly, lewd, or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental, or physical disability; use of a service animal; age (40+); religion; gender, including pregnancy; marital status; 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, electronic communication, social media, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and 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.

(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.

(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; age (40+); religion; genetic information; gender, including pregnancy, marital status; 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) **Abuse or misuse of college policies or 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 verbal or written directive from a college official;

(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.

(19) **Safety violation.** 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. A safety violation may include the 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.

(20) **Violation of other laws and policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies including, college traffic and parking rules.

(21) **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 132U-125-025 Classroom conduct. Faculty have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

An instructor has the authority to exclude a student from any single class session during which the student is disruptive to the learning environment. The instructor shall report any such exclusion from the class to the vice-president of student services or designee, who may summarily suspend the student or initiate conduct proceedings as provided in this procedure. The vice-president of student services or designee, may impose a disciplinary probation that restricts the student from the classroom until the student has met with the student conduct officer and the student agrees to comply with the specific conditions outlined by the student conduct officer for behavior in the classroom. The student may appeal the disciplinary sanction according to the disciplinary appeal procedures.

NEW SECTION

WAC 132U-125-030 Trespass. The vice-president or designee(s) shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain in any college property 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 movement of persons from facilities owned and/or operated by the college. Any person who disobeys a lawful order given by the vice-president or designee(s), shall be subject to disciplinary action and/or charges of criminal trespass.

NEW SECTION

WAC 132U-125-035 Disciplinary sanctions. A primary objective of the disciplinary process is to promote the personal and social development of those students found responsible for misconduct. Charges are investigated and resolved in a forum of candor, civility, and fairness. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed:

(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) 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 who is on disciplinary probation 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 132U-125-040 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer or designee. If that officer is the subject of a complaint initiated by the respondent, the vice-president for student services 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 contacting the respondent by telephone, e-mail, or in person to schedule a conduct hearing.

(3) If the respondent is unable to be reached by phone, e-mail, or in person, a written notice will be sent by certified mail 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.

(4) 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.

(5) After considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall notify the student in writing within ten business days of the 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.

(6) 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 132U-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.

(7) If the student fails to appear at the scheduled meeting without prior notification or evidence of extenuating circumstances, the conduct officer may impose a sanction consistent with the existing evidence, as authorized by this code. In addition, a hold may be placed on the student's records restricting the student from further enrollment.

NEW SECTION

WAC 132U-125-045 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 ten business days of hand delivery and/or postmark 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 individuals involved in 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) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten business 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.

(8) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten business days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, the president or designee.

(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 132U-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.

(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 business 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.

NEW SECTION

WAC 132U-125-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer or designee. The conduct review officer shall not participate in any case in which the conduct officer is a complainant or witness; has direct or personal interest, prejudice, or bias; or has acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each person:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the person's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten business 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 ten business

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 business days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132U-125-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president or designee, provided the respondent files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The president or designee shall not participate in any case in which the president or designee, is a complainant or witness; has direct or personal interest, prejudice, or bias; or has acted previously in an advisory capacity.

(3) During the review, the president or designee 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 business days of the initial decision or of the request for review, whichever is later. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the president or designee, upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten business days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132U-125-065 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 proceeding.

NEW SECTION

WAC 132U-125-070 Student conduct committee. (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 or designee;

(c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president or designee 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 132U-125-075 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 business 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 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.

(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 their 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 132U-125-080 Student conduct committee hearings—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 they select 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 132U-125-085 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 business 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 or designee.

NEW SECTION

WAC 132U-125-090 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 or designee by filing a notice of appeal with the president's office within ten business 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 or designee'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 or designee shall provide a written decision to all parties within forty-five business days after receipt of the notice of appeal. The president's or designee's decision shall be final.

(4) The president or designee may suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president or designee shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132U-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 the student's 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) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 132U-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 132U-125-005 through 132U-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 132U-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.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(3) **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, electronic communication, social media, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and 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.

(4) **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.

(5) **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.

NEW SECTION

WAC 132U-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 the complainant's 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 that prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132U-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 ten business days of service of the notice of the discipline decision provided for in WAC 132U-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 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 business 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 business days or an expulsion shall be reviewed by the student conduct board.

(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 the complainant's own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, they file 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, the 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 the 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 the complainant's appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president or designee, subject to the same procedures and deadlines applicable to other parties.

(12) The president or designee, 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.

STUDENT COMPLAINTS

NEW SECTION

WAC 132U-125-130 Purpose. Whatcom Community College is committed to providing quality service to students, including providing accessible services, accurate information, and equitable and fair application of policies and procedures, including evaluation of class performance, grading, and rules and regulations for student participation in college activities and student conduct. The college procedures pertaining to student complaints are delineated in the Whatcom Community College policy and procedure manual and published on the college web site.

WSR 14-08-020
PROPOSED RULES
WHATCOM COMMUNITY COLLEGE

[Filed March 21, 2014, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-125.

Title of Rule and Other Identifying Information: Chapter 132U-140 WAC, Use of college facilities.

Hearing Location(s): Whatcom Community College, Laidlaw Center, Boardroom, 237 West Kellogg Road, Bellingham, WA 98226, on Friday, May 9, 2014, at 1:00 p.m.

Date of Intended Adoption: Friday, May 9, 2014.

Submit Written Comments to: Sheila Pennell, 237 West Kellogg Road, Bellingham, WA 98226, e-mail spennell@whatcom.ctc.edu, fax (360) 383-3071, by May 5, 2014.

Assistance for Persons with Disabilities: Contact Kerri Holferty, disability services, by May 5, 2014, TTY (360) 225-7182 or (360) 383-3043.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing chapter 132U-140 WAC, Use of college facilities, needs to be based upon the model policy and procedures prepared by the AAG for CTCs.

Reasons Supporting Proposal: The proposed policy revisions for chapter 132U-140 WAC provide clear definitions, priorities, and limitations for use of college facilities based upon best practices from other WA CTCs and was developed by the AAG in order to adhere to relevant federal and state regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

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: Statuatory [Statutory] language and enforcement has been recommended by the office of the attorney general.

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Sheila Pennell, LDC 205, (360) 383-3077; Implementation: Kristopher Baier, SSC 208E, (360) 383-3003; and Enforcement: Patricia Onion, LDC 205, (360) 383-3070.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable - no costs involved.

March 21, 2014
Patricia Onion
Vice-President for
Educational Services

NEW SECTION

WAC 132U-140-015 Definitions. (1) "College groups" shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college, who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(2) "College facilities" includes all buildings, structures, grounds, office space, and parking lots.

(3) "Public use areas" means those areas of each campus that the college has chosen to open as places where nongroups may assemble for expressive activity protected by the First Amendment, subject to reasonable time, place or manner restrictions.

(4) "Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speechmaking, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of assemblies to share information, perspective or viewpoints.

(5) "Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of, a recognized student organization, recognized employee group, or the administration of the college.

NEW SECTION

WAC 132U-140-025 Statement of purpose. Whatcom Community College district is an educational institution pro-

vided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities, and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity, which limits, interferes with, or otherwise disrupts the normal activities to which the college's facilities and grounds are dedicated. Accordingly, the college designates the common areas of the college as a limited public forum dedicated to the use of college groups, subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college has designated certain facilities as public use areas open to noncollege groups as set forth herein.

NEW SECTION

WAC 132U-140-035 Priority use of facilities for college activities. When allocating use of college facilities, top priority shall be given to activities specifically related to the college's mission. No arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, rental, or public service programs. In particular, the college buildings, properties, and facilities shall be used primarily for:

(1) Regularly established teaching, research, or public service activities of the college and its departments.

(2) Cultural, educational, or recreational activities of the students, faculty, or staff.

(3) Short courses, conferences, seminars, or similar events conducted either in the public service or for the advancement of specific departmental professional interests, when arranged under the sponsorship of the college or its departments.

(4) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees and presented with their active sponsorship and active participation.

(5) Public events, activities, or programs sponsored by the college and educational institutions, state or federal agencies, charitable agencies or civic or community organizations whose activities are of widespread public service and of a character appropriate to the college.

(6) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the college community. In conformance with state guidelines, the appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration, or the board of trustees, whether implicit or explicit, of the speaker's views.

(7) The college may restrict an individual or group's use of college facilities if that person or group has, in the past, physically abused college facilities. Charges may be imposed for rental, damage, or for any other unusual costs for the use of facilities. The individual, group, or organization requesting space will be required to state in advance the general purpose of any meeting. If any charge or collection of funds is contemplated, advance permission from the party giving authority for space allocations will be required.

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

WAC 132U-140-040 General policies limiting use. (((~~(1) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities.~~

~~(2) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use shall be intermittent only.~~

~~(3) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and commitments.~~

~~(4) The college may designate areas in its facilities and times for use by commercial entities on a space-available basis. The college may establish procedures for allocating such space and time to assure equal opportunity for access to different commercial enterprises. Such designation shall be made in keeping with other college policies.~~

~~(5) Activities of a political or commercial nature may be approved providing they do not involve the use of promotional signs or posters on building, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.~~

~~(6) These general policies shall apply to recognized student groups using college facilities.~~

~~(7) Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.~~

~~(8) Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.~~

~~(9) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law.~~

~~(10) The right of peaceful dissent within the college community shall be preserved. The college retains the right to~~

~~insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.~~

~~(11) Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.~~

~~(12) Where college space is used for an authorized function (such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities) groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.~~

~~(13) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might be available through local law enforcement agencies.~~)) (1) Specific conditions shall be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities. All requests for facilities use must be made through the designated administrative officer(s). Allocation of space shall be made in accordance with college regulations and on the basis of time, space, manner, and priority of the request. The college designates public use areas for college and noncollege groups for expressive activity on campus. The specific locations of these public use areas are identified on a campus map located on the college web site.

(2) Individuals and groups should notify the designated campus department no later than twenty-four hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

(3) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office, except for student-sponsored activities.

Approved student-sponsored activities of a political or commercial nature shall not permit promotional signs or posters on building, trees, walls, bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.

(4) Religious groups, not meeting as part of a recognized student club activity, shall not use the college facilities as a permanent meeting place. Use shall be intermittent only.

(5) The college reserves the right to prohibit the use of college facilities by groups, which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and commitments.

(6) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned police officers as prescribed by law.

(7) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college;

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(8) The right of peaceful dissent within the college community shall be preserved. The college retains the right to ensure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group, or organization attempt to resolve differences by means of violence or perceived threat to health or safety, the college and its officials need not negotiate while such methods are employed and may involve local law enforcement authorities.

(9) Orderly picketing and other forms of peaceful dissent are protected activities in public use areas as outlined in this policy. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property, shall result in the sanctions outlined in this policy.

(10) Where college space is used for authorized function (such as a rental contract, class, or a public or private meeting under approved sponsorship, administrative function, or service related activities) groups must obey or comply with directions of the designated college administrative officer or individual in charge of the meeting.

(11) If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanction although remedies might be available through local law enforcement agencies.

(12) Subject to the regulations and requirements of this policy, individuals and groups may use the campus limited forums for expressive activities between the hours of 8:00 a.m. and 9:00 p.m.

(13) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices, or laboratories or any previously scheduled college event or activity.

(14) All sites used for expressive activity should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(15) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook ups for purposes of expressive activity conducted pursuant to this policy.

(16) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or

otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(17) The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(18) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(19) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

NEW SECTION

WAC 132U-140-045 Distribution of materials. (1) Handbills, leaflets, and similar materials, except those which are commercial, obscene, libelous, or advocate or incite imminent unlawful conduct, may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.

(2) College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus.

(3) Noncollege groups may distribute materials only at the site designated for noncollege groups. The sponsoring organization is encouraged, but not required to include its name and address on the distributed information.

NEW SECTION

WAC 132U-140-055 Additional requirements for noncollege groups. (1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. When renting college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy. When the college grants permission to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage. Noncollege groups may otherwise use college facilities for expressive activity as identified in this policy.

(2) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for expressive activity on campus are located on a campus map on the college web site. The public use areas may be scheduled. Scheduled groups have priority of use over unscheduled groups.

(3) Noncollege groups that seek to engage in expressive activity on the designated public use area(s) shall provide notice to the designated campus office no later than twenty-four hours prior to the event along with the following information solely to ensure:

(a) The area is not otherwise scheduled; and

(b) To give the college an opportunity to assess any security needs:

(i) The name, address and telephone number of a contact person for the individual, group, entity or organization sponsoring the event;

(ii) The date, time and requested location of the event;

(iii) The nature and purpose of the event;

(iv) The estimated number of people expected to participate in the event; and

(v) The type of sound amplification devices to be used in connection with the event, if any.

When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

WAC 132U-140-060 Criminal trespass and other sanctions for violations. (1) ((~~Individuals who are not students or members of the faculty or staff and who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his or her designee, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW.~~)) Noncollege groups who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the campus president or designee to leave the college property. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college facilities of the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or municipal ordinance.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) Persons who violate a district policy may have their license or privilege to be on district property revoked and be ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property

after one's license or privilege to be on that property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

AMENDATORY SECTION (Amending WSR 88-15-005, filed 7/8/88)

WAC 132U-140-070 Prohibited conduct at college facilities. (1) State law relative to public institutions governs the use or possession of intoxicants on campus or at college functions. The use or possession of unlawful drugs or narcotics, not medically prescribed, on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities shall be subject to disciplinary action. Non-students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities may be subject to criminal trespass.

(2) The use of tobacco is restricted by law and by regulations of the fire marshal to designated smoking areas.

(3) Destruction of property is also prohibited by state law in reference to public institutions.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
132U-140-050	132U-140-080

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132U-140-010 Use of college facilities.

WAC 132U-140-020 Limitation of use to school activities.

WAC 132U-140-030 Statement of intentions.

WSR 14-08-021
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2014, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-091.

Title of Rule and Other Identifying Information: New WAC 390-17-301 Eligibility to receive primary election contributions.

Hearing Location(s): Public Disclosure Commission (PDC), Evergreen Plaza Building, Room 206, 711 Capitol Way, Olympia, WA, on May 22, 2014, at 9:30 a.m.

Date of Intended Adoption: May 22, 2014.

Submit Written Comments to: Lori Anderson, by mail P.O. Box 40908, Olympia, WA 98504-0908, physical address 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by May 12, 2014.

Assistance for Persons with Disabilities: Contact Nancy Coverdell by phone (360) 753-1980.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Converting PDC Interpretation 04-01, Contribution Limits: Impact When a Candidate Subject to Limit Does Not Have a Primary Election (adopted February 24, 2004) to rule. The interpretation and proposed new WAC 390-17-301 clarify that only candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive primary election contributions under the limits imposed by RCW 42.17A.405 and 42.17A.410. The rule informs how refunds are to be made when contributions are received that a candidate is not eligible to accept.

Reasons Supporting Proposal: PDC Interpretation 04-01 was adopted February 24, 2004, to provide guidance to candidates who are subject to limit and who may receive contributions that they are not entitled to accept. Converting the interpretation to rule is especially important now that the legislature has since extended contribution limits to many local, nonpartisan elective offices. Candidates running for these local offices are the most likely to not have a primary election under the Top 2 Primary system.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Statute Being Implemented: RCW 42.17A.405 and 42.17A.410.

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: This rule will enact an interpretation that has been in place for ten years. No increased costs to the agency are expected.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-2737; and Enforcement: Philip Stutzman, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

March 21, 2014
Lori Anderson
Communications and
Training Officer

NEW SECTION

WAC 390-17-301 Eligibility to receive primary election contributions. (1) Candidates for state and certain local offices are subject to the contribution limits in RCW 42.17A.405. Judicial candidates are subject to the contribution limits in RCW 42.17A.410. Only candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive primary election contributions.

(2) Once the appropriate elections official determines that no primary election for a particular office will be held, a declared candidate for that office must refund any contributions received in excess of the general election contribution limit. The candidate or the candidate's authorized committee must make the refunds within two weeks of the election's official's determination, and must disclose the refunds on the appropriate report.

(3) Failure by a candidate or a candidate's authorized committee to make refunds as required by subsection (2) of this section is a violation of RCW 42.17A.405 or 42.17A.410 by the candidate, but not by the contributors who made primary election contributions before a determination was made that no primary election would be held.

(4) WAC 390-17-303 sets out additional eligibility criteria for superior court candidates.

WSR 14-08-022
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed March 21, 2014, 6:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-090.

Title of Rule and Other Identifying Information: WAC 390-16-105 Mini campaign reporting—Eligibility, describes the circumstances under which a candidate or political committee may be relieved of disclosing contributions and expenditures: No more than $5,000 is raised or spent and no more than $500 in the aggregate is received from a single contributor. A candidate's filing fee does not count against either threshold. A candidate's personal contributions count against the $5,000 cap, but are not limited to $500 in the aggregate.

WAC 390-16-125 Mini campaign reporting—Exceeding limitations, explains what steps a candidate or political committee must complete in order to change from mini reporting to full reporting (disclosing contributions and expenditures) and notes the deadline for completing an application. The rule also explains what happens when a candidate fails to switch reporting options and exceeds the mini reporting limitations.

Hearing Location(s): Public Disclosure Commission (PDC), Evergreen Plaza Building, Room 206, 711 Capitol Way, Olympia, WA, on May 22, 2014, at 9:30 a.m.

Date of Intended Adoption: May 22, 2014.

Submit Written Comments to: Lori Anderson, by mail P.O. Box 40908, Olympia, WA 98504-0908, physical address 711 Capitol Way, Room 206, Olympia, WA, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by May 12, 2014.

Assistance for Persons with Disabilities: Contact Nancy Coverdell by phone (360) 753-1980.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendment to WAC 390-16-105 clarifies that a candidate or political committee who registers a campaign and selects the mini reporting option must disclose contributions and expenditures as required by chapter 42.17A RCW upon failing to comply with the mini reporting eligibility criteria set out in the rule.

Proposed amendment to WAC 390-16-125 allows the PDC staff to approve an application to change reporting options after the applicant has exceeded the mini reporting thresholds, provided the application is received by the proscribed deadline for switching reporting options, the applicant acknowledges a violation of WAC 390-16-105, and files disclosure reports. The current rule mandates that the application must be submitted prior to exceeding the mini reporting limitations. The proposed amendment also moves the deadline for submitting an application to change from mini to full reporting from thirty business days before the general election to August 31.

Reasons Supporting Proposal: Today under WAC 390-16-125, an application to switch reporting options made after exceeding the mini reporting limitations would be denied and the applicant would be instructed to not exceed the mini reporting limitations. The proposed amendment stems from a 2013 enforcement matter involving a local ballot measure campaign who registered as a mini reporting committee, exceeded the limitations, and then completed its application to switch reporting options. The enforcement concluded in September 2013 and the committee was penalized for exceeding the mini reporting limitations. The committee had debt to retire and it wanted to continue to support the ballot measure, which was on the November 2013 general ballot. WAC 390-16-125 should be amended to allow the staff the ability to act on similar applications. Making the pre-general election application deadline earlier promotes disclosure by ensuring that campaign funding sources are disclosed when ballots are mailed.

Statutory Authority for Adoption: RCW 42.17A.110(8).

Statute Being Implemented: RCW 42.17A.110(8).

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: No increased costs to the agency are expected.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-2737; and Enforcement: Philip Stutzman, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small business. The PDC is not subject to the requirement to prepare a

school district fiscal impact statement, per RCW 28A.305.-135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

March 21, 2014
Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-105 Mini campaign reporting—Eligibility. (1) A candidate or candidate's authorized committee, as those terms are defined in RCW 42.17A.005, ((~~shall not be~~)) is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when both of the following conditions are present:

(a) Neither aggregate contributions nor aggregate expenditures exceed the amount of the candidate's filing fee provided by law plus a sum not to exceed five thousand dollars; and

(b) No contribution or contributions from any person other than the candidate ((~~within such aggregate~~)) exceed five hundred dollars in the aggregate. However, a bona fide political party may pay the candidate's filing fee provided by law without that payment disqualifying that candidate from eligibility under this section.

(2) A political committee, as that term is defined in RCW 42.17A.005, ((~~shall not be~~)) is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when both of the following conditions are present:

(a) Neither aggregate contributions nor aggregate expenditures exceed five thousand dollars; and

(b) No contribution or contributions from any person exceed five hundred dollars in the aggregate.

(3) A continuing political committee, as that term is defined in RCW 42.17A.005, ((~~shall not be~~)) is not required to comply with the provisions of RCW 42.17A.225 through 42.17A.240 except as otherwise prescribed in WAC 390-16-038, 390-16-115, and 390-16-125 when both of the following conditions are present:

(a) Neither aggregate contributions nor aggregate expenditures during a calendar year exceed five thousand dollars; and

(b) No contribution or contributions from any person exceed five hundred dollars in the aggregate.

(4) A candidate or political committee that exceeds one or both of the thresholds set out in this section after registering as a mini reporting campaign shall comply with the provisions of chapter 42.17A RCW, including, but not limited to, disclosure of contributions and expenditures, disclosure of last minute contributions, applicable contribution limits, false political advertising, sponsor identification and public inspection of campaign books of account.

(5) Candidates and political committees eligible for mini campaign reporting are required to comply with all applicable provisions of chapter 42.17A RCW including, but not limited to, false political advertising, sponsor identification and public inspection of campaign books of account unless specifically exempted under subsections (1) through (3) of this section.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-16-125 Mini campaign reporting—Exceeding limitations. (1) A candidate or political committee ((~~shall~~)) wishing to change from mini to full reporting must apply in writing to the commission for authorization to change reporting options before the limitations specified in WAC 390-16-105 are exceeded. A complete application shall include all of the following documents:

(a) An amended registration statement (Form C-1 for candidates, Form C-1pc for political committees) selecting the full reporting option as provided in RCW 42.17A.225 through 42.17A.240;

(b) PDC forms C-3 and C-4 with relevant schedules and attachments disclosing all contributions and expenditures to date reportable under RCW 42.17A.240 for the election campaign, or in the case of continuing political committees, for the calendar year; and

(c)(i) If the applicant is a candidate, a statement affirming that all candidates registered with the commission for the office being sought have been notified personally in writing of the application, and the manner and date of such notification;

(ii) If the applicant is the treasurer of a political committee supporting or opposing a ballot proposition, a statement affirming that all treasurers of all political committees registered with the commission as supporting or opposing the proposition have been notified personally in writing of the application, and the manner and date of such notification; or

(iii) If the applicant is the treasurer of a county or legislative district party committee, a statement affirming that the treasurer of that party committee's counterpart in any other major political party has been notified personally in writing of the application, and the manner and date of such notification.

(2) An application that is submitted without the required documents described in subsection (1) of this section is incomplete and will not be processed or approved. If the applicant provides the missing documents, the application will be determined to be complete on the date the documents are ((~~postmarked or delivered to~~)) received by the commission.

(3) If a complete application is ((~~postmarked or delivered to~~)) received by the commission on or before thirty business days prior to the date of ((~~the~~)) an election other than the general election, the executive director will approve the application ((~~shall be approved by the executive director~~)). An appli-

cation to change reporting options before the general election must be received by the commission on or before August 31.

(4) If a complete application is ((~~postmarked or delivered to~~)) received by the commission on or after ((~~twenty-nine business days prior to the election~~)) the deadlines set out in subsection (3) of this section, the executive director will approve the application ((~~shall be approved by the executive director~~)) only if one or more of the following factors are present:

(a) The applicant's campaign had its respective C-1 or C-1pc on file with the commission ((~~forty-one or more days before the election~~)) when notice of the upcoming application deadline to change reporting options was sent and the commission staff did not send to the applicant's campaign in a timely and proper manner, either electronically or by other mail delivery service, a notice that the ((~~thirtieth business day~~)) deadline for unrestricted changes in reporting options is approaching. To be timely and proper, this notice must be sent at least ((~~forty business days~~)) two weeks before the ((~~election~~)) application deadline to the campaign's electronic mail address or postal service mailing address specified on the registration statement;

(b) The applicant is a candidate and, ((~~within thirty business days of the election~~)) after the application deadline, a write-in opponent has filed for office in accordance with chapter 29A.24 RCW;

(c) ((~~Within thirty business days of the election~~)) After the application deadline, an independent expenditure as defined in RCW 42.17A.005 is made in support of the applicant's opponent or in opposition to the applicant; or

(d) When a candidate or political committee on one side of an election campaign or proposition has been approved to change reporting options under this section, each opponent of that candidate or political committee is approved to change options as of the date that ((~~opponent postmarks or delivers a~~)) opponent's complete application ((~~to~~)) is received by the commission.

(5) Exceeding the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 without complying with the provisions of this section ((~~shall~~)) constitutes one or more violations of chapter 42.17A RCW or 390-17 WAC.

(6) The executive director may approve an application to change reporting options after the aggregate contributions or aggregate expenditures specified in WAC 390-16-105 have been exceeded only if the applicant (a) meets the deadlines provided in subsection (3) of this section; and (b) acknowledges the violation and demonstrates compliance with WAC 390-16-105(4). Approval of an application under this subsection does not absolve a candidate or political committee from liability for any violation or violations of subsection (5) of this section.

WSR 14-08-028
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 24, 2014, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-008.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-100 on the requirements for the site team chair for review of preparation programs. Current requirements are for a professional educator standards board staff person. Change would require the team chair to have completed specific training.

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 requirements for review team chair trainings.

Reasons Supporting Proposal: Strengthens site team knowledge and skills.

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 24, 2014
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-20-028, filed 9/23/13, effective 10/24/13)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to programs in the revision of their existing programs.

(1) The professional educator standards board shall determine the schedule for such approval reviews and

whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and national accreditation organizations as such agreement relates to the accreditation cycle and allow CAEP accredited ((~~colleges/universities~~)) programs to follow the CAEP schedule for their review. Non-CAEP accredited ((~~colleges/universities~~)) programs shall have a review every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2). The professional educator standards board will not consider requests for site visit delays.

(2) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards as follows:

(a) At least six months prior to a scheduled on-site visit, the institution shall submit an institutional report that provides evidence and narrative, as needed, that addresses how the program approval standards are met for each preparation program undergoing review. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the professional educator standards board as evidence pertinent to the program approval process.

(b) The institutional report shall be reviewed by a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) A ((~~designated professional educator standards board staff member who shall serve as team leader~~)) site team chair who has completed state training or council for the accreditation of educator preparation (CAEP/NCATE) training specific to the role.

(c) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The professional educator standards board liaison for that institution may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(d) Team membership may be reduced for regular continuing visits in which fewer than five standards are being reviewed, initial visits, and focus visits. At a minimum, the team must consist of two members of which one must be a member of the professional educator standards board.

(e) Members of a focus visit team shall, at a minimum, be comprised of one member who served on the on-site team and one member of the professional educator standards board.

(f) The review of the off-site team shall identify additional evidence and clarifications that may be needed to provide adequate support for the institutional report.

(g) The report of the off-site team shall be submitted to the institution, which shall provide an addendum to the institutional report no later than five weeks preceding the on-site review.

(h) The on-site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board. The team shall be comprised of members of the off-site review team whenever possible.

(i) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(j) Institutions may submit a reply to the report within two weeks following receipt of the report. The reply may address issues for consideration, including a request for appeal per this subsection (g), limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

(k) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(1).

(l) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(3) Institutions seeking Council for the Accreditation of Educator Preparation, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

WSR 14-08-059
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed March 28, 2014, 5:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-042.

Title of Rule and Other Identifying Information: WAC 182-550-1050 Hospital services definitions, 182-550-2511 Acute PM&R definitions, 182-550-2570 LTAC program definitions, 182-550-2800 Payment methods and limits—Inpatient hospital services for medicaid and SCHIP, 182-550-2900 Payment limits—Inpatient hospital services, 182-550-3000 Payment method—DRG, 182-550-3010 Payment method—Per diem payment, 182-550-3020 Payment method—Bariatric surgery—Per case payment, 182-550-3100 Calculating DRG relative weights, 182-550-3150 Base

period costs and claims data, 182-550-3200 Medicaid cost proxies, 182-550-3250 Indirect medical education costs—Conversion factors, per diem rates, and per case rates, 182-550-3381 Payment methodology for acute PM&R services and administrative day services, 182-550-3450 Payment method for calculating medicaid DRG conversion factor rates, 182-550-3460 Payment method—Per diem rate, 182-550-3800 Rebasing and recalibration, 182-550-3900 Payment method—Bordering city hospitals and critical border hospitals, 182-550-4000 Payment method—Out-of-state hospitals, 182-550-4100 Payment method—New hospitals, 182-550-4300 Hospitals and units exempt from the DRG payment method, 182-550-4400 Services—Exempt from DRG payment, 182-550-4800 Hospital payment methods—State administered programs, and 182-550-7050 OPPS—Definitions.

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 May 6, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 7, 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 May 6, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 28, 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: During the rebasing of inpatient and outpatient rates, the agency along with consultants and stakeholders, reviews and revises how the agency pays hospitals for caring for agency clients. During this process, payment methods and rates change. These changes must be reflected in rule.

The agency is also updating WAC 182-550-1050 with new and revised definitions pertaining to chapter 182-550 WAC.

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: Dylan Oxford, Olympia, Washington 98504-5500, (360) 725-2130.

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 28, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-1050 Hospital services definitions. The following definitions and abbreviations, those found in ((~~WAC 388-500-0005~~)) chapter 182-500 WAC, Medical definitions, and definitions and abbreviations found in other sections of this chapter((~~,~~)) apply to this chapter. When a term is not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the medical definitions found in *Taber's Cyclopedic Medical Dictionary* apply.

"Accommodation costs" ((~~means~~)) - The expenses incurred by a hospital to provide its patients services for which a separate charge is not customarily made. These expenses include, but are not limited to, room and board, medical social services, psychiatric social services, and the use of certain hospital equipment and facilities.

((~~**"Acquisition cost (AC)"** means the cost of an item excluding shipping, handling, and any applicable taxes as indicated by a manufacturer's invoice.~~))

"Accredited" or **"accreditation"** - A term used by nationally recognized health organizations, such as the commission on accreditation of rehabilitation facilities (CARF), to indicate a facility meets both professional and community standards of medical care.

"Acute" ((~~means~~)) - A medical condition of severe intensity with sudden onset. ((~~See WAC 388-550-2511 for the definition of "acute"~~)) For the purposes of the acute physical medicine and rehabilitation (Acute PM&R) program, acute means an intense medical episode, not longer than three months.

"Acute care" ((~~means~~)) - Care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional in order to maintain their health status (((~~see WAC 248-27-015~~))).

"Acute physical medicine and rehabilitation (Acute PM&R)" ((~~means~~)) - A comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at ((~~a department-approved~~)) an agency-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement. Acute PM&R is a twenty-four hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation.

((~~**"ADATSA/DASA assessment center"** means an agency contracted by the division of alcohol and substance abuse (DASA) to provide chemical dependency assessment for clients and pregnant women in accordance with the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA). Full plans for a continuum of drug and alcohol~~

~~treatment services for pregnant women are also developed in ADATSA/DASA assessment centers.~~

~~**"Add-on procedure(s)"** means secondary procedure(s) that are performed in addition to another procedure.~~))

"Administrative day" ((~~means a day~~)) or **"administrative days" -** One or more days of a hospital stay in which an acute inpatient or observation level of care is ((~~no longer~~)) not medically necessary, and ((~~noninpatient hospital placement~~)) a lower level of care is appropriate.

"Administrative day rate" ((~~means~~)) **-** The agency's statewide medicaid average daily nursing facility rate ((~~as determined by the department.~~

~~**"Admitting diagnosis"** means the medical condition before study, which is initially responsible for the client's admission to the hospital, as defined by the international classification of diseases, 9th revision, clinical modification (ICD-9-CM) diagnostic code, or with the current published ICD-CM coding guidelines used by the department.~~

~~**"Advance directive"** means a document, recognized under state law, such as a living will, executed by a client, that tells the client's health care providers and others about the client's decisions regarding his or her health care in the event the client should become incapacitated. (See WAC 388-501-0125.)~~

~~**"Aggregate capital cost"** means the total cost or the sum of all capital costs~~)).

"Aggregate cost" ((~~means~~)) **-** The total cost or the sum of all constituent costs.

"Aggregate operating cost" ((~~means~~)) **-** The total cost or the sum of all operating costs.

((~~**"Alcoholism and Drug Addiction Treatment and Support Act (ADATSA)"** means the law and the state-administered program it established which provides medical services for persons who are incapable of gainful employment due to alcoholism or substance addiction.~~

~~**"Alcoholism and/or alcohol abuse treatment"** means the provision of medical social services to an eligible client designed to mitigate or reverse the effects of alcoholism or alcohol abuse and to reduce or eliminate alcoholism or alcohol abuse behaviors and restore normal social, physical, and psychological functioning. Alcoholism or alcohol abuse treatment is characterized by the provision of a combination of alcohol education sessions, individual therapy, group therapy, and related activities to detoxified alcoholics and their families.~~))

"All-patient DRG grouper (AP-DRG)" ((~~means~~)) **-** A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions between August 1, 2007, and June 30, 2014.

"All-patient refined DRG grouper (APR-DRG)" - A computer software program that determines the medical and surgical diagnosis-related group (DRG) assignments used by the agency for inpatient admissions on and after July 1, 2014.

"Allowable" ((~~means~~)) **-** The calculated amount for payment, after exclusion of any "nonallowed service or charge," based on the applicable payment method before final adjustments, deductions, and add-ons.

"Allowed amount" ((~~means~~)) **-** The initial calculated amount for any procedure or service, after exclusion of any "nonallowed service or charge," that the ((~~department~~)) agency allows as the basis for payment computation before final adjustments, deductions, and add-ons.

"Allowed charges" ((~~means the maximum amount for any procedure or service that the department allows as the basis for payment computation~~)) **-** The total billed charges for allowable services.

"Allowed covered charges" ((~~means the maximum amount of charges on a hospital claim recognized by the department as charges for "hospital covered service" and payment computation, after exclusion of any "nonallowed service or charge," and before final adjustments, deductions, and add-ons~~)) **-** The total billed charges for services minus the billed charges for noncovered and/or denied services.

"Ambulatory payment classification (APC)" - A grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

"Ambulatory surgery" ((~~means~~)) **-** A surgical procedure that is not expected to require an inpatient hospital admission.

((~~**"Ancillary hospital costs"** means the expenses incurred by a hospital to provide additional or supporting services to its patients during their hospital stay. See **"ancillary services."**~~))

"Ancillary services" ((~~means~~)) **-** Additional or supporting services provided by a hospital to a ((~~patient~~)) client during the ((~~patient's~~)) client's hospital stay. These services include, but are not limited to((~~,~~)): Laboratory, radiology, drugs, delivery room, operating room, postoperative recovery rooms, and other special items and services.

"Appropriate level of care" ((~~means~~)) **-** The level of care required to best manage a client's illness or injury based on:

(1) The severity of illness ((~~presentation~~)) and the intensity of services ((~~received~~)) required to treat the illness or injury; or

(2) A condition-specific episode of care.

((~~**"Approved treatment facility"** means a treatment facility, either public or private, profit or nonprofit, approved by DSHS.~~))

"Audit" ((~~means~~)) **-** An assessment, evaluation, examination, or investigation of a health care provider's accounts, books, and records, including:

(1) Health, financial, and billing records pertaining to billed services paid by the ((~~department~~)) agency through ((~~medicaid, SCHIP, or other state programs~~)) Washington apple health, by a person not employed or affiliated with the provider, for the purpose of verifying the service was provided as billed and was allowable under program regulations; and

(2) Financial, statistical, and health records, including mathematical computations and special studies conducted supporting the medicare cost report (Form 2552-96 and 2552-10 or successor form), submitted to the ((~~department~~)) agency for the purpose of establishing program rates for payment to hospital providers.

((~~**"Audit claims sample"** means a selection of claims reviewed under a defined audit process.~~))

"Authorization" - See **"prior authorization"** and **"expedited prior authorization (EPA)."**

((**"Average hospital rate"** means an average of hospital rates for any particular type of rate that the department uses.))

"Bad debt" ((means)) **-** An operating expense or loss incurred by a hospital because of uncollectible accounts receivables.

((**"Beneficiary"** means a recipient of Social Security benefits, or a person designated by an insuring organization as eligible to receive benefits.))

"Bedside nursing services" - Services included under the room and board services paid to the facility and provided by nursing service personnel. These services include, but are not limited to: Medication administration, IV hydration and IV medication administration, vaccine administration, dressing applications, therapies, glucometry testing and other point of care testing, catheterizations, tube feedings and irrigations, and equipment monitoring services.

"Billed charge" ((means)) **-** The charge submitted to the ((department)) agency by the provider.

((**"Blended rate"** means a mathematically weighted average rate.))

"Bordering city hospital" ((means)) **-** A hospital located ((outside Washington state and located)) in one of the ((bordering)) cities listed in WAC ((388-501-0175)) 182-501-0175.

((**"BR" -** See **"by report."**))

"Budget ((neutrality)) neutral" ((is a concept that means that hospital payments resulting from payment methodology changes and rate changes should be equal to what payments would have been if the payment methodology changes and rate changes were not implemented)) **-** A condition in which a claims model produces aggregate payments to hospitals that are the same under two separate payment systems. ((()))See also **"budget neutrality factor."**((()))

"Budget neutrality factor" ((is a factor)) **-** A multiplier used by the ((department)) agency to ((adjust conversion factors, per diem rates, and per case rates in order)) ensure that modifications to the payment ((methodology)) method and rates are budget neutral. ((()))See also **"budget ((neutrality)) neutral."**((()))

"Budget target" - Funds appropriated by the legislature or through the agency's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjuster" - A multiplier applied to the outpatient prospective payment system (OPPS) payment to ensure aggregate payments do not exceed the established budget target.

"Bundled services" ((means)) **-** Interventions ((that are)) integral to or related to the major procedure ((and are not paid separately.

"Buy-in premium" means a monthly premium the state pays so a client is enrolled in part A and/or part B medicare.

"By report (BR)" means a method of payment in which the department determines the amount it will pay for a service when the rate for that service is not included in the department's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Callback" means keeping hospital staff members on duty beyond their regularly scheduled hours, or having them return to the facility after hours to provide unscheduled services which are usually associated with hospital emergency room, surgery, laboratory and radiology services.

"Capital-related costs" or **"capital costs"** means the component of operating costs related to capital assets, including, but not limited to:

(1) Net adjusted depreciation expenses;

(2) Lease and rentals for the use of depreciable assets;

(3) The costs for betterment and improvements;

(4) The cost of minor equipment;

(5) Insurance expenses on depreciable assets;

(6) Interest expense; and

(7) Capital-related costs of related organizations that provide services to the hospital.

Capital costs due solely to changes in ownership of the provider's capital assets are excluded.

"CARF" is the official name for commission on accreditation of rehabilitation facilities. CARF is an international, independent, nonprofit accreditor of human service providers and networks in the areas of aging services, behavioral health, child and youth services, employment and community services, and medical rehabilitation)). The agency does not pay separately for these services.

"Case mix" ((means, from the clinical perspective, the condition of the treated patients and the difficulty associated with providing care. Administratively, it means the resource intensity demands that patients place on an institution)) **-** A relative value assigned to a DRG or classification of patients in a medical care environment representing the resource intensity demands placed on an institution.

"Case mix index (CMI)" ((means the arithmetical index that measures)) **-** The average relative weight of all cases treated in a hospital during a defined period.

"Centers for Medicare and Medicaid Services (CMS)" – See WAC 182-500-0020.

"Charity care" - See chapter 70.170 RCW.

"Chemical dependency" ((means)) **-** An ((alcohol or drug)) addiction((,)) or dependence on ((alcohol and one or more other psychoactive chemicals)) alcohol or drugs, or both.

"Children's health insurance program (CHIP)" - The federal Title XXI program under which medical care is provided to uninsured children younger than age nineteen. Part of Washington apple health.

"Children's hospital" ((means)) **-** A hospital primarily serving children.

"Client" ((means)) **-** A person who receives or is eligible to receive services through ((department of social and health services (DSHS))) agency programs.

((**"CMS"** means Centers for Medicare and Medicaid Services.))

"Commission on accreditation of rehabilitation facilities (CARF)" - See http://www.carf.org/home/.

"CMS PPS input price index" ((means)) **-** A measure, expressed as a percentage, of the annual inflationary costs for

hospital services((~~, measured by Global Insight's Data Resources, Inc. (DRI).~~

~~**"Comorbidity"** means of, relating to, or caused by a disease other than the principal disease.~~

~~**"Complication"** means a disease or condition occurring subsequent to or concurrent with another condition and aggravating it~~)).

"Comprehensive hospital abstract reporting system (CHARS)" ((~~means~~)) - The department of health's (DOH's) inpatient hospital data collection, tracking, and reporting system.

((~~**"Contract hospital selective contracting"** means for dates of admission before July 1, 2007, a licensed hospital located in a selective contracting area, which is awarded a contract to participate in the department's hospital selective contracting program. The department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.~~))

"Condition-specific episode of care" - Care provided to a client based on the client's primary condition, complications, comorbidities, standard treatments, and response to treatments.

"Contract hospital" ((~~means~~)) - A hospital contracted by the ((~~department~~)) agency to provide specific services.

((~~**"Contractual adjustment"** means the difference between the amount billed at established charges for the services provided and the amount received or due from a third-party payer under a contract agreement. A contractual adjustment is similar to a trade discount.~~

~~**"Cost proxy"** means an average ratio of costs to charges for ancillary charges or per diem for accommodation cost centers used to determine a hospital's cost for the services where the hospital has medicaid claim charges for the services, but does not report costs in corresponding centers in its medicare cost report.~~))

"Conversion factor" - A hospital-specific dollar amount that is used in calculating inpatient payments.

"Core provider agreement (CPA)" – The basic contract the agency holds with providers serving Washington apple health clients.

"Cost report" - See **"medicare cost report."**

"Costs" ((~~mean department-approved~~)) - Agency-approved operating, medical education, and capital-related costs (capital costs) as reported and identified on the "cost report."

((~~**"Cost-based conversion factor (CBCF)"** means for dates of admission before August 1, 2007, a hospital-specific dollar amount that reflects a hospital's average cost of treating medicaid and SCHIP clients. It is calculated from the hospital's cost report by dividing the hospital's costs for treating medicaid and SCHIP clients during a base period by the number of medicaid and SCHIP discharges during that same period and adjusting for the hospital's case mix. See also "hospital conversion factor" and "negotiated conversion factor."~~

~~**"County hospital"** means a hospital established under the provisions of chapter 36.62 RCW.~~))

"Covered charges" ((~~means~~)) - Billed charges submitted to the ((~~department~~)) agency on a claim by the provider, less the noncovered charges indicated on the claim.

"Covered services" - See **"hospital covered service"** and WAC ((~~388-501-0060~~)) 182-501-0050.

"Critical border hospital" ((~~means, on and after August 1, 2007,~~)) - An acute care hospital located in a bordering city (see WAC 182-501-0175 for list) that the ((~~department~~)) agency has, through analysis of admissions and hospital days, designated as critical to provide ((~~elective~~)) health care for ((~~the department's medical assistance~~)) Washington apple health clients.

"Current procedural terminology (CPT)" ((~~means~~)) - A systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians. CPT is copyrighted and published annually by the American Medical Association (AMA).

((~~**"Customary charge payment limit"** means the limit placed by the department on aggregate DRG payments to a hospital during a given year to assure that DRG payments do not exceed the hospital's charges to the general public for the same services.~~

~~**"Day outlier"** means an inpatient case with a date of admission before August 1, 2007, that requires the department to make additional payment to the hospital provider but which does not qualify as a high cost outlier. See **"day outlier payment"** and **"day outlier threshold."** The department's day outlier policy no longer exists for dates of admission on and after August 1, 2007.~~

~~**"Day outlier payment"** means the additional amount paid to a disproportionate share hospital for inpatient claims with dates of admission before August 1, 2007, for a client five years old or younger who has a prolonged inpatient stay which exceeds the day outlier threshold but whose covered charges for care fall short of the high cost outlier threshold. The amount is determined by multiplying the number of days in excess of the day outlier threshold and the administrative day rate.~~

~~**"Day outlier threshold"** means for inpatient claims with dates of admission before August 1, 2007, the average number of days a client stays in the hospital for an applicable DRG before being discharged, plus twenty days.~~))

"Deductible" ((~~means~~)) - The dollar amount a ((~~beneficiary~~)) client is responsible for((~~,~~)) before ((~~medicare~~)) an insurer, such as medicare, starts paying((~~,~~)) or the initial specific dollar amount for which the ((~~applicant or~~)) client is responsible.

"Department of social and health services (DSHS)" ((~~means the state department of social and health services (DSHS). As used in this chapter, department also means MAA, HRSA, or a successor administration that administers the state's medicaid, SCHIP, and other medical assistance programs.~~

~~**"Detoxification"** means treatment provided to persons who are recovering from the effects of acute or chronic intoxication or withdrawal from alcohol or other drugs~~)) - The Washington state agency that provides food assistance, financial aid, medical and behavioral health care, and other services to eligible children, families, and vulnerable adults and seniors of Washington state.

"Diabetes education program" ((~~means~~)) - A comprehensive, multidisciplinary program of instruction offered by

a ((~~department of health (DOH)-approved~~)) DOH-approved diabetes education provider to diabetic clients ((~~on dealing with~~)) for managing diabetes. This includes instruction on nutrition, foot care, medication and insulin administration, skin care, glucose monitoring, and recognition of signs/symptoms of diabetes with appropriate treatment of problems or complications.

"Diagnosis code" ((~~means~~)) - A set of numeric or alpha-numeric characters assigned by the ((~~ICD-9-CM, or successor document,~~)) current published ICD-CM coding guidelines used by the agency as a shorthand symbol to represent the nature of a disease or condition.

"Diagnosis-related group (DRG)" ((~~means~~)) - A classification system that categorizes hospital patients into clinically coherent and homogenous groups with respect to resource use((~~, i.e., similar treatments and statistically similar lengths of stay for patients with related medical conditions~~)). Classification of patients is based on the ((~~International Classification of Diseases (ICD-9)~~)) current published ICD-CM coding guidelines used by the agency, the presence of a surgical procedure, patient age, presence or absence of significant comorbidities or complications, and other relevant criteria.

"Direct medical education costs" ((~~means~~)) - The direct costs of providing an approved medical residency program as recognized by medicare.

"Discharging hospital" ((~~means~~)) - The institution releasing a client from the acute care hospital setting.

"Discount factor" - The percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Disproportionate share hospital (DSH) payment" ((~~means~~)) - A supplemental ((~~payment(s)~~)) payment made by the ((~~department~~)) agency to a hospital that qualifies for one or more of the disproportionate share hospital programs identified in the state plan. See WAC 182-550-4900.

"Disproportionate share hospital (DSH) program" ((~~is~~)) - A program through which the ((~~department gives consideration to hospitals~~)) agency makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income ((~~patients with special needs by making payment adjustment to eligible hospitals~~)) clients in accordance with legislative direction and established payment methods. See 1902 (a)(13)(A)(iv) of the Social Security Act. See also WAC ((~~388-550-4900 through 388-550-5400~~)) 182-550-4900 through 182-550-5400.

"Dispute conference" - See **"hospital dispute conference."**

"Distinct unit" ((~~means medicare-certified~~)) - A distinct area for psychiatric ((~~or~~)), rehabilitation, or detox services which has been certified by medicare within an acute care hospital or ((~~a department-designated unit in~~)) approved by the agency within a children's hospital.

"**Division of** ((~~**alcohol and substance abuse (DASA)" is**~~)) **behavioral health and recovery services (DBHR)" -** The division within DSHS ((~~responsible for providing alcohol and drug-related services to help clients recover from alcoholism and drug addiction~~)) that administers mental health, problem gambling, and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96A RCW.

"DRG" - See **"diagnosis-related group."**

"DRG allowed amount" - The DRG relative weight multiplied by the conversion factor.

"DRG average length-of-stay" ((~~means for dates of admission on and after July 1, 2007, the department's~~)) - The agency's average length-of-stay for a DRG classification established during ((~~a department~~)) an agency DRG rebasing and recalibration project.

"DRG-exempt services" ((~~means services which are~~)) - Services paid through ((~~other methodologies than those using inpatient medicaid conversion factors, inpatient state-administered program conversion factors, cost-based conversion factors (CBCF) or negotiated conversion factors (NCF). Some examples are services paid using a~~)) methods other than DRG, such as per diem rate, ((~~a~~)) per case rate, or ((~~a~~)) ratio of costs-to-charges (RCC) ((~~rate~~)).

"DRG payment" ((~~means~~)) - The total payment made by the ((~~department~~)) agency for a client's inpatient hospital stay. ((~~This~~)) The DRG payment ((~~allowed amount is calculated by multiplying the conversion factor by the DRG relative weight assigned by the department to provider's inpatient claim before any outlier payment calculation~~)) is the DRG allowed amount plus the high outlier minus any third-party liability, client participation, medicare payment, and any other adjustments applied by the agency.

"DRG relative weight" ((~~means the average cost or charge of a certain DRG classification divided by the average cost or charge, respectively, for all cases in the entire data base for all DRG classifications.~~)

~~"Drug addiction and/or drug abuse treatment"~~ ~~means the provision of medical and rehabilitative social services to an eligible client designed to mitigate or reverse the effects of drug addiction or drug abuse and to reduce or eliminate drug addiction or drug abuse behaviors and restore normal physical and psychological functioning. Drug addiction or drug abuse treatment is characterized by the provision of a combination of drug and alcohol education sessions, individual therapy, group therapy and related activities to detoxified addicts and their families.~~

~~"DSHS"~~ ~~means the department of social and health services.~~

~~"Elective procedure or surgery"~~ ~~means a nonemergency procedure or surgery that can be scheduled at the client's and provider's convenience.~~)) - A factor used in the calculation of DRG payments. As of July 1, 2014, the medicaid agency uses the 3M™ Corporation's national weights developed for the all-patient refined-diagnosis-related group (APR-DRG) software.

"Enhanced ambulatory patient groupings (EAPG)" - The payment system used by the agency to calculate reimbursement to hospitals for the facility component of outpatient services on and after July 1, 2014. This system uses 3M's EAPGs as the primary basis for payment.

"Emergency medical condition" ((~~see WAC 388-500-0005~~)) - See WAC 182-500-0030.

((**~~"Emergency medical expense requirement (EMER)"~~** ~~means a specified amount of expenses for ambu-~~

~~lance, emergency room or hospital services, including physician services in a hospital, incurred for an emergency medical condition that a client must incur prior to certification for the psychiatric indigent inpatient (PII) program.~~))

"Emergency room" or **"emergency facility"** or **"emergency department"** ((~~means an organized, distinct hospital-based facility available twenty-four hours a day for the provision of unscheduled episodic services to patients who present for immediate medical attention, and is capable of providing emergency services including trauma care~~)) - A distinct hospital-based facility which provides unscheduled services to clients who require immediate medical attention. An emergency department must be capable of providing emergency medical, surgical, and trauma care services twenty-four hours a day, seven days a week. A physically separate extension of an existing hospital emergency department may be considered a freestanding emergency department as long as the extension provides comprehensive emergency medical, surgical, and trauma care services twenty-four hours a day, seven days a week.

"Emergency services" ((~~means~~)) - Health care services required by and provided to a ((~~patient~~)) client after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the ((~~patient's~~)) client's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. ((~~For department payment to a hospital,~~)) Inpatient maternity services are ((~~treated as~~)) considered emergency services by the agency.

"Equivalency factor (EF)" ((~~means~~)) - A factor that may be used by the ((~~department~~)) agency in conjunction with other factors to determine the level of a state-administered program payment. See WAC ((~~388-550-4800~~)) 182-550-4800.

"Exempt hospital((—)) - DRG payment method" ((~~means~~)) - A hospital that for a certain ((~~patient~~)) client category is reimbursed for services to ((~~medical assistance~~)) Washington apple health clients through methodologies other than those using DRG conversion factors.

((~~**"Exempt hospital - Hospital selective contracting program"** means a hospital that is either not located in a selective contracting area or is exempted by the department from the selective contracting program. The department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.~~))

"Expedited prior authorization (EPA)" ((~~means the department-delegated process of creating an authorization number for selected medical/dental procedures and related supplies and services in which providers use a set of numeric codes to indicate which department-acceptable indications, conditions, diagnoses, and/or department defined criteria are applicable to a particular request for service.~~

~~**"Expedited prior authorization (EPA) number"** means an authorization number created by the provider that certifies that the department-published criteria for the medical/dental procedure or supply or services have been met~~)) - See WAC 182-500-0030.

"Experimental service" ((~~means~~)) - A procedure, course of treatment, drug, or piece of medical equipment, which lacks scientific evidence of safety and effectiveness. See WAC ((~~388-531-0050~~)) 182-531-0050. A service is not "experimental" if the service:

(1) Is generally accepted by the medical profession as effective and appropriate; and

(2) Has been approved by the federal Food and Drug Administration (FDA) or other requisite government body if such approval is required.

"Fee-for-service" ((~~means the general payment process the department uses to pay a hospital provider's claim for covered medical services provided to medical assistance clients when the payment for these services is through direct payment to the hospital provider, and is not the responsibility of one of the department's managed care organization (MCO) plans, or a mental health division designee~~)) - See WAC 182-500-0035.

"Fiscal intermediary" ((~~means~~)) - Medicare's designated fiscal intermediary for a region ((~~and/or~~)) or category of service, or both.

"Fixed per diem rate" ((~~means~~)) - A daily amount used to determine payment for specific services provided in long-term acute care (LTAC) hospitals.

"Formal release" – When a client:

(1) Discharges from a hospital or distinct unit;

(2) Dies in a hospital or distinct unit;

(3) Transfers from a hospital or distinct unit as an acute care transfer; or

(4) Transfers from the hospital or distinct unit to a designated psychiatric unit or facility, or a designated acute rehabilitation unit or facility.

"Global surgery days" ((~~means~~)) - The number of preoperative and follow-up days that are included in the payment to the physician for the major surgical procedure.

"Graduate medical education costs" ((~~means~~)) - The direct and indirect costs of providing medical education in teaching hospitals. See "direct medical education costs" and "indirect medical education costs."

"Grouper" - See **"all-patient DRG grouper (APDRG)"** and **"all-patient refined DRG grouper (APR-DRG)."**

"Health ((~~**and recovery services administration (HRSA)"** means the successor administration to the medical assistance administration within the department, authorized by the department secretary to administer the acute care portion of Title XIX medicaid, Title XXI SCHIP, and other medical assistance programs, with the exception of certain non-medical services for persons with chronic disabilities~~)) **care authority (medicaid agency)"** - The Washington state agency that administers Washington apple health.

((~~**"Health care team"** means a group of health care providers involved in the care of a client.~~

~~**"High cost outlier"** means, for dates of admission before August 1, 2007, a claim paid under the DRG payment method that did not meet the definition of "administrative day," and has extraordinarily high costs when compared to other claims in the same DRG. For dates of admission on and after January 1, 2001, to qualify as a high-cost outlier, the billed charges, minus the noncovered charges reported on the claim, must exceed three times the applicable DRG payment and exceed thirty-three thousand dollars. The department's~~

high-cost outliers are not applicable for dates of admission on and after July 1, 2007.

"High outlier claim Medicaid/SCHIP DRG" means, for dates of admission on and after August 1, 2007, a claim paid under the DRG payment method that does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.))

"High outlier ((claim Medicaid/SCHIP per diem))" ((means, for dates of admission on and after August 1, 2007,)) - A DRG claim ((that is)) classified by the ((department)) agency as being allowed a high outlier payment that is paid under the ((per diem)) DRG payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the ((department)) agency. See WAC ((388-550-3700)) 182-550-3700.

((**"High outlier claim State-administered program DRG"** means, for dates of admission on and after August 1, 2007, claim paid under the DRG payment method that does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.

"High outlier claim State-administered program per diem" means, for dates of admission on or after August 1, 2007, claim that is classified by the department as being allowed as a high outlier payment, that is paid under the per diem payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.))

"Hospice" ((means)) - A medically directed, interdisciplinary program of palliative services for terminally ill clients and the clients' families. Hospice is provided under arrangement with a Washington state-licensed and Title XVIII-certified Washington state hospice.

"Hospital" ((means)) - An entity that is licensed as an acute care hospital in accordance with applicable state laws and regulations, or the applicable state laws and regulations of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit ((or)), a "psychiatric hospital" as defined in this section, or any other distinct unit of the hospital.

((**"Hospital base period"** means, for purposes of establishing a provider rate, a specific period or timespan used as a reference point or basis for comparison.

"Hospital base period costs" means costs incurred in, or associated with, a specified base period.

"Hospital conversion factor" means a hospital-specific dollar amount that reflects the average cost for a DRG paid case of treating medicaid and SCHIP clients in a given hospital. See cost-based conversion factor (CBCF) and negotiated conversion factor (NCF).))

"Hospital covered service" ((means a)) - Any service ((that is)), treatment, equipment, procedure, or supply provided by a hospital, covered under a ((medical assistance)) Washington apple health program, and ((is)) within the scope of an eligible client's ((medical assistance)) Washington apple health program.

"Hospital cost report" - See **"cost report."**

((**"Hospital dispute resolution conference"** means an informal meeting for deliberation during a provider administrative appeal. For provider audit appeals, see chapter 388-502A WAC. For provider rate appeals, see WAC 388-501-0220.

"Hospital market basket index" means a measure, expressed as a percentage, of the annual inflationary costs for hospital services measured by Global Insight's Data Resources, Inc. (DRI) and identified as the CMS PPS input price index.

"Hospital peer group" means the peer group categories established by the department for classification of hospitals:

(1) Peer Group A - Hospitals identified by the department as rural hospitals (excludes all rural hospitals paid by the certified public expenditure (CPE) payment method and critical access hospital (CAH) payment method);

(2) Peer Group B - Hospitals identified by the department as urban hospitals without medical education programs (excludes all hospitals paid by the CPE payment method and CAH payment method);

(3) Peer Group C - Hospitals identified by the department as urban hospitals with medical education programs (excludes all hospitals paid by the CPE payment method and CAH payment method);

(4) Peer Group D - Hospitals identified by the department as specialty hospitals and/or hospitals not easily assignable to the other five peer groups;

(5) Peer Group E - Hospitals identified by the department as public hospitals participating in the "full cost" public hospital certified public expenditure (CPE) payment program; and

(6) Peer Group F - Hospitals identified by the department of health (DOH) as CAHs, and paid by the department using the CAH payment method.

"Hospital selective contracting program" or **"selective contracting"** means for dates of admission before July 1, 2007, a negotiated bidding program for hospitals within specified geographic areas to provide inpatient hospital services to medical assistance clients. The department's hospital selective contracting program no longer exists for dates of admission on and after July 1, 2007.))

"Hospital readmission" - A situation in which a client who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital.

"Indirect medical education costs" ((means)) - The indirect costs of providing an approved medical residency program as recognized by medicare.

"Inflation adjustment" ((means,)) - For cost inflation, this is the hospital inflation adjustment. This adjustment is determined by using the inflation factor method ((supported)) approved by the legislature. For charge inflation, ((it means)) this is the inflation factor determined by comparing average discharge charges for the industry from one year to the next, as found in the comprehensive hospital abstract reporting system (CHARS) ((standard reports three and four)) Hospital Census and Charges by Payer report.

((**"Informed consent"** means that an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

(1) Disclosed and discussed the patient's diagnosis;

(2) Offered the patient an opportunity to ask questions about the procedure and to request information in writing;

(3) Given the patient a copy of the consent form;

(4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. 441.257; and

(5) Given the patient oral information about all of the following:

(a) The patient's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure;

(b) Alternatives to the procedure including potential risks, benefits, and consequences; and

(c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital" means a hospital authorized by the department of health to provide inpatient services.))

"Inpatient hospital admission" ((means an)) - A formal admission to a hospital based on an evaluation of the client using objective clinical indicators for the purpose of providing medically necessary, acute inpatient care((, including)). These indicators include assessment, monitoring, and therapeutic services as required to best manage the client's illness or injury((, and that is)). All applicable indicators must be documented in the client's health record. The decision to admit a client to inpatient status should be based on the condition-specific episode of care, severity of illness presented, and the intensity of services rendered. The agency does not deem inpatient hospital admissions as covered or noncovered solely on the basis of the length of time the client actually spends in the hospital. Generally, a client remains overnight and occupies a bed. Inpatient status can apply even if the client is discharged or transferred to another acute hospital and does not actually use a hospital bed overnight. For the agency to recognize a stay as inpatient there must be a physician admission order in the client's medical record indicating the status as inpatient.

"Inpatient medicaid DRG conversion factor" ((means)) - A dollar amount that represents selected hospitals' average costs of treating medicaid and ((SCHIP)) CHIP clients. The conversion factor is a rate that is multiplied by a DRG relative weight to pay medicaid and ((SCHIP)) CHIP claims under the DRG payment method. See WAC ((388-550-3450)) 182-550-3800 for how this conversion factor is calculated.

"Inpatient services" ((means)) - Health care services provided ((directly or indirectly)) to a client ((subsequent to the client's inpatient hospital admission and prior to discharge)) during hospitalization whose condition warrants formal admission and treatment in a hospital.

((["])) "Inpatient state-administered program conversion factor" ((means a dollar amount used as a rate)) - A DRG conversion factor reduced from the inpatient medicaid DRG conversion factor to pay a hospital for inpatient services provided to a client eligible under a state-administered program. The conversion factor is multiplied by a DRG relative weight to pay claims under the DRG payment method.

"Intermediary" - See **"fiscal intermediary."**

"International Classification of Diseases((, 9th Revision, Clinical Modification (ICD-9-CM) Edition" means)) **(ICD-9-CM and ICD-10-CM)" -** The systematic listing ((that transforms verbal descriptions)) of diseases, injuries, conditions, and procedures ((into)) as numerical or alpha numerical designations (coding).

"Length of stay (LOS)" ((means)) - The number of days of inpatient hospitalization, calculated by adding the total number of days from the admission date to the discharge date, and subtracting one day.

((**"Length of stay extension request"** means a request from a hospital provider for the department, or in the case of psychiatric admission, the appropriate mental health division designee, to approve a client's hospital stay exceeding the average length of stay for the client's diagnosis and age.

"Lifetime hospitalization reserve" means, under the medicare Part A benefit, the nonrenewable sixty hospital days that a beneficiary is entitled to use during his or her lifetime for hospital stays extending beyond ninety days per benefit period. See also **"reserve days."**))

"Long-term acute care (LTAC) services" ((means)) - Inpatient intensive long-term care services provided in ((department-approved)) agency-approved LTAC hospitals to eligible ((medical assistance)) Washington apple health clients who meet criteria for level 1 or level 2 services. See WAC ((388-550-2565 through 388-550-2596)) 182-550-2565 through 182-550-2596.

((**"Low-cost outlier"** means a case having a date of admission before August 1, 2007, with extraordinarily low costs when compared to other cases in the same DRG. For dates of admission on and after January 1, 2001, to qualify as a low-cost outlier, the allowed charges must be less than the greater of ten percent of the applicable DRG payment or four hundred and fifty dollars. The department's low-cost outliers are not applicable for dates of admission on and after August 1, 2007.

"Low-income utilization rate (LIUR)" means a rate determined by a formula represented as (A/B)+(C/D) in the same period in which:

(1) The numerator A is the hospital's total patient services revenue under the state plan, plus the amount of cash subsidies for patient services received directly from state and local governments;

(2) The denominator B is the hospital's total patient services revenue (including the amount of such cash subsidies);

(3) The numerator C is the hospital's total inpatient service charge attributable to charity care, less the portion of cash subsidies described in (1) of this definition in the period reasonably attributable to inpatient hospital services. The amount shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under the state plan); and

(4) The denominator D is the hospital's total charge for inpatient hospital services.))

"LTAC level 1 services" - LTAC services provided to a client who requires eight or more hours of direct skilled nursing care per day and the client's medical needs cannot be met at a lower level of care due to clinical complexity. Level 1 services include one of the following:

(1) Ventilator weaning care; or

(2) Care for a client who has:

(a) Chronic open wounds that require on-site wound care specialty services and daily assessments and/or interventions; and

(b) At least one comorbid condition (such as chronic renal failure requiring hemodialysis).

"LTAC level 2 services" - LTAC services provided to a client who requires four or more hours of direct skilled nursing care per day, and the clients' medical needs cannot be met at a lower level of care due to clinical complexity. Level 2 services include at least one of the following:

(1) Ventilator care for a client who is ventilator-dependent and is not weanable and has complex medical needs; or

(2) Care for a client who:

(a) Has a tracheostomy;

(b) Requires frequent respiratory therapy services for complex airway management and has the potential for decannulation; and

(c) Has at least one comorbid condition (such as quadriplegia).

"Major diagnostic category (MDC)" ((~~means~~)) - One of the mutually exclusive groupings of principal diagnosis areas in the AP-DRG and APR-DRG classification systems. ((~~The diagnoses in each MDC correspond to a single major organ system or etiology and, in general, are associated with a particular medical specialty.~~

~~**"Market basket index" -** See **"hospital market basket index."**~~

~~**"MDC" -** See **"major diagnostic category."**~~

~~**"Medicaid cost proxy"** means a figure developed to approximate or represent a missing cost figure.~~

~~**"Medicaid inpatient utilization rate (MIPUR)"** means a ratio expressed by the following formula represented as X/Y in which:~~

~~(1) The numerator X is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under the state plan in a period.~~

~~(2) The denominator Y is the hospital's total number of inpatient days in the same period as the numerator's. Inpatient day includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.~~

~~**"Medical assistance administration (MAA)"** means the health and recovery services administration (HRSA), or a successor administration, within the department authorized by the department's secretary to administer the acute care portion of the Title XIX medicaid, Title XXI state children's health insurance program (SCHIP), and other medical assistance programs, with the exception of certain nonmedical services for persons with chronic disabilities.~~

~~**"Medical assistance program"** means any health care program administered through HRSA.~~))

"Medical care services (MCS)" ((~~means the state-administered limited scope of care provided to general assistance-unemployable (GAU) recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW~~)) - See WAC 182-500-0070.

"Medical education costs" ((~~means~~)) - The expenses incurred by a hospital to operate and maintain a formally organized graduate medical education program.

((~~**"Medical screening evaluation"** means the service(s) provided by a physician or other practitioner to determine whether an emergent medical condition exists.~~

~~**"Medical stabilization"** means a return to a state of constant and steady function. It is commonly used to mean the patient is adequately supported to prevent further deterioration.~~))

"Medical visit" - Diagnostic, therapeutic, or consultative services provided to a client by a health care professional in an outpatient setting.

"Medicare cost report" ((~~means~~)) - The medicare cost report (Form 2552-96 or Form 2552-10), or successor document, completed and submitted annually by a hospital provider((~~:~~

~~(1) To medicare intermediaries at the end of a provider's selected fiscal accounting period to establish hospital reimbursable costs for per diem and ancillary services; and~~

~~(2) To medicaid to establish appropriate DRG and other rates for payment of services rendered~~)).

"Medicare crossover" ((~~means~~)) - A claim involving a client who is eligible for both medicare benefits and medicaid.

"Medicare physician fee schedule ((~~(MFS)~~)) (MPFS)" ((~~means~~)) - The official CMS publication of relative value units and medicare ((~~policies and relative value units~~)) payment policy indicators for the resource-based relative value scale (RBRVS) payment program.

"Medicare Part A" - See WAC ((~~388-500-0005~~)) 182-500-0070.

"Medicare Part B" - See WAC ((~~388-500-0005~~)) 182-500-0070.

((~~**"Medicare buy-in premium" -** See **"buy-in premium."**~~))

"Medicare payment principles" ((~~means~~)) - The rules published in the federal register regarding payment for services provided to medicare clients.

"Mental health ((~~division~~)) designee" ((~~or **"MHD designee"** means~~)) - A professional contact person authorized by ((~~MHD~~)) the division of behavioral health and recovery (DBHR) of DSHS, who operates under the direction of a regional support network (RSN) or a prepaid inpatient health plan (PIHP). See WAC ((~~388-550-2600~~)) 182-550-2600.

((~~**"Mentally incompetent"** means a person who has been declared mentally incompetent by a federal, state, or local court of competent jurisdiction.~~

~~**"Multiple occupancy rate"** means the rate customarily charged for a hospital room with two to four patient beds.~~))

"Military hospital" - A hospital reserved for the use of military personnel, their dependents, and other authorized users.

"Modifier" - A two-digit alphabetic and/or numeric identifier added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code.

The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"National correct coding initiative (NCCI)" - A national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the *American Medical Associations' Current Procedural Terminology (CPT®)* manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at http://www.cms.hhs.gov/NationalCorrectCodInitEd/.

"National drug code (NDC)" ((means)) - The eleven-digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The eleven-digit NDC is composed of a five-four-two grouping. The first five digits comprise the labeler code assigned to the manufacturer by the ((Federal Drug Administration ())FDA((.)). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

((**"Negotiated conversion factor (NCF)"** means, for dates of admission before July 1, 2007, a negotiated hospital-specific dollar amount which is used in lieu of the cost-based conversion factor as the multiplier for the applicable DRG weight to determine the DRG payment for a selective contracting program hospital. See also **"hospital conversion factor"** and **"cost-based conversion factor."** The department's hospital selective contracting program no longer exists for dates of admission on and after July 1, 2007.))

"National payment rate (NPR)" - A rate for a given procedure code, published by CMS, that does not include a state- or location-specific adjustment.

"National Provider Identifier (NPI)" - A standard, unique identifier for health care providers assigned by CMS. The agency's ProviderOne system pays for inpatient and outpatient services using only one NPI per provider. The agency may make an exception for inpatient claims billed with medicare-certified, distinct unit NPIs.

"Nationwide rate" - See **"national payment rate (NPR)."**

"NCCI edit" - A software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency fee schedules, billing instructions, and other publications. The agency has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards, or agency policy.

"Newborn" or **"neonate"** or **"neonatal"** ((means)) - A person younger than twenty-nine days old. ((However, a person who has been admitted to an acute care hospital setting as a newborn and is transferred to another acute care hospital setting is still considered a newborn for payment purposes.))

"Nonallowed service or charge" ((means)) - A service or charge ((that is not recognized for payment)) billed by the provider as noncovered or denied by the ((department, and)) agency. This service or charge cannot be billed to the client except under the conditions identified in WAC ((388-502-0160)) 182-502-0160.

((**"Noncontract hospital"** means, for dates of admission before July 1, 2007 a licensed hospital located in a selective contracting area (SCA) but which does not have a contract to participate in the hospital selective contracting program. The department's hospital selective contracting program no longer exists for dates of admission on and after July 1, 2007.))

"Noncovered charges" ((means)) - Billed charges ((submitted)) a provider submits to the ((department by a provider)) agency on a claim ((that are indicated by the provider)) and indicates them on the claim as noncovered.

"Noncovered service or charge" ((means)) - A service or charge ((that is not considered or paid by the department)) the agency does not consider or pay for as a "hospital covered service((," and cannot))." This service or charge may not be billed to the client, except under the conditions identified in WAC ((388-502-0160)) 182-502-0160.

((**"Nonemergency hospital admission"** means any inpatient hospitalization of a patient who does not have an emergent medical condition, as defined in WAC 388-500-0005.

"Nonparticipating hospital" means a noncontract hospital. See **"noncontract hospital."**))

"Nursing service personnel" - A group of health care professionals that includes, but is not limited to: Registered nurse (RN), licensed practical nurse (LPN), certified nursing assistant/nursing assistant certified (CNA/NAC).

"Observation services" ((means health care services furnished by a hospital on the hospital's premises, including use of a bed and periodic monitoring by hospital staff, which are reasonable and necessary to evaluate an outpatient's condition or determine the need for possible admission to the hospital as an inpatient)) - A well-defined set of clinically appropriate services furnished while determining whether a client will require formal inpatient admission or be discharged from the hospital. Services include ongoing short-term treatment, monitoring, assessment, and reassessment. Rarely do reasonable and necessary observation services exceed forty-eight hours. The agency or its designee may determine through the retrospective utilization review process that an inpatient hospital service should have been billed as an observation service.

"Operating costs" ((means)) - All expenses incurred ((in)) providing accommodation and ancillary services, excluding capital and medical education costs.

((**"OPPS"** - See **"outpatient prospective payment system."**

"OPPS adjustment" means the legislative mandated reduction in the outpatient adjustment factor made to account for the delay of OPPS implementation.

"OPPS outpatient adjustment factor" means the outpatient adjustment factor reduced by the OPPS and adjustment factor as a result of legislative mandate.))

"Orthotic device" or **"orthotic"** ((means)) - A corrective or supportive device that:

(1) Prevents or corrects physical deformity or malfunction; or

(2) Supports a weak or deformed portion of the body.

"Out-of-state hospital" ((~~means~~)) - Any hospital located outside the state of Washington and ((~~outside the designated~~)) the bordering cities ((~~in Oregon and Idaho (see WAC 388-501-0175)~~)) designated in WAC 182-501-0175. For ((~~medical assistance~~)) Washington apple health clients requiring psychiatric services, an "out-of-state hospital" ((~~means~~)) is any hospital located outside the state of Washington.

((**~~"Outlier set-aside factor"~~** ~~means the amount by which a hospital's cost-based conversion factor is reduced for payments of high cost outlier cases. The department's outlier set-aside factor is not applicable for dates of admission on and after August 1, 2007.~~

~~"Outlier set-aside pool"~~ ~~means the total amount of payments for high cost outliers which are funded annually based on payments for high cost outliers during the year. The department's outlier set-aside pool is not applicable for dates of admission on and after August 1, 2007.~~))

"Outliers" ((~~means~~)) - Cases with extraordinarily high ((~~or low~~)) costs when compared to other cases in the same DRG.

"Outpatient" ((~~means a patient~~)) - A client who is receiving health care services ((~~in~~)), other than ((~~an~~)) inpatient services, in a hospital setting.

"Outpatient care" ((~~means health care provided other than inpatient services in a hospital setting.~~)) - See **"outpatient hospital services."**

"Outpatient code editor (OCE)" - A software program the agency uses for classifying and editing in ambulatory payment classification (APC)-based OPPS.

"Outpatient hospital" ((~~means~~)) - A hospital authorized by ((~~the department of health~~)) DOH to provide outpatient services.

"Outpatient hospital services" ((~~means~~)) - Those health care services that are within a hospital's licensure and provided to a client who is designated as an outpatient.

"Outpatient observation" - See **"observation services."**

"Outpatient prospective payment system (OPPS)" ((~~means~~)) - The payment system used by the ((~~department~~)) agency to calculate reimbursement to hospitals for the facility component of outpatient services. ((~~This system uses ambulatory payment classifications (APCs) as the primary basis of payment.~~

~~"Outpatient short stay"~~ ~~- See **"observation services"** and **"outpatient hospital services."**~~))

"Outpatient prospective payment system (OPPS) conversion factor" - See **"outpatient prospective payment system (OPPS) rate."**

"Outpatient prospective payment system (OPPS) rate" - A hospital-specific multiplier assigned by the agency that is one of the components of the APC payment calculation.

"Outpatient surgery" ((~~means~~)) - A surgical procedure that is not expected to require an inpatient hospital admission.

((**~~"Pain treatment facility"~~** ~~means a department-approved inpatient facility for pain management, in which a multidisciplinary approach is used to teach clients various techniques to live with chronic pain.~~

~~"Participating hospital"~~ ~~means a licensed hospital that accepts department clients.~~

~~"PAS length of stay (LOS)"~~ ~~means, for dates of admission before August 1, 2007, the average length of an inpatient hospital stay for patients based on diagnosis and age, as determined by the commission of professional and hospital activities and published in a book entitled *Length of Stay by Diagnosis, Western Region*. See also **"professional activity study (PAS)."**~~

~~"Patient consent"~~ ~~means the informed consent of the patient and/or the patient's legal guardian, as evidenced by the patient's or guardian's signature on a consent form, for the procedure(s) to be performed upon or for the treatment to be provided to the patient.~~

~~"Peer group"~~ ~~- See **"hospital peer group."**~~

~~"Peer group cap"~~ ~~means, for dates of admission before August 1, 2007, the reimbursement limit set for hospital peer groups B and C, established at the seventieth percentile of all hospitals within the same peer group for aggregate operating, capital, and direct medical education costs.~~))

"Pass-throughs" - Certain drugs, devices, and biologicals, as identified by CMS, for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own APC.

"Per diem ((~~**rate"** means~~))**"** - A method which uses a daily rate ((~~used~~)) to calculate payment for services provided as a "hospital covered service."

((**~~"Personal comfort items"~~** ~~means items and services which primarily serve the comfort or convenience of a client and do not contribute meaningfully to the treatment of an illness or injury.~~))

"PM&R" - See **"Acute PM&R."**

((**~~"Plan of treatment"~~** ~~or **"plan of care"** means the written plan of care for a patient which includes, but is not limited to, the physician's order for treatment and visits by the disciplines involved, the certification period, medications, and rationale indicating need for services.~~

~~"PPS"~~ ~~see "prospective payment system."~~))

"Point of care testing (POCT)" - A test designed to be used at or near the site where the patient is located, that does not require permanent dedicated space, and that is performed outside the physical facilities of the clinical laboratory.

"Primary care case management (PCCM)" ((~~means~~)) - The coordination of health care services under the ((~~department's~~)) agency's Indian health center or tribal clinic managed care program. See WAC ((~~388-538-068~~)) 182-538-068.

"Principal diagnosis" ((~~means~~)) - The condition ((~~established after study to be~~)) chiefly responsible for the admission of the patient to the hospital ((~~for care~~)).

((**~~"Principal procedure"~~** ~~means a procedure performed for definitive treatment rather than diagnostic or exploratory purposes, or because it was necessary due to a complication.~~))

"Prior authorization" ((~~means a process by which clients or providers must request and receive department or a department designee's approval for certain health care services, equipment, or supplies, based on medical necessity, before the services are provided to clients, as a precondition for payment to the provider. Expedited prior authorization~~

and limitation extension are forms of prior authorization)) - See WAC 182-500-0085.

"Private room rate" ((means)) - The rate customarily charged by a hospital for a one-bed room.

((**"Professional activity study (PAS)"** means the compilation of inpatient hospital data by diagnosis and age, conducted by the commission of professional and hospital activities, which resulted in the determination of an average length of stay for patients. The data are published in a book entitled *Length of Stay by Diagnosis, Western Region*.

"Professional component" means the part of a procedure or service that relies on the physician's professional skill or training, or the part of a payment that recognizes the physician's cognitive skill.

"Prognosis" means the probable outcome of a patient's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the patient's probable life span as a result of the illness.))

"Prospective payment system (PPS)" ((means a system that sets payment rates for a predetermined period for defined services, before the services are provided. The payment rates are based on economic forecasts and the projected cost of services for the predetermined period)) - A payment system in which what is needed to calculate payments (methods, types of variables, and other factors) is set in advance and is knowable by all parties before care is provided. In a retrospective payment system, what is needed (actual costs or charges) is not available until after care is provided.

"Prosthetic device" or **"prosthetic"** ((means)) - A replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner, within the scope of his or her practice as defined by state law, to:

(1) Artificially replace a missing portion of the body;

(2) Prevent or correct physical deformity or malfunction; or

(3) Support a weak or deformed portion of the body.

"Psychiatric hospital" ((means)) - A medicare-certified distinct psychiatric unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital. Eastern state hospital and western state hospital are excluded from this definition.

((**"Psychiatric indigent inpatient (PII) program"** means a state-administered program established by the department specifically for mental health clients identified in need of voluntary emergency inpatient psychiatric care by a mental health division designee. See WAC 388-865-0217.

"Psychiatric indigent person" means a person certified by the department as eligible for the psychiatric indigent inpatient (PII) program.))

"Public hospital district" ((means)) - A hospital district established under chapter 70.44 RCW.

"Ratable" ((means)) - A factor used to calculate ((a reduction factor used to reduce medicaid level rates to determine)) inpatient payments for state-administered programs ((claim payment to hospitals)).

"Ratio of costs-to-charges (RCC)" ((means)) - A method used to pay hospitals for some services exempt from the DRG payment method. It also refers to the ((factor or rate)) percentage applied to a hospital's allowed covered charges for medically necessary services to determine estimated costs, as determined by the ((department)) agency, and payment to the hospital for some DRG-exempt services.

((**"RCC"** - See **"ratio of costs-to-charges."**))

"Rebasing" ((means)) - The process ((of recalculating the conversion factors, per diems, per case rates, or RCC rates using historical data)) used by the agency to update hospital payment policies, related variables (rates, factors, thresholds, multipliers, and caps), and system processes (edits, adjudication, grouping, etc.).

"Recalibration" ((means)) - The process of recalculating DRG relative weights using historical data.

"Regional support network (RSN)" ((means a county authority or a group of county authorities recognized and certified by the department, that contracts with the department per chapters 38.52, 71.05, 71.24, 71.34, and 74.09 RCW and chapters 275-54, 275-55, and 275-57 WAC, to manage the provision of mental health services to medical assistance clients)) - See WAC 182-500-0095.

((**"Rehabilitation accreditation commission, The"** - See **"CARF."**))

"Rehabilitation units" ((means)) - Specifically identified rehabilitation hospitals and designated rehabilitation units of hospitals that meet ((department and/or)) agency and medicare criteria for distinct rehabilitation units.

"Relative weights" - See **"DRG relative weights."**

((**"Remote hospitals"** means, for claims with dates of admission before July 1, 2007, hospitals that meet the following criteria during the hospital selective contracting (HSC) waiver application period:

(1) Are located within Washington state;

(2) Are more than ten miles from the nearest hospital in the HSC competitive area; and

(3) Have fewer than seventy-five beds; and

(4) Have fewer than five hundred medicaid and SCHIP admissions within the previous waiver period.))

"Reserve days" ((means)) - The days beyond the ninetieth day of hospitalization of a medicare patient for a benefit period or ((spell)) incidence of illness. See also **"lifetime hospitalization reserve."**

((**"Retrospective payment system"** means a system that sets payment rates for defined services according to historic costs. The payment rates reflect economic conditions experienced in the past.))

"Revenue code" ((means a nationally-assigned)) - A nationally assigned coding system for billing inpatient and outpatient hospital services, home health services, and hospice services.

"Room and board" ((means the services a hospital facility provides a patient)) - Routine supplies and services provided to a client during the ((patient's)) client's hospital stay. ((These services include)) This includes, but ((are)) is not limited to, a ((routine)) regular or special care hospital room and related furnishings, ((routine)) room supplies, dietary and bedside nursing services, and the use of certain hospital equipment and facilities.

"Rural health clinic" ((means a clinic that is located in areas designed by the bureau of census as rural and by the Secretary of the Department of Health and Human Services

~~(DHHS), as medically underserved~~)) - See WAC 182-549-1100.

"Rural hospital" ((~~means~~)) - An acute care health care facility capable of providing or assuring availability of inpatient and outpatient hospital health services in a rural area.

((~~**"Secondary diagnosis"** means a diagnosis other than the principal diagnosis for which an inpatient is admitted to a hospital.~~

~~**"Selective contracting area (SCA)"** means, for dates of admission before July 1, 2007, an area in which hospitals participate in negotiated bidding for hospital contracts. The boundaries of an SCA are based on historical patterns of hospital use by medicaid and SCHIP clients. This definition is not applicable for dates of admission on and after July 1, 2007.~~))

"Semi-private room rate" ((~~means~~)) - A rate customarily charged for a hospital room with two to four beds; this charge is generally lower than a private room rate and higher than a ward room. See also **"multiple occupancy rate."**

((~~**"Seven-day readmission"** means the situation in which a client who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital within seven days.~~

~~**"Special care unit"** means a department of health (DOH) or medicare-certified hospital unit where intensive care, coronary care, psychiatric intensive care, burn treatment or other specialized care is provided.~~))

"Significant procedure" - A procedure, therapy, or service provided to a client that constitutes one of the primary reasons for the visit to the health care professional, and represents a substantial portion of the resources associated with the visit.

"Specialty hospitals" ((~~means~~)) - Children's hospitals, psychiatric hospitals, cancer research centers or other hospitals which specialize in treating a particular group of patients or diseases.

"Spenddown" ((~~means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department.~~)) - See chapter ((~~388-519~~)) 182-519 WAC.

((~~**"Stat laboratory charges"** means the charges by a laboratory for performing a test or tests immediately. "Stat." is the abbreviation for the Latin word "statim" meaning immediately.~~

~~**"State children's health insurance program (SCHIP)"** means the federal Title XXI program under which medical care is provided to uninsured children younger than age nineteen.~~))

"State plan" ((~~means~~)) - The plan filed by the ((~~department~~)) agency with ((~~the Centers for Medicare and Medicaid Services (CMS)~~)) CMS, Department of Health and Human Services (DHHS), outlining how the state will administer medicaid and ((~~SCHIP~~)) CHIP services, including the hospital program.

"Status indicator (SI)" - A code assigned to each medical procedure or service by the agency that contributes to the selection of a payment method.

"Subacute care" ((~~means~~)) - Care provided to a ((~~patient~~)) client which is less intensive than that given at an acute care hospital. Skilled nursing, nursing care facilities and other facilities provide subacute care services.

((~~**"Surgery"** means the medical diagnosis and treatment of injury, deformity or disease by manual and instrumental operations. For reimbursement purposes, surgical procedures are those designated in CPT as procedure codes 10000 to 69999.~~))

"Survey" - An inspection or review conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with program requirements.

"Swing bed" - An inpatient hospital bed certified by CMS for either acute inpatient hospital or skilled nursing services.

"Swing-bed day" ((~~means~~)) - A day in which a client is receiving skilled nursing services in a hospital-designated swing bed at the hospital's census hour. ((~~The hospital swing bed must be certified by the Centers for Medicare and Medicaid Services (CMS) for both acute care and skilled nursing services.~~

~~**"Technical component"** means the part of a procedure or service that relates to the equipment set-up and technician's time, or the part of a procedure and service payment that recognizes the equipment cost and technician time.~~

~~**"Tertiary care hospital"** means a specialty care hospital providing highly specialized services to clients with more complex medical needs than acute care services.~~))

"Total patient days" ((~~means~~)) - All patient days in a hospital for a given reporting period, excluding days for skilled nursing, nursing care, and observation days.

"Transfer" ((~~means~~)) - To move a client from one acute care ((~~facility or distinct unit to another~~)) setting to a higher level acute care setting for emergency care or to a post-acute, lower level care setting for ongoing care.

"Transferring hospital" ((~~means~~)) - The hospital or distinct unit that transfers a client to another acute care or subacute facility or distinct unit, or to a nonhospital setting.

((~~**"Trauma care facility"** means a facility certified by the department of health as a level I, II, III, IV, or V facility. See chapter 246-976 WAC.~~

~~**"Trauma care service"** - See department of health's WAC 246-976-935.~~))

"UB-04" ((~~is~~)) - The uniform billing document required for use nationally((~~, beginning on May 23, 2007,~~)) by hospitals, nursing facilities, hospital-based skilled nursing facilities, home health agencies, and hospice agencies in billing ((~~third party payers~~)) for services provided to patients. This document includes the current national uniform billing data element specifications developed by the National Uniform Billing Committee and approved ((~~and/or~~)) and modified by the Washington state payer group or the ((~~department~~)) agency.

((~~**"UB-92"** is the uniform billing document discontinued for billing claims submitted on and after May 23, 2007.~~

~~**"Unbundled services"** means interventions that are not integral to the major procedure and that are paid separately.~~

~~**"Uncompensated care"** - See **"charity care."**~~

~~**"Uniform cost reporting requirements"** means a standard accounting and reporting format as defined by medicare.~~

~~**"Uninsured patient"** means an individual who is not covered by insurance for provided inpatient and/or outpatient hospital services.~~

~~**"Usual and customary charge (UCC)"** means the charge customarily made to the general public for a health care procedure or service, or the rate charged other contractors for the service if the general public is not served.~~))

"Vendor rate increase" ((~~means an inflation~~)) - An adjustment determined by the legislature, that may be used to periodically increase rates for payment to vendors, including health care providers, that do business with the state.

"Washington apple health program" - Any health care program administered through the medicaid agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-2900 Payment limits—Inpatient hospital services. (1) To be eligible for payment for covered inpatient hospital services, a hospital must:

(a) Have a core-provider agreement with the ((~~department~~)) agency; and

(b) Be an in-state hospital, a bordering city hospital, a critical border hospital, or a distinct unit of such a hospital, ((~~that meets~~)) and meet the definition in ((~~RCW 70.41.020 and is certified under Title XVIII of the federal Social Security Act~~)) WAC 182-550-1050; or

(c) Be an out-of-state hospital that meets the conditions in WAC ((~~388-550-6700~~)) 182-550-6700.

(2) The ((~~department~~)) agency does not pay for any of the following:

(a) ((~~A hospital or distinct unit for~~)) Inpatient care ((~~and/or~~)) or services, or both, provided in a hospital or distinct unit to a client when a managed care organization (MCO) plan is contracted to cover those services.

(b) ((~~A hospital or distinct unit for care and/or~~)) Care or services, or both, provided in a hospital or distinct unit provided to a client enrolled in the hospice program, unless the care or services are completely unrelated to the terminal illness that qualifies the client for the hospice benefit.

(c) ((~~A hospital or distinct unit for ancillary services in addition to the:~~

~~(i) Diagnosis related group (DRG) payment, or per case rate payment on claims with dates of admission before August 1, 2007; or~~

~~(ii) DRG payment, per diem payment, or per case rate payment on claims with dates of admission on and after August 1, 2007.~~)) Ancillary services provided in a hospital or distinct unit unless explicitly spelled out in this chapter.

(d) ((~~For~~)) Additional days of hospitalization on a non-DRG claim when:

(i) Those days exceed the number of days established by the ((~~department~~)) agency or mental health ((~~division (MHD)~~)) designee (see WAC ((~~388-550-2600~~)) 182-550-2600), as the approved length of stay (LOS); and

(ii) The hospital or distinct unit has not ((~~requested and/or~~)) received approval for an extended ((~~length of stay (~~))LOS((~~)~~)) from the ((~~department or MHD~~)) agency or mental health designee as specified in WAC ((~~388-550-4300~~)) 182-550-4300(6). The ((~~department~~)) agency may perform a prospective, concurrent, or retrospective utilization review as described in WAC ((~~388-550-1700~~)) 182-550-1700, to evaluate an extended LOS. A ((~~MHD~~)) mental health designee may also perform those utilization reviews to evaluate an extended LOS.

(e) ((~~For dates of admission before August 1, 2007, for elective or nonemergency inpatient services provided in a nonparticipating hospital. A nonparticipating hospital is defined in WAC 388-550-1050. See also WAC 388-550-4600.~~

~~(f) For~~)) Inpatient hospital services when the ((~~department~~)) agency determines that the client's medical record fails to support the medical necessity and inpatient level of care for the inpatient admission. The ((~~department~~)) agency may perform a retrospective utilization review as described in WAC ((~~388-550-1700~~)) 182-550-1700, to evaluate if the services are medically necessary and are provided at the appropriate level of care.

((~~(g) For~~)) (f) Two separate inpatient hospitalizations if a client is readmitted to the same or ((~~different~~)) an affiliated hospital or distinct unit within ((~~seven~~)) fourteen calendar days of discharge((~~, unless the readmission is due to conditions unrelated to the previous admission. The department:~~

~~(i) May perform a retrospective utilization review as described in WAC 388-550-1700 to determine the appropriate payment for the readmission.~~

~~(ii) Determines if the combined hospital stay for the admission qualifies to be paid as an outlier. See WAC 388-550-3700 for DRG high-cost outliers and per diem high outliers for dates of admission on and after August 1, 2007.~~

~~(h) For~~)) and the agency determines one inpatient hospitalization does not qualify for a separate payment. See WAC 182-550-3000.

(g) A client's day(s) of absence from the hospital or distinct unit.

((~~(i) For~~)) (h) An inappropriate or nonemergency transfer of a client ((~~from one acute care hospital or distinct unit to another. The department may perform a prospective, concurrent, or retrospective utilization review as described in WAC 388-550-1700 to determine if the admission to the second hospital or distinct unit qualifies for payment. See also WAC 388-550-3600~~)). See WAC 182-550-3600 for hospital transfers.

(i) Charges related to a provider preventable condition (PPC), hospital acquired condition (HAC), serious reportable event (SRE), or a condition not present on admission (POA). See WAC 182-502-0022.

(3) ((~~An interim billed inpatient hospital claim submitted for a client's continuous inpatient hospitalization of at least sixty calendar days, is considered for payment by the department only when the following occurs (this does not apply to interim billed hospital claims for which the department is not the primary payer (see (b) of this subsection), or to inpatient psychiatric admissions:~~)) This section defines when the agency considers payment for an interim billed inpatient hospital claim.

(a) When the agency is the primary payer, each interim billed ((~~hospital~~)) nonpsychiatric claim must:

(i) Be submitted in sixty calendar day intervals, unless the client is discharged prior to the next sixty calendar day interval.

(ii) Document the entire date span between the client's date of admission and the current date of services billed, and include the following for that date span:

(A) All inpatient hospital services provided; and

(B) All applicable diagnosis codes and procedure codes.

(iii) Be submitted as an adjustment to the previous interim billed hospital claim.

(b) When the ((~~department~~)) agency is not the primary payer((~~, the department~~)):

(i) The agency pays an interim billed ((~~hospital~~)) non-psychiatric claim when the criteria in (a) of this subsection are met; and((~~:~~

~~(i) After sixty~~))

(ii) Either of the following:

(A) Sixty calendar days have passed from the date the ((~~department becomes~~)) agency became the primary payer; or

(((~~(ii) The date a~~)) (B) A client is eligible for both medicare and medicaid and has exhausted the medicare lifetime reserve days for inpatient hospital care.

(c) For psychiatric claims, (a)(i) and (b)(i) of this subsection do not apply.

(4) The agency considers for payment a hospital claim submitted for a client's continuous inpatient hospital admission of sixty calendar days or less ((~~is considered for payment by the department~~)) upon the client's ((~~discharge~~)) formal release from the hospital or distinct unit. ((~~The department considers a client discharged from the hospital or distinct unit if one of the following occurs. The client:~~

~~(a) Obtains a formal release issued by the hospital or distinct unit;~~

~~(b) Dies in the hospital or distinct unit;~~

~~(c) Transfers from the hospital or distinct unit as an acute care transfer; or~~

~~(d) Transfers from the hospital or distinct unit to a designated psychiatric unit or facility, or a designated acute rehabilitation unit or facility.~~))

(5) To be eligible for payment, a hospital or distinct unit must bill the agency using an inpatient hospital claim:

(a) In accordance with the current national uniform billing data element specifications:

(i) Developed by the National Uniform Billing Committee (NUBC);

(ii) Approved ((~~and/or~~)) or modified, or both, by the Washington state payer group or the ((~~department~~)) agency; and

(iii) In effect on the date of the client's admission.

(b) In accordance with the current published international classification of diseases clinical modification coding guidelines;

(c) Subject to the rules in this section and other applicable rules;

(d) In accordance with the ((~~department's current~~)) agency's published ((~~billing instructions~~)) provider guides and other documents; and

(e) With the date span that covers the client's entire hospitalization. See subsection (3) of this section for when the ((~~department~~)) agency considers and pays an initial interim billed hospital claim ((~~and/or~~)) and any subsequent interim billed hospital claims; ((~~and~~))

(f) That requires an adjustment due to, but not limited to, charges that were not billed on the original paid claim (((~~i.e.~~)) e.g., late charges), through submission of an adjusted hospital claim. Each adjustment to a paid hospital claim must provide complete documentation for the entire date span between the client's admission date and discharge date, and include the following for that date span:

(i) All inpatient hospital services provided; and

(ii) All applicable diagnosis codes and procedure codes; and

(g) With the appropriate National Uniform Billing Committee (NUBC) revenue code(s) specific to the service or treatment provided to the client.

(6) ((~~The department allows the semiprivate room rate for a client's room charges, even if a hospital bills the private room rate.~~)) When a hospital charges multiple rates for an accommodation room and board revenue code, the agency pays the hospital's lowest room and board rate for that revenue code. The agency may request the hospital's charge master. Room charges must not exceed the hospital's usual and customary charges to the general public, as required by C.F.R. §447.271.

(7) ((~~For inpatient hospital claims, the department~~)) The agency allows hospitals an all-inclusive administrative ((~~date~~)) day rate((~~, beginning on the client's admission date,~~)) for those days of a hospital stay in which a client ((~~does not meet~~)) no longer meets criteria for the acute inpatient level of care((~~, but is not discharged because~~)). The agency allows this day rate only when an appropriate placement outside the hospital is not available.

(8) The ((~~department~~)) agency pays for observation services according to WAC ((~~388-550-3000 (2)(b), 388-550-6000 (4)(c) and 388-550-7200 (2)(c)~~)) 182-550-6000, 182-550-7200, and other applicable rules.

(9) The ((~~department~~)) agency determines its actual payment for an inpatient hospital admission by making any required adjustments from the calculations of the allowed covered charges. Adjustments include((~~, but are not limited to, any client~~)):

(a) Client responsibility((~~, any~~)) (e.g., spenddown);

(b) Any third-party liability amount, including medicare part A and part B((~~,~~)); and

(c) Any other adjustments as determined by the ((~~department~~)) agency.

(10) The ((~~department reduces payment rates to~~)) agency pays hospitals ((~~and distinct units~~)) less for services provided to clients eligible under state-administered programs ((~~according to the hospital equivalency factor and/or ratable, or other department policy~~)), as provided in WAC ((~~388-550-4800~~)) 182-550-4800.

(11) All hospital providers must present final charges to the ((~~department within three hundred sixty-five days of the "statement covers period from date" shown on the claim. The state of Washington is not liable for payment based on billed charges received beyond three hundred sixty-five days from the "statement covers period from date" shown on the claim~~)) agency according to WAC 182-502-0150.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-3000 Payment method((—DRG)). (1) The ((department)) medicaid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC ((388-550-4300 and 388-550-4400)) 182-550-4300 and 182-550-4400.

(2) The ((department uses the all-patient grouper (AP-DRG) to)) agency assigns a DRG code to each claim for an inpatient hospital stay((. The department periodically evaluates which version of the AP-DRG to use)) using 3M™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

(a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and

(b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:

(i) Ratio of costs-to-charges (RCC); and

(ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(((3) A DRG)) (4) An inpatient claim payment includes all hospital covered ((hospital)) services provided to a client during days the client is eligible. This includes, but is not limited to:

(a) ((An)) The inpatient hospital stay((.));

(b) Outpatient hospital services, including preadmission, emergency ((room)) department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim (((see WAC 388-550-6000 (3)(c)).));

(c) Any ((specific service(s), treatment(s), or procedure(s) (such as renal dialysis services) that the admitting hospital is unable to provide and:

(i) The)) hospital covered service for which the admitting hospital sends the client to another facility or provider ((for the service(s), treatment(s), or procedure(s))) during the client's inpatient hospital stay((; and

(ii) The client returns as an inpatient to the admitting hospital.

(d) All transportation costs for an inpatient client when the client requires transportation to another facility or provider for a specific service(s), treatment(s), or procedure(s) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s); and

(ii) The client returns as an inpatient to the admitting hospital.

(4) The department's allowed amount for the DRG payment is determined by multiplying the assigned DRG's relative weight, as determined in WAC 388-550-3100, by the hospital's specific DRG conversion factor. See WAC 388-550-3450. The total allowed amount also includes any high outlier amount calculated for claims.

(5) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 388-550-2800(2), the department may apply an inpatient adjustment factor to each hospital's specific DRG conversion factor rate used in calculating the DRG payment.)), and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, detox, or CUP) times covered allowable days	182-550-2600 and 182-550-3381
Single Case Rate	Hospital specific bariatric case rate per stay	182-550-3470
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598

Payment Method	General Description of Payment Formula	WAC Reference
Military	Depending on the revenue code billed by the hospital: • RCC times billed covered allowable charges; and • Military subsistence per diem.	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ancillary charges that are allowable and covered for administrative days	182-550-3381

(6) ((~~The department's DRG payment to a hospital may be adjusted~~)) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

(a) ((~~For dates of admission before August 1, 2007, a claim qualifies as a DRG high-cost or low-cost outlier, and for dates of admission on and after August 1, 2007,~~)) A claim qualifies as a ((~~DRG~~)) high outlier (see WAC ((~~388-550-3700~~)) 182-550-3700);

(b) A claim is paid by the DRG method and a client transfers((~~:~~

~~(i) Before July 1, 2009, from one acute care hospital or distinct unit to another acute care hospital or distinct unit; or~~

~~(ii) On and after July 1, 2009 from one acute care hospital or distinct unit to:~~

~~(A) Another acute care hospital or distinct unit;~~

~~(B) A skilled nursing facility (SNF);~~

~~(C) An intermediate care facility;~~

~~(D) Home care under the department's home health program;~~

~~(E) A long term acute care facility (LTAC);~~

~~(F) Hospice (facility-based or in the client's home);~~

~~(G) A hospital-based medicare-approved swing bed, or another distinct unit such as a rehabilitation or psychiatric unit (see WAC 388-550-3600); or~~

~~(H) A nursing facility certified under medicaid but not medicare.~~)) from one acute care hospital or distinct unit per WAC 182-550-3600;

(c) A client is not eligible for a ((~~medical assistance~~)) Washington apple health program on one or more days of the hospital stay;

(d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges; or

(f) A client is discharged from an inpatient hospital stay and, within ((~~seven~~)) fourteen calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The ((~~department~~)) agency or its designee performs a retrospective utilization review (see WAC ((~~388-550-1700~~)) 182-550-1700) on the initial admission and the readmission(s) to determine which inpatient hospital stay(s) qualify for ((~~DRG~~)) payment. ((~~Upon the department's retrospective review, an outlier payment may be made if the department determines the claim for combined hospital stays qualifies as a high-cost outlier or high outlier. See WAC 388-550-3700 for DRG high-cost outliers and high outliers.~~

~~(7) For dates of admission on and after July 1, 2009, the department pays inpatient claims assigned by the all patient DRG grouper (AP-DRG) as cesarean section without complications and comorbidities, at the same rate as the vaginal birth with complicating diagnoses.~~

~~(8)~~)) (g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition). The agency or its designee performs a retrospective utilization review to determine if both admissions are appropriate and qualify for individual payments;

(h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The ((~~department~~)) agency does not pay for a client's day(s) of absence from the hospital.

(((~~9~~))) (10) The ((~~department~~)) agency pays an interim billed hospital claim ((~~or~~)) for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC ((~~388-550-2900~~)) 182-550-2900.

(((~~10~~))) (11) The ((~~department~~)) agency applies to the ((~~payment~~)) allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the ((~~department~~)) agency.

(((~~11~~))) (12) The ((~~department~~)) agency pays hospitals in designated bordering cities for allowed covered services as described in WAC ((~~388-550-3900~~)) 182-550-3900.

(((~~(12)~~))) (13) The ((~~department~~)) agency pays out-of-state hospitals for allowed covered services as described in WAC ((~~388-550-4000~~)) 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(16) Hospitals participating in the Washington apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(21) For a client's hospital stay that involves regional support network (RSN)-approved voluntary inpatient or involuntary inpatient hospitalizations, the hospital must bill the agency for payment. When the hospital contracts directly with the RSN, the hospital must bill the RSN for payment.

(22) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the agency may manually price the claim at the hospital's psychiatric per diem rate.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-3381 Payment ((~~methodology~~)) method for acute PM&R services and administrative day services. ((~~The department's~~)) This section describes the agency's payment ((~~methodology~~)) method for acute physical medicine and rehabilitation (PM&R) services provided by acute PM&R hospitals ((~~is described in this section~~)).

(1) ((~~For dates of admission before August 1, 2007, the department pays an acute PM&R rehabilitation hospital according to the individual hospital's current ratio of costs-to-charges as described in WAC 388-550-4500. For dates of admission on and after August 1, 2007, the department~~)) The agency pays an acute PM&R hospital for acute PM&R services based on a rehabilitation per diem rate. See ((~~WAC 388-550-3010 and 388-550-3460~~)) chapter 182-550 WAC and WAC 182-550-3000.

(2) Acute PM&R room and board includes, but is not limited to:

(a) Facility use;

(b) ((~~Medical~~)) Social services (e.g., discharge planning);

(c) Bed and standard room furnishings; and

(d) Dietary and nursing services.

(3) When the ((~~department~~)) agency authorizes administrative day(s) for a client as described in WAC ((~~388-550-2561(8)~~)) 182-550-2561(8), the ((~~department~~)) agency pays the facility:

(a) The administrative day rate; and

(b) For pharmaceuticals prescribed ((~~in~~)) for the client's use during the administrative portion of the client's stay.

(4) The ((~~department~~)) agency pays for transportation services provided to a client receiving acute PM&R services in an acute PM&R hospital according to chapter ((~~388-546~~)) 182-546 WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-3800 Rebasing ((~~and recalibration~~)). (((~~(1) The department rebases most of the rates used in~~)) The agency redesigns (rebases) the medicaid inpatient payment system ((~~once every three years. Changes to the inpatient hospital rate calculations and rate-setting methods involved in this rebasing process are implemented pursuant to the rebasing of the rate system.~~

~~(a) To determine costs for that rebasing process, the department uses:~~

~~(i) Each instate hospital's medicare cost report for the hospital fiscal year that ends during the calendar year that the rebasing base year designated by the department begins; and~~

~~(ii) Inpatient medicaid and SCHIP claims data for the twelve-month period designated by the department as the rebasing base year.~~

~~(b) The rebasing process updates rates for the diagnosis related group (DRG), per diem, and per case rate payment methods.~~

~~(c) Other inpatient payment system rates (e.g., the ratio of costs-to-charges (RCC) rates, departmental weighted costs-to-charges (DWCC) rates, administrative day rate, and swing bed rate) are rebased on an annual basis.~~

~~(d) The department increases inpatient hospital rates only when mandated by the state legislature. These increases are implemented according to the base methodology in effect, unless otherwise directed by the legislature.~~

~~(2) The department periodically recalibrates diagnosis-related group (DRG) relative weights, as described in WAC 388-550-3100, but no less frequently than each time the rate rebasing process described in subsection (1) takes place. The department makes recalibrated relative weights effective on the rebasing implementation date, which can change with each rebasing process.~~

~~(3) When recalibrating DRG relative weights without rebasing, the department may apply a budget neutrality factor (BNF) to hospitals' conversion factors to ensure that total~~

~~DRG payments to hospitals do not exceed total DRG payments that would have been made to hospitals if the relative weights had not been recalibrated. For the purposes of this section, BNF equals the percentage change from total aggregate payments calculated under a new payment system to total aggregate payments calculated under the prior payment system.~~)) as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of fee-for-service (FFS) paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(2) Estimates costs. The agency uses one of two methods to estimate costs. The agency may perform an aggregate cost determination by multiplying the ratio of costs-to-charges (RCC) by the total billed charges, or the agency may use the following detailed costing method:

(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;

(b) The agency estimates costs for each claim in the dataset as follows:

(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and

(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and

(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:

(i) Routine cost components:

(A) Routine care;

(B) Intensive care;

(C) Intensive care-psychiatric;

(D) Coronary care;

(E) Nursery;

(F) Neonatal ICU;

(G) Alcohol/substance abuse;

(H) Psychiatric;

(I) Oncology; and

(J) Rehabilitation.

(ii) Ancillary cost components:

(A) Operating room;

(B) Recovery room;

(C) Delivery/labor room;

(D) Anesthesiology;

(E) Radio, diagnostic;

(F) Radio, therapeutic;

(G) Radioisotope;

(H) Laboratory;

(I) Blood administration;

(J) Intravenous therapy;

(K) Respiratory therapy;

(L) Physical therapy;

(M) Occupational therapy;

(N) Speech pathology;

(O) Electrocardiography;

(P) Electroencephalography;

(Q) Medical supplies;

(R) Drugs;

(S) Renal dialysis/home dialysis;

(T) Ancillary oncology;

(U) Cardiology;

(V) Ambulatory surgery;

(W) CT scan/MRI;

(X) Clinic;

(Y) Emergency;

(Z) Ultrasound;

(AA) NICU transportation;

(BB) GI laboratory;

(CC) Miscellaneous; and

(DD) Observation beds.

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by 3M™ Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base rate factors on its web site.

(5) Determines global adjustments.

(a) Claims paid under the DRG, rehab per diem, and detox per diem payment methods were reduced to support an estimated three million five hundred thousand dollar increase in psychiatric payments to acute hospitals.

(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by three million five hundred thousand dollars.

(6) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(iii) The agency adds the nonlabor portion of the base rate to the amount in (a)(ii) of this subsection to produce a hospital-specific wage adjusted factor.

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

(7) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (5) and (6) of this section.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-3900 Payment method—Bordering city hospitals and critical border hospitals. The ((~~department~~)) agency uses the payment methods described in this section to pay bordering city hospitals and critical border hospitals for inpatient and outpatient claims. Bordering city hospitals and critical border hospitals are defined in WAC ((~~388-550-1050~~)) 182-550-1050.

(1) ((~~Bordering city hospitals—~~)) For inpatient hospital claims ((~~payment methods.~~

~~(a) For dates of admission before August 1, 2007, under the diagnosis related group (DRG) payment method:~~

~~(i) The department calculates the cost-based conversion factor (CBCF) of a bordering city hospital as defined in WAC 388-550-1050, in accordance with WAC 388-550-3450.~~

~~(ii) For a bordering city hospital with no medicare cost report (Form 2552-96) submitted for the rebasing year, the department assigns the department peer group average conversion factor. This is the average of all final conversion factors of hospitals in that group.~~

~~(b) For dates of admission before August 1, 2007, under the ratio of costs-to-charges (RCC) payment method:~~

~~(i) The department calculates the RCC in accordance with WAC 388-550-4500.~~

~~(ii) For a bordering city hospital with no medicare cost report (Form 2552-96) submitted for the rebasing year, the department bases the RCC on the Washington instate average RCC.~~

~~(c) For dates of admission on and after August 1, 2007:~~

~~(i)~~)) from bordering city hospitals, the ((~~department~~)) agency calculates the payment for allowed covered charges related to medically necessary services, by using the lowest of the in-state inpatient hospital rates ((~~without graduate medical education (GME) (excluding DWCC rates that are paid to instate critical access hospitals)~~)) for the:

(a) Diagnosis-related group (DRG) conversion factor((~~, the~~));

(b) Per diem((~~,~~)) payment method;

(c) Per case((~~,~~)) payment method; and

(d) Ratio of costs-to-charges (RCC) payment method((~~; and~~

~~(ii) The department pays the lesser of the:~~

~~(A) Billed charges; or~~

~~(B) Calculated payment amount~~)).

(2) ((~~Bordering city hospitals—~~)) For outpatient hospital claims ((~~payment methods for allowed covered charges related to medically necessary services.~~

~~(a) For bordering city hospitals paid according to the outpatient prospective payment system (OPPS), refer to WAC 388-550-7000 through 388-550-7600. The department uses the following types of payment methods used in OPPS:~~

~~(i) Ambulatory payment classification (APC) method (the primary payment method for OPPS) (WAC 388-55-7200):~~

~~(A) Before August 1, 2007, the department determines the OPPS conversion factor using the methods described in WAC 388-550-7500.~~

~~(B) On and after August 1, 2007, the department pays using the lowest instate OPPS conversion factor.~~

~~(ii) OPPS maximum allowable fee schedule (WAC 388-550-7200).~~

~~(iii) Hospital outpatient RCC rate (WAC 388-550-4500).~~

~~(A) Before August 1, 2007, the department pays the instate average hospital outpatient RCC rate times the allowed covered charges for medically necessary services.~~

~~(B) On and after August 1, 2007, the department pays the lowest instate hospital outpatient RCC rate times the allowed covered charges for medically necessary services.~~

~~(b) For bordering city hospitals exempt from OPPS, the department uses the following payment methods:~~

~~(i) Outpatient maximum allowable fee schedule (WAC 388-550-6000); and~~

~~(ii) Hospital outpatient RCC rate (WAC 388-550-4500).~~

~~(c) When the RCC payment method described in WAC 388-550-4500 is used to pay for outpatient services provided:~~

~~(i) Before August 1, 2007, the department pays the instate average hospital outpatient RCC rate times the allowed covered charges for medically necessary services.~~

~~(ii) On and after August 1, 2007, the department pays the lowest instate hospital outpatient RCC rate times the allowed covered charges for medically necessary services.~~

~~(d) When the maximum allowable fee schedule method is used to pay for outpatient services provided, the department pays the lesser of the:~~

~~(i) Billed charges; or~~

~~(ii) Calculated payment amount~~)) from bordering city hospitals, the agency calculates the payment for allowed covered charges related to medically necessary services, using the lowest of the in-state outpatient hospital rates for the outpatient prospective payment system (OPPS). Refer to WAC 182-550-7000 through 182-550-7600.

(3) Designated critical border hospitals.

(a) ((~~Beginning August 1, 2007, the department designated~~)) The agency designates certain qualifying hospitals located out-of-state as critical border hospitals. A designated critical border hospital must:

(i) Be a bordering city hospital as described in WAC ((~~388-550-1050~~)) 182-550-1050; and

(ii) Have submitted at least ten percent of the total nonemergency inpatient hospital claims ((~~that have been~~)) paid to bordering city hospitals for the prior state fiscal year (SFY) for clients eligible for Washington ((~~state medicaid and state-administered programs~~)) apple health. Nonemergency inpatient hospital claims are defined as those that do not include emergency ((~~room~~)) department charges (revenue code 045X series).

(b) The ((~~department~~)) agency analyzes bordering city hospitals' base period claims data during the rebasing process, and annually thereafter, to determine if a bordering city hospital qualifies or continues to qualify as a critical border hospital.

(4) Critical border hospitals((~~—~~)) - Inpatient hospital claim payment methods. The ((~~department~~)) agency pays inpatient critical border hospital claims ((~~with dates of services on and after August 1, 2007,~~)) as follows:

(a) The inpatient payment rates used to calculate payments to critical border hospitals are prospective payment rates. The rates are not used to pay for claims with dates of admission before the hospital qualified as a critical border hospital.

(b) The ((~~department~~)) agency pays inpatient critical border hospital claims using the same payment methods and rates ((~~as~~)) used for in-state hospital claims, including DRG, RCC, per diem, outliers, and per case rate, subject to the following:

(i) Inpatient payment rates used to pay critical border university hospitals for inpatient hospital claims cannot exceed the highest corresponding inpatient payment rate for an in-state university hospital;

(ii) Inpatient payment rates used to pay critical border Level 1 trauma centers for inpatient hospital claims cannot exceed the highest corresponding inpatient payment rate for an in-state Level 1 trauma center; and

(iii) Inpatient payment rates used to pay critical border hospitals ((~~not listed in (A) and (B) of this subsection for inpatient hospital claims~~)) that are not university hospitals or Level 1 trauma centers cannot exceed the highest corresponding in-state inpatient payment rate for in-state hospitals ((~~that are~~)) not designated as((~~:~~

(~~A) Critical access hospitals (CAHs);~~

(~~B) University hospitals; or~~

(~~C) Level 1 trauma centers~~)) university hospitals or Level 1 trauma centers.

(5) Critical border hospitals((~~—~~)) - Outpatient hospital claim payment methods. The ((~~department~~)) agency pays outpatient critical border hospital claims ((~~with dates of services on and after August 1, 2007,~~)) using the same payment methods ((~~as~~)) used for in-state outpatient hospital claims((~~, including the APC method using the hospital's OPPS conversion factor, maximum allowable fee schedule method, and the hospital outpatient RCC rate method (refer to WAC 388-550-7000 through 388-550-7600 and WAC 388-550-4500)~~)) (see WAC 182-550-7000 through 182-550-7600 and 182-550-4500), subject to the following:

(a) Outpatient rates used to pay critical border university hospitals for outpatient claims cannot exceed the highest corresponding rate for an in-state university hospital((~~.~~));

(b) Outpatient rates used to pay critical border Level 1 trauma centers for outpatient claims cannot exceed the highest corresponding rate for an in-state Level 1 trauma center((~~.~~)); and

(c) Outpatient rates used to pay ((~~the~~)) critical border hospitals ((~~not listed in (i) and (ii) of this subsection for outpatient claims~~)) that are not university hospitals or Level 1 trauma centers cannot exceed the highest corresponding rate for in-state hospitals ((~~that are~~)) not designated as((~~:~~

(~~i) Critical access hospitals (CAH);~~

(~~ii) University hospitals; or~~

(~~iii) Level 1 trauma centers~~)) university hospitals or Level 1 trauma centers.

(6) Critical border hospitals are eligible to receive payment for graduate medical education (GME). All other bordering city hospitals are not eligible to receive payment for GME.

(7) The ((~~department~~)) agency makes:

(a) Claim payment adjustments, including but not limited to, third-party liability, medicare, and client responsibility; and

(b) Other necessary adjustments, as directed by the legislature (e.g., rate rebasing and other changes).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4000 Payment method—Out-of-state hospitals. This section describes the payment methods the ((~~department~~)) agency uses to pay hospitals located out-of-state for providing services to eligible Washington ((~~state medical assistance~~)) apple health clients. This section does not apply to hospitals located in any of the designated bordering cities listed in WAC ((~~388-501-0175~~)) 182-501-0175. Payment methods that apply to bordering city hospitals, including critical border hospitals, are described in WAC ((~~388-550-3900.~~

(~~1) Emergency hospital services before August 1, 2007.~~

(~~a) For inpatient hospital claims for emergency services provided in out-of-state hospitals with dates of admission before August 1, 2007, the department limits the payment to the lesser of the:~~

(~~i) Billed charges; or~~

(~~ii) Weighted average of ratio of costs-to-charges (RCC) ratios for in-state hospitals multiplied by the allowed covered charges for medically necessary services.~~

(~~b) For outpatient hospital claims for emergency services provided in out-of-state hospitals with the first date of service before August 1, 2007, the department limits the payment to the lesser of the:~~

(~~i) Billed charges; or~~

(~~ii) Weighted average of hospital outpatient RCC rates for instate hospitals multiplied by the allowed covered charges for medically necessary services.~~

~~(2)~~)) 182-550-3900. See also WAC 182-501-0180, health care services provided outside the state of Washington - General provisions, and WAC 182-502-0120, payment for health care services provided outside the state of Washington.

(1) Emergency hospital services ((~~on and after August 1, 2007~~)).

(a) For inpatient hospital claims for emergency services provided in out-of-state hospitals ((~~with dates of admission on and after August 1, 2007~~)), the ((~~department~~)) agency:

(i) Pays using the same methods used to pay in-state hospitals((~~:~~

~~(A) Diagnosis related group (DRG) (WAC 388-550-3000);~~

~~(B) Per diem (WAC 388-550-3010);~~

~~(C) DRG and per diem outliers (WAC 388-550-3700); and~~

~~(D) Ratio of costs-to-charges (RCC) (WAC 388-550-4500).~~)) as specified in this chapter; and

(ii) ((~~Pays~~)) Calculates the payment using the lowest in-state inpatient hospital rate corresponding to the payment method ((~~used in (a)(i) of this subsection.~~

~~(iii) Limits payment to out-of-state hospitals to the lesser of the:~~

~~(A) Billed charges; or~~

~~(B) Calculated payment amount~~)).

(b) For outpatient hospital claims for emergency services provided in out-of-state hospitals ((~~with dates of service on or after August 1, 2007~~)), the ((~~department~~)) agency pays an out-of-state hospital using ((~~one or both of~~)) the following methods:

(i) The agency's outpatient prospective payment system (OPPS) described in WAC 182-550-7000;

(ii) The maximum allowable fee schedule method described in WAC ((~~388-550-6000, and limits payment when~~)) 182-550-6000. When the maximum allowable fee schedule method is used, the agency limits payment to the lesser of the:

(A) Billed charges; or

(B) Calculated payment amount((~~:~~

~~(ii)~~)); and

(iii) The hospital outpatient RCC payment method described in WAC ((~~388-550-4500~~)) 182-550-4500. When using the RCC payment method, the ((~~department~~)) agency pays the lowest in-state hospital outpatient RCC ((~~rate~~)), excluding ((~~departmental~~)) weighted costs-to-charges (((~~DWCC~~))) (WCC) rates that are paid to in-state critical access hospitals.

(((~~(c) Out-of-state hospitals are not eligible to receive payment for graduate medical education (GME).~~

~~(3) The department makes:~~

~~(a) Claim payment adjustments, including but not limited to client responsibility, third-party liability, and medicare; and~~

~~(b) Other necessary adjustments as directed by the legislature (e.g., rate rebasing and other changes).~~

~~(4)~~)) (2) Nonemergency hospital services.

(a) The agency pays for:

(i) Contracted and prior authorized nonemergency hospital services according to the contract terms whether or not the hospital has signed a core provider agreement; and

(ii) Nonemergency hospital services authorized by the agency after the fact (subsequent to the date of admission, if the client is still at the out-of-state hospital, or after the services have been provided) according to subsections (1) and (3) of this section.

(b) The ((~~department~~)) agency does not pay for:

(i) Nonemergency hospital services provided to a ((~~medical assistance~~)) Washington apple health client in a hospital located out-of-state unless the hospital is contracted ((~~and/or~~)) and prior authorized by the ((~~department~~)) agency or the ((~~department's~~)) agency's designee((~~,~~)) for the specific service provided((~~:~~

~~(a) Contracted services are paid according to the contract terms whether or not the hospital has signed a core provider agreement.~~

~~(b) Authorized services are paid according to subsections (1), (2), and (3) of this section.~~

~~(c) Bariatric surgery performed in a designated department-approved hospital is paid a per case rate and must be prior authorized by the department (see WAC 388-550-3020).~~)) to a specific client; and

(ii) Unauthorized nonemergency hospital services are not paid by the agency. See WAC 182-501-0182.

(3) The agency makes claim payment adjustments including, but not limited to, client responsibility, third-party liability, and medicare. All applicable adjustments are factored into the final hospital payment amount.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4100 Payment method—New hospitals. (1) For rate-setting purposes, the ((~~department~~)) agency considers as new:

(a) A hospital which began services after the most recent ((~~rebased cost-based conversion factors (CBCFs) conversion factors, RCC rates, per diem rates, per case rates, etc.~~)) rebasing; or

(b) A hospital that has not been in operation for a complete fiscal year.

(2) The ((~~department~~)) agency determines a new hospital's((~~:~~

~~(a) CBCF as the average of the CBCF of all hospitals within the same department peer group for dates of admission before August 1, 2007.~~

~~(b)~~)) Conversion factor, per diem rate, or per case rate, to be the statewide average rate for the conversion factor, category of per diem rate, or per case rate((~~, for dates of admission on and after August 1, 2007,~~)) adjusted by the geographically appropriate hospital specific medicare wage index.

(3) The ((~~department~~)) agency determines a new hospital's ratio of costs-to-charges (RCC) by calculating and using the average RCC ((~~rate~~)) for all current Washington in-state hospitals.

(4) ((~~The department considers that a change in hospital ownership does not constitute~~)) When a hospital changes ownership, the agency does not consider it a new hospital.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4300 Hospitals and units exempt from the DRG payment method. (1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are paid under the ratio of costs-to-charges (RCC) payment method described in WAC ((~~388-550-4500~~)) 182-550-4500, the per diem payment method described in WAC ((~~388-550-3010~~)) 182-550-3000, the per case rate payment method described in WAC ((~~388-550-3020~~)) 182-550-3000, or other payment methods identified in this chapter (e.g., long term acute care (LTAC), certified public expenditure (CPE), critical access hospital (CAH), etc.). ((~~The department limits inpatient hospital stays based on the department's determinations from medical necessity and quality assurance reviews.~~

~~(2) For dates of admission before August 1, 2007, subject to the restrictions and limitations listed in this section, the department exempts the following hospitals and units from the DRG payment method for inpatient services provided to medicaid-eligible clients:~~

~~(a) Peer group A hospitals, as described in WAC 388-550-3300(2). Exception: Inpatient services provided to clients eligible under the following programs are paid through the DRG payment method (see WAC 388-550-4400):~~

~~(i) General assistance programs; and~~

~~(ii) Other state administered programs.~~

~~(b) Peer group E hospitals, as described in WAC 388-550-3300(2). See WAC 388-550-4650 for how the department calculates payment to Peer group E hospitals.~~

~~(c) Peer group F hospitals (critical access hospitals).~~

~~(d) Rehabilitation units when the services are provided in department-approved acute physical medicine and rehabilitation (acute PM&R) hospitals and designated distinct rehabilitation units in acute care hospitals.~~

~~The department uses the same criteria as the medicare program to identify exempt rehabilitation hospitals and designated distinct rehabilitation units. Inpatient rehabilitation services provided to clients eligible under the following programs are covered and paid through the DRG payment method (see WAC 388-550-4400 for exceptions):~~

~~(i) General assistance programs; and~~

~~(ii) Other state-only administered programs.~~

~~(e) Out-of-state hospitals excluding hospitals located in designated bordering cities as described in WAC 388-501-0175. Inpatient services provided in out-of-state hospitals to clients eligible under the following programs are not covered or paid by the department:~~

~~(i) General assistance programs; and~~

~~(ii) Other state administered programs.~~

~~(f) Military hospitals when no other specific arrangements have been made with the department. Military hospitals may individually elect or arrange for one of the following payment methods in lieu of the RCC payment method:~~

~~(i) A negotiated per diem rate; or~~

~~(ii) DRG.~~

~~(g) Nonstate-owned specifically identified psychiatric hospitals and designated hospitals with medicare certified distinct psychiatric units. The department uses the same criteria as the medicare program to identify exempt psychiatric hospitals and distinct psychiatric units of hospitals.~~

~~(i) Inpatient psychiatric services provided to clients eligible under the following programs are paid through the DRG payment method:~~

~~(A) General assistance programs; and~~

~~(B) Other state administered programs.~~

~~(ii) Mental health division (MHD) designees that arrange to reimburse nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals directly, may use the department's payment methods or contract with the hospitals to reimburse using different methods. Claims not paid directly through a MHD are paid through the department's payment system.~~

~~(3) The department limits inpatient hospital stays for dates of admission before August 1, 2007 that are exempt from the DRG payment method and identified in subsection (2) of this section to the number of days established at the seventy-fifth percentile in the current edition of the publication, "*Length of Stay by Diagnosis and Operation, Western Region*," unless the stay is:~~

~~(a) Approved for a specific number of days by the department, or for psychiatric inpatient stays, by the regional support network (RSN);~~

~~(b) For chemical dependency treatment which is subject to WAC 388-550-1100; or~~

~~(c) For detoxification of acute alcohol or other drug intoxication.~~

~~(4) If subsection (3)(c) of this section applies to an eligible client, the department will:~~

~~(a) Pay for three-day detoxification services for an acute alcoholic condition; or~~

~~(b) Pay for five-day detoxification services for acute drug addiction when the services are directly related to detoxification; and~~

~~(c) Extend the three- and five-day limitations for up to six additional days if either of the following is invoked on a client under care in a hospital:~~

~~(i) Petition for commitment to chemical dependency treatment; or~~

~~(ii) Temporary order for chemical dependency treatment.~~

~~(5) For dates of admission on and after August 1, 2007, the department~~)) Inpatient services provided by hospitals and units are exempt from the DRG payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) The agency exempts the following hospitals, units, and services from the DRG payment method for inpatient services provided to ((~~medicaid-eligible~~)) clients eligible for Washington apple health:

(a) ((~~Peer group E hospitals as described in WAC 388-550-3300(2), i.e.,~~)) Hospitals participating in the ((~~department's~~)) agency's certified public expenditure (CPE) payment program((~~.~~)) (see WAC ((~~388-550-4650.~~)) 182-550-4650);

(b) ((~~Peer group F hospitals, i.e., critical~~)) Hospitals participating in the agency's critical access hospital((~~s.~~)) program (see WAC ((~~388-550-2598.~~)) 182-550-2598);

(c) Rehabilitation services. All rehabilitation services are paid through the per diem payment method except as indi-

cated in (((~~(b), (c), and (f)~~)) (a), (b), and (d) of this subsection((~~. See WAC 388-550-3010. Inpatient psychiatric services, Involuntary Treatment Act services, and detoxification services provided in out-of-state hospitals are not covered or paid by the department or a MHD designee. The department does not cover or pay for other hospital services provided to clients eligible for those services in the following programs, when the services are provided in out-of-state hospitals that are not in designated bordering cities:~~

~~(i) General assistance programs; and~~

~~(ii) Other state-administered programs.~~

~~(f)~~)) (See WAC 182-550-3000);

(d) Military hospitals when no other specific arrangements have been made with the ((~~department~~)) agency. The ((~~department~~)) agency, or the military hospital, may elect or arrange for one of the following payment methods in lieu of the RCC payment method:

(i) Per diem payment method; or

(ii) DRG payment method((~~.~~

~~(g)~~)); and

(e) Psychiatric services. All psychiatric services are paid through the per diem payment method except as indicated in (((~~(b), (c), and (f)~~)) (a), (b), and (d) of this subsection (see WAC 182-550-3000). ((~~See WAC 388-550-3010. A MHD~~)) A mental health designee that arranges to directly pay a hospital and/or a designated distinct psychiatric unit of a hospital ((~~directly,~~)) may use the ((~~department's~~)) agency's payment methods or contract with the hospital((~~s~~)) to pay using different methods. Claims not paid directly through a ((~~MHD~~)) mental health designee are paid through the ((~~department's~~)) agency's payment system.

(((~~(6) For dates of admission on and after August 1, 2007, the department~~)) (3) Inpatient psychiatric services, Involuntary Treatment Act services, and detoxification services provided in out-of-state hospitals are not covered or paid by the agency or the agency's mental health designee. The agency does not cover or pay for other hospital services provided to clients eligible for those services in the following programs, when the services are provided in out-of-state hospitals that are not in designated bordering cities:

(a) Medical care services; and

(b) Other state-administered programs.

(4) The agency has established an average length of stay (ALOS) for each DRG classification((~~. The DRG ALOS is based on the claims data used during the rebasing period. For DRGs with an exceptionally low volume of claims, the department uses a proxy DRG ALOS~~)) and publishes it on the agency's web site. The agency uses the DRG ALOS ((~~is used~~)) as a benchmark to authorize and pay inpatient hospital stays exempt from the DRG payment method. When an inpatient hospital stay exceeds the ((~~department's~~)) agency's DRG ALOS benchmark or prior authorized LOS:

(a) For a psychiatric inpatient stay, the hospital must obtain approval for additional days beyond the prior authorized days from the ((~~MHD~~)) division of behavioral health and recovery (DBHR) or the ((~~MHD~~)) mental health designee who prior authorized the admission. See WAC ((~~388-550-2600~~)) 182-550-2600;

(b) For an acute physical medicine and rehabilitation (PM&R) or a long term acute care (LTAC) stay, the hospital must obtain approval for additional days beyond the prior authorized days from the ((~~department~~)) agency unit that prior authorized the admission. See WAC ((~~388-550-2561 and 388-550-2590~~)) 182-550-2561 and 182-550-2590;

(c) For an inpatient hospital stay for detoxification for a chemical ((~~dependent~~)) using pregnant (CUP) client, see WAC ((~~388-550-1100~~)) 182-550-1100;

(d) For other medical inpatient stays for detoxification, see WAC ((~~388-550-1100~~)) 182-550-1100 and subsection (((~~(7)~~))) (5) of this section;

(e) For an inpatient stay in a certified public expenditure (CPE) hospital, see WAC ((~~388-550-4690~~)) 182-550-4690; and

(f) For an inpatient hospital stay not identified in (a) through (e) of this subsection, the ((~~department~~)) agency may perform retrospective utilization review to determine if the LOS was medically necessary and at the appropriate level of care.

(((~~(7)~~))) (5) If subsection (((~~(6)~~))) (4)(d) of this section applies to an eligible client, the ((~~department~~)) agency will:

(a) Pay for three-day detoxification services for an acute alcoholic condition; or

(b) Pay for five-day detoxification services for acute drug addiction when the services are directly related to detoxification; and

(c) If WAC 182-550-1100 (5)(b) applies, extend the three- and five-day limitations ((~~for up to six additional days if either of the following is invoked on a client under care in a hospital:~~

~~(i) Petition for commitment to chemical dependency treatment; or~~

~~(ii) Temporary order for chemical dependency treatment~~)) when the following are true:

(i) The days are billed as covered;

(ii) A medical record is submitted with the claim;

(iii) The medical record clearly documents that the days are medically necessary; and

(iv) The level of care is appropriate according to WAC 182-550-2900.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4400 Services—Exempt from DRG payment. (((~~(1) Except when otherwise specified, inpatient services exempt from the diagnosis-related group (DRG) payment method are paid under the ratio of costs-to-charges (RCC) payment method described in WAC 388-550-4500, the per diem payment method described in WAC 388-550-3010, the per case rate payment method described in WAC 388-550-3020, or other payment methods identified in this chapter (e.g., long term acute care (LTAC), certified public expenditure (CPE), critical access hospital (CAH), etc.). The department limits inpatient hospital stays based on the department's determinations from medical necessity and quality assurance reviews.~~

~~(2) Subject to the restrictions and limitations in this section, for dates of admission before August 1, 2007, the department exempts the following services for medicaid clients from the DRG payment method:~~

~~(a) Neonatal services for DRGs 602-619, 621-628, 630, 635, and 637-641.~~

~~(b) Acquired immunodeficiency syndrome (AIDS)-related inpatient services for those cases with a reported diagnosis of AIDS-related complex and other human immunodeficiency virus infections. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs and any other state administered program.~~

~~(c) Alcohol or other drug detoxification services when provided in a hospital having a detoxification provider agreement with the department to perform these services. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs and any other state administered program.~~

~~(d) Hospital-based intensive inpatient detoxification, medical stabilization, and drug treatment services provided to chemically dependent pregnant women (CUP program) by a certified hospital. These are medicaid program services and are not funded by the department for the general assistance programs or any other state administered program.~~

~~(e) Acute physical medicine and rehabilitation services provided in department-approved rehabilitation hospitals and hospital distinct units, and services for physical medicine and rehabilitation patients. See WAC 388-550-4300 (2)(d). Rehabilitation services provided to clients under the general assistance programs and any other state-only administered program are also reimbursed through the RCC payment method.~~

~~(f) Psychiatric services provided in nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals. Inpatient psychiatric services provided to clients eligible under the following programs are reimbursed through the DRG payment method:~~

~~(i) General assistance programs; and~~

~~(ii) Other state administered programs.~~

~~(g) Chronic pain management treatment provided in department-approved pain treatment facilities.~~

~~(h) Administrative day services. The department pays administrative days based on the statewide average medicaid nursing facility per diem rate, which is adjusted annually each November 1. The department applies this rate to patient days identified as administrative days on the hospital's notice of rates. Hospitals must request an administrative day designation on a case-by-case basis.~~

~~(i) Inpatient services recorded on a claim that is grouped by the department to a DRG for which the department has not published an all patient DRG relative weight, except that claims grouped to DRGs 469 and 470 will be denied payment. This policy also applies to covered services paid through the general assistance programs and any other state administered program.~~

~~(j) Organ transplants that involve the heart, kidney, liver, lung, allogeneic bone marrow, pancreas, autologous bone marrow, or simultaneous kidney/pancreas. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs and any other state administered program.~~

~~(k) Bariatric surgery performed in hospitals that meet the criteria in WAC 388-550-2301. The department pays hospitals for bariatric surgery on a per case rate basis. See WAC 388-550-3470.~~

~~(3) Inpatient services provided through a managed care plan contract are paid by the managed care plan.~~

~~(4)~~)) (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, ((~~for dates of admission on and after August 1, 2007, the department~~)) the agency exempts the following services for medicaid and ((~~SCHIP~~)) CHIP clients from the DRG payment method. This policy also applies to covered services paid through ((~~the general assistance programs~~)) medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) Alcohol or other drug detoxification services when provided in a hospital having a detoxification provider agreement with the ((~~department~~)) agency to perform these services.

(b) Hospital-based intensive inpatient detoxification, medical stabilization, and drug treatment services provided to ((~~chemically using~~)) chemical-using pregnant (CUP) women ((~~program~~)) by a certified hospital. These are medicaid program services and are not covered or funded by the ((~~department~~)) agency through ((~~the general assistance programs~~)) MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. A mental health ((~~division (MHD)~~)) designee that arranges to pay a hospital directly for psychiatric services((~~,~~)) may use the ((~~department's~~)) agency's payment methods or contract with the hospital to pay using different methods. Claims not paid directly through a ((~~MHD~~)) mental health designee are paid through the ((~~department's~~)) agency's payment system.

(e) Chronic pain management treatment provided in a hospital approved by the ((~~department~~)) agency to provide that service.

(f) Administrative day services. ((~~The department~~)) For patient days during an inpatient stay where no acute care services were provided, a hospital may request an administrative day designation on a case-by-case basis. The agency pays administrative days based on the statewide average medicaid nursing facility per diem rate, which is adjusted annually. The ((~~department applies this rate to patient days identified as administrative days on the hospital's notice of rates. A hospital must request an administrative day designation on a case-by-case basis. The department~~)) agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim ((~~and/or~~)) or the client's medical record, or both.

(g) Inpatient services recorded on a claim ((~~that is~~)) grouped by the ((~~department~~)) agency to a DRG for which the ((~~department~~)) agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to DRG 469 ((~~or~~)), DRG 470 ((~~will be denied payment~~)), APR DRG 955, or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The ((~~department~~)) agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's web site.

(i) Bariatric surgery performed in hospitals that meet the criteria in WAC ((~~388-550-2301~~)) 182-550-2301. The ((~~department~~)) agency pays hospitals for bariatric surgery on a per case rate basis for clients in medicaid and state-administered programs when the services are prior authorized and take place at an approved hospital. The agency approves bariatric services at Sacred Heart Medical Center, the University of Washington Medical Center, and the Oregon Health Sciences University and may approve other hospitals based on agency discretion. See WAC ((~~388-550-3020 and 388-550-3470~~)) 182-550-3000 and 182-550-3470.

(((~~j) Services provided by a critical access hospital (CAH).~~

~~(k) Services provided by a hospital participating in the certified public expenditure (CPE) payment program. The CPE "hold harmless" provision allows a reconciliation that is described in WAC 388-550-4670.~~

~~(l) Services provided by a long term acute care (LTAC) hospital.~~))

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4800 Hospital payment methods—State-administered programs. ((~~Subsections (1) through (11) of this section apply to hospital payment methods for state-administered programs for dates of admission before August 1, 2007. Subsections (12) through (19) of this section apply to hospital payment methods for state-administered programs for dates of admission on and after August 1, 2007.~~

~~(1) Except as provided in subsection (2) of this section, the department uses the ratio of costs-to-charges (RCC) and diagnosis-related group (DRG) payment methods described in this section to pay hospitals at reduced rates for covered services provided to a client who is not eligible under a medicaid program, the SCHIP program, or alien emergency medical (AEM) program and:~~

~~(a) Who qualifies for the general assistance unemployable (GAU) program; or~~

~~(b) Is involuntarily detained under the Involuntary Treatment Act (ITA).~~

~~(2) The department exempts the following services from the state-administered programs' payment methods and/or reduced rates:~~

~~(a) Detoxification services when the services are provided under a department-assigned provider number starting with "thirty-six." (The department pays these services using the Title XIX medicaid RCC payment method.)~~

~~(b) Program services provided by department-approved critical access hospitals (CAHs) to clients eligible under state-administered programs. (The department pays these services through cost settlement as described in WAC 388-550-2598.)~~

~~(c) Program services provided by Peer group E hospitals to clients eligible under the GAU program. (The department these services through the "full cost" public hospital certified public expenditure (CPE) payment program (see WAC 388-550-4650).)~~

~~(3) The department determines:~~

~~(a) A state-administered program RCC payment by reducing a hospital's Title XIX medicaid RCC rate using the hospital's ratable.~~

~~(b) A state-administered program DRG payment by reducing a hospital's Title XIX medicaid DRG cost based conversion factor (CBCF) using the hospital's ratable and equivalency factor (EF).~~

~~(4) The department determines:~~

~~(a) The RCC rate for the state-administered programs mathematically as follows:~~

~~State-administered programs' RCC rate = current Title XIX medicaid RCC rate x (one minus the current hospital ratable)~~

~~(b) The DRG conversion factor (CF) for the state-administered programs mathematically as follows:~~

~~State-administered programs' DRG CF = current Title XIX medicaid DRG CBCF x (one minus the current hospital ratable) x EF~~

~~(5) The department determines payments to hospitals for covered services provided to clients eligible under the state-administered programs mathematically as follows:~~

~~(a) Under the RCC payment method:~~

~~State-administered programs' RCC payment = state-administered programs' RCC Rate x allowed charges~~

~~(b) Under the DRG payment method:~~

~~State-administered programs' DRG payment = state-administered programs' DRG CF x all patient DRG relative weight (see subsection (6) of this section for how the department determines payment for state-administered program claims that qualify as DRG high-cost outliers).~~

~~(6) For state-administered program claims that qualify as DRG high-cost outliers, the department determines:~~

~~(a) In-state children's hospital payments for state-administered program claims that qualify as DRG high-cost outliers mathematically as follows:~~

~~Eighty-five percent of the allowed charges above the outlier threshold x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the DRG allowed amount~~

~~(b) Psychiatric DRG high-cost outlier payments for DRGs 424 through 432 mathematically as follows:~~

~~One hundred percent of the allowed charges above the outlier threshold x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the applicable DRG allowed amount~~

~~(c) Payments for all other claims that qualify as DRG high-cost outliers as follows:~~

~~Sixty percent x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the applicable DRG allowed amount~~

High-cost Outlier Calculations for Qualifying Claims State-administered Programs (for admission dates January 1, 2001 and after)															
In-state Children's Hospitals Allowed charges	(-)	> of $33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Ratable	(x)	85%	(=)	Outlier Add-on Amount	(+)	*DRG Allowed Amount
Psychiatric DRGs 424-432 Allowed charges	(-)	> of $33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Ratable	(x)	100%	(=)	Outlier Add-on Amount	(+)	* DRG Allowed Amount
All other qualifying claims Allowed charges	(-)	> of $33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Ratable	(x)	60%	(=)	Outlier Add-on Amount	(+)	* DRG Allowed Amount
*Basic DRG allowed amount calculation: DRG relative weight x conversion factor = DRG allowed amount														

(7) See WAC 388-550-3700(5) for how claims qualify as low-cost outliers.

(8) The department determines payments for claims that qualify as DRG low-cost outliers mathematically as follows:

Allowed charges for the claim x the specific hospital's RCC rate x (one minus the current hospital ratable)

(9) To calculate a hospital's ratable that is applied to both the Title XIX medicaid RCC rate and the Title XIX medicaid DRG CBCF used to determine the respective state-administered program's reduced rates, the department:

(a) Adds the hospital's medicaid revenue (medicaid revenue as reported by department of health (DOH) includes all medicaid revenue and all other medical assistance revenue) and medicare revenue to the value of the hospital's charity care and bad debts, all of which is taken from the most recent complete calendar year data available from DOH at the time of the ratable calculation; then

(b) Deducts the hospital's low income disproportionate share hospital (LIDSH) revenue from the amount derived in (a) of this subsection to arrive at the hospital's community care dollars; then

(c) Subtracts the hospital-based physicians revenue that is reported in the hospital's most recent HCFA-2552 medicare cost report received by the department at the time of the ratable calculation, from the total hospital revenue reported by DOH from the same source as discussed in (a) of this subsection, to arrive at the net hospital revenue; then

(d) Divides the amount derived in (b) of this subsection by the amount derived in (c) of this subsection to obtain the ratio of community care dollars to net hospital revenue (also called the preliminary ratable factor); then

(e) Subtracts the amount derived in (d) of this subsection from 1.0 to obtain the hospital's preliminary ratable; then

(f) Determines a neutrality factor by:

(i) Multiplying hospital-specific medicaid revenue that is reported by DOH from the same source as discussed in (a) of this subsection by the preliminary ratable factor; then

(ii) Multiplying that same hospital-specific medicaid revenue by the prior year's final ratable factor; then

(iii) Summing all hospital-medicaid revenue from the hospital-specific calculations that used the preliminary ratable factor discussed in (f)(i) of this subsection; then

(iv) Summing all hospital revenue from the hospital-specific calculations that used the prior year's final ratable factor discussed in (f)(ii) of this subsection; then

(v) Comparing the two totals; and

(vi) Setting the neutrality factor at 1.0 if the total using the preliminary ratable factor is less than the total using the prior year's final ratable factor; or

(vii) Establishing a neutrality factor that is less than 1.0 that will reduce the total using the preliminary ratable factor to the level of the total using the prior year's final ratable factor, if the total using the preliminary ratable factor is greater than the total using the prior year's ratable factor; then

(g) Multiplies, for each specific hospital, the preliminary ratable by the neutrality factor to establish hospital-specific final ratables for the year; then

(h) Subtracts each hospital-specific final ratable from 1.0 to determine hospital-specific final ratable factors for the year; then

(i) Calculates an instate-average ratable and an instate-average ratable factor used for new hospitals with no prior year history.

(10) The department updates each hospital's ratable annually on August 1.

(11) The department:

(a) Uses the equivalency factor (EF) to hold the hospital specific state-administered programs' DRG CF at the same level prior to rebasing, adjusted for inflation; and

(b) Calculates a hospital's EF as follows:

EF = State-administered programs' prior DRG CF divided by current Title XIX medicaid DRG CBCF x (one minus the prior ratable)

(12) For dates of admission on and after August 1, 2007, the department)) This section does not apply to out-of-state hospitals unless they are border hospitals (critical or noncritical).

(1) The agency:

(a) Pays for services provided to a client eligible for a state-administered program (SAP) based on ((state-administered program)) SAP rates((. The state-administered program)):

(b) Establishes SAP rates ((are established)) independently from the process used in setting the medicaid payment rates((. The state-administered program rates may not

~~be changed unless the legislature authorizes the changes. The department uses the~~));

(c) Calculates a ratable ((~~factor and~~)) each year to adjust each hospital's SAP rates for their percentage of community-based dollars to the total revenues for all hospitals;

(d) Calculates an equivalency factor (EF) to keep the ((~~state-administered program~~)) SAP payment rates at the same level ((~~they were at~~)) before and after the ((~~state~~)) medicaid rates ((~~are~~)) were rebased.

(((~~(13) The table in this subsection shows a comparison of the payment policy for the department's inpatient payment system for dates of admission before August 1, 2007, and the inpatient payment system effective for dates of admission on and after August 1, 2007. Under this inpatient payment system effective August 1, 2007, the per diem rates are used to pay for many services previously paid using the RCC payment method.~~

~~The following table indicates differences in policy for the two inpatient payment systems:~~

	~~Inpatient payment system for dates of admission before August 1, 2007~~	~~Inpatient payment system for dates of admission on and after August 1, 2007~~
~~Stable DRGs~~	~~DRG Grouper v 14.1~~	~~DRG grouper v 23.0~~
~~Unstable/Medical DRGs~~	~~RCC~~	~~Per diem~~
~~Unstable Surgical DRGs~~ ~~Unstable Neonate DRGs~~	~~RCC~~ ~~RCC~~	~~Per diem~~ ~~Per diem~~
~~Psych~~	~~RCC~~	~~Per diem~~
~~Rehab~~	~~RCC~~	~~Per diem~~
~~Detox~~	~~RCC~~	~~Per diem~~
~~Transplant~~	~~RCC~~	~~RCC~~
~~Military hospitals~~	~~RCC~~	~~RCC~~
~~HIV~~ ~~Chronic pain management~~	~~RCC~~ ~~Per diem~~	~~Not separately defined~~ ~~Per diem~~
~~Bariatric surgery~~	~~Per case rate~~	~~Per case rate~~
~~CUP~~	~~Not separately defined~~	~~Per diem~~
~~Burns~~	~~Not separately defined~~	~~Per diem~~

~~See specific sections in the chapter 388-550 WAC to determine how the department pays hospitals participating in the critical access hospital (CAH) program, the long term acute care (LTAC) program, and the certified public expenditure (CPE) payment program.~~

~~(14) Due to changes in payment methodologies established for the inpatient payment system effective August 1, 2007, the department~~)) (2) The agency has established the following ((~~state administered program rates used for dates of admission on and after August 1, 2007~~)):

(a) ((~~State-administered program~~)) SAP diagnosis-related group (DRG) conversion factor (CF) for claims grouped under ((~~stable~~)) DRG classifications services((~~.~~));

(b) ((~~State-administered program~~)) SAP per diem rates for claims grouped under the following specialty service categories:

(i) Chemical-using pregnant(CUP) women;

(ii) Detoxification; ((~~and~~))

(iii) Physical medicine and rehabilitation((~~.~~)) (PM&R); and

(iv) Psychiatric;

(c) ((~~State-administered program per diem rates for the claims grouped to unstable DRG classifications under the following nonspecialty service categories:~~

~~(i) Surgical;~~

~~(ii) Medical;~~

~~(iii) Burns; and~~

~~(iv) Neonate and pediatric.~~

~~(d) State-administered program per diem rates for claims grouped under psychiatric services.~~

~~(e) State-administered program~~)) SAP per case rate for claims grouped under bariatric services((~~.~~

~~(f) State-administered program~~)); and

(d) SAP ratio of costs-to-charges (RCC) ((~~rates~~)) for claims grouped under transplant services.

(((~~(15)~~))) (3) This subsection describes the ((~~state-administered program (DRG) conversion factor~~)) SAP DRG CF and payment calculation processes used by the ((~~department~~)) agency to pay claims ((~~paid~~)) using the DRG payment method. The ((~~department~~)) agency pays for services grouped to a ((~~stable~~)) DRG classification ((~~that are~~)) provided to clients eligible for a ((~~state-administered program~~)) SAP based on the use of a DRG ((~~conversion factor and~~)) CF, a DRG relative weight, and a maximum service adjustor. This process is similar to the payment method used to pay for medicaid and ((~~SCHIP~~)) CHIP services ((~~that are~~)) grouped to a ((~~stable~~)) DRG classification.

(a) The ((~~department's state-administered program DRG conversion factor~~)) agency's SAP DRG CF calculation process is as follows:

(i) ((~~For instate and critical border hospitals,~~)) The hospital's specific DRG ((~~conversion factor that is~~)) CF used to calculate payment for a ((~~state-administered program claim, is based on the medicaid conversion factor adjusted by the most available ratable factor and the applicable equivalency factor. Mathematically the calculation is:~~

~~State administered program DRG CF =~~

~~((Medicaid DRG CF x applicable Equivalency Factor) x most available ratable factor))~~ SAP claim is the medicaid DRG CF multiplied by the applicable EF multiplied by the ratable;

(ii) For ((~~instate and critical border~~)) hospitals that do not have ((~~a current state administered program DRG conversion factor~~)) a ratable or an EF, the ((~~state administered program conversion factor~~)) SAP CF is the hospital's specific ((~~proposed~~)) medicaid ((~~conversion factor~~)) CF multiplied by the average ((~~applicable equivalent factor and average applicable ratable.~~)) EF and the average ratable; and

(iii) For ((~~bordering city hospitals that are not critical border hospitals, and for other out-of-state hospitals that are not critical border hospitals, the state administered program DRG conversion factor~~)) noncritical border hospitals, the SAP DRG CF is the lowest in-state medicaid DRG ((~~conversion factor~~)) CF multiplied by the average ratable and ((~~equivalency factor~~)) the average EF.

(b) The ((~~department's state administered program DRG equivalency factor calculation process is~~)) agency calculates the SAP DRG EF as follows:

(i) The ((~~equivalency factor is a factor used to hold the hospital's specific state administered program DRG conversion factor or rates at the same level before and after the medicaid DRG rate is rebased. Mathematically the calculation is:~~

~~Equivalency factor = (State administered program DRG CF/(medicaid DRG CF x ratable))~~

~~(ii) The department may make an adjustment to the equivalency factor to address the differences in the relative weight values of the two DRG grouper versions due to the recalibration of the weights.~~

~~(iii) Refer to the ratable and ratable factor definition and calculation for the ratable factor determination.~~)) hospital-specific current SAP DRG CF is divided by the rebased medicaid DRG CF and then divided by the ratable factor to compute the preliminary EF.

(ii) The current SAP DRG payment is determined by multiplying the hospital specific SAP DRG CF by the AP-DRG version 23 relative weight.

(iii) The current aggregate DRG payment is determined by summing the current SAP DRG payments for all hospitals.

(iv) The hospital projected SAP DRG payment is determined by multiplying the hospital specific current SAP DRG CF by the APR-DRG relative weights version 31.0 and the maximum service adjustor.

(v) The projected aggregate DRG payment is determined by summing the projected SAP program DRG payments for all hospitals.

(vi) The aggregate amounts derived in (b)(iii) and (v) of this subsection are compared to identify a neutrality factor that keeps the projected aggregate SAP DRG payment (based on DRG-APR relative weights version 31.0) at the same level as the current aggregate SAP DRG payment (based on AP-DRG relative weights version 23.0).

(vii) The neutrality factor is multiplied by the hospital specific preliminary EF to determine the hospital specific final EF that is used to determine the SAP DRG conversion factors for the rebased system implementation.

(c) The ((~~department's~~)) agency calculates the DRG payment ((~~calculation process for DRG classifications grouped to stable DRG relative weights is~~)) for services paid under the DRG payment method as follows:

(i) The ((~~department determines~~)) agency calculates the allowed amount for the inlier portion of the ((~~state administered program~~)) SAP DRG payment ((~~calculation. Mathematically the calculation is:~~

~~State administered program DRG inlier portion allowed amount of the payment = (State administered program DRG CF x DRG relative weight)~~

~~(ii) The department determines the high outlier claim calculation for the state administered program DRG payment. See WAC 388-550-3700 for more information about high outlier qualification and calculation processes. Mathematically the calculation is:~~

~~State administered program DRG inlier and outlier portion allowed amount of the payment = (State administered program DRG CF x DRG relative weight) + outlier adjustment~~

~~(iii) The outlier payment adjustment calculation for a state administered program claim is different than the outlier payment calculation for a medicaid claim. The outlier adjustment for a state administered program claim is adjusted by the ratable factor.~~

~~(iv) The outlier threshold amount for claims that are eligible for a high outlier payment and are grouped to nonneonatal DRGs and nonpediatric DRGs, equals one hundred seventy-five percent of the DRG inlier allowed amount calculation. This same outlier threshold is used for claims that are eligible for a high outlier payment in hospitals other than Children's Hospital Regional Medical Center and Mary Bridge Children's Hospital and Health Center.~~

~~(v) The outlier threshold amount for claims that are eligible for a high outlier payment and are grouped to neonatal DRGs, pediatric DRGs, equals one hundred fifty percent of the DRG inlier allowed amount calculation. This same outlier threshold is used for claims that are eligible for a high outlier payment when the claim is from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center.~~

~~(vi) The outlier transfer provision is applied for the calculation of services paid under the state administered program DRG payments.~~

~~(vii) Refer to the medicaid percent of outlier adjustment factor described in WAC 388-550-3700 and (d) of this subsection for how the percent of outlier adjustment factor is reduced by a ratable to determine the outlier portion allowed amount for the claim.~~

~~(d) The department determines the outlier portion allowed amount calculation for the state administered program high outlier claim DRG payment as follows. Mathematically the calculation is:~~

~~State administered program outlier portion allowed amount of claim = ((Covered charges x RCC) - outlier threshold) x (Percent of outlier adjustment factor x ratable factor)~~

~~(i) A claim is an outlier claim when the claim cost (covered charges x RCC) is greater than both the fixed loss amount of fifty thousand dollars and one hundred seventy-~~

~~five percent (one hundred fifty percent for neonatal, pediatric DRGs, Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center) of the DRG inlier allowed amount for payment.~~

~~(ii) The outlier threshold used in calculation of the outlier payment adjustment will always be one hundred seventy-five percent (one hundred fifty percent for neonatal, pediatric DRGs, Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center) of the DRG inlier allowed amount for payment.~~

~~(iii) Refer to the ratable and ratable factor definition and calculation for the ratable factor determination.~~

~~(16)~~)) by multiplying the SAP DRG CF by the DRG relative weight and the maximum service adjustor.

(ii) SAP claims are also subject to outlier pricing. See WAC 182-550-3700 for details on outlier pricing.

(4) This subsection describes ((~~the state-administered program~~)) how the agency calculates the SAP per diem rate and payment ((~~calculation for the following specialty service categories and unstable DRG nonspecialty service categories.~~

~~(a) The per diem rate is separately established for each of the following services:~~

~~(i) CUP;~~

~~(ii) Detoxification;~~

~~(iii) Physical medicine and rehabilitation;~~

~~(iv) Surgical;~~

~~(v) Medical;~~

~~(vi) Burns; and~~

~~(v) Neonate and pediatric.~~

~~(b) The per diem rate calculation process for CUP, detoxification, physical medicine and rehabilitation, surgical, medical, burns, and neonate and pediatric services is,~~)) for CUP, detoxification, PM&R, and psychiatric services.

(a) The agency calculates the SAP per diem rate for in-state and critical border hospitals((~~, the hospital's specific state administered program per diem rate is based on the Title XIX medicaid rates multiplied by the most available ratable factor and the equivalency factor. Mathematically the calculation is:~~

~~State-administered program per diem rate =~~

~~((Hospital's specific medicaid per diem x ratable factor) x Equivalency factor)~~

~~(c) The per diem equivalency factor calculation process is as follows:~~

~~(i) The per diem equivalency factor is a factor used to hold the aggregate payment for all nonmedicaid claims grouped under per diem payment method at the same level before and after the per diem medicaid rate is rebased. The equivalency factor is the calculated based on the estimate nonmedicaid per diem, the medicaid per diem, and the hospital's specific ratable factor. Mathematically the calculation is:~~

~~Equivalency factor =~~

~~(Estimated state administered program per diem rate/ (medicaid per diem rate x ratable))~~

~~(ii) For bordering city hospitals that are not critical border hospitals, and for other out-of-state hospitals that are not critical border hospitals, the state-administered program per diem rate is the lowest instate medicaid per diem rate multiplied by the average ratable and equivalency factor.~~

~~(iii) The state-administered program per diem rate is an estimate based on the actual payment per day. The actual payment per day equals the aggregate payment amount (inflated from the base year to the implementation year) divided by the number of days associated with the aggregate costs.~~

~~(iv) For a hospital with more than twenty state-administered program claims that grouped in the base year data to DRG classifications that are paid using the per diem payment method, a hospital's specific equivalency factor is established based on the hospital's data.~~

~~(v) For a hospital with less than twenty state-administered program claims that grouped in the base year data to DRG classifications are paid using the per diem payment method, an average equivalency factor is established based on the hospital data base of all hospitals.~~

~~(d) The state-administered program~~)) by multiplying the hospital's specific medicaid per diem by the ratable and the per diem EF.

(b) The agency calculates the SAP per diem rate for non-critical border hospitals by multiplying the lowest in-state medicaid per diem rate by the average ratable and the average per diem EF.

(c) For hospitals with more than twenty nonpsychiatric SAP per diem paid services during SFY 2011, the agency calculates a per diem EF for each hospital using the individual hospital's claims as follows:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments by the total number of days associated with the payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payments (same claims used in (c)(i) of this subsection).

(iii) The agency divides the hospital estimated SAP average payment per day in (a) of this subsection by the hospital medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (c)(iii) of this subsection by the hospital specific ratable factor to determine the EF.

(d) For hospitals with twenty or less nonpsychiatric SAP per diem paid services during SFY 2011, the EF is an average for all hospitals. The agency uses the following process to determine the average EF:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments for all hospitals by the total number of days associated with the aggregate payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payment (same claims used in (d)(i) of this subsection).

(iii) The agency divides the SAP average per day in (a) of this subsection by the medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (d)(iii) of this subsection by the hospital specific ratable factor to determine the

EF. The EF is an average based on claims for all the hospitals in the group.

(e) A psychiatric EF is used to keep SAP psychiatric rates at the level required by the Washington state legislature. The agency's SAP psychiatric rates are eighty-five and four one hundredths of a percent (85.04%) of the agency's medicaid psychiatric rates. The factor is applied to all hospitals.

(f) The agency calculates the SAP per diem allowed amount ((~~of payment calculation process~~)) for CUP, detoxification, ((~~and physical medicine and rehabilitation~~)) PM&R, and psychiatric services ((~~is as follows. Mathematically the calculation is:~~

~~Per diem payment =~~

~~Hospital's state administered program~~)) by multiplying the hospital's SAP per diem rate ((~~x patient stay LOS recognized by the department for payment~~)) by the agency's allowed patient days.

(g) The agency does not apply the high outlier ((~~and~~)) or transfer policy ((~~is not applied~~)) to the payment calculations for CUP, detoxification, ((~~and physical medicine and rehabilitation~~)) PM&R, and psychiatric services.

(((~~(c) The state administered program per diem allowed amount of payment calculation process for surgical, medical, burns, and neonate services is as follows. Mathematically the calculation is:~~

~~Per diem payment =~~

~~Hospital's state administered program per diem rate x patient stay LOS recognized by the department for payment~~

~~(i) The outlier policy is applied to payment calculations for a claim grouped to an unstable DRG classification when the claim is for surgical, medical, burns, neonate and pediatric services (see WAC 388-550-3700). Refer to the state administered program outlier DRG adjustment payment calculation for the outlier calculation.~~

~~(ii) The transfer policy is not applied to payment calculations for a claim grouped to an unstable DRG classification when the claim is for surgical, medical, burns, neonate and pediatric services.~~

~~(17) The state administered program per diem rate and payment calculation for psychiatric services is as follows:~~

~~(a) The department uses a payment method similar to the method used to pay for medicaid psychiatric services, for state administered program psychiatric services provided to clients eligible for those services. Psychiatric services provided to state administered program clients are paid using a psychiatric per diem rate. The per diem rate calculation process for state administered program psychiatric services is as follows:~~

~~(i) For instate hospitals, the hospital's specific state administered program psychiatric per diem rate used to calculate the allowed amount for payment is based on the Title XIX medicaid rate adjusted by a ratable factor specified by the legislature to reduce the medicaid psychiatric per diem to a state program per diem. Mathematically the calculation is:~~

~~State administered program psychiatric per diem rate =~~

~~Medicaid psychiatric per diem x a ratable factor specified by the legislature to reduce the medicaid psychiatric per diem to a state program per diem.~~

~~(ii) For hospitals located outside the state of Washington, including bordering city hospitals, critical border hospitals, and other out-of-state hospitals, psychiatric services and Involuntary Treatment Act (ITA) services are not covered or paid by the department.~~

~~(b) The per diem payment calculation process for state-administered program psychiatric services is as follows. Mathematically the calculation is:~~

~~Psychiatric payment =~~

~~State administered program hospital's specific per diem rate x patient stay LOS recognized by the department's MHD designee for payment~~

~~(i) Outlier payment and transfer policies are not applied to state administered program psychiatric claims.~~

~~(ii) The ratable factor was provided to the department by the legislature.~~

~~(18)~~)) (5) This subsection describes the ((~~state administered program~~)) SAP per case rate and payment processes for bariatric surgery services.

(a) ((~~The department limits provision of bariatric surgery services to medical assistance clients to hospitals that are approved by the department to provide those services. Bariatric surgery services provided to a medical assistance client by an approved hospital must also be prior authorized by the department for the hospital to receive payment from the department for those services. Effective August 1, 2007, the department approved bariatric surgery services programs at the Sacred Heart Medical Center, the University of Washington Medical Center, and the Oregon Health Science University. The department may approve other programs based on department discretion.~~

~~(b) The department~~)) The agency calculates the ((~~state administered program~~)) SAP per case rate for bariatric surgery services by multiplying the hospital's ((~~specific~~)) medicaid per case rate for bariatric surgery services by the hospital's ((~~specific~~)) ratable ((~~factor and DRG-equivalency factor. Mathematically the calculation is:~~

~~State administered program per case rate =~~

~~Medicaid per case rate x hospital's specific ratable factor x DRG equivalency factor~~)).

(b) The per case payment rate for bariatric surgery services is an all-inclusive rate. ((~~No outlier provision is applied to the per case rate.~~

~~(19) This subsection describes the state administered program RCC rates and payment calculation processes for transplant services and other RCC paid services. Transplant services provided to a client eligible for those services through a state administered program are paid using the RCC payment method. There are some other services that may be paid using the RCC payment method, e.g., services provided by military hospitals when no other payment method is agreed upon by the department and the hospital. The state administered program RCC rate is calculated by multiplying the medicaid RCC rate by the ratable factor. Mathematically the calculation is:~~

~~State administered program RCC rate = Medicaid RCC x ratable factor~~

~~(20) The department may pay for authorized psychiatric indigent inpatient claims submitted by an instate community hospital designated as an institution for mental diseases (IMD) using state funds when such funds are provided by the state legislature specifically for this purpose.~~

~~(21) The department's policy for payment on state-administered program claims that involve third party liability (TPL) and/or client responsibility payments is the same policy indicated in the table in WAC 388-550-2800, except that when the department determines the payment on the claim, it applies state-administered program rates, not medicaid or SCHIP rates, when comparing the lesser of billed charges or the allowed amount on the claim.~~))

(c) The agency does not apply the high outlier or transfer policy to the payment calculations for bariatric surgery services.

(6) The agency calculates the SAP RCC by multiplying the medicaid RCC by the hospital's ratable.

(7) The agency establishes annually the hospital-specific ratable factor used in the calculation of SAP payment rate based on the most current hospital revenue data available from the department of health (DOH). The agency uses the following process to determine the hospital ratable factor:

(a) The agency adds the hospital's medicaid revenue, medicare revenue, charity care, and bad debts as reported in DOH data.

(b) The agency determines the hospital's community care dollars by subtracting the hospital's low-income disproportionate share hospital (LIDSH) payments from the amount derived in (a) of this subsection.

(c) The agency calculates the hospital net revenue by subtracting the hospital-based physician revenue (based on information available from the hospital's medicare cost report or provided by the hospitals) from the DOH total hospital revenue report.

(d) The agency calculates the preliminary hospital-specific ratable by dividing the amount derived in (b) of this subsection by the amount derived in (c) of this subsection.

(e) The agency determines a neutrality factor by comparing the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the preliminary ratable to the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the prior year ratable. The neutrality factor is used to keep the projected SAP payments at the same current payment level.

(f) The agency determines the final hospital-specific ratable by multiplying the hospital-specific preliminary ratable by the neutrality factor.

(g) The agency applies to the allowable for each SAP claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(8) The agency does not pay an SAP claim paid by the DRG method at greater than the billed charges.

(9) SAP rates do not apply to the critical access hospital (CAH) program's weighted cost-to-charges, to the long-term acute care (LTAC) program's per diem rate, or to the certified public expenditure (CPE) program's RCC (except as the RCC applies to the CPE hold harmless described in WAC 182-550-4670).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-550-2511	Acute PM&R definitions.
WAC 182-550-2570	LTAC program definitions.
WAC 182-550-2800	Payment methods and limits—Inpatient hospital services for medicaid and SCHIP clients.
WAC 182-550-3010	Payment method—Per diem payment.
WAC 182-550-3020	Payment method—Bariatric surgery—Per case payment.
WAC 182-550-3100	Calculating DRG relative weights.
WAC 182-550-3150	Base period costs and claims data.
WAC 182-550-3200	Medicaid cost proxies.
WAC 182-550-3250	Indirect medical education costs—Conversion factors, per diem rates, and per case rates.
WAC 182-550-3450	Payment method for calculating medicaid DRG conversion factor rates.
WAC 182-550-3460	Payment method—Per diem rate.
WAC 182-550-7050	OPPS—Definitions.

WSR 14-08-074
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 31, 2014, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-059.

Title of Rule and Other Identifying Information: These rules address the details and methodology of the K-1 high poverty staffing compliance calculation as required by the legislature.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 Washington, Olympia, WA 98504, on May 7, 2014, at 10:00 a.m.

Date of Intended Adoption: May 7, 2014.

Submit Written Comments to: T. J. Kelly, P.O. Box 47200, Olympia, WA 98504, e-mail Thomas.Kelly@k12.wa.us, fax (360) 664-3683, by May 7, 2014.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These are new rules that are necessary to address the details and methodology for determining compliance with K-1 high poverty funding starting with the 2014-15 school year. This is the second CR-102 filed for these rules, as a significant change in the language was made prior to the initial rules hearing.

Reasons Supporting Proposal: To ensure that school districts are being funded in accordance with the Omnibus Appropriations Act.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, OSPI, (360) 725-6301; and Enforcement: JoLynn Berge, OSPI, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(1)[(i)]. Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 31, 2014
Randy Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-140-921 K-1 high poverty class size compliance. The superintendent of public instruction shall determine which high poverty schools are eligible for enhanced funding for class size reduction per WAC 392-140-915. High poverty class size compliance will be measured at each eligible school independent of other eligible schools within a district. A demonstrated class size will be measured at each eligible school. That demonstrated class size will be converted to a funded class size, and a weighted average funded class size by district will be calculated and used for funding purposes.

Compliance calculations will be performed in January, March, and June of each school year. The most recent weighted average funded class size will be used for funding purposes. Districts will be funded based on their budgeted high poverty class size from September through December. Only districts with at least one high poverty eligible school may budget an enhanced class size.

NEW SECTION

WAC 392-140-923 K-1 high poverty class size—Enrollment. School level enrollment by grade at each of the high poverty eligible schools will be considered from the current school year October 1 CEDARS data inclusive of changes through the enrollment count day in January, March, and June. All students in ALE programs will be excluded from the compliance calculation. First grade and full day kindergarten students will be considered a 1.0 FTE, while half day kindergartners will be considered a 0.5 FTE.

NEW SECTION

WAC 392-140-932 K-1 high poverty class size—Teachers. The superintendent of public instruction shall include in the calculation of high poverty class size compliance those teachers reported on the S-275 at the eligible schools that are coded in programs 01 and 79 to grade group K or 1, and are reported in one of the following duty roots:

- Duty Root 31 – Elementary teacher
- Duty Root 33 – Other teacher
- Duty Root 52 – Substitute teacher
- Duty Root 63 – Contractor teacher

S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

Program 21 special education teachers coded to grade K or 1 at the eligible schools multiplied by the annual percentage of students in special education instruction used in determination of a district's 3121 revenue will be included.

Teachers coded to program 02 alternative learning experience shall be excluded.

NEW SECTION

WAC 392-140-933 K-1 demonstrated class size. Demonstrated class size at each school will be calculated by dividing the total teachers for that school as described in WAC 392-140-932 into the calculated total of K-1 student FTE for that school. Funded class size will equal the demonstrated class size to a maximum of 24.1 and a minimum of 20.3 students per teacher.

A weighted average of funded class sizes across all high poverty eligible schools will be calculated by multiplying eligible enrollment as defined in WAC 392-140-923 at each school by the funded class size at each school. The results of that calculation for each school will be summed and divided by the total K-1 calculate enrollment at all eligible schools to arrive at a district wide weighted average funded class size. This weighted average funded class size will be used for funding purposes.

WSR 14-08-081
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed April 1, 2014, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-072.

Title of Rule and Other Identifying Information: Chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Olympia, WA 98504, on May 6, 2014, at 10:00 a.m.

Date of Intended Adoption: May 30, 2014.

Submit Written Comments to: Jessica Nau, P.O. Box 44180, Olympia, WA 98504-4180, e-mail Jessica.Nau@LNI.wa.gov, fax (360) 902-4258, by 5:00 p.m., May 6, 2014.

Assistance for Persons with Disabilities: Contact office of information and assistance by April 29, 2014, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to modify a formula in an existing rule that allowed a small number of retrospective rating (retro) program participating employers to receive refunds or larger refunds inconsistent with the intent of the retro program, when their loss ratio (claim costs divided by standard premium) exceeds the maximum loss limit they had chosen.

This rule will amend WAC 296-17B-440 Net insurance charge. With this change, the department proposes removing the performance adjustment factor (PAF) from the calculation of insurance charges for those retro participants whose insurance charges are based on standard premium paid.

Reasons Supporting Proposal: Rules for the retro program were rewritten for enrollment beginning in January 2011. Tables were updated to increase fairness in the distribution of retro refunds and to offer participants more choices in how they participate financially in the program. Changes included the assessment of insurance charges based on hazard, and were based on historic performance of groups and employers enrolled in the retro program.

Statutory Authority for Adoption: RCW 51.18.010 (Retrospective rating) and 51.04.020(1) (General authority).

Statute Being Implemented: RCW 51.18.010, 51.04.020.

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

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

Name of Agency Personnel Responsible for Drafting: Diane Doherty, Tumwater, Washington, (360) 902-5903; Implementation: Tim Smolen, Tumwater, Washington, (360) 902-4835; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4777.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025(3) does not apply to a rule described in RCW 34.05.310(4), and that subsection exempts rules that "set or adjust fees pursuant to legislative standards." These proposed rules clarify one part of the process for calculating retrospective rating premiums.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 exempts from its requirements rules "that set or adjust fees pursuant to legislative standards." These proposed rules clarify one part of the process for calculating retrospective rating premiums.

April 1, 2014
Joel Sacks
Director

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

WAC 296-17B-440 Net insurance charge. You will pay a net insurance charge for the protection provided by your single loss occurrence limit and your maximum loss ratio.

Your net insurance charge can be calculated as a percentage of either your standard premiums or your incurred loss and expense charge.

(1) If you choose to have your net insurance charge calculated using your standard premiums, your net insurance charge will be calculated using the following formula:

(Premium insurance charge factor - Premium insurance savings factor) x (Standard premiums)((~~x (Performance adjustment factor)~~))

Your premium insurance charge factor and premium insurance savings factor will depend on your maximum and minimum loss ratio choice, size group and hazard group, and can be found in WAC 296-17B-910 through 296-17B-990. If you choose a maximum and/or minimum loss ratio between the options found in one of the tables, the department will interpolate to obtain the charge and/or savings factors from the factors found in the tables.

(2) If you choose to have your net insurance charge calculated using your losses incurred, your net insurance charge will be calculated using the following formula:

(Loss insurance charge factor - Loss insurance savings factor) / [1.0 - (Loss insurance charge factor - Loss insurance savings factor)] x Incurred loss and expense charge

Your loss insurance charge factor and loss insurance savings factor will depend on your maximum and minimum loss ratio choice, size group and hazard group, and can be found in WAC 296-17B-910 through 296-17B-990. If you choose a maximum and/or minimum loss ratio between the options found in one of the tables, the department will interpolate to obtain the charge and/or savings factors from the factors found in the tables.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 14-08-085
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed April 1, 2014, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-021.

Title of Rule and Other Identifying Information: Chapter 246-120 WAC creating a new chapter clarifying the secretary of health's authority and procedures for issuing civil penalties against health carriers and third-party administrators. Amending WAC 246-10-501 to allow adjudicative proceedings involving civil penalties against health carriers and third-party administrators to be conducted under brief adjudicative proceedings.

Hearing Location(s): Washington State Department of Health (DOH), Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on May 7, 2014, at 9:00 a.m.

Date of Intended Adoption: May 14, 2014.

Submit Written Comments to: Jan Hicks-Thomson, DOH, P.O. Box 47843, Olympia, WA 98504-7843, e-mail

[web site] http://www3.doh.wa.gov/policyreview/, fax (360) 236-3590, by May 7, 2014.

Assistance for Persons with Disabilities: Contact Nicole Avelar by May 1, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies the secretary of health's ability and procedures for fining health plans and third-party administrators in connection with the conditions established in the Washington Vaccine Association plan of operations, which details the conditions and procedures regarding late payment of vaccine assessments and reimbursement as established in state law. The proposed rule will also allow for the use of brief adjudicative proceedings as part of the appeal process.

Reasons Supporting Proposal: The rules provide the administrative framework for the secretary of health to carry out the levying of penalties as described in the law.

Statutory Authority for Adoption: RCW 70.290.060.

Statute Being Implemented: Chapter 70.290 RCW.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Jan Hicks-Thomson, DOH, 310 Israel Road S.E., Point Plaza East, Tumwater, WA, (360) 236-3578; Implementation and Enforcement: Michele Roberts, DOH, 310 Israel Road S.E., Point Plaza East, Tumwater, WA, (360) 236-3568.

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. It is a nonsignificant legislative rule that outlines the process for how the secretary of health will notify health plans and third-party administrators of the civil penalty as outlined in chapter 246-120 WAC.

A cost-benefit analysis is not required under RCW 34.05.328. By definition this is not a significant legislative rule. The proposed rule outlines the process for how the secretary of health will notify health plans and third-party administrators of the civil penalty as outlined in chapter 246-120 WAC.

March 31, 2014
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

WAC 246-10-501 Application of brief adjudicative proceedings. (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC 246-291-100 or 246-291-110;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC 246-291-130;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW 70.119A.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111(8) and 70.38.115(13);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal;

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050; ((~~or~~))

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW; or

(u) A civil penalty imposed against a health carrier or third-party administrator under RCW 70.290.060.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding.

Chapter 246-120 WAC

CIVIL PENALTIES OF HEALTH CARRIERS AND THIRD-PARTY ADMINISTRATORS

NEW SECTION

WAC 246-120-010 Purpose. The purpose of this chapter is to describe the procedures and conditions by which the secretary must issue civil penalties to health carriers and

third-party administrators. This chapter is adopted under RCW 70.290.060.

NEW SECTION

WAC 246-120-020 Definitions. For the purposes of this chapter, the words and phrases in this section have the following meanings unless the context clearly indicates otherwise:

(1) "Health carrier" has the same meaning as defined in RCW 70.290.010.

(2) "Secretary" means the secretary of the department of health.

(3) "Third-party administrator" has the same meaning as defined in RCW 70.290.010.

(4) "Washington vaccine association" or "association" means the association created under chapter 70.290 RCW. The association collects and remits adequate funds from health carriers and third-party administrators for the cost of vaccines provided to certain children in Washington state.

NEW SECTION

WAC 246-120-030 Penalty—Failure to reimburse audit costs. (1) Following a compliance audit by Washington vaccine association pursuant to RCW 70.290.060 and upon certification of the audit costs, the Washington vaccine association shall notify the health carrier or third-party administrator in writing that there is an outstanding obligation to reimburse the Washington vaccine association for the cost of the audit.

(2) The health carrier or third-party administrator must reimburse the Washington vaccine association for the cost of the audit within forty-five days after receiving written notice of the obligation.

(3) The Washington vaccine association shall notify the secretary if the health carrier or third-party administrator fails to timely reimburse the Washington vaccine association for the cost of the audit. Upon receipt of such notice, the secretary shall assess a civil penalty of one hundred fifty percent of the amount of the costs of the audit against the health carrier or third-party administrator.

(4) The secretary shall serve notice of the civil penalty for failure to pay the audit costs in writing upon the health carrier or third-party administrator by personal service or by certified mail in a manner that shows proof of receipt. The civil penalty is due and payable twenty-eight days at the place specified in the notice after receipt by the health carrier or third-party administrator.

(5) A health carrier or third-party administrator who has received written notification of an assessed civil penalty according to this section may request a brief adjudicative proceeding pursuant to WAC 246-120-050. The sole issue at the brief adjudicative proceeding shall be whether the health carrier or third-party administrator paid the cost of the audit in the required time and manner.

NEW SECTION

WAC 246-120-040 Penalty—Failure to remit assessment. (1) Following Washington vaccine association's notice of assessment pursuant to RCW 70.290.060 and the plan of operation, the health carrier or third-party administrator must remit the amount of the assessment to the Washington vaccine association within ninety days after receiving the written notice or timely pay in accordance with an approved payment plan with the Washington vaccine association.

(2) The Washington vaccine association shall notify the secretary if the health carrier or third-party administrator fails to pay the amount of the assessment or, after notification from the Washington vaccine association to the health carrier or third-party administrator of an outstanding obligation, the amount owed on the approved payment plan. The notice must provide the amount due to the Washington vaccine association. Upon receipt of such notice, the secretary shall assess a civil penalty of one hundred fifty percent of the assessment amount due against the health carrier or third-party administrator.

(3) The secretary shall serve notice of the civil penalty for failure to pay the assessment or amount owed on the approved payment plan in writing upon the health carrier or third-party administrator by personal service or by certified mail in a manner that shows proof of receipt. The civil penalty is due and payable twenty-eight days at the place specified in the notice after receipt by the health carrier or third-party administrator.

(4) A health carrier or third-party administrator who has received written notification of an assessed civil penalty according to this section may request a brief adjudicative proceeding pursuant to WAC 246-120-050. The sole issue at the brief adjudicative proceeding shall be whether the health carrier or third-party administrator failed to pay the annual assessment or the amount owed on the approved payment plan in the required time and manner.

NEW SECTION

WAC 246-120-050 Request for a brief adjudicative proceeding. (1) A health carrier or third-party administrator who has received written notification of an assessed civil penalty according to this chapter may request a brief adjudicative proceeding pursuant to chapter 34.05 RCW.

(2) The application for a brief adjudicative proceeding must:

(a) Be in writing;

(b) State the basis for contesting the civil penalty;

(c) Include a copy of the adverse notice;

(d) Be served on and received by the department within twenty-eight days of the health carrier or third-party administrator receiving the notice of a civil penalty; and

(e) Be served in a manner which shows proof of receipt at the following address:

Adjudicative Clerk Office
310 Israel Rd. S.E.
Olympia, WA 98504-7879

(3) If a health carrier or third-party administrator files a timely and sufficient application for a brief adjudicative proceeding, the secretary shall not implement the action for the civil penalty until the final order is entered. The presiding or reviewing officer may permit the secretary to implement part

or all of the action while the proceedings are pending, if the health carrier or third-party administrator causes an unreasonable delay in the proceedings or for other good cause.

WSR 14-08-091
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT
[Filed April 2, 2014, 9:24 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-04-130 What rules ensure that the director's office complies with the provisions of the State Public Records Act?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on May 8, 2014, at 8:30 a.m.

Date of Intended Adoption: May 8, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by May 1, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by May 1, 2014, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to repeal WAC 357-04-130. This rule cites the OFM public disclosure rule as the operative rule for the state human resources office. Repealing the rule has no effect on the process for public disclosure.

Reasons Supporting Proposal: This WAC was adopted as part of ESSB 5931 (consolidation bill) which transferred powers and duties from the department of personnel to OFM or to the department of enterprise services. Now that the consolidation is complete WAC 357-04-130 is no longer necessary.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristie Wilson, 400 Insurance Building, (360) 902-0483.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

April 2, 2014
Roselyn Marcus
Assistant Director of Legal
and Legislative Services

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-04-130	What rules ensure that the director's office complies with the provisions of the State Public Records Act?

WSR 14-08-092
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT
[Filed April 2, 2014, 9:25 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-100 Must an employer have a policy for requesting and approving leave? and 357-31-130 When can an employee use accrued sick leave?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on May 8, 2014, at 8:30 a.m.

Date of Intended Adoption: May 8, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by May 1, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by May 1, 2014, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to add language to WAC 357-31-100 and 357-31-130 to include that employers, including higher education, must allow the use of sick leave for qualifying absences under Family and Medical Leave Act (FMLA) for the purpose of parental leave for bonding with his/her newborn, adoptive or foster child. We are also proposing adding language which says employers must address in their leave policy the maximum amount of sick leave allowed to be used for this purpose during the twelve-week FMLA period.

Reasons Supporting Proposal: This is to align the state rule with FMLA.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristie Wilson, 400 Insurance Building, (360) 902-0483.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

April 2, 2014
Roselyn Marcus
Assistant Director of Legal
and Legislative Services

AMENDATORY SECTION (Amending WSR 10-11-071, filed 5/14/10, effective 6/15/10)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020; ((~~and~~))

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave; and

(4) Allow an employee to use sick leave for qualifying absences under the Family and Medical Leave Act (FMLA) for parental leave for the purpose of baby bonding with his/her newborn, adoptive, or foster child in accordance with WAC 357-31-495. The policy must state the maximum amount of sick leave allowed to be used during the twelve-week FMLA period.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-130 When can an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) Because of and during illness, disability, or injury that has incapacitated the employee from performing required duties.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) To care for a minor/dependent child with a health condition requiring treatment or supervision.

(d) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

(f) For personal health care appointments.

(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.

(h) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(i) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(j) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(k) For qualifying absences under the Family and Medical Leave Act for parental leave for the purpose of bonding with his/her newborn, adoptive, or foster child in accordance with WAC 357-31-495. The amount of sick leave allowed to be used must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

WSR 14-08-093
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT
[Filed April 2, 2014, 9:25 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on May 8, 2014, at 8:30 a.m.

Date of Intended Adoption: May 8, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by May 1, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by May 1, 2014, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing a housekeeping change to move the placement of subsections (3)(a) and (b) to fall under subsection (2). The ability to limit the number of occurrences or deny an employee's request should be tied to when an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

Reasons Supporting Proposal: This is to correct a placement error to properly align the subsections (3)(a) and (b) with the correct subsection (2).

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 400 Insurance Building, (360) 902-0483.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

April 2, 2014
Roselyn Marcus
Assistant Director of Legal
and Legislative Services

AMENDATORY SECTION (Amending WSR 10-23-041, filed 11/10/10, effective 12/13/10)

WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination? Leave with pay **must** be granted to an employee:

(1) To allow an employee to receive assessment from the employee assistance program((;)).

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours((; or)).

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(((~~(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.~~

~~(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.~~))

WSR 14-08-094
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Docket UT-131239—Filed April 2, 2014, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-122 [13-14-122].

Title of Rule and Other Identifying Information: This rule making proposes amending rules and adopting rules in chapter 480-123 WAC, Universal service, to implement legislation establishing a state universal communications service program.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on May 15, 2014, at 1:30 p.m.

Date of Intended Adoption: May 15, 2014.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-8203, by May 5, 2014. Please include "Docket UT-131239" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by May 1, 2014, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would implement conditions for commission oversight of the state universal communications program including, but not limited to, criteria for determining eligibility and information requirements, determining funding levels, and operation of an advisory board. Adoption of the rules would provide transitional state funding over a five-year period to small eligible telecommunications carriers whose customers, absent state funding, may be subject to significant local rate increases or potential disruption to local telephone service. The commission plans no changes to existing rules although some rules, including WAC 480-120-399 and other rules may be modified or eliminated pursuant to a separate rule-making proceeding.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040(4), 80.36.630, 80.36.650, 80.36.660, 80.36.670, 80.36.680, 80.36.690, and 80.36.700.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Thomas, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 359-1049; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose more than minor costs. Because there will not be more than minor increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

April 2, 2014
Steven V. King
Executive Director
and Secretary

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

WAC 480-123-020 Definitions. As used in ((~~WAC 480-123-030 through 480-123-080~~)) this chapter:

"Applicant" means any person applying to an ETC for new service or reconnection of discontinued service.

"Communications provider" or "provider" means a company providing communications service that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

"Communications services" includes telecommunications services and information services and any combination of these services.

"Eligible telecommunications carrier" and "ETC" mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

"Facilities" means for the purpose of WAC 480-123-030 (1)(b) any physical components of the telecommunications network that are used in the transmission or routing of the services that are supported by federal universal service mechanisms.

".shp format" means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS™.

"Program" means the state universal communications services program created in RCW 80.36.650.

"Service outage" means a significant degradation in the ability of an end user to establish and maintain a channel of voice communications as a result of failure or degradation in the performance of a communications provider's network.

"Substantive" means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, benefits for customers. For example, information about investments and expenses that will provide, increase, or maintain service quality, signal coverage, or network capacity, and information about the number of customers that benefit, and how they will benefit is sufficient to enable evaluation.

"Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

NEW SECTION

WAC 480-123-100 Prerequisites for requesting program support. (1) **Wireline communications providers.** A wireline communications provider may seek support from the program if the provider satisfies all of the following requirements:

(a) The provider is a local exchange company as defined in WAC 480-120-021 that serves less than forty thousand access lines within the state;

(b) The provider is an incumbent local exchange carrier as defined in 47 U.S.C. Sec. 253(h);

(c) The provider offers basic residential and business exchange telecommunications services as set forth in WAC 480-120-021 and RCW 80.36.630;

(d) The provider's rates for residential local exchange service, plus mandatory extended area service charges, are no lower than the local urban rate floor established by the commission as the benchmark rate based on the Federal Communications Commission's most current calculation of a national local urban rate floor pursuant to 47 C.F.R. Sec. 54.318 in the year in which the provider files a petition for support; provided that, if the provider's rates exceed the benchmark, the provider may not seek support from the program for the purpose of reducing those rates towards or to the benchmark; and

(e) The provider has been designated by the commission as an eligible telecommunications carrier for purposes of receiving federal universal service support pursuant to 47 C.F.R. Part 54 Subpart D – Universal Service Support for

High Cost Areas, with respect to the service areas for which the provider is seeking program support.

(2) **Wireless communications providers.** A wireless communications provider may seek support from the program if the provider satisfies all of the following requirements:

(a) The provider is licensed by the Federal Communications Commission to offer commercial mobile radio service within the state of Washington;

(b) The provider serves fewer than the equivalent of forty thousand access lines in Washington; and

(c) The provider has been designated by the commission as an eligible telecommunications carrier for purposes of receiving federal universal service support pursuant to 47 C.F.R. Part 54 Subpart D – Universal Service Support for High Cost Areas, with respect to the service areas for which the provider is seeking program support.

(3) In calculating access lines or equivalents under this section, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington; provided that only the wireline access lines of the affiliates of a provider seeking support as a wireline carrier will count toward the single threshold for that provider, and only the wireless access line equivalents of the affiliates of a provider seeking support as a wireless carrier will count toward the single threshold for that provider.

NEW SECTION

WAC 480-123-110 Petitions for eligibility to receive program support. (1) **Wireline communications providers.** A wireline communications provider that satisfies the prerequisites in WAC 480-123-100 may petition the commission to receive support from the program. The provider must petition the commission each year to be eligible to receive support from the program the following year. The petition must include the following information:

(a) The name of the legal entity that provides communications services and is seeking program support;

(b) A corporate organization chart showing the relationship between the legal entity identified in (a) of this subsection and all affiliates as defined in RCW 80.16.010 and a detailed description of any transactions between the provider and those affiliates recorded in the provider's operating accounts;

(c) A service area map or detailed reference to any maps on file with the commission showing the provider's Washington service area;

(d) A demonstration that the provider's customers are at risk of rate instability or service interruptions or cessation in the absence of support from the program;

(e) Detailed financial information and supporting documentation in a form prescribed by the commission for the provider's total Washington regulated operations for the two calendar years prior to the year in which the provider is filing the petition including, but not limited to, the following:

(i) The provider's balance sheet and statements of income and retained earnings or margin from, or in the same format and detail required in, Rural Utilities Service (RUS) Form 479;

(ii) The provider's consolidated audited financial statements; if the provider does not have consolidated audited financial statements prepared in the normal course of its business, the provider must submit financial statements reviewed by a certified public accountant;

(iii) Information demonstrating the provider's earned rate of return on a total Washington unseparated regulated operations basis for each of the two prior years;

(iv) Information demonstrating the provider's earned return on equity on a total company (regulated and nonregulated) Washington basis for each of the two prior years;

(v) Information detailing all of the provider's revenues from the statements of income and retained earnings or margin section of RUS Form 479 for the two prior years; if the provider does not submit RUS Form 479, the provider must file with the commission the same revenue information specified in this subsection that is required to complete the applicable portion of that form;

(vi) Information detailing the amounts of any corporate operations adjustments to existing high-cost loop and interstate common line support mechanisms the Federal Communications Commission required of the provider for the two prior years or a statement under penalty of perjury from a company officer of the provider with personal knowledge and responsibility certifying that no such adjustments apply to the provider;

(vii) Any additional supporting information the commission requests to enable it to analyze the provider's financial results for program purposes; and

(viii) A statement under penalty of perjury from a company officer of the provider with personal knowledge and responsibility certifying that the provider complies with state and federal accounting, cost allocation, and cost adjustment rules pertaining to incumbent local exchange companies;

(f) A complete copy of the FCC Form 481 the provider filed with the Federal Communications Commission for the calendar year preceding the year in which the provider is filing the petition; if the provider does not submit FCC Form 481 to the Federal Communications Commission, the provider must file with the commission the same information required to complete that form;

(g) Information detailing the number of residential and business local exchange access lines the provider served as of December 31st for each of the prior two years and the monthly rate charged to each customer category; and

(h) A statement under penalty of perjury from a company officer of the provider certifying that if it receives program support the provider will continue to provide communications services pursuant to its tariffs on file with the commission throughout its service territory in Washington for which it is seeking and receives program support during the entirety of the calendar year in which the provider is applying for support from the program.

(2) **Wireless communications provider.** A wireless communications provider that meets the requirements in WAC 480-123-100 may petition the commission to receive support from the program. The provider must petition the commission each year to be eligible to receive support from the program the following year. The petition must include the same type of information for the same periods required of

wireline communications providers in subsection (1) of this section. The first time a wireless communications provider seeks to file such a petition, the provider must first submit its request to file the petition to the advisory board, pursuant to any guidelines the advisory board will adopt, detailing how the provider will compile and supply the information required by this rule. The advisory board will make a recommendation to the commission, and the commission will determine the precise information the provider must file in support of its petition.

(3) **Information already on file with the commission.** To the extent that the provider has filed any of the information required under this rule in conjunction with its application for certification as an eligible telecommunications carrier, the provider need not include that same information in its petition so long as the provider identifies the docket number, documents, and location within those documents in which the provider included that information.

(4) **Timing of petitions.** A provider must file a complete petition that fully complies with this section no later than August 1st if the company seeks support from the program for the following calendar year. Program support is available annually until the expiration of the program on June 30, 2019.

(5) **Certification.** One or more company officers responsible for the provider's business and financial operations must certify in the form of a statement under penalty of perjury that the information and representations made in the petition are accurate and that the provider has not knowingly withheld any information required to be provided to the commission pursuant to the rules governing the program. The provider must file this certification with its petition.

NEW SECTION

WAC 480-123-120 Eligibility and distributions from the program. The commission will authorize distributions from the program on a calendar year basis. Each eligible provider will receive a single distribution for the year after January 1st of that year.

(1) **Eligibility.** A wireline communications provider that complies with the requirements in this chapter is eligible to receive distributions from the program if the provider demonstrates that its financial circumstances are such that its customers are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark the commission has established. In making that determination, the commission will consider the provider's earned rate of return on a total Washington company books and unseparated regulated operations basis, the provider's return on equity, the status of the provider's existing debt obligations, and other relevant factors including, but not limited to, the extent to which the provider is planning or implementing operational efficiencies and business plan modifications to transition or expand from primary provision of legacy voice telephone service to broadband service or otherwise reduce its reliance on support from the program.

(2) **Calculation of support amount.** The amount that a wireline communications provider eligible to receive support from the program may receive in a calendar year shall not exceed the sum of the following:

(a) The amount the provider received in 2012 from the former traditional USF fund established in Docket U-85-23, et al., and administered by the Washington exchange carrier association; and

(b) The cumulative reduction in support from the Connect America Fund incurred by the provider up through and including the year for which program support is distributed to the provider to the extent the program contains sufficient funds.

(3) **Distribution to wireless communications providers.** The advisory board will make a recommendation to the commission on eligibility and distribution calculations for any wireless communications provider that seeks support from the program, and the commission will determine that provider's eligibility and the amount of support, if any, the provider may receive consistent with RCW 80.36.650 and commission rules.

(4) **Total requests in excess of available funds.** If the total requests for support for a calendar year exceed the program funds available for that year, the commission will distribute the available funds to eligible carriers on a pro rata basis. The commission may seek a recommendation from the advisory board on the best pro rata distribution methodology to use.

(5) **Commission determination.** The commission will consider petitions from companies seeking support from the program and will make the necessary eligibility and distribution determinations in response to those petitions prior to January 1st of the calendar year in which funds from the program will be distributed.

NEW SECTION

WAC 480-123-130 Reporting requirements. (1) **Wireline communications provider reports.** A wireline communications provider that receives program support must submit the following information and reports to the commission on or before July 1st of the year following each calendar year in which the provider receives that support unless a different date is specified below:

(a) The number of residential and business access lines served within the state of Washington for which the provider used program support in the provision of basic telecommunications service (broken down to reflect beginning and end of year quantities);

(b) Detailed information on how the provider used program support the provider received during the preceding year;

(c) A list with detailed information of all consumer requests for new basic telecommunications service in the area for which the provider received program support during the preceding year that the provider denied or did not fulfill for any reason;

(d) A statement under penalty of perjury from a company officer of the provider with personal knowledge and responsibility certifying that, during the preceding year, the provider materially complied with all commission rules in chapter 480-120 WAC that are applicable to the provider and its

provision of service within the area for which the provider received program support;

(e) Complete copies of the FCC Form 477 for the state of Washington that the provider filed with the Federal Communications Commission during and for the calendar year in which the provider receives support at the same time the provider submits those forms to the Federal Communications Commission; if the provider does not submit FCC Form 477 to the Federal Communications Commission, the provider must file with the commission the same information required to complete that form at the same time carriers that file FCC Form 477 are required to submit that form;

(f) A report on operational efficiencies and business plan modifications for the area for which the provider receives program support during the preceding year that the provider has undertaken to transition or expand from primary provision of legacy voice telephone service to broadband service or otherwise reduce its reliance on support from the program, and whether and how disbursements from the program were used to accomplish such outcomes;

(g) Detailed information on any other efforts the provider made to use program support to advance universal service and the public interest in Washington; and

(h) Any other information or reports the commission requires including, but not limited to, information the commission needs to provide a report to the legislature concerning the program.

(2) **Wireless communications provider reports.** The advisory board will make a recommendation to the commission on the information and reports that any wireless communications provider that receives support from the program should provide, and the commission will determine the information and reports that provider must provide consistent with RCW 80.36.650 and commission rules.

(3) **Information already on file with the commission.** To the extent that the provider has filed any of the information required under this rule in conjunction with its application for certification as an eligible telecommunications carrier, the provider need not include that same information in its report so long as the provider identifies the docket number, documents, and location within those documents in which the provider included that information.

(4) **Comments from stakeholders.** Interested persons may submit information or comments on any of the issues on which the providers must report under this rule. Persons must submit such information or comments by July 1st of the year following each calendar year in which the commission distributes program support.

NEW SECTION

WAC 480-123-140 Commission compliance review of accounts and records. Communications providers that receive program support are subject to compliance reviews and other investigations by the commission to ensure compliance with program rules and orders. Each provider shall retain all records required to demonstrate to the commission that the support the provider received was consistent with RCW 80.36.650 and commission rules and orders. Providers shall retain all such documentation for at least five years from the distribution of program funds, and a provider shall make that documentation available to the commission upon request. Any eligible providers authorized to receive program support that fail to comply with public interest obligations under federal or Washington law or any other terms and conditions established by the commission may be subject to further action, including the commission's existing enforcement procedures and penalties, reductions in program support amounts, potential revocation of program eligibility designation, and suspension from, or disentitlement to future participation in the program.

NEW SECTION

WAC 480-123-150 Advisory board. (1) **Establishment.** The commission will establish an industry and consumer advisory board to provide recommendations to the commission on the implementation and management of the program.

(2) **Membership.** The commission secretary is authorized to solicit nominations and approve membership on the board.

(a) The board will be comprised of members representing the following interests:

(i) One from incumbent local exchange companies serving fewer than forty thousand access lines in Washington;

(ii) One from incumbent local exchange companies serving more than forty thousand access lines in Washington;

(iii) One from competitive local exchange companies serving customers in Washington;

(iv) One from wireless communications providers offering service in Washington;

(v) One from the public counsel division of the office of the attorney general of Washington; and

(vi) One from the commission staff.

(b) Commission staff and public counsel shall have permanent membership on the board. The commission will appoint industry members for a term of three years, at the expiration of which the industry members are eligible for appointment to a subsequent three-year term.

(3) **Duties.** The board shall:

(a) Have a consultative role on matters directly referred to it by the commission;

(b) Conduct meetings no less than once per year;

(c) Conduct all meetings as public meetings in accordance with the Open Public Meetings Act, chapter 42.30 RCW; and

(d) Prepare and submit to the commission a written report on matters brought to it for consideration including, where appropriate, a recommendation to the commission on potential resolution of such matters.

(4) **Initiating board action.** The commission alone may initiate board action other than the execution of administrative duties, which the board may conduct on its own initiative. Any person who seeks board participation in program issues or matters must petition the commission to initiate board action.

NEW SECTION

WAC 480-123-160 Resolution of disputes. An affected provider may petition the commission to resolve any disputed matter concerning the program including, but not necessarily limited to, the provider's eligibility to receive program support, the amount or timing of any distribution of support, and calculations of the provider's revenues and earnings levels. The commission may refer such requests to the advisory board as the initial point of review and consideration of the matter for which a carrier seeks resolution. The commission will make the final determination on any petition.

NEW SECTION

WAC 480-123-170 Operation of the program. The commission will authorize and process payments from the universal communications services account for providers that the commission determines have met the requirements of WAC 480-123-100 through 480-123-140.

WSR 14-08-096
PROPOSED RULES
UNIVERSITY OF WASHINGTON

[Filed April 2, 2014, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-079.

Title of Rule and Other Identifying Information: WAC 478-136-041 Alcoholic beverage policy and 478-137-050 Limitations on use.

Hearing Location(s): Room 142 Gerberding Hall, University of Washington, Seattle campus, on May 12, 2014, at 12:00 noon.

Date of Intended Adoption: June 12, 2014.

Submit Written Comments to: Rebecca Goodwin Deardorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195-1210, e-mail rules@uw.edu, by May 12, 2014.

Assistance for Persons with Disabilities: Contact disability services office by May 2, 2014, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Because of recent changes in the state liquor control board's rules for the special occasion license, the University of Washington proposes making administrative changes to its alcoholic beverage policy for all University of Washington campuses and facilities in WAC 478-136-041. Specifically, the state's special occasion license now allows for auctions of unopened alcohol (such as a bottle of wine or spirits) to be removed from the premises as part of a fundraiser. The University of Washington also proposes to clarify rules pertaining to third-party vendors, restrictions at athletic venues, and the time frame for obtaining a license or permit from the state.

Reasons Supporting Proposal: Rules (in WAC 478-137-050) for shared facilities at the colocated University of Washington, Bothell and Cascadia Community College will also be amended by this rule making for the expanded use of the state's special occasion license when issued for University of Washington, Bothell events. Cascadia Community College likewise intends to amend their WAC rules (in Title 132Z WAC) for this use of the state's special occasion license in these shared facilities for their events, as soon as current rule-making activities permit.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lincoln Johnson, Associate Vice-President and UW Seattle UUF Chair, Room 305F HUB, UW Seattle, Washington, (206) 221-6323 and Stephanie Rempe, Senior Associate Athletic Director, 230 Graves Building, UW Seattle, Washington, (206) 685-2634; and Enforcement: Lincoln Johnson, Associate Vice-President and UW Seattle UUF Chair, Room 305F HUB, UW Seattle, Washington, (206) 221-6323, Kelly Snyder, Vice-Chancellor of Government and Community Relations and UW Bothell UUF Interim Chair, Room 260E, UW1 Building, UW Bothell, Washington, (425) 352-3623, and Alina Solano, Executive Associate to the Chancellor and UW Tacoma UUF Chair, Room 312C, GWP Building, UW Tacoma, Washington, (253) 692-5645.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose a disproportionate impact on small businesses or affect a school district under Title 28A RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The University of Washington does not consider this rule making to be a significant legislative rule.

April 2, 2014
Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 13-15-062, filed 7/15/13, effective 8/15/13)

WAC 478-136-041 Alcoholic beverage policy. Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(1) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(2) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(3) Alcoholic beverages may be possessed, sold, served, and consumed at the University of Washington club, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(4) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(5) Except as provided in subsections (3) and (4) of this section, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board (including third-party vendors with a caterer's business license with liquor endorsement) and only as follows:

(a) Events at which alcohol is to be possessed, sold, served, or consumed must be approved by the appropriate committee chair for the committee on the use of university facilities and an application to the chair must be accompanied by a request for written authorization under subsection (6) of this section or proof that the seller holds an appropriate license; and

(b) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must:

(i) ((~~Not~~)) Be within ((~~the spectator viewing~~)) designated areas and must have restricted attendance; or

(ii) Operate under a sport entertainment facility license issued by the Washington state liquor control board; and

(c) A university unit, or an individual or organization applying for a permit/license must have obtained approval under subsection (6) of this section; and

(d) Sale, service, and consumption of alcohol is to be confined to the specified room(((~~s~~))) or area(((~~s~~))) identified on the license or permit. ((~~Unopened containers may not be sold or served. No alcohol is permitted to be taken off premises.~~))

(6) Written authorization to apply for a special occasion license ((~~to sell alcoholic beverages~~)) or a banquet permit ((~~to serve and consume alcoholic beverages at university facilities~~)) must be obtained from the appropriate committee chair for the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least ((~~thirty~~)) forty-five days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(7) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

AMENDATORY SECTION (Amending WSR 06-13-022, filed 6/13/06, effective 8/1/06)

WAC 478-137-050 Limitations on use. (1) Freedom of expression is a highly valued and indispensable quality of university and college life. However, joint facilities may not be used in ways that obstruct or disrupt the institutions' operations, the freedom of movement, or any other lawful activities. Additionally, use of joint facilities may be subject to reasonable time, place and manner restrictions.

(2) Joint facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office providing the event has received preliminary approval by an administrative or academic unit of one of the institutions and final approval by the appropriate facility designee. There are, however, certain limitations on the use of joint facilities for these political activities.

(a) First priority for the use of joint facilities shall be given to regularly scheduled university and college activities.

(b) Joint facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. Use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on joint property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside joint facility buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the institutions is not disrupted and entrances to and exits from buildings are not blocked.

(f) Joint facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) Joint facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities are consistent with the institution's mission, as determined by the appropriate designee.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular media or publications of the institutions. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-137-010 the institutions will make their joint facilities available only for purposes related to their educational missions, including but not limited to instruction, research, public assembly, community programs, and student activities. When permission is granted to use joint facilities for approved instructional or related purposes, as a condition of approval, the user of joint facilities agrees to include in all materials nonendorsement statements in the form approved by the appropriate designee. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in joint facilities. The designee will determine the content, size of print and placement of the nonendorsement language. The institutions will not make their joint facilities available for instructional or

related purposes that compete with courses or programs offered by the university or college.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university and college community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Electronic amplification on the grounds of the campus shall not be permitted unless approved by the joint committee on facility use.

(8) No person may use joint facilities to camp. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws. This provision does not prohibit use of joint facilities where a university or college employee remains overnight to fulfill the responsibilities of his or her position.

(9) The institutions are committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. In accordance with the Washington Clean Indoor Air Act (chapter 70.160 RCW), the Use of University of Washington facilities (chapter 478-136 WAC) and Cascadia Community College facility use (chapter 132Z-140 WAC), the following smoking policy is intended to protect nonsmokers from exposure to smoke in their campus-associated environments and to protect life and property against fire hazards:

(a) Smoking is prohibited inside all university or college vehicles, inside buildings and parking structures owned or occupied by the university or college and/or used by university or college faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) The institutions may designate specific outdoor locations as smoking areas. Signage will be placed to indicate the designated locations.

(c) Any student, staff, or faculty member who violates the smoking policy may be subject to disciplinary action. In addition, violations of the smoking policy may be subject to appropriate enforcement.

(10) Alcoholic beverages may be possessed, sold, served, and consumed at joint facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at joint facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(d) Except as provided in (c) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at joint facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the joint committee on facility use and an application to the committee must be accompanied by a request for written authorization under (e) or (f) of this subsection or proof that the seller holds an appropriate license; and

(ii) A university or college unit or an individual or organization applying for a permit/license must have obtained approval under (e) or (f) of this subsection; and

(iii) Sale, service, and consumption of alcohol is to be confined to the specified room((~~(s)~~)) or area((~~(s) specified~~)) identified on the license or permit. ((~~Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.~~))

(e) Written authorization to apply for a special occasion license to sell alcoholic beverages at joint facilities must be obtained from the joint committee on facility use prior to applying for a special occasion license from the Washington state liquor control board. Authorization should be requested through the facilities use coordinator for the joint committee on facility use sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least ((~~thirty~~)) forty-five days or more before the event.) Written authorization to apply for such license shall accompany the license application filed with the Washington state liquor control board.

(f) Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at joint facilities must be obtained from the university chancellor or college president prior to applying for the permit from the Washington state liquor control board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor control board.

(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

WSR 14-08-097
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)

[Filed April 2, 2014, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-089.

Title of Rule and Other Identifying Information: The securities division proposes to amend the investment adviser rules in chapter 460-24A WAC. The amendments would update various provisions of the investment adviser rules, including the rules regarding examination and registration requirements, financial reporting requirements, custody, performance compensation arrangements, books and records requirements, and unethical business practices. The amend-

ments would add new rule sections addressing compliance policies and procedures, proxy voting, and advisory contracts. In addition, the amendments would create exemptions from registration for certain private fund and venture capital fund advisers. The amendments would repeal WAC 460-24A-058, which defines when an application is considered filed; and make additional updates, clarifications, and changes to the rules.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on June 5, 2014, at 10:00 a.m.

Date of Intended Adoption: June 6, 2014.

Submit Written Comments to: Jill Vallely, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail jill.vallely@dfi.wa.gov, fax (360) 704-7035, by June 4, 2014.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the rules in chapter 460-24A WAC in order to address changes in federal law and updates to NASAA model rules, and to implement necessary protections for the investing public who may use the services of investment advisers. The proposed rules would make the following changes:

- Amend the definitions section at WAC 460-24A-005;
- Create a new section at WAC 460-24A-035 which clarifies who is a client and specifies how to count clients for the purposes of determining who needs to register as an investment adviser under RCW 21.20.040(3);
- Update the examination and registration requirements at WAC 460-24A-050 to make them consistent with NASAA model rules;
- Amend the financial reporting requirements at WAC 460-24A-060 to require advisers who have custody to file an audited balance sheet with the securities division. In addition, advisers who have custody as defined by WAC 460-24A-005 (1)(a)(iii) and who comply with the safekeeping requirements in WAC 460-24A-107 (1)(b) by providing audited financial statements of the pooled investment vehicle must file those financial statements with the securities division;
- Create a new section at WAC 460-24A-071 which adds an exemption from investment adviser registration for advisers to qualified private funds (which does not apply to advisers of funds exempt from the definition of "investment company" under Section 3 (c)(1) of the Investment Company Act of 1940);
- Create a new section at WAC 460-24A-072 which adds an exemption from investment adviser registration for venture capital fund advisers;
- Create a new section at WAC 460-24A-080 which provides for the termination of pending applications where the applicants have taken no action for nine months;
- Amend the custody rules at WAC 460-24A-105, 460-24A-106, and 460-24A-107 to require certain written agreements and to clarify the requirements for account statements to pooled investment vehicles;
- Create a new section at WAC 460-24A-120 which requires investment advisers with more than one employee to adopt compliance policies and procedures reasonably designed to prevent violations of the Securities Act by the adviser and its supervised persons;
- Create a new section at WAC 460-24A-125 which requires investment advisers who vote client securities to adopt policies and procedures reasonably designed to ensure that the adviser votes in the best interest of the clients;
- Create a new section at WAC 460-24A-130 which clarifies the requirements for investment advisory contracts;
- Update the brochure rule at WAC 460-24A-145 to make it consistent with the NASAA model rule;
- Amend the performance compensation rule at WAC 460-24A-150 consistent with the NASAA model rule and the Securities and Exchange Commission's amended rule;
- Amend the books and records requirement at WAC 460-24A-200 to clarify additional recordkeeping requirements;
- Amend the unethical business practices rule at WAC 460-24A-220 to specify additional unethical practices;
- Repeal WAC 460-24A-058, which defined when an application was considered filed; and
- Make additional updates, amendments, and clarifications.

Reasons Supporting Proposal: The proposed amendments should be adopted in order to reflect changes in federal law which impact the state regulation of investment advisers. The amendments will incorporate provisions from updated NASAA model rules which will help create uniformity among the states. In addition, the securities division believes the amendments should be adopted because they will provide necessary protections for the investing public who use the services of investment advisers or invest in pooled investment vehicles managed by investment advisers.

Statutory Authority for Adoption: RCW 21.20.005, [21.20].020, [21.20].030, [21.20.]040, [21.20].050, [21.20].060, [21.20].070, [21.20].080, [21.20].090, [21.20].100, [21.20].330, [21.20].340, [21.20].450, and [21.20].702.

Statute Being Implemented: Chapter 21.20 RCW.

Rule is necessary because of federal law, Dodd-Frank Act enacted July 21, 2010, Public Law No. 111-203.

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities,

150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

A small business economic impact statement has been prepared under chapter 19.85 RCW. See Reviser's note below.

A copy of the statement may be obtained by contacting Jill Vallely, DFI, Securities Division, P.O. Box 9033, Olympia, WA, 98507-9033, phone (360) 902-8760, fax (360) 704-7035, e-mail jill.vallely@dfi.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

April 2, 2014
Scott Jarvis
Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-09 issue of the Register.

WSR 14-08-098
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 13-10—Filed April 2, 2014, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-01-066.

Title of Rule and Other Identifying Information: Chapter 173-182 WAC, Oil spill contingency plan, ecology proposes to update the definition of plan holder to include all persons listed in RCW 88.46.060 and update the definition of "umbrella plan" to ensure the term is used only when referring to nonprofit corporations. Ecology also proposes to amend the rule so that owner/operators, if operating under a plan that covers multiple parties, are not required to comply with provisions of the rule that apply specifically to "plan holders."

Hearing Location(s): Department of Ecology, 300 Desmond Drive S.E., Room R1G-07, Lacey, WA 98504, on May 6, 2014, at 10:00 a.m. Presentation, question and answer session followed by the formal public hearing.

Webinar: Ecology is also offering this presentation, question and answer session and formal public hearing via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access. To participant [participate] by phone, you will need to have a phone or computer with phone modem capability. For more information and instructions, go to http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html.

Comments: Ecology will accept comments at the Lacey location and through the webinar via phone at 1-877-668-4493/Participant Code 926 137 326. For more information and instructions, go to http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html.

To join the webinar click on the following link for more information and instructions, http://www.ecy.wa.gov/programs/spills/community_outreach/sppr_webinar.html.

Date of Intended Adoption: July 15, 2014.

Submit Written Comments to: Amanda Righi, P.O. Box 47600, Olympia, WA 98504-7600, e-mail Amanda.righi@ecy.wa.gov, fax (360) 407-7288, by May 13, 2014.

Assistance for Persons with Disabilities: Contact Spills Program by April 29, 2014, TTY (360) 407-7455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to update the definition of plan holder to include all persons listed in RCW 88.46.060 and update the definition of "umbrella plan" to ensure the term is used only when referring to nonprofit corporations. Ecology also proposes to amend the rule so that owner/operators, if operating under a plan that covers multiple parties, are not required to comply with provisions of the rule that apply specifically to "plan holders."

Reasons Supporting Proposal: Inconsistencies between governing RCWs and chapter 173-182 WAC create a confusing and potentially harmful situation in which ecology is unable to adequately regulate oil spill contingency plans. RCW 88.46.060 and WAC 173-182-110 provide owner/operators, nonprofit corporations, primary response contractors (PRC), and agents the opportunity to submit a contingency plan covering one or more vessels or facilities. The definition of "plan holder," however, only includes owner/operators and nonprofit corporations. Many of the provisions throughout the rule apply specifically to "plan holders." Some entities may not be subject to many of the rule requirements. RCW 88.46.060 (3)(a) and (b) states that an "umbrella plan" may only be submitted by a nonprofit entity. The rule language, however, uses the term to apply to all plan holders covering multiple entities, regardless of corporate structure. A contingency plan assures that, in the event of a spill, the vessel or facility will have adequate response equipment, local spill response teams, spill notifications, and response coordination with state and federal partners. A vessel operating without the important services and regulatory safeguards that a plan provides creates a threat to public health, safety and general welfare.

Statutory Authority for Adoption: RCW 88.46.060, 90.46.050.

Statute Being Implemented: Chapters 88.46 and 90.46 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Amanda Righi, Lacey, Washington, (360) 407-7040; Implementation and Enforcement: Linda Pilkey-Jarvis, Lacey, Washington, (360) 407-7447.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Ecology did not prepare a small business economic impact statement because the Regulatory Fairness Act (chapter 19.85 RCW) does not apply to this rule making. The proposed rule changes do not impose costs on businesses in an industry (RCW 19.85.030 (1)(a)(i)).

A cost-benefit analysis is not required under RCW 34.05.328. Ecology did not prepare a cost-benefit analysis or least-burdensome alternative analysis because the requirements in RCW 34.05.328 of the Administrative Procedure

Act do not apply to this rule making. Under RCW 34.05.328 (5)(b)(iv) and (v). The proposed rule changes are clarifications or updated language to be consistent with existing law (chapters 88.46 and 90.56 RCW).

April 1, 2014
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-015 Applicability. (1) This chapter applies to owners and operators of onshore ((~~and~~)) facilities, offshore facilities, and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to ((~~nonprofit corporations, their enrolled members, and agents that submit and implement plans on behalf of onshore and offshore facilities and covered vessels~~)) any person submitting a contingency plan on behalf of a covered vessel, multiple covered vessels, onshore facilities and offshore facilities, or any combination thereof.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-030 Definitions. (1) "Aerial oil spill spotter" (spotter) means personnel trained to:

(a) Direct vessels to the heaviest concentrations of oil;

(b) Direct dispersant resources;

(c) Direct in situ burn resources; and

(d) Observe document and report the effectiveness of response operations.

(2) "Aerial observer" means a trained observer that monitors, records and reports the spill characteristics including the shoreline impacts, area oiled, color, and thickness of the oil. Observers also provide data to the command post through the development of detailed maps of the area oiled and the resources in the field as well as other photographs, videos, or documents developed to support planning.

(3) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. Ecology's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

(a) The additional protection provided by the measures;

(b) The technological achievability of the measures; and

(c) The cost of the measures.

(4) "Best achievable technology" means the technology that provides the greatest degree of protection. Ecology's determination of best achievable technology will take into consideration:

(a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development;

(b) Processes that are currently in use; and

(c) In determining what is best achievable technology, ecology shall consider the effectiveness, engineering feasibility, and the commercial availability of the technology.

(5) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(7) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(8) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(9) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or other provider or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that: Identifies personnel, equipment and services capable of being provided by the primary response contractor or other provider within stipulated planning standard times; acknowledges that the primary response contractor or other provider commits the identified resources in the event of an oil spill.

(10) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

(11) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(12) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(13) "Director" means the director of the state of Washington department of ecology.

(14) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(15) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or

promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(16) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(17) "Ecology" means the state of Washington department of ecology.

(18) "Emergency response towing vessel" means a towing vessel stationed at Neah Bay that is available to respond to vessel emergencies upon call out under the contingency plan. The emergency response towing vessel shall be available to the owner or operator of the covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, Vancouver Island, Canada.

(19) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(20) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(21) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(22) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(23) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(24) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(25) "Lower Columbia River" means the Columbia River waters west of Bonneville Dam.

(26) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(27) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(28) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(29) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(30) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

(31) "Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

(32) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(33) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(34) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and pressure and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(35) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(36) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(37) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found

in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(38) "Operational period" means the period of time scheduled for execution of a given set of operational actions as specified in the incident action plan. The operational period coincides with the completion of one planning cycle.

(39) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(40) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(41) "Passive recovery" means a tactic that uses absorbent material to mitigate impacts to shorelines.

(42) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(43) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(44) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(45) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(46) "Plan holder" means ((~~all covered facility owner/operators required to submit contingency plans, all covered vessel owner/operators required to submit contingency plans or enroll under a vessel umbrella plan and the umbrella plan holders that submit contingency plans on behalf of multiple covered vessels owner/operators or facility owner/operators~~)) a person who submits and implements a contingency plan consistent with RCW 88.46.060 and 90.56.210 on the person's own behalf or on behalf of one or more persons. Where a plan is submitted on behalf of multiple persons, those covered under that plan are not considered plan holders for purposes of this chapter.

(47) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(48) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(49) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(50) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(51) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessel of opportunity response system to respond when needed and available.

(52) "Resident" means the spill response resources are staged at a location within the described planning area.

(53) "Responsible party" means a person liable under RCW 90.56.370.

(54) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(55) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(56) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(57) "Systems approach" means the infrastructure and support resources necessary to mobilize, transport, deploy, sustain, and support the equipment to meet the planning standards, including mobilization time, trained personnel, personnel call out mechanisms, vehicles, trailers, response vessels, cranes, boom, pumps, storage devices, etc.

(58) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(59) "Technical manual" means a manual intended to be used as a planning document to support the evaluation of best

achievable protection systems for potential response capability of plan holder owned and PRC dedicated and nondedicated equipment.

(60) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(61) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(62) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(63) "Umbrella plan" means a single plan submitted on behalf of multiple covered vessels that is prepared by a ((~~plan holder to cover multiple vessels~~)) nonprofit corporation.

(64) "Vessels of opportunity response system" means nondedicated vessels and operating personnel, including fishing and other vessels, available to assist in spill response when necessary. The vessels of opportunity are under contract with and equipped by contingency plan holders to assist with oil spill response activities including, but not limited to, on-water oil recovery in the near shore environment, the placement of oil spill containment booms to protect sensitive habitats, and providing support of logistical or other tactical actions.

(65) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(66) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(67) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(68) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-110 Authority to submit contingency plan. (1) For tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the tank vessel; or

(b) The owner or operator of the facilities at which the tank vessel will be unloading its cargo; or

(c) A nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the tank vessel owner or operator is a member; or

(d) A ((~~PRC contractually obligated to provide containment and cleanup services to the tank vessel company~~)) person who has contracted with the tank vessel to provide containment and clean-up services and who has been approved by ecology.

(2) For covered vessels other than tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the ((~~covered~~)) vessel; or

(b) The agent for the ((~~covered~~)) vessel provided that the agent resides in this state; or

(c) A nonprofit corporation established for the purpose of oil spill response and contingency plan coverage ((~~and~~)) of which the covered vessel owner or operator is a member; or

(d) A ((~~PRC contractually obligated to provide containment and cleanup services to the covered vessel company~~)) person who has contracted with the vessel to provide containment and clean-up services and who has been approved by ecology.

(3) For facilities, a plan may be submitted by any of the following:

(a) The owner or operator of the facility; or

(b) A ((~~PRC contractually obligated to provide containment and cleanup services to the facility~~)) person who has contracted with the facility to provide containment and clean-up services and who has been approved by ecology.

((~~(4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each covered vessel or facility.~~))

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-130 Phase in language. (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications. Each update must contain all necessary content and meet the requirements of this chapter.

(2) For existing approved facility plan holders within six months after the effective date of this chapter, all facility plan holders must update their plans to comply with the following sections as applicable to the facility:

(a) Binding agreement (WAC 173-182-220).

(b) Contingency plan general content (WAC 173-182-230((~~(7)~~)) (8)), claims procedures.

(c) Contingency plan general content (WAC 173-182-230 (4)(c)(i) through (v)), products handled.

(d) Facility spills to ground notifications (WAC 173-182-264).

(e) Planning standards for dispersants (WAC 173-182-325).

(f) Planning standard for Group 5 Oils (WAC 173-182-324).

(g) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(3) For existing approved tank vessel plan holders and vessel umbrella plan holders, the following is required, as applicable to the plan holder:

(a) Within six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Binding agreement (WAC 173-182-220).

(ii) Contingency plan general content (WAC 173-182-230 (3)(b)(ii)).

(iii) Contingency plan general content (WAC 173-182-230 (5)(f) and (g)).

(iv) Contingency plan general content (WAC 173-182-230 (6)(a)(i) through (vii) and (7)).

(v) Contingency plan general content (WAC 173-182-230((~~(7)~~)) (8)), claims procedures.

(vi) Aerial surveillance planning standard (WAC 173-182-321(2)), Additional surveillance assets.

(vii) Planning standard for dispersants (WAC 173-182-325).

(viii) Planning standard for Group 5 Oils (WAC 173-182-324).

(ix) Requirements for vessel umbrella plan holders maintaining additional agreements for supplemental resources (WAC 173-182-232).

(x) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(b) Within eighteen months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 1 - Cape Flattery/Strait of Juan De Fuca.

(ii) Aerial surveillance planning standard (WAC 173-182-321(1)), Helicopter/fixed wing.

(iii) Dedicated on-water storage (WAC 173-182-335), at least twenty-five percent of the total worst case discharge requirement.

(iv) San Juan County planning standard (WAC 173-182-370), four hour planning standard.

(v) Neah Bay staging area (WAC 173-182-395), four hour planning standard.

(vi) Covered vessel planning standard for shoreline cleanup (WAC 173-182-522).

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(c) Within thirty-six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 2 - San Juan Islands/North Puget Sound.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 4 - Lower Columbia River.

(iii) Provide proposal for ecology review of the aerial surveillance planning standard (WAC 173-182-321(3)), Helicopter/fixed wing with forward looking infrared. Plan holder shall have an additional twelve months to have this asset staged and all plan updates finalized as applicable.

(iv) Covered vessel plan holder's technical manual requirement (WAC 173-182-349).

(v) Commencement Bay Quartermaster Harbor planning standard (WAC 173-182-380), four hour planning standard.

(vi) Cathlamet staging area (WAC 173-182-415), four hour planning standard.

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(d) Within forty-eight months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 6 - Grays Harbor.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 3 - South Puget Sound and Central Puget Sound.

(iii) Vessels of opportunity planning standard (WAC 173-182-317), Region 5 - Admiralty Inlet, Hood Canal and North Puget Sound.

(iv) Grays Harbor planning standard (WAC 173-182-450), four hour planning standard.

(v) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(4) Within eighteen months after the effective date of this chapter, all primary response contractors must update their applications to comply with the following section: Primary response contractor application content, submittal and review (WAC 173-182-810).

(5) Each plan update will be given a thirty day public review and comment period. Ecology will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-145 Plan implementation procedures. Every plan holder, including each person ((~~whose vessel enrolls~~)) enrolled in ((~~coverage under an umbrella~~)) a plan covering multiple persons, is required to implement the Washington approved plan in any response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-220 Binding agreement. (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by each of the following: (a) The plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the ((~~facility~~)) facilities or vessels covered by the plan. ((~~In the case of an umbrella plan, the umbrella plan holder that submitted the umbrella plan on behalf of enrolled vessels must sign the binding agreement.~~)) The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability ((~~of the plan holder~~)) to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-230 Contingency plan general content. (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.

(ii) For vessel umbrella plans that enroll both tank vessels and nontank covered vessels and that rely on supplemental resources for approval, specify the worst case discharge volume and product type for both tank and nontank covered vessels for each port covered by the contingency plan.

(iii) For multiple facilities using a single ((~~umbrella~~)) plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) Inventory all tanks and list the tank capacity((~~;~~)).

(iii) All oil(s) or product(s) handled by name and include; density, gravity, API, oil group number, and sulfur content (sweet/sour).

(iv) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(v) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel plan content. Except as provided in subsections (6) and (7) of this section, vessel plans shall also include:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) List all oil(s) or product(s) by name and include; density, gravity, API, oil group number, sulfur content (sweet/sour) and general ship capacity for amounts carried as cargo or fuel;

(g) Description of the operations covered by the plan; and

(h) A diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) ((~~Special exemptions for vessel umbrella~~)) Plans covering multiple vessels with different owners shall((~~, at a minimum,~~)) also include the following:

(a) In lieu of providing vessels names, call signs and country of registry, ((~~vessel umbrella~~)) plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall provide ecology twenty-four hour access to the enrolled vessels list via the internet in a format acceptable to ecology. The list shall be updated daily, or at a minimum every three days. The list must at a minimum include the following:

(i) Vessel name;

(ii) Vessel type;

(iii) Worst case discharge oil type and quantity;

(iv) The name and API gravity of the densest oil being handled on the enrolled vessels;

(v) Qualified individual/spill management team;

(vi) Agent; and

(vii) ((~~PRC/supplemental resources provider; and~~

~~(viii)~~)) Protection and indemnity (P&I) club.

(b) ((~~Umbrella~~)) Plans ((~~for~~)) covering multiple vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

(7) Umbrella plans shall list the name of the entities that provide supplemental equipment.

(8) Plans shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-240 Field document. (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that ((~~vessel umbrella~~)) plan holders covering multiple persons shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

((~~Umbrella vessel~~)) Plans covering multiple persons shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260 and 173-182-262 or 173-182-264 as applicable; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-262 Vessel notification requirements for a discharge or substantial threat of a discharge. (1) The owner or operator of a covered vessel must notify the state through the Washington emergency management division of a discharge or substantial threat of a discharge. Notification must be made within one hour of the discharge or substantial threat of a discharge, or as soon as is feasible without further endangering the vessel or personnel.

(2) Vessel discharge notifications are in addition and made subsequent to notifications that the owner or operator of a covered vessel must provide to the United States Coast Guard. Vessels enrolled in ((~~umbrella~~)) plans covering multiple vessels must notify the ((~~umbrella~~)) plan holder in addition to the state, unless the state has already been notified by the ((~~umbrella~~)) plan holder on behalf of the vessel owner or operator.

(3) Notification of the discharge or substantial threat of a discharge initiates activation of the plan. Upon notification the vessel owner/operator will coordinate as appropriate with:

(a) The state of Washington and the United States Coast Guard to take any necessary actions to protect the public health, welfare, and natural resources of the state; and

(b) The ((~~umbrella~~)) plan holder for plan implementation as described in the plan.

(4) Notification procedures must be included in the plan.

(5) The substantial threat of a discharge may be determined or affected by the following conditions:

(a) Ship location and proximity to land or other navigational hazards;

(b) Weather;

(c) Tidal currents;

(d) Sea state;

(e) Traffic density;

(f) Condition of vessel; and

(g) Timing or likelihood of vessel repairs.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-280 Spill management teams. (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, this list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.

(c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) ((~~Covered vessel~~)) The plan ((~~holders~~)) shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include estimated time frames for arrival of the remainder of the spill management team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) ((~~Covered vessel umbrella~~)) Plans covering multiple vessels must maintain a list of the spill management team(s) for each vessel enrolled under the plan, and must describe the transition process from ((~~umbrella~~)) plan personnel to the incoming vessel owner or operator's team. The plan must include checklists and documentation to facilitate an effective transition.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-630 Process for plan approval. (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment.

Ecology will accept comments on the plan no later than thirty days after the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination that the plan is disapproved, approved, or conditionally approved. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the plan holder receives a certificate of plan approval and plan expiration dates. Approved plans shall be valid for five years.

(b) If a plan is conditionally approved, ecology may require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. In the conditional approval ecology will describe:

(i) Each specific restriction and the duration for which they apply;

(ii) Each required item to bring the plan into compliance; and

(iii) The schedule for plan holders to submit required updates, including a reference to the regulatory standard in question.

(iv) Restrictions may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Restrictions may also include additional requirements to ensure availability of response equipment.

(v) Conditional approval expires no later than eighteen months from date of issue before the plan holder must request an extension which is subject to public review.

(vi) Ecology shall revoke its conditional approval prior to the expiration date of a plan holder who fails to meet the

terms of the conditional approval. The revocation will be in the form of an appealable order.

(c) If plan approval is disapproved, the plan holder shall receive an explanation of the factors.

(3) The owner or operator or plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved or conditionally approved plan. ((~~Umbrella~~)) Plan holders shall not enroll any ((~~vessels~~)) persons in a plan that has not been approved or conditionally approved, by ecology.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(5) Public notice will be given of any plan approval, conditional approval, or disapproval of a plan.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-710 Type and frequency of drills. The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Done two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance. Except the tank vessel multiplan holder deployment drill which must be scheduled at least 60 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
ERTV Deployment Drill for covered vessels transiting the Strait of Juan de Fuca	1 - One in each three year cycle, this is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.	This drill may involve notifications and tug call out, communications safety, tug demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel and holding position within one hundred feet of another vessel.	Scheduled at least 30 days in advance.
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill.	This drill will be a deployment of wildlife equipment and wildlife handlers.	Scheduled at least 30 days in advance.
Tank vessel multiplan holder deployment drill	1 - One in each three year cycle.	This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, and the verification of operational readiness over multiple operational periods.	Scheduled at least 60 days in advance.

(1) Tabletop drills: ((~~(a)~~)) Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the incident command system (ICS). Role playing shall be required in this drill. During all required tabletop drills plan

holders must provide a master list of equipment and personnel identified to fill both command post and field operations roles. The master resources list must include:

((~~(b)~~)) (a) Western regional response list identification numbers for all response resources; and

((~~(c)~~)) (b) Personnel names, affiliation, home base and command post or field role.

(2) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(3) ((~~Umbrella~~)) Plan holders covering multiple vessels and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230 (6)(a) in tabletop and deployment drills as a best practice to demonstrate the preparedness of enrolled vessel members. These drills will be scheduled by the plan holder or unannounced to be conducted by ecology, at the discretion of ecology. These drills may test any plan components but at a minimum will include notification to the enrolled vessel qualified individual, coordination of supplemental resources under WAC 173-182-232 and the transition from the ((~~umbrella~~)) plan holder spill management team to the enrolled vessel company spill management team.

(4) Equipment deployment drills: Plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of plan holder owned assets, contracted PRC assets, nondedicated assets, and vessels of opportunity.

(b) Plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a geographic response plan (GRP) strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the prebooming of an oil transfer provided the transfer is scheduled as a deployment on the drill calendar. Such credit may only be requested once per triennial cycle.

(5) Plan holders may receive credit for deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(6) Additional large-scale multiple tank vessel plan holder equipment deployment drill requirement. Once every three years all tank vessel plan holders, including ((~~vessel umbrella~~)) plan holders that enroll multiple tank vessels, must participate in a multiple plan holder deployment exercise. At least one plan holder shall be the drill planning lead, participate in all the planning meetings and observe the drill. This deployment may include the following objectives:

(a) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;

(b) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;

(c) Demonstration of multiple simultaneous tactics including:

(i) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;

(ii) Protection task forces which deploy multiple GRPs;

(iii) Vessel and personnel decontamination and disposal;

(iv) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations; and

(v) Personnel and equipment identified for night operations.

(d) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

(7) Additional deployment requirement for vessel plan holders with contracted access to the ERTV. Once every three years plan holders with contracted access to the ERTV must cosponsor a drill that includes deployment of the ERTV, unless ERTV drill credit has already been received under WAC 173-182-242 (1)(e). This drill must be scheduled on the area exercise calendar. The drill shall include at a minimum:

(a) Notifications and tug call out;

(b) Safety and environmental assessment;

(c) Demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel;

(d) Demonstration of the capability to hold position within one hundred feet of another vessel; and

(e) Communications.

(8) Additional deployment requirement for all plan holders. Once every three years plan holders must deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan. This is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.

(9) For all plan holders, ecology may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.