

**WSR 14-10-049**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed May 1, 2014, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-059.

Title of Rule and Other Identifying Information: WAC 260-70-630 Threshold levels.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on June 13, 2014, at 9:30 a.m.

Date of Intended Adoption: June 13, 2014.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by June 10, 2014.

Assistance for Persons with Disabilities: Contact Patty Sorby by June 10, 2014, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates the threshold levels to current industry standards.

Reasons Supporting Proposal: To move closer to the RMTTC and ARCI guidelines regarding permitted medications and the threshold levels to have consistency from jurisdiction to jurisdiction. Also, protects the equine and human participants to ensure that no substances are present in a horse at a level that may affect the performance.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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. Not applicable.

May 1, 2014  
 Douglas L. Moore  
 Executive Secretary

**AMENDATORY SECTION** (Amending WSR 13-07-045, filed 3/15/13, effective 4/15/13)

**WAC 260-70-630 Threshold levels.** (1) Permitted medications.

(a) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in urine:

~~((Acepromazine - 25 ng/ml urine  
 Albuterol - 1 ng/ml urine  
 Benzocaine - 50 ng/ml urine  
 Bupivacaine - 5 ng/ml urine  
 Betamethasone - 60 ng/ml urine  
 Clenbuterol - 25 pg/ml serum or plasma~~

~~Dexamethasone - 1.5 ng/ml serum or plasma  
 Diclofenac - 5 ng/ml serum or plasma  
 DMSO - 10 mc/ml serum or plasma  
 Firocoxib - 40 ng/ml serum or plasma  
 Glycopyrrolate - 3.5 pg/ml serum or plasma  
 Lidocaine - 50 ng/ml urine  
 Mepivacaine - 10 ng/ml urine  
 Methocarbamol - 1 ng/ml serum or plasma  
 Methylprednisolone - 1.3 ng/ml serum or plasma  
 Prednisolone - 2 ng/ml serum or plasma  
 Procaine - 25 ng/ml urine  
 Promazine - 25 ng/ml urine  
 Pyrilamine - 50 ng/ml urine  
 Salicylates - 750,000 ng/ml urine  
 Theobromine - 2000 ng/ml urine  
 Triamcinolone acetonide - 1 ng/ml serum or plasma))~~

Acepromazine - 25 ng/ml

Albuterol - 1 ng/ml

Bupivacaine - 5 ng/ml

Detomidine - 1 ng/ml

Mepivacaine - 10 ng/ml

Omeprazole - 1 ng/ml

Promazine - 25 ng/ml

Pyrilamine - 25 ng/ml

(b) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in serum or plasma:

Betamethasone - 10 pg/ml

Butorphanol - 2 ng/ml

Clenbuterol - 25 pg/ml

Dantrolene - 100 pg/ml

Dexamethasone - 1 ng/ml

Diclofenac - 5 ng/ml

DMSO - 10 mc/ml

Firocoxib - 40 ng/ml

Glycopyrrolate - 3 pg/ml

Isoflupredone - 100 pg/ml

Lidocaine - 20 pg/ml

Methocarbamol - 1 ng/ml

Methylprednisolone - 1.3 ng/ml

Prednisolone - 1 ng/ml

\*Procaine penicillin - 25 ng/ml

Triamcinolone - 100 pg/ml

Xylazine - 0.01 ng/ml

\*Administration of procaine penicillin to those horses entered must be reported to the commission and may require surveillance up to six hours prior to post time.

(c) The official urine or blood test sample may not contain more than one of the above substances, including their metabolites or analogs, and may not exceed the concentrations established in this rule.

(2) Environmental substances.

(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be

found in a horse. The following substances are permissible in test samples up to the stated concentrations:

- Arsenic - 0.3 mc/ml urine
- Caffeine - 100 ng/ml serum or plasma
- Benzoylcegonine - 50 ng/ml urine
- Estranediol - 0.045 mc/ml free + conjugated (5a-oestrane-3β,17a-diol), in male horses, other than geldings
- Hydrocortisone - 1 mc/ml urine
- Methoxytyramine - 4 mc/ml, free + conjugated urine
- Morphine Glucuronides - 50 ng/ml urine
- Salicylate salicylic acid - 750 mc/ml serum or plasma
- Theobromine - 2 mc/ml urine

(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

(3) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations:

~~((Stanozolol (Winstrol) - 1 ng/ml urine in all horses regardless of sex-))~~

Boldenone (Equipose) - 15 ng/ml urine in intact males. No level is permitted in geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5a-oestrane-3β,17a-diol) - 45 ng/ml urine in intact males.

Testosterone - 20 ng/ml urine in geldings. 55 ng/ml urine in fillies and mares. Samples from intact males will not be tested for the presence of testosterone.

(b) All other androgenic-anabolic steroids are prohibited in race horses.

ing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply to the second half of 2014.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Mark E. Bohe, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, e-mail markbohe@dor.wa.gov. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

May 1, 2014  
Dylan Waits  
Rules Coordinator

**WSR 14-10-051**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed May 1, 2014, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-087.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on June 10, 2014, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

*Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: June 17, 2014.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by June 10, 2014, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hear-

AMENDATORY SECTION (Amending WSR 14-01-097, filed 12/17/13, effective 1/1/14)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.** (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2014:

**Washington State Department of Revenue**  
**STUMPAGE VALUE TABLE**

~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2014  
Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting July 1, 2012, there are no separate  
Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
<del>((Douglas-fir<sup>(2)</sup></del>	DF	1	\$440	\$433	\$426	\$419	\$412
		2	462	455	448	441	434

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
		3	379	372	365	358	351
		4	476	469	462	455	448
		5	437	430	423	416	409
		6	250	243	236	229	222
Western Hemlock and	WH	1	380	373	366	359	352
Other Conifer <sup>(3)</sup>		2	392	385	378	371	364
		3	344	337	330	323	316
		4	357	350	343	336	329
		5	337	330	323	316	309
		6	253	246	239	232	225
Western Redcedar <sup>(4)</sup>	RC	1-5	972	965	958	951	944
		6	654	647	640	633	626
Ponderosa Pine <sup>(5)</sup>	PP	1-6	209	202	195	188	181
Red Alder	RA	1-5	464	457	450	443	436
Black Cottonwood	BC	1-5	52	45	38	31	24
Other Hardwood	OH	1-5	262	255	248	241	234
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	802	795	788	781	774
Western Redcedar Poles	RCL	1-5	1401	1394	1387	1380	1373
		6	913	906	899	892	885
Chipwood <sup>(6)</sup>	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs <sup>(6)</sup>	SML	6	30	29	28	27	26
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-5	178	171	164	157	150
Posts <sup>(8)</sup>	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-5	0.50	0.50	0.50	0.50	0.50
Douglas-fir <sup>(2)</sup>	DF	1	\$476	\$469	\$462	\$455	\$448
		2	516	509	502	495	488
		3	438	431	424	417	410
		4	530	523	516	509	502
		5	470	463	456	449	442
		6	265	258	251	244	237
Western Hemlock and	WH	1	408	401	394	387	380
Other Conifer <sup>(2)</sup>		2	430	423	416	409	402
		3	396	389	382	375	368
		4	385	378	371	364	357
		5	407	400	393	386	379
		6	273	266	259	252	245
Western Redcedar <sup>(4)</sup>	RC	1-5	943	936	929	922	915
		6	705	698	691	684	677

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Ponderosa Pine <sup>(5)</sup>	PP	1-6	222	215	208	201	194
Red Alder	RA	1-5	466	459	452	445	438
Black Cottonwood	BC	1-5	54	47	40	33	26
Other Hardwood	OH	1-5	280	273	266	259	252
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	840	833	826	819	812
Western Redcedar Poles	RCL	1-5	1378	1371	1364	1357	1350
		6	935	928	921	914	907
Chipwood <sup>(6)</sup>	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs <sup>(6)</sup>	SML	6	30	29	28	27	26
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-6	178	171	164	157	150
Posts <sup>(8)</sup>	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-6	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A

harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June-30)) December 31, 2014:

**TABLE 9—Harvest Adjustment Table  
Stumpage Value Areas 1, 2, 3, 4, and 5  
((January)) July 1 through ((June-30)) December 31, 2014**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00

Proposed

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table  
Stumpage Value Area 6  
((January)) July 1 through ((June-30)) December 31, 2014**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
<b>II. Logging conditions</b>		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	

<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVA's 1 through 5 only:	\$((8-00)) 4.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before

the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

denying a variance. It also requires that certain information be included with variance requests (e.g., specific laws/regulations from which variance is being sought, maps of the site subject to the variance, etc.). It notes that for variances from state rules, SRCAA may determine that the thirty day public notice and public hearing conducted by ecology satisfies the provisions in WAC 173-400-171 (to avoid duplicating work already done and to streamline the process). In addition, the proposal explains that actual legal fees incurred by the agency which are directly attributed to the variance request be included in the variance fees.

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2), 70.94.181.

Statute Being Implemented: RCW 70.94.141, 70.94.380(2), 70.94.181.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. SRCAA is not required under chapter 19.85 RCW to file small business economic impact statements.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

May 2, 2014

Matt Holmquist

Compliance Administrator

#### WSR 14-10-054

##### PROPOSED RULES

##### SPOKANE REGIONAL

##### CLEAN AIR AGENCY

[Filed May 2, 2014, 8:15 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information:  
SRCAA Regulation I, Article III - Variances.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on July 10, 2014, at 9:30 a.m.

Date of Intended Adoption: July 10, 2014.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by June 20, 2014.

Assistance for Persons with Disabilities: Contact Barbara Nelson by June 20, 2014, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In summary, if a variance pertains to state and local regulations, the proposal clarifies that it's the applicant's responsibility to submit a request and receive approval from both ecology and SRCAA. The proposal clarifies that for variances that require ecology approval, ecology's approval is required before SRCAA will begin processing the request (if ecology denies the request, SRCAA needn't process the request). The proposal explains that applications must be complete and accurate before SRCAA's sixty-five day timeline begins for approving or

#### AMENDATORY SECTION

SPOKANE REGIONAL CLEAN AIR AGENCY  
(SRCAA) REGULATION I, ARTICLE III - VARIANCES

#### **SECTION 3.01 VARIANCES—APPLICATION FOR— CONSIDERATIONS—LIMITATIONS—RENEWALS—REVIEW**

##### A. Applicability (RCW 70.94.181)

Any person, or group of persons, who (~~own or is in control of any plant, building, structure, establishment, processor equipment~~) is directly impacted by any SRCAA rule or regulation, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. (~~The Board may grant such variance, provided that variances to state rules shall require Ecology's approval, prior to being issued by the Board.~~) The total time period for a variance and renewal of such variance shall not exceed one year.

##### B. General Process

The Board may grant a variance to SRCAA rules or regulations. However, if the variance sought also requires a variance from state rules, Ecology must issue its approval prior to a decision being issued by the Board.

1. If the variance pertains to an Agency rule only, the applicant must submit the variance request to SRCAA and the decision to approve or deny the variance will be made by the Board.

2. If the variance pertains to an Agency rule and a state rule, the applicant must submit the variance request to SRCAA and Ecology. If approved by Ecology, the variance request may then be processed by the Agency. Approval of such a variance is contingent upon approval by both Ecology and SRCAA.

a. Per 40 CFR 52.2476(b), any change to a provision of the state implementation plan described in 40 CFR 52.2476(a) must be submitted by Ecology for approval by EPA in accordance with the requirements of 40 CFR 51.104. In accordance with 40 CFR 51.104, variances approved under this Article shall not be included in orders or permits provided for in RCW 70.94.152 (Notice of Construction) or RCW 70.94.161 (Operating Permits) until such time as the variance has been accepted by the EPA as part of an approved State Implementation Plan in 40 CFR Part 52, subpart WW.

#### C. Conditions for Granting a Variance

Pursuant to RCW 70.94.181(1), ~~((V))~~variances may be issued by ~~((either Ecology, where Ecology has retained jurisdiction, or))~~ the Board~~((, but only after public involvement per WAC 173-400-171,))~~ if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health, safety, or the environment; and
2. Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

The interests of the applicant, other owners of property likely to be affected by the emissions, and the general public must also be considered pursuant to Section 3.01.E and RCW 70.94.181(2).

#### ~~((B))~~ D. Complete Application

In addition to the requirements of Section 3.01.A above, applicants~~((#ons))~~ seeking a variance must submit an accurate and complete request. An application is not deemed complete until all of the information identified below is received. At a minimum, applicants must submit all of the following information: ~~((shall not be considered complete unless the applicant provides:))~~

1. A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, including mailing addresses, or as deemed necessary by the Control Officer.

2. The specific laws and/or regulations from which a variance is being sought.

3. How compliance with rules or regulations from which the variance is sought would produce serious hardship to the applicant without equal or greater benefits to the public.

4. An explanation of the time period for which the variance is sought; not to exceed one year.

5. How the applicant will comply with the applicable laws and/or regulations following expiration of the variance so as to alleviate the need for a renewal of a variance, if one is approved.

6. An explanation, if applicable, as to why there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved.

7. If alternatives are available, what the cost of the alternatives are. Supporting documentation must be provided.

8. Detailed maps of the site subject to the variance request.

9. Any additional information requested by SRCAA prior to, during, or following submittal of the request.

10. The variance request must be complete and accurate and a statement to this effect by the applicant must be included in the request. Incomplete or inaccurate requests may be returned to the applicant for completion or correction.

11. If the variance application requires Ecology's approval, the applicant must demonstrate to SRCAA that a variance request to Ecology has been approved.

#### ~~((C))~~ E. Public Notice and Public Hearing

Variance may be issued only after public involvement per WAC 173-400-171. No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond 500 feet, if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

1. The time, date, and place of the hearing;
2. The name and address of the owner or operator and the source;
3. A brief description of the variance request; and
4. The deadline for submitting written comments to the Agency.

For variances from state rules, SRCAA may determine that public notice and public hearing conducted by Ecology satisfies the provision in WAC 173-400-171.

#### ~~((D))~~ F. Variance Limitations

Any variance or renewal thereof shall be granted within the requirements of Section 3.01.A and C of this Regulation for not more than one (1) year under conditions consistent with the reasons therefore, and within the following limitations:

1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

2. If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Sections 3.01.~~(D)~~E.1 and 3.01.~~(D)~~E.2 of this Regulation, it shall be for not more than one (1) year.

~~(E)~~ **G. Renewal**

Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or the ~~(Authority)~~ **Agency**.

~~(F)~~ **H. Appeal Process**

A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW, as ~~(now)~~ of the effective date of this regulation or thereafter amended.

~~(G)~~ **I. Emergency Provisions**

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 (Air Pollution Episodes) to any person or his or her property.

~~(H)~~ **J. Processing Period**

An application for a variance, or for the renewal thereof, submitted to the Board pursuant to this Section shall be approved or disapproved by the Board within sixty-five (65) days of ~~(receipt)~~ SRCAA determining that the application for a variance is accurate and complete, unless the applicant and the Board agree to a continuance. If approval from Ecology is required per Section 3.01.B, approval or denial by the Board shall occur within sixty-five (65) days of receipt of Ecology's written decision unless the applicant and the Board agree to a continuance.

~~(I. Per 40 CFR 52.2476(b), Variances, approved under this Article, shall not be included in orders or permits provided for in RCW 70.94.152 or RCW 70.94.161 until such time as the variance and has been accepted by the EPA as part of an approved SIP, in accordance with 40 CFR 51.104.)~~

### SECTION 3.02 FILING FEES

A filing fee of \$250 shall be submitted at the time of application and shall be applied to the final invoice fee. An hourly fee, as established in Section 10.08~~(D)~~ of this Regulation and SRCAA's fee schedule, shall be assessed to, and paid by, the applicant for requests pursuant to this Article. The applicant shall also be responsible to pay all legal fees incurred by the Agency directly attributed to the variance request and costs associated with any legal notice(s) required pursuant to this Article. Once the agency accepts the applica-

tion for variance, the filing fee and all hourly fees incurred by the Agency must be paid by the applicant and are nonrefundable regardless of whether the variance is granted or denied.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### WSR 14-10-057

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed May 2, 2014, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: **Phase 2 ACA WACs**, WAC 182-500-0020 Medical assistance definitions—C, 182-500-0030 Medical assistance definitions—E, 182-503-0001 Insurance affordability programs—Overview, 182-503-0005 Washington apple health (WAH)—How to apply, 182-503-0010 WAH—Who can apply, 182-503-0060 WAH—Application processing times, 182-503-0070 WAH—When coverage begins, 182-503-0080 WAH—Application denials and withdrawals, 182-503-0505 WAH—General eligibility requirements, 182-503-0515 WAH—Social security number requirements, 182-503-0520 WAH—Residency requirements for noninstitutionalized medical programs, 182-503-0525 WAH—Residency requirements for an institutionalized individual, 182-503-0535 WAH—Citizenship and alien status, 182-503-0540 WAH—Assignment of rights and cooperation, 182-503-0565 WAH—Age requirements for medical programs based on MAGI, 182-504-0015 WAH—Certification periods for CN programs, 182-504-0035 WAH—Renewals, 182-504-0105 WAH—Changes that must be reported, 182-504-0110 WAH—When to report changes, 182-504-0125 WAH—Effect of changes, 182-505-0100 WAH—Monthly income standards based on the FPL, 182-505-0115 WAH—Eligibility for pregnant women, 182-505-0210 WAH—Eligibility for children, 182-505-0215 WAH—Premium-based children's program—Purpose and scope, 182-505-0220 Definitions for premium-based health care coverage under programs included in apple health for kids, 182-505-0225 WAH—Premium-based children's program—Purpose and scope, 182-505-0230 Waiting period for premium-based health care coverage, 182-505-0235 WAH—Premium-based children's program—Order of payments, 182-505-0237 WAH—Premium-based children's program—Other rules that apply, 182-505-0240 WAH—Parents and caretaker relatives, 182-505-0245 Income and resources standards for family medical programs, 182-505-0250 WAH—MAGI-based adult medical, 182-505-0515 Medical coverage resulting from a cash grant, 182-518-0005 WAH—Notice requirements—General, 182-518-0010 WAH—Notice requirements—Approval and denial notices, 182-518-0015 WAH—Notice requirements—Verification requests, 182-518-0020 WAH—Notice requirements—Renewals, 182-

518-0025 WAH—Notice requirements—Changes in and terminations of coverage, and 182-518-0030 WAH—Notice requirements—Electronic notices.

These rules were previously proposed in 2013 under WSR 13-11-141. At that time, there were so many substantive changes resulting from the public comments that the agency felt it best to repropose the rules.

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://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf>, or directions can be obtained by calling (360) 725-1000), on June 10, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 10, 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](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on June 10, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 2, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (WAH).

Reasons Supporting Proposal: See Purpose statement.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) [725-]1344; Implementation and Enforcement: Jessie M. Dean, P.O. Box 45534, Olympia, WA 98504-5534, (360) [725-]1301.

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.

May 2, 2014  
Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-500-0020 Medical assistance definitions—**  
**C. "Caretaker relative"** means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(3) Other relatives including relatives of half-blood, first cousins once removed, persons of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally funded health care program established under Title XIX of the Social Security Act for persons within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy income level (CNIL)" is the standard used by the agency to determine eligibility under a categorically needy program.

"Categorically needy (CN) scope of care" is the range of health care services included within the scope of service categories described in WAC ((388-501-0060)) 182-501-0060 available to ((individuals)) persons eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal department of health and human services (DHHS) with oversight responsibility for the medicare and medicaid programs.

"Children's health program or children's health care programs" See "Apple health for kids."

"Community spouse." See "spouse" in WAC ((388-500-0100)) 182-500-100.

"Cost-sharing" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"Cost-sharing reductions" means reductions in cost-sharing for an eligible person enrolled in a silver level plan in the health benefit exchange or for a person who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"Couple." See "spouse" in WAC ((388-500-0100)) 182-500-0100.

"Covered service" is a health care service contained within a "service category" that is included in a medical assistance benefits package described in WAC ((388-501-0060)) 182-501-0060. For conditions of payment, see WAC ((388-501-0050)) 182-501-0050(5). A noncovered service is a spe-



cific health care service (for example, cosmetic surgery), contained within a service category that is included in a medical assistance benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC ((388-501-0160)) 182-501-0160). A non-covered service is not an excluded service (see WAC ((388-501-0060)) 182-501-0060).

**"Creditable coverage"** means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

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

**WAC 182-500-0030 Medical assistance definitions—**  
**E. "Early and periodic screening, diagnosis and treatment (EPSDT)"** is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to persons twenty years of age and younger who are eligible for any agency health care program. Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B. See also chapter ((388-534)) 182-534 WAC.

**"Emergency medical condition"** means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) Placing the patient's health in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

~~(("Emergency medical expense requirement (EMER)" see WAC 388-865-0217(3).))~~

**"Employer-sponsored dependent coverage"** means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or in part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

**"Evidence-based medicine (EBM)"** means the application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective, and beneficial when making:

(1) Population-based health care coverage policies (WAC ((388-501-0055)) 182-501-0055 describes how the agency or ((the agency's)) its designee determines coverage of services for its health care programs by using evidence and criteria based on health technology assessments); and

(2) Individual medical necessity decisions (WAC ((388-501-0165)) 182-501-0165 describes how the agency or ((the agency's)) its designee uses the best evidence available to

determine if a service is medically necessary as defined in WAC ((388-500-0030)) 182-500-0030).

**"Exception to rule."** See WAC ((388-501-0160)) 182-501-0160 for exceptions to noncovered health care services, supplies, and equipment. See WAC 182-503-0090 for exceptions to program eligibility.

**"Expedited prior authorization (EPA)"** means the process for obtaining authorization for selected health care services in which providers use a set of numeric codes to indicate to the agency or the agency's designee which acceptable indications, conditions, or agency or agency's designee-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

**"Extended care services"** means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient.

## NEW SECTION

**WAC 182-503-0001 Insurance affordability programs—Overview.** (1) For the purposes of this chapter, "we" refers to the agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.

(2) A person may apply for all of the insurance affordability programs offered through the health care authority (HCA) or the Washington Healthplanfinder (as defined in WAC 182-500-0015):

(a) Washington apple health (WAH) programs (defined in WAC 182-500-0120). WAH includes medicaid programs (defined in WAC 182-500-0070), the children's health insurance program (CHIP) (defined in WAC 182-500-0020), and state-only funded health care programs. These programs are provided free or at low cost on a sliding scale to eligible persons based on their income. WAH program regulations for the application process and eligibility determination are found in chapters 182-503 through 182-527 WAC.

(b) Health insurance premium tax credits (defined in WAC 182-500-0045). This federal refundable tax credit partially offsets the cost of monthly premiums for qualified health plan (QHP) (defined in WAC 182-500-0090) insurance that an eligible person purchases through the Washington Healthplanfinder. Any advance payments of the tax credit are reconciled annually by the Internal Revenue Service (IRS) when the person files his or her federal tax return.

(c) Cost-sharing reductions. Cost-sharing reductions (defined in WAC 182-500-0020) are available to eligible persons enrolled in a silver-level QHP and to American Indians/Alaska Natives enrolled in any QHP.

(3) A person may also apply for and enroll in unsubsidized insurance with a QHP. This unsubsidized insurance is not an insurance affordability program.

(4) Persons choose whether or not to apply for insurance affordability programs. All persons who apply for an insurance affordability program are treated as an applicant for WAH coverage and receive an approval or denial of WAH. Applicants who are denied WAH are reviewed for other insurance affordability programs.

NEW SECTION

**WAC 182-503-0005 Washington apple health—How to apply.** (1) You may apply for Washington apple health (WAH) by giving us (the medicaid agency or its designee) an application as follows:

(a) For WAH for parents and caretaker relatives, adults, pregnant women, or kids (with or without premiums):

(i) Online via the Washington Healthplanfinder at <http://www.wahealthplanfinder.org>;

(ii) By calling the Washington Healthplanfinder customer support center number;

(iii) By mail to Washington Healthplanfinder, the agency or its designee; or

(iv) By fax to Washington Healthplanfinder.

(b) For WAH medical programs for persons age sixty-five or older, persons on medicare, persons applying for health care based on blindness or disability, or persons applying for long-term care services:

(i) Online via Washington Connection at <http://www.waconnection.org>;

(ii) By mail to community services division of the department of social and health services (DSHS); or

(iii) At a local DSHS office.

(c) For the breast and cervical cancer treatment program (see WAC 182-505-0120), the TAKE CHARGE program (see chapter 182-532 WAC), and the kidney disease program (chapter 182-540 WAC), complete a separate application directly with a program provider.

More information on how to give us an application may be found at the agency's web site: <http://www.hca.wa.gov>.

(2) You may start an application for WAH by giving us at least the following information:

(a) Name of the primary applicant or head of household;

(b) Birth dates; and

(c) Signing the application.

(3) To complete an application for WAH, you must also give us all of the other information requested on the application form.

(4) If you need help filing an application, you can:

(a) For WAH for parents and caretaker relatives, adults, pregnant women, or kids (with or without premiums):

(i) Contact the Washington Healthplanfinder customer support center number listed on the application form or medical eligibility determination services at the number provided on the agency's web site, <http://www.hca.wa.gov>; or

(ii) Contact an application assistor, certified application counselor or navigator.

(b) For WAH medical programs for persons age sixty-five or older, persons on medicare, persons applying for health care based on blindness or disability, or persons applying for long-term care services:

(i) Visit a local DSHS office; or

(ii) Call the DSHS community services division customer service contact center.

(c) Have an authorized representative apply on your behalf as described in WAC 182-500-0010.

(5) We will help you with the application or renewal process in a manner that is accessible to persons with disabilities as described in WAC 182-503-0120 and in a manner that is

accessible to those who are limited-English proficient as described in WAC 182-503-0110.

NEW SECTION

**WAC 182-503-0010 Washington apple health—Who can apply.** (1) You may apply for Washington apple health (WAH) for yourself.

(2) You can apply for WAH for another person if you are:

(a) A legal guardian;

(b) An authorized representative (as described in WAC 182-500-0010);

(c) A parent or caretaker relative of a child less than nineteen years of age;

(d) A tax filer applying for a tax dependent less than nineteen years of age;

(e) A spouse; or

(f) A person applying for someone who is unable to apply on their own due to a medical condition and who is in need of long-term care services.

(3) If you reside in one of the following facilities and the facility has entered into a memorandum of understanding with the agency, the agency will coordinate with the facility to enroll you in WAH coverage for which you are determined eligible no later than the day you are released to:

(a) A correctional institution, as defined in RCW 9.94.049, including:

(i) Washington state department of corrections facilities;

(ii) City or county jails; and

(iii) Secure community transition facilities and total confinement facilities, as defined in RCW 71.09.020, including the special commitment center.

(b) An institution for mental disease (IMD).

(4) You are automatically enrolled in WAH and do not need to turn in an application if you are a:

(a) Supplemental security income (SSI) recipient;

(b) Person deemed to be an SSI recipient under 1619(b) of the SSA;

(c) Newborn as described in WAC 182-505-0210; or

(d) Child in foster care placement as described in WAC 182-505-0211.

(5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.

(6) If you are an SSI recipient, then you, your authorized representative as defined in WAC 182-500-0010, or another person applying on your behalf as described in subsection (2) of this section, must turn in a signed application to apply for long-term care services as described in WAC 182-513-1315.

NEW SECTION

**WAC 182-503-0060 Washington apple health (WAH)—Application processing times.** (1) We process applications for Washington apple health (WAH) within forty-five calendar days, with the following exceptions:

(a) If you are pregnant, we process your application within fifteen calendar days;

(b) If you are applying for a program that requires a disability decision, we process your application within sixty calendar days; or

(c) The modified adjusted gross income (MAGI)-based WAH application process using Washington Healthplanfinder may provide faster or real-time determination of eligibility for medicaid.

(2) For calculating time limits, "day one" is the day we get an application from you that includes at least the information described in WAC 182-503-0005(2). If you give us your paper application during business hours, "day one" is the day you give us your application. If you give us your paper application outside of business hours, "day one" is the next business day. If you experience technical difficulties while attempting to give us your application in Washington Healthplanfinder, "day one" is the day we are able to determine, based on the evidence available, that you first tried to submit an application that included at least the information described in WAC 182-503-0005(2).

(3) We determine eligibility as quickly as possible and respond promptly to applications and information received. We do not delay a decision by using the time limits in this section as a waiting period.

(4) If we need more information to decide if you can get WAH coverage, we will send you a letter within twenty calendar days of your initial application that:

- (a) Follows the rules in chapter 182-518 WAC;
- (b) States the additional information we need; and
- (c) Allows at least ten calendar days to provide it. We will allow you more time if you ask for more time or need an accommodation due to disability or limited-English proficiency.

(5) Good cause for a delay in processing the application exists when we acted as promptly as possible but:

- (a) The delay was the result of an emergency beyond our control;
- (b) The delay was the result of needing more information or documents that could not be readily obtained;
- (c) You did not give us the information within the time frame specified in subsection (1) of this section.
- (6) Good cause for a delay in processing the application does NOT exist when:
  - (a) We caused the delay in processing by:
    - (i) Failing to ask you for information timely; or
    - (ii) Failing to act promptly on requested information when you provided it timely; or
  - (b) We did not document the good cause reason before missing a time frame specified in subsection (1) of this section.

#### NEW SECTION

**WAC 182-503-0070 Washington apple health (WAH)—When coverage begins.** (1) Your Washington apple health (WAH) coverage starts on the first day of the month you applied for and we decided you are eligible to receive coverage, unless one of the exceptions in subsection (4) of this section applies to you.

(2) Sometimes we can start your coverage up to three months before the month you applied (see WAC 182-504-0005).

(3) If you are confined or incarcerated as described in WAC 182-503-0010, your coverage cannot start before the day you are discharged, except when:

- (a) You are hospitalized during your confinement; and
  - (b) The hospital requires you to stay overnight.
- (4) Your WAH coverage may not begin on the first day of the month if:

(a) Subsection (3) of this section applies to you. In that case, your coverage would start on the first day of your hospital stay;

(b) You must meet a medically needy spenddown liability (see WAC 182-519-0110). In that case, your coverage would start on the day your spenddown is met; or

(c) You are eligible under the WAH alien emergency medical program (see WAC 182-507-0115). In that case, your coverage would start on the day your emergent hospital stay begins.

(5) For long-term care, the date your services start is described in WAC 388-106-0045.

#### NEW SECTION

**WAC 182-503-0080 Washington apple health—Application denials and withdrawals.** (1) We follow the rules about notices and letters in chapter 182-518 WAC. We follow the rules about timelines in WAC 182-503-0060.

(2) We deny your application for Washington apple health (WAH) coverage when:

(a) You tell us either orally or in writing to withdraw your request for coverage; or

(b) Based on all information we have received from you and other sources within the time frames stated in WAC 182-503-0060, including any extra time given at your request or to accommodate a disability or limited-English proficiency:

- (i) We are unable to determine that you are eligible; or
  - (ii) We determine that you are not eligible.
- (3) We send you a written notice explaining why we denied your application (per chapter 182-518 WAC).

(4) We reconsider our decision to deny your WAH coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within thirty days of the date on the denial notice; or

(b) You request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) or HCA review judge decides our denial was wrong (per chapter 182-526 WAC).

(5) If you disagree with our decision, you can ask for a hearing. If we denied your application because we don't have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

#### NEW SECTION

**WAC 182-503-0515 Washington apple health—Social Security number requirements.** (1) To be eligible

for Washington apple health (WAH), you must provide your valid Social Security number (SSN) or proof of application for an SSN, except as provided in subsections (5) and (6) of this section.

(2) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(3) Your WAH coverage will not be delayed, denied or terminated while waiting for SSA to send you your SSN.

(4) If you do not provide your SSN, then you will not receive WAH coverage except if you:

(a) Refused to apply for or provide your SSN for religious reasons;

(b) Claim good cause for not providing your SSN because of domestic violence;

(c) Have a newborn as described in WAC 182-505-0210(1). A newborn is eligible for WAH coverage until the baby's first birthday.

(5) There is no SSN requirement for the following:

(a) WAH refugee medical;

(b) WAH alien emergency medical;

(c) WAH programs for children and pregnant women who do not meet citizenship criteria described in WAC 182-503-0535;

(d) A household member who is not applying for WAH coverage.

(6) If you are a "qualified" or "nonqualified" alien as defined in WAC 182-503-0530 who is not authorized to work in the U.S., you do not have to apply for a nonwork SSN.

#### NEW SECTION

**WAC 182-503-0525 Washington apple health—Residency requirements for an institutionalized person.** (1) An institutionalized person is a person who resides in an institution as defined in WAC 182-500-0050. The term "person" used in this section means an "institutionalized person" unless otherwise indicated. It does not include persons who receive services under a home and community-based waiver program. When a state is making a placement for a person in another state, the term institution also includes foster care homes, licensed as described in 45 C.F.R. 1355.20.

(2) The agency must determine whether a person is capable of indicating their intent to reside in Washington state when deciding whether that person is a resident of the state. The agency determines that persons who meet the following criteria are deemed incapable of indicating intent to reside in the state:

(a) The person is judged legally incompetent by a court of law;

(b) A physician, psychologist or licensed medical professional in the field of intellectual disabilities has determined that the person is incapable of indicating intent; or

(c) The person is incapable of declaring intent due to a documented medical condition.

(3) When a person is placed in an out-of-state institution by the agency, its designee or by a department of social and

health services-contracted agency, the state arranging the placement is considered the person's state of residence, unless the person is capable of expressing intent and:

(a) Indicates a desire to change his or her state of residence; or

(b) Asks the current state of residence for help in relocating. This may include assistance in locating an institutional placement in the new state of residence.

(4) If another state has not authorized the placement in the institution, as described in subsection (3) of this section, the agency or its designee uses one of the following criteria to determine the state of residence for a person who is age twenty or younger:

(a) The state of residence is the state where the parent or legal guardian is a resident at the time of the placement in the institution. To determine a parent's or legal guardian's place of residence, follow rules described in WAC 182-503-0520 for a noninstitutionalized person.

(b) The state of residence is the state where the parent or legal guardian currently is a resident if the person resides in an institution in that state.

(c) If the parents of the person are separated and live in different states, the state of residence is that of the parent filing the application.

(d) If the parental rights are terminated and the person has a legal guardian, the state of residence is where the legal guardian is a resident.

(e) If the person has both a guardian of the estate and a guardian of the person, the state of residence is where the guardian of the person is a resident, unless the state has laws which delegate guardianship to a state official or agency for persons who are admitted to state institutions. In that case, the state of residence for the person is the state where the institution is located (unless another state has authorized the placement).

(f) If the person has been abandoned by the parents or legal guardian, and an application is filed on their behalf by another party, the state of residence is the state where the person is institutionalized. The term abandoned also includes situations where the parents or legal guardian are deceased.

(5) A person age twenty-one or older that is capable of indicating intent is considered a resident of the state where he or she is living and intends to reside.

(6) A person age twenty-one or older who became incapable of indicating intent at age twenty-one or older is considered a resident of the state where the person is physically residing, unless the person has been placed in the institution by another state.

(7) A person age twenty-one or older who became incapable of indicating intent before the age of twenty-one is considered a resident of the state where the parents or legal guardian were residents at the time of the placement in the institution.

(8) If a noninstitutionalized person moves directly from another state to an institution in Washington state, it is not necessary for the person to establish residency in Washington state prior to entering the facility. The person is considered a resident if he or she intends to reside in the state unless the placement was made by the other state.

(9) A person of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

(10) In a dispute between states, the state of residence is the state in which the person is physically located.

#### NEW SECTION

**WAC 182-503-0535 Washington apple health—Citizenship and alien status.** (1) To receive Washington apple health (WAH) coverage, you must meet all other eligibility requirements and be one of the following as defined in WAC 182-503-0530:

- (a) A United States (U.S.) citizen;
- (b) A U.S. national;
- (c) A qualified alien; or
- (d) A nonqualified alien and you are a:
  - (i) Pregnant woman;
  - (ii) Person who is otherwise eligible for medical care services (see WAC 182-508-0005);
  - (iii) Child under age nineteen; or
  - (iv) Child under age twenty-one who resides in an institution.

(2) If you are a nonqualified alien approved under deferred action childhood arrivals (DACA), then you are not eligible for WAH under subsection (1)(d) of this section. However, you may qualify under subsection (6) of this section.

(3) If you are a qualified alien as defined in WAC 182-503-0530, who physically entered the U.S. before August 22, 1996, you may receive WAH for nonpregnant adults if you:

- (a) Became a qualified alien before August 22, 1996; or
- (b) Became a qualified alien on or after August 22, 1996, and have continuously resided in the U.S. between your date of entry into the U.S. and the date on which you became a qualified alien.

(4) If you are a qualified alien who physically entered the U.S. on or after August 22, 1996, and you are a nonpregnant adult, you are not eligible to receive WAH for five years beginning on the day you most recently became a qualified alien, unless you meet one of the exemptions in subsection (5) of this section. This is called the five-year bar. The five-year bar starts on the day you obtain qualified alien status.

(5) You are exempt from the five-year bar if you are one of the following qualified aliens as defined in WAC 182-503-0530:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Special immigrants from Iraq and Afghanistan;
- (g) Victims of trafficking who have been certified or had their eligibility approved by the Office of Refugee Resettlement (ORR); and
- (h) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation; and

(i) Lawful permanent residents, parolees, or battered aliens, who are also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(i) On active duty in the U.S. military, other than active duty for training;

(ii) An honorably discharged U.S. veteran;

(iii) A veteran of the military forces of the Philippines who served prior to July 1st, 1946, as described in Title 38, Section 107 of the U.S. Code; or

(iv) The spouse, unremarried widow or widower, or unmarried dependent child of a veteran or active duty service member.

(6) If you are ineligible for WAH because of the five-year bar or because of your immigration status, including if you are approved under DACA, you may be eligible for:

(a) The WAH alien emergency medical program as described in WAC 182-507-0110 through 182-507-0125;

(b) WAH pregnancy medical for noncitizen women as described in WAC 182-505-0115;

(c) WAH for kids for pregnant minors as described in WAC 182-505-0117;

(d) State-funded WAH for kids as described in WAC 182-505-0210; or

(e) The medical care services (MCS) program as described in chapter 182-508 WAC.

#### NEW SECTION

**WAC 182-503-0565 Washington apple health—Age requirements for medical programs based on modified adjusted gross income (MAGI).** The following age requirements apply to persons whose eligibility for Washington apple health (WAH) is based on modified adjusted gross income (MAGI) methodology per WAC 182-509-0305.

(1) You must be age sixty-four or younger to be eligible for WAH MAGI-based adult coverage as described in WAC 182-505-0250.

(2) Your household must include an eligible dependent child age seventeen or younger to be eligible for WAH parent or caretaker relative coverage as described in WAC 182-505-0240. For purposes of this subsection, an "eligible dependent child" is a child related to you in one of the ways described in WAC 182-500-0020.

(3) A child must be age eighteen or younger to be eligible for WAH for kids as described in WAC 182-505-0210 with the following exceptions:

(a) An institutionalized child may still qualify under a children's health care program through the age of twenty-one (see WAC 182-514-0230);

(b) A foster care child may qualify for WAH foster care coverage through the age of twenty-six (see WAC 182-505-0211).

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-503-0505 Washington apple health—General eligibility requirements ~~((for medical programs))~~.** (1) Persons applying for ~~((benefits under the medical coverage))~~ Washington apple health (WAH) programs established under chapter 74.09 RCW must meet the eligibility criteria ~~((established by the department))~~ in chapters ~~((388-400))~~ 182-500 through ~~((388-555))~~ 182-527 WAC.

(2) Persons applying for ~~((medical coverage))~~ WAH are considered first for federally funded or federally matched programs. State-funded programs are considered after the person is determined ineligible for federally funded and federally matched programs ~~((are not available to the client except for brief periods when the state-funded programs offer a broad scope of care which meet a specific client need))~~.

(3) Unless otherwise specified in a program specific WAC, the eligibility criteria for each ~~((medical))~~ WAH program ~~((is))~~ are as follows:

(a) ~~((Verification of))~~ Age and identity ~~((chapters 388-404, 388-406, and 388-490))~~ WAC 182-503-0050; ~~((and))~~

(b) Residence in Washington state ~~((chapter 388-468))~~ WAC 182-503-0520 and 182-503-0525; ~~((and))~~

(c) Citizenship or immigration status in the United States ~~((chapter 388-424))~~ WAC 182-503-0535; ~~((and))~~

(d) Possession of a valid Social Security account number ~~((chapter 388-476))~~ WAC 182-503-0515; ~~((and))~~

(e) Assignment of medical support rights to the state of Washington ~~((388-505-0540))~~ 182-503-0540; ~~((and))~~

(f) ~~((Cooperation in securing medical support (chapter 388-422 WAC); and~~

~~((g))~~ Application for medicare and enrollment into medicare's prescription drug program if:

(i) It is likely that the ~~((individual))~~ person is entitled to medicare; and

(ii) The state has authority to pay medicare cost sharing as described in chapter ~~((388-517))~~ 182-517 WAC.

~~((h))~~ (g) For persons whose eligibility is not on the basis of modified adjusted gross income (MAGI) methodology, countable resources must be within specific program limits (chapters ~~((388-470 and 388-478))~~ 182-512, 182-513, 182-515, 182-517, and 182-519 WAC); and

~~((i))~~ (h) Countable income within program limits ~~((chapters 388-450 and 388-478 WAC-));~~

(i) For MAGI-based WAH programs, see WAC 182-505-0100;

(ii) For the WAH refugee program, see WAC 182-507-0110;

(iii) For the WAH medical care services program, see WAC 182-508-0150;

(iv) For WAH for workers with disabilities (HWD), see WAC 182-511-0060;

(v) For the WAH SSI-related program, see WAC 182-512-0010;

(vi) For WAH long-term care programs, see WAC 182-513-1300 and 182-515-1500;

(vii) For WAH medicare savings programs, see WAC 182-517-0100; and

(viii) For the WAH medically needy program, see WAC 182-519-0050.

(4) In addition to the general eligibility requirements in subsection (3) of this section, each program has specific eligibility requirements as described in applicable WAC.

(5) Persons ~~((living))~~ in a public institution, including a correctional facility, are not eligible for ~~((the department's medical coverage))~~ WAH programs ~~((For a person)), except in the following situations:~~

(a) The person is under age twenty or over age sixty-five ~~((who))~~ and is a patient in an institution for mental disease (see WAC ~~((388-513-1315(13) for exception-))~~ 182-513-1315(13)); or

(b) The person receives inpatient hospital services outside of the public institution or correctional facility.

(6) Persons terminated from SSI or ~~((TANF cash grants and those))~~ who lose eligibility for categorically needy (CN) ~~((medical))~~ coverage have their CN coverage continued while their eligibility for other ~~((medical))~~ health care programs is redetermined. ~~((This continuation of medical coverage is described in chapter 388-434 WAC))~~ See WAC 182-504-0125.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-503-0520 Washington apple health—Residency requirements ~~((for medical care services (MCS)))~~—Persons who are not residing in an institution. ~~((This section applies to medical care services (MCS-))~~**

(1) A resident is ~~((an individual who:~~

~~((a)))~~ a person (including an emancipated person under age eighteen and a married person under age eighteen who is capable of indicating intent) who currently lives in Washington and;

(a) Intends to ~~((continue living here permanently or for an indefinite period of time))~~ reside here, including persons without a fixed address; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) ~~((An individual))~~ A person does not need to live in the state for a specific period of time prior to ~~((be))~~ meeting the requirements in subsection (1) of this section before being considered a resident.

(3) ~~((An individual receiving MCS))~~ A child under age eighteen who is not covered by subsection (1) of this section, is a resident if:

(a) The child lives in the state, with or without a fixed address, including with a custodial parent or caretaker; or

(b) The child's parent or caretaker is a resident as defined in subsection (1) of this section.

(4) A resident applying for or receiving health care coverage can temporarily be out of the state for more than one month ~~((If so, the individual must provide the agency or the agency's designee with adequate information to demonstrate the intent to continue to reside in the state of Washington.~~

~~((4) An individual may not receive comparable benefits from another state for the MCS program.~~

~~((5) A former resident of the state can apply for MCS while living in another state if:~~

(a) The individual:

- (i) Plans to return to this state;
- (ii) Intends to maintain a residence in this state; and
- (iii) Lives in the United States at the time of the application.

(b) In addition to the conditions in (a)(i), (ii), and (iii) of this subsection being met, the absence must be:

- (i) Enforced and beyond the individual's control; or
- (ii) Essential to the individual's welfare and is due to physical or social needs.

(c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.

(6) Residency is not a requirement for detoxification services.

(7) An individual is not a resident when the individual enters Washington state only for medical care. This individual is not eligible for any medical program. The only exception is described in subsection (8) of this section.

(8) It is not necessary for an individual moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The individual is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.

(9) An individual's residence is the state:

(a) Where the parent or legal guardian resides, if appointed, for an institutionalized individual twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one;

(b) Where an individual is residing if the individual becomes incapable of determining residential intent after reaching twenty-one years of age;

(c) Making a placement in an out-of-state institution; or

(d) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

(10) In a dispute between states as to which is an individual's state of residence, the state of residence is the state in which the individual is physically located) without their health care coverage being denied or terminated, if the person:

(a) Intends to return to the state once the purpose of his or her absence has been accomplished and provides adequate information of this intent after a request by the agency or its designee; and

(b) Has not been determined eligible for medicaid or state-funded health care coverage in another state (other than coverage in another state for incidental or emergency health care).

(5) A person who enters Washington state only for health care is not a resident and is not eligible for any medical program. The only exception is for a person who moves from another state directly into an institution in Washington state. Residency rules for institutionalized persons are described in WAC 182-503-0525.

(6) A person of any age who receives a state supplemental payment (SSP) is considered a resident of the state that is making the payment.

(7) A person who receives federal payments for foster or adoption assistance is considered a resident of the state where the person physically resides even if:

(a) The person does not live in the state that is making the foster or adoption assistance payment; or

(b) The person does not live in the state where the adoption agreement was entered.

(8) In a dispute between states, the state of residence is the state in which the person is physically located.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-503-0540 Assignment of rights and cooperation.** (1) When ((a person)) you become((s)) eligible for any of the ((department's medical)) agency's health care programs, ((they make assignment of)) you assign certain rights to the state of Washington. ((This assignment includes)) You assign all rights to any type of coverage or payment for ((medical)) health care ((which results)) that comes from:

(a) A court order;

(b) An administrative agency order; or

(c) Any third-party benefits or payment obligations for medical care which are the result of **subrogation** or contract (see WAC 388-501-0100).

(2) ((**Subrogation** is a legal term which describes the method by which the state acquires the rights of a client for whom or to whom the state has paid benefits. The subrogation rights of the state are limited to the recovery of its own costs.

(3) The person who)) When you sign((s)) the application ((makes the assignment of)) you assign the rights described in subsection (1) of this section to the state((-Assignment is made on their own behalf and on behalf of any eligible person for whom they can legally make such assignment.

(4) A person)) for:

(a) Yourself; and

(b) Any eligible person for whom you can legally make such assignment.

(3) You must cooperate with ((the department)) us in ((the identification, use or collection of)) identifying, using or collecting third-party benefits. ((Failure to)) If you do not cooperate ((results in a termination of eligibility for the responsible person. Other obligations for cooperation are located in chapters 388-14A and 388-422 WAC. The following clients are exempt from termination of eligibility for medical coverage as a result of noneooperation:

(a) A pregnant woman; and

(b) Minor children; and

(c) A person who has been determined to have "good cause" for noneooperation (see WAC 388-422-0015).

(5) A person will not lose eligibility for medical assistance programs), your health care coverage may end unless you can show good reason not to cooperate with us. Examples of good reason include, but are not limited to:

(a) Your reasonable belief that cooperating with us would result in serious physical or emotional harm to you or a child in your care; and

(b) Your being incapacitated without the physical ability to cooperate with us.

(4) Your WAH coverage will not end due solely to the noncooperation of any third party.

~~((6) A person)~~ (5) You will ((be responsible for the costs of otherwise covered medical)) have to pay for your health care services if you:

(a) ~~((The person))~~ Received and kept the third-party payment for those services; or

(b) ~~((The person))~~ Refused to ((provide)) give to the provider of care ((their)) your legal signature on insurance forms.

(6) The state is limited to the recovery of its own costs for health care costs paid on behalf of a recipient of health care coverage. The legal term which describes the method by which the state acquires the rights of a person for whom the state has paid costs is called subrogation.

**AMENDATORY SECTION** (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

**WAC 182-504-0015 Washington apple health—Certification periods for categorically needy ~~((CN)) scope of care medical assistance))~~ programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) ~~((scope of care medical))~~ Washington apple health (WAH) program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues ~~((to))~~ through the last day of the last month of the certification period.

(2) For a ~~((child))~~ newborn eligible for ~~((the newborn medical program))~~ WAH, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for ~~((a medical program))~~ WAH based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For a person eligible for the WAH refugee program, the certification period ends at the end of the eighth month following the client's date of entry to the United States.

~~((5))~~ (5) For ~~((families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011)) all other WAH-CN coverage, the certification period is twelve months.~~

~~((5))~~ (6) For children, ~~((the certification period is twelve months.))~~ eligibility is continuous ~~((without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death.))~~

~~((6))~~ throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months or the child:

(a) Turns age nineteen;

(b) Moves out of state;

(c) Is incarcerated; or

(d) Dies.

(7) When the child turns nineteen, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the twelve-month

period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services ~~((see))~~ described in WAC ~~((388-505-0230)) 182-514-0230~~ on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for ~~((exceeding))~~ turning age nineteen.

~~((7))~~ For an SSI-related person the certification period is twelve months.

~~((8))~~ When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or

(b) Completed eligibility review.

~~((9))~~ (8) A retroactive certification period ~~((can begin up to three months immediately before the month of application when:~~

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

(10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification, except when:

(a) A pregnant woman is eligible in one of the three months preceding the month of application, but no earlier than the month of conception. Eligibility continues as described in subsection (3);

(b) A child is eligible for a CN medical program as described in WAC 388-505-0210 (1) through (5) and (7) in one of the three months preceding the month of application. Eligibility continues for twelve months from the earliest month that the child is determined eligible.

(11) Any months of a retroactive certification period are added to the designated certification periods described in this section) is described in WAC 182-504-0005.

~~((12))~~ (9) Coverage under premium-based programs included in apple health for kids as described in ~~((WAC 388-505-0210 and))~~ chapter ~~((388-542)) 182-505~~ WAC begins no sooner than the month after creditable coverage ends.

## NEW SECTION

**WAC 182-504-0120 Washington apple health—Effective dates of changes.** (1) We (the agency or its designee) determine the date a change affects your Washington apple health (WAH) coverage based on:

(a) The date you report the change to us;

(b) The date you give us the requested verification; and

(c) The type of WAH you or your family is receiving.

(2) When you report a change after you submit your application, but before your application is processed, the change is considered when processing your application.

(3) If another person, agency, or data source reports a change in circumstances, the information may be used in determining your eligibility. We will not rely on information received from a person, agency, or data source to terminate



your WAH coverage without requesting additional information from you.

(4) A change in income affects your ongoing eligibility only if it is expected to continue beyond the month when the change is reported, and only if it is expected to last more than two months.

(5) A change that results in termination of your WAH coverage takes effect the first of the month following the advance notice period.

(6) The advance notice period:

(a) Begins on the day we send the letter about the change to you; and

(b) Is determined according to the rules in WAC 182-518-0025.

(7) A change that results in a decreased scope of care takes effect on the first of the month following the advance notice period. Examples of a decreased scope of care are:

(a) Termination of WAH categorically needy (CN) medical and approval for other WAH coverage with a lesser scope of care such as WAH medically needy (MN) medical;

(b) WAH-MN recipient with a change that increases the spenddown liability amount;

(c) WAH-MN recipient with no spenddown liability with a change that results in WAH-MN with a spenddown liability.

(8) A change that results in an increased scope of care takes effect on the first of the month following the date the change was reported, when you provide the required verification:

(a) Within ten days of the date we requested the verification; or

(b) By the end of the month of your change report, whichever is later.

If you are a WAH-MN applicant with a spenddown liability that has not yet been met and you report a change that results in your becoming eligible for WAH-CN medical or WAH for adults, your change report will be treated as a new application for purposes of retroactive WAH coverage as described in WAC 182-504-0005.

(9) If you do not provide the required verification timely under subsection (8) of this section, we make the change effective the first of the month following the month in which you provide the verification. We may terminate your WAH coverage if you do not provide the required verification.

(10) When a law or regulation requires a change in WAH, the date specified by the law or regulation is the effective date of the change.

(11) When a change in income or allowable expenses is reported timely (within thirty days) and changes the amount you pay towards the cost of your care for institutional programs (residing in a medical institution), we calculate your new participation amount based on:

(a) Either actual income received in a month or allowable deductions incurred in a month, or both; or

(b) An estimate of your monthly or allowable expenses in a prospective period of six months or less, based on both actual income received in a preceding period of six months or less and income expected to be received during the prospective period. At the end of the prospective period or when any

significant change occurs, we reconcile this estimate for the period with income received during the same period.

(12) When a change in income, or allowable expenses, changes the amount you pay towards the cost of your care for a home and community-based waiver or service, we calculate your new participation amount effective the first of the following month, except that the new participation amount will be effective the month the change occurs if the change is the loss of an income source that you report within thirty days of the change.

(13) We use the following rules to determine the effective date of change for the health care for workers with disabilities (HWD) program:

(a) HWD coverage begins the month after coverage in another medical program ends and the premium amount has been approved by the eligible person; and

(b) If a change in income increases or decreases the monthly premium, the change is effective the first of the month after the change is reported. For more information on premium requirements for this program, see WAC 182-511-1250.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-504-0125 Washington apple health—Effect of reported changes ((~~on medical program eligibility~~)).** (1) ((~~An individual~~)) If you report a change required under WAC 182-504-0105 during a certification period, you continue((s)) to be eligible for ((~~medical assistance~~)) Washington apple health (WAH) coverage until ((~~the agency or the agency's designee completes a review of the individual's case record and determines the individual is ineligible for medical assistance or is eligible for another medical program. This applies to all individuals who, during a certification period, become ineligible for, or are terminated from, or request termination from:~~))

((~~(a) A categorically needy (CN) medicaid program;~~))

((~~(b) A program included in apple health for kids; or~~))

((~~(c) Any of the following cash grants:~~))

((~~(i) Temporary assistance for needy families (TANF);~~))

((~~(ii) Supplemental security income (SSI); or~~))

((~~(iii) Aged, blind, disabled (ABD) cash assistance. See~~))

WAC 388-434-0005 for changes reported during eligibility review)) we decide if you can keep getting WAH coverage under your current WAH program or a different WAH program.

(2) If ((~~CN medical~~)) your WAH categorically needy (CN) coverage ends ((~~under one program and the individual meets~~)) due to a reported change and you meet all the eligibility requirements ((~~to be eligible under~~)) for a different ((~~CN medical~~)) WAH-CN program, ((~~coverage is approved~~)) we will approve your coverage under the new WAH-CN program. If ((~~the individual's income exceeds the standard for CN medical coverage, the agency or the agency's designee considers eligibility under the medically needy (MN) program where appropriate.~~))

((~~3~~)) If)) you are not eligible for coverage under any WAH-CN ((~~medical coverage ends and the individual does not~~)) program but you meet the eligibility requirements ((~~to~~))

be eligible under a different medical program, the redetermination process is complete and medical assistance is terminated giving advance and adequate notice with the following exception:

~~(a) An individual who claims~~) for either WAH alternative benefits plan (ABP) coverage or WAH medically needy (MN) coverage, we will approve your coverage under the program you are eligible for. If you are not eligible for coverage under any WAH-CN program but you meet the eligibility requirements for both WAH-ABP coverage and WAH-MN coverage, we will approve the WAH-ABP coverage unless you notify us that you prefer WAH-MN coverage.

(3) If your WAH coverage ends and you are not eligible for a different WAH program, we stop your WAH coverage after giving you advance and adequate notice unless the exception in subsection (4) of this section applies to you.

(4) If you claim to have a disability (is referred to the division of disability determination services for a disability determination if) and that is the only basis (under which the individual is) for you to be potentially eligible for (medical assistance) WAH coverage, then we refer you to the division of disability determination services (within the department of social and health services) for a disability determination. Pending the outcome of the disability determination, (medical eligibility is considered) we also determine if you are eligible for WAH coverage under the SSI-related medical program described in chapter ((388-475)) 182-512 WAC. ((b) An individual with countable income in excess of the SSI-related CN medical standard is considered for medically needy (MN) coverage or medically needy (MN)) If you have countable income in excess of the SSI-related categorically needy income level (CNIL), then we look to see if you can get coverage under WAH-MN with spenddown as described in chapter 182-519 WAC pending the final outcome of the disability determination.

~~((4) An individual who becomes ineligible for refugee cash assistance is eligible for continued refugee medical assistance through the eight-month limit, as described in WAC 182-507-0130.~~

~~(5) An individual who receives a TANF cash grant or family medical is eligible for a medical extension, as described under WAC 182-523-0100, when the cash grant or family medical program is terminated as a result of:~~

- ~~(a) An increase in earned income; or~~
- ~~(b) Collection of child or spousal support.~~

~~(6)) (5) If you receive coverage under the WAH parent and caretaker relative program described in WAC 182-505-0240, you will be eligible for the WAH medical extension program described in WAC 182-523-0100, if your coverage ends as a result of an increase in your earned income.~~

(6) Changes in income during a certification period do not affect(s) eligibility for (all medical programs except) the following programs:

(a) WAH for pregnant ((women's CN medical programs)) women;

(b) ((A program included in apple health for kids)) WAH for children, except as specified in subsection (((5))) (7) of this section; ((or))

(c) ((The first six months of the medical extension benefits described under chapter 182-523 WAC.

~~(7) A child who receives)) WAH for SSI recipients;~~

~~(d) WAH refugee program; and~~

~~(e) WAH medical extension program.~~

(7) We redetermine eligibility for children receiving WAH for kids premium-based coverage ((under a program included in apple health for kids)) described in WAC 182-505-0210 ((and chapter 182-505 WAC must be redetermined for a nonpremium-based coverage)) when the ((family reports)):

(a) ((Family)) Household's countable income ((has decreased)) decreases to ((less than two hundred percent)) a percentage of the federal poverty level (FPL) that would result in either a change in premium for WAH for kids with premiums or the children becoming eligible for WAH for kids (without premiums);

(b) ((The)) Child becomes pregnant;

(c) ((A change in)) Family size changes; or

(d) ((The)) Child receives SSI.

(8) ((An individual who receives)) If you get SSI-related WAH-CN ((medical)) coverage and report(s) a change in work or earned income which ((exceeds the substantial gainful activity (SGA) limit set by Social Security Administration)) results in a determination by the division of disability determination services that you no longer meet(s) the definition of a disabled ((individual)) person as described in WAC 182-512-0050((- unless the individual continues to receive a Title 2 cash benefit, e.g., SSDI, DAC, or DWB. The agency or the agency's designee)) due to work or earnings at the level of substantial gainful activity (SGA), we redetermine(s) your eligibility for ((such an individual)) coverage under the health care for workers with disabilities (HWD) program ((which waives the SGA income test)). The HWD program is a premium-based program that waives the SGA work or earnings test, and ((the individual)) you must approve the premium amount before ((the agency or the agency's designee)) we can authorize ((ongoing CN medical benefits)) coverage under this program. For HWD program rules, see chapter 182-511 WAC.

(9) Prior to a scheduled renewal or March 31, 2014, whichever is later, your WAH coverage will not end and you will not pay more for your WAH coverage as a result of an eligibility determination if:

(a) You are enrolled in WAH at the time of the eligibility determination;

(b) You were enrolled in WAH prior to October 1, 2013; and

(c) At the time of the eligibility determination, your enrollment in WAH is not yet based on MAGI methodologies.

#### NEW SECTION

**WAC 182-504-0035 Washington apple health—Renewals.** (1) For all Washington apple health (WAH) programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every twelve months with the following exceptions:

(i) If you are eligible for WAH medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for WAH alien emergency medical, then you are certified for a specific period of time to cover emergency inpatient hospitalization costs only (see WAC 182-507-0115(8)); or

(iii) If you are eligible for WAH refugee coverage, you must complete a renewal of eligibility after eight months.

(b) You may complete renewals online, by phone, or mailed or faxed to us (the agency or its designee).

(c) If your WAH is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before WAH is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

(ii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get WAH coverage beyond the current certification period.

(iii) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your WAH coverage is terminated because you didn't renew, you have ninety days from the termination date to give us a completed renewal. If we decide you are still eligible to get WAH coverage, we will restore your WAH without a gap in coverage.

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form to be completed, signed, and returned by the end of the certification period.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) If you are terminated for failure to renew, you have thirty days from the termination date to submit a completed renewal. If still eligible, we will restore your WAH without a gap in coverage.

(4) If we determine that you are not eligible for renewal of your WAH coverage, we:

(a) Consider your eligibility for all other WAH programs before ending your WAH coverage; and

(b) Coordinate with the health benefit exchange any request for information that is necessary to determine your eligibility for:

(i) Other WAH programs; and

(ii) With respect to qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

#### NEW SECTION

**WAC 182-504-0105 Washington apple health—Changes that must be reported.** (1) You must report changes in your household and family circumstances to us (the agency or its designee) timely according to WAC 182-504-0110.

(2) We tell you what you are required to report at the time you are approved for WAH coverage. We also will tell you if the reporting requirements change.

(3) You must report the following:

(a) Change in residential address;

(b) Change in mailing address;

(c) Change in marital status;

(d) When family members or dependents move in or out of the residence;

(e) Pregnancy;

(f) Incarceration;

(g) Change in institutional status;

(h) Change in health insurance coverage including medicare eligibility; and

(i) Change in immigration or citizenship status.

(4) If you are eligible for a WAH long-term care program described in chapter 182-513 or 182-515 WAC, you must also report changes to the following:

(a) Income;

(b) Resources;

(c) Medical expenses; and

(d) Spouse or dependent changes in income or shelter cost when expenses are allowed for either.

(5) If you get WAH parent or caretaker (as described in WAC 182-505-0240) or WAH modified adjusted gross income (MAGI)-based adult coverage (as described in WAC 182-505-0250), you must also report changes to the following:

(a) When total income increases or total deductions decrease by one hundred fifty dollars or more a month and the change will continue for at least two months;

(b) Your federal income tax filing status that you expect to use when you file your taxes for the current tax filing year (such as changing from "married filing separately" to "married filing jointly"); and

(c) The tax dependents you expect to claim when you file your federal income tax return for the current tax filing year.

(6) If you get WAH based on age, blindness, or disability (SSI-related medical), then you must also report changes to the following:

(a) Income; and

(b) Resources.

NEW SECTION

**WAC 182-504-0110 Washington apple health—When to report changes.** (1) All changes you report to us (the agency or its designee), as required by WAC 182-504-0105, are used to decide if you can receive or keep receiving Washington apple health (WAH) coverage.

(2) You must report changes during your certification period within thirty days of when the change happened.

(3) You must report all changes during application, renewal, or redetermination of your WAH eligibility, regardless of when the change happened.

(4) For a change in income, the date a change happened is the first date you received income based on the change. For example, the date you receive your first paycheck for a new job or the date you got a paycheck with a wage increase is the date the change happened.

(5) If you don't report a change or you report a change late, we will decide if you can receive or keep receiving WAH coverage based on the date the change was required to be reported.

(6) If you don't report a change or you report a change late, and if it affects the amount you must pay toward your cost of care as described in WAC 182-513-1380 or chapter 182-515 WAC, you may become liable for overpayments we make on your behalf and you may need to pay more to your care provider.

(7) If you don't report a change or you report a change late, it may result in us overpaying you and you having to pay us back for the health care costs we overpaid. See chapter 182-520 WAC.

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

**WAC 182-505-0100 ((Medical programs)) Washington apple health—Monthly income standards based on the federal poverty level (FPL).** (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following ((medical)) Washington apple health (WAH) programs change on the first day of April every year based on the new FPL:

(a) ~~((Pregnant women's program up to one hundred eighty-five))~~ WAH for parents and caretaker relatives up to fifty-four percent of FPL (see WAC 182-505-0240). Persons enrolled in WAH for parents and caretaker relatives whose earned income increases above this limit are the only persons who may be eligible for the WAH transitional medical program described in WAC 182-523-0100;

(b) ~~((A program included in apple health for kids up to two hundred))~~ Modified adjusted gross income (MAGI)-based WAH for adults up to one hundred thirty-three percent of FPL;

(c) ~~((Health care for workers with disabilities (HWD) up to two hundred twenty))~~ WAH for pregnant women up to one hundred ninety-three percent of FPL; ((and))

(d) ~~((Premium-based coverage under a program included in apple health for kids over two hundred percent of FPL, but~~

~~not over three hundred))~~ WAH for children up to two hundred ten percent of FPL; and

~~((e) Premium-based coverage under WAH for children over two hundred ten percent of FPL, but not over three hundred twelve percent of FPL.~~

(2) The ~~((department))~~ agency uses the FPL income standards to determine~~((=~~

~~((a) The mandatory or optional medicaid status of an individual; and~~

~~((b) Premium amount, if any, for a child.~~

~~((3) There are no resource limits for the programs under this section))~~ the premium amount, if any, for a child.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0115 ((Medical)) Washington apple health—Eligibility for pregnant women.** ~~((Eligibility requirements for pregnancy medical are described below:))~~

(1) A pregnant woman is eligible for ~~((categorically needy (CN) scope of care))~~ the Washington apple health (WAH) for pregnant women program if she ~~((meets the following requirements))~~:

(a) Meets citizenship or immigration status ~~((chapter 388-424 WAC))~~ under WAC 182-503-0535; ((and))

(b) Meets Social Security ~~((account))~~ number ~~((chapter 388-474 WAC))~~ requirements under WAC 182-503-0115; ((and))

(c) ~~((Is a))~~ Meets Washington state ~~((resident (chapter 388-468 WAC))~~ residency requirements under WAC 182-503-0520 and 182-503-0525; and

(d) Has countable income ~~((as described in))~~ at or below the limit described in:

(i) WAC ((388-478-0075)) 182-505-0100 to be eligible for categorically needy (CN) coverage; or

(ii) WAC 182-505-0100 to be eligible for medically needy (MN) coverage. MN coverage begins when the pregnant woman meets any required spenddown liability as described in WAC 182-519-0110.

(2) ~~((A pregnant woman is considered for medically needy (MN) scope of care if she meets the requirements in subsection (1)(a) through (c) of this section and:~~

~~((a) Has countable income that exceeds the standard in subsection (1)(d) of this section; and~~

~~((b) Has countable resources that do not exceed the standard in WAC 388-478-0070.~~

~~((3) A pregnant woman may be eligible for noncitizen pregnancy medical if she is not eligible for medical described in subsections (1) and (2) of this section due to citizenship, immigrant status, or social security number requirements.~~

(4) A pregnant woman meeting the eligibility criteria in subsection (3) is eligible for:

(a) CN scope of care when the countable income is at or below the income standard described in subsection (1)(d); or

(b) MN scope of care when:

(i) The countable income exceeds the standard in subsection (1)(d); and

(ii) The resources do not exceed the standard described in WAC 388-478-0070.

(5) Consider as income to the pregnant woman the amount that is actually contributed to her by the father of her unborn child when the pregnant woman is not married to the father.

(6)) A noncitizen pregnant woman who does not need to meet the requirements in subsection (1)(a) or (b) of this section to be eligible for WAH and receives either CN or MN coverage based upon her countable income as described in subsection (1)(d) of this section.

(3) The assignment of ~~((child support and))~~ medical support rights as described in ~~((chapter 388-422))~~ WAC ~~((do))~~ 182-503-0540 do not apply to pregnant women.

~~((7))~~ (4) A woman who was eligible for and received ~~((medical))~~ coverage under any WAH program on the last day of pregnancy is eligible for extended medical ~~((benefits))~~ coverage for postpartum care for a minimum of sixty days from the end of her pregnancy. This includes women who meet an MN spenddown liability with expenses incurred no later than the date the pregnancy ends. This extension continues through the end of the month in which the sixtieth day falls.

~~((8))~~ A woman who was eligible for medical coverage on the last day of pregnancy is) (5) All women approved for WAH pregnancy coverage at any time are eligible for family planning services for twelve months ((from the end of)) after the pregnancy ((even when eligibility for pregnancy was determined after the pregnancy ended)) ends.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0210 Washington apple health ~~((for kids and other children's medical assistance programs))—Eligibility for children.~~** ((Funding for coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI (CHIP), or through state-funded programs. There are no resource limits for the apple health for kids programs. Apple health for kids coverage is free to children in households with incomes of no more than two hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The newborn is a resident of the state of Washington.

(b) The newborn's mother is eligible for medical assistance:

(i) On the date of the newborn's birth, including a retroactive eligibility determination; or

(ii) Based on meeting a medically needy (MN) spend-down liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for SSI.

(3) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(c) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

(d) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(e) They pay the required monthly premiums as described in WAC 388-505-0211.

(5) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premium as described in WAC 388-505-0211.

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Are ineligible for other federally matched CN programs;

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown liability as described in WAC 388-519-0100 and 388-519-0110.

(7) Children under the age of nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids health care coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for health care coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long term care" for more information.

(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, Social Security number, and citizenship as described in subsection (2)(a), (b) and (c) of this section are eligible for federally matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty first birthday if the children's administration determines they remain eligible for continued foster care services; or

(c) Twenty first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(9) Children are eligible for state funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally matched CN coverage.

(11) Children under the age of nineteen not eligible for apple health for kids programs listed above may be eligible for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100;

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e) of this section; and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL; or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.

(12) Except for a child described in subsection (7) of this section, an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any apple health for kids program.)) (1) Unless otherwise stated in this section, a child is a person who is under nineteen years of age (including the month the person turns nineteen). To be eligible for one of the Washington apple health (WAH) for kids programs described below, a child must:

(a) Be a resident of Washington state, as described in WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number (SSN) as described in WAC 182-503-0515 unless exempt; and

(c) Meet any additional requirements listed for the specific program.

(2) Children under one year of age are eligible for WAH categorically needy (CN) coverage, without a new application, when they are born to a mother who is eligible for WAH:

(a) On the date of the newborn's birth, including a retroactive eligibility determination; or

(b) Based on meeting a medically needy (MN) spenddown liability with expenses incurred no later than the date of the newborn's birth.

(3) Children are eligible for WAH at no cost when they:

(a) Have countable family income that is no more than two hundred ten percent of the federal poverty level (FPL) as described in WAC 182-505-0100;

(b) Are currently eligible for supplemental security income (SSI); or

(c) Received SSI payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions.

(4) Children are eligible for premium-based WAH as described in WAC 182-505-0215 when they:

(a) Have countable family income that is not more than three hundred twelve percent of FPL as described in WAC 182-505-0100;

(b) Do not have other creditable health insurance as described in WAC 182-505-0220; and

(c) Pay the required monthly premiums as described in WAC 182-505-0225.

(5) Children are eligible for WAH home and community based waiver programs as described in chapter 182-515 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0525;

(b) Meet SSI-related eligibility requirements as described in chapter 182-512 WAC; and

(c) Meet program specific age requirements.

(6) Children are eligible for the WAH long-term care program when they meet the institutional program rules as described in chapter 182-513 or 182-514 WAC, and either:

(a) Reside or are expected to reside in a medical institution, intermediate care facility for the intellectually disabled (ICF/ID), hospice care center, or nursing home for thirty days or longer; or

(b) Reside or are expected to reside in an institution for mental diseases (IMD) or inpatient psychiatric facility:

(i) For ninety days or longer and are age seventeen or younger; or

(ii) For thirty days or longer and are age eighteen through twenty-one.

(7) Children are eligible for the WAH-MN program as described in WAC 182-519-0100 when they:

(a) Meet citizenship or immigrant status as described in WAC 182-503-0535;

(b) Have countable family income that exceeds three hundred twelve percent of FPL as described in WAC 182-505-0100; or

(c) Have countable family income that is more than two hundred ten percent of FPL, but are not eligible for premium-based WAH as described in subsection (4) of this section because of creditable coverage; and

(d) Meet a spenddown liability as described in WAC 182-519-0110, if required.

(8) Children are eligible for WAH SSI-related programs as described in chapter 182-512 WAC when they:

(a) Meet citizenship or immigration status as described in WAC 182-503-0535;

(b) Meet SSI-related eligibility as described in chapter 182-512 WAC; and

(c) Meet an MN spenddown liability as described in WAC 182-519-0110, if required.

(9) Children who are not eligible for WAH under subsections (5) through (8) of this section because of their immigration status, are eligible for the WAH alien emergency medical program if they:

(a) Meet the eligibility requirements of WAC 182-507-0110;

(b) Have countable family income:

(i) That exceeds three hundred twelve percent of FPL as described in WAC 182-505-0100; or

(ii) That is more than two hundred ten percent of FPL, but they are not eligible for premium-based WAH, as described in subsection (4) of this section because of creditable coverage; and

(c) Meet a spenddown liability as described in WAC 182-519-0110, if required.

(10) Children who are in foster care or receive subsidized adoption services are eligible for coverage under the WAH foster care program described in WAC 182-505-0211.

(11) Children who are incarcerated in a public institution (as defined in WAC 182-500-0050), or a city or county jail, are not eligible for any WAH program, with the following exceptions:

(a) Children who reside in an IMD as described in subsection (6) of this section; or

(b) Children who are released from a public institution or city or county jail to a hospital for inpatient treatment. Chil-

dren who are released from an IMD to a hospital setting must be unconditionally discharged from the IMD to qualify for coverage under this provision.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0215 Washington apple health—Premium-based children's program—Purpose and scope** (~~(of premium-based health care coverage under programs included in apple health for kids)~~). The ((department)) medicaid agency administers the programs included in Washington apple health (WAH) for kids that provide premium-based coverage through a combination of state and federal funding sources as described below:

(1) Federally matched health care coverage as authorized by Title XXI of the Social Security Act state children's health insurance program ((~~SCHIP~~)) (CHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred ten percent of the federal poverty level (FPL) but is not above three hundred twelve percent FPL.

(2) State funded health care coverage for children with family income above two hundred ten percent FPL, but not above three hundred twelve percent FPL, who are ineligible for ((~~Title XXI~~)) federally matched health care coverage due to immigration ((~~issues~~)) status.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0225 Premium-based Washington apple health for kids—Premium requirements** (~~(for premium-based health care coverage under programs included in apple health for kids)~~). (1) For the purposes of this chapter, "**premium**" means an amount paid for ((~~health care~~)) Washington apple health (WAH) coverage ((~~under programs included in apple health~~)) for kids as described in WAC ((~~388-505-0210 (4) and (5)~~)) 182-505-0210(4).

(2) Payment of a premium is required as a condition of eligibility for premium-based WAH coverage ((~~under programs included in apple health~~)) for kids, as described in WAC ((~~388-505-0210 (4) and (5)~~)) 182-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska Native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for ((~~medical~~)) WAH coverage received in a month or months before the determination of eligibility.

(4) ((~~The premium amount for the assistance unit (AU) is based on the net countable income as described in WAC 388-450-0210 and the number of children in the AU. If the household includes more than one AU, the premium amount billed for the AUs may be different amounts.~~

~~(5))~~) The premium amount is limited to a monthly maximum of two premiums for ((~~households~~)) families with two or more children.

~~((6))~~ (5) The premium amount ~~((for each U.S. citizen or lawfully present alien child described in WAC 388-505-0210(4)))~~ is:

(a) Twenty dollars per month per child for ~~((households))~~ families with countable income above two hundred ~~ten~~ percent FPL, but not above two hundred ~~((and fifty))~~ sixty percent FPL; or

(b) Thirty dollars per month per child for ~~((households))~~ families with countable income above two hundred ~~((and fifty))~~ sixty percent FPL, but not above three hundred twelve percent FPL.

~~((7))~~ The premium amount for each noncitizen child described in WAC 388-505-0210(5) who is not a lawfully present qualified or nonqualified alien is no greater than the average of the state share of the per capita cost for state-funded children's health coverage. The premium amount is set every two years, based on the forecasted per capita costs for that period.

~~((8))~~ (6) All children in an assistance unit (AU) are ineligible for ~~((health care))~~ WAH coverage when the ~~((head of household))~~ family fails to pay required premium payments for three consecutive months.

~~((9))~~ (7) When the agency or ~~((the agency's))~~ its designee terminates the ~~((medical))~~ WAH coverage ~~((of a child))~~ due to nonpayment of premiums, the child's eligibility is restored ~~((only))~~ when the:

(a) Past due premiums are paid in full prior to the end of the certification period; or

(b) The child becomes eligible for coverage under ~~((a nonpremium-based CN health care program))~~ WAH without a premium.

~~((10))~~ (8) The agency or ~~((the agency's))~~ its designee writes off past-due premiums after twelve months.

~~((11))~~ (9) If all past due premiums are paid after the certification period is over:

(a) Eligibility for prior months is not restored; and

(b) Children are not eligible for premium-based ~~((coverage under apple health))~~ WAH for kids until:

(i) The month the premiums are paid or the agency writes off the debt; and

(ii) The family reapplies and is found eligible.

~~((12))~~ (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the AU. The full premium amount is the obligation of the head of household of the AU. A family can decide to request health care coverage only for certain children in the AU, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the AU. The premium payment requirement remains the obligation of head of household of the AU. The failure of a sponsor or other third party to pay the premium does not eliminate the obligation of the head of household to pay past due premiums.

AMENDATORY SECTION (Amending WSR 11-23-077, filed 11/15/11, effective 12/16/11)

**WAC 182-505-0235 Washington apple health—Premium-based children's program—Order of payments** ~~((under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act)).~~ The medicaid agency administers ~~((the programs included in))~~ premium-based Washington apple health (WAH) for kids ~~((that provide premium-based))~~ coverage through a combination of state and federal funding sources. For expenditures funded by Title XXI of the Social Security Act ~~((SSA))~~, also known as the children's health insurance program (CHIP), federal financial participation will be sought in compliance with section 2105 ~~((of the act))~~ in the following order:

(1) For ~~((medical assistance))~~ health care coverage for targeted low-income children from birth through age eighteen, as described in section 4 of the Title XXI state plan.

(2) For ~~((medical assistance))~~ health care coverage for unborn children, as described in section 4.1.2.1 of the Title XXI state plan.

(3) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in the Children's Health Insurance Program Reauthorization Act (CHIPRA), section 214.

(4) For ~~((medical assistance))~~ health care coverage for medicaid-eligible children, as described in section 2105 (g)(4)(A) and (B) of the ~~((act))~~ SSA.

(5) For allowable administrative expenditures under the ten percent cap, as defined in section 2105 (a)(1)(D) of the ~~((act))~~ SSA in the following order:

(a) First, for reasonable expenditures necessary to administer the plan, including staffing for eligibility determinations, plan administration, quality assurance, and similar costs.

(b) Second, for a toll-free 800 telephone number providing information regarding the Washington apple health for kids program.

(c) Third, for health services initiatives, such as the funding of the Washington poison center, to the extent that state funds are appropriated by the legislature.

(d) Fourth, for translation or interpretation services in connection with the enrollment, retention, or use of services under this title by ~~((individuals))~~ persons for whom English is not their primary language, but only to the extent that state-matching funds are made available.

(e) Fifth, for outreach services for the Washington apple health for kids program, to the extent that appropriated state-matching funds are available.

(f) Sixth, for other CMS-approved activities to the extent that federal matching funds are available, and where such activities do not duplicate efforts conducted under this subsection.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0237 Premium-based Washington apple health for kids—Other rules that apply** ~~((to premium-based health care coverage under programs included in apple health for kids)).~~ In addition to the rules



of this chapter, children receiving premium-based (~~coverage under~~) Washington apple health (WAH) for kids are subject to the following rules:

(1) Chapter (~~(388-538)~~) 182-538 WAC, Managed care (except WAC (~~(388-538-061)~~) 182-538-061, (~~(388-538-063)~~) 182-538-063, and (~~(388-538-065)~~) 182-538-065) if the child is covered under federally matched CN coverage;

(2) WAC (~~(388-505-0210 (4) and (5)~~), apple health for kids program eligibility;

(3) WAC ~~388-505-0211~~, Premium requirements for premium-based coverage under programs included in apple health for kids;

(4) WAC ~~388-416-0015(12))~~ 182-504-0015, Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(~~(5))~~ (3) WAC (~~(388-418-0025)~~) 182-504-0125, Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-505-0240 (~~(Family medical eligibility.)~~)**

**Washington apple health—Parents and caretaker relatives.** (1) A person is eligible for Washington apple health (WAH) categorically needy (CN) (~~(medical assistance))~~ coverage when (~~(they are))~~ he or she:

(a) (~~(Receiving temporary assistance for needy families (TANF) cash benefits;~~

(b) ~~Receiving Tribal TANF;~~

(c) ~~Receiving cash diversion assistance, except SFA relocatable families, described in WAC 388-400-0010(2);~~

(d) ~~Eligible for TANF cash benefits but choose not to receive;~~

(e) ~~Over the TANF cash payment standard but under the family medical payment standard as described in WAC 388-478-0065; or~~

(f) ~~Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:~~

(i) ~~Earned income is treated as described in WAC 388-450-0210; and~~

(ii) ~~Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.~~

(2) ~~An adult cannot receive a family medicaid program unless the household includes a child who is eligible for:~~

(a) ~~Family medicaid;~~

(b) ~~SSI; or~~

(c) ~~Children's medicaid.~~

(3) ~~A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:~~

(a) ~~Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;~~

(b) ~~Failed to meet the school attendance requirement in chapter 388-400 WAC;~~

(c) ~~Is an unmarried minor parent who is not in a department approved living situation;~~

(d) ~~Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the~~

~~home and the child's absence will exceed one hundred eighty days;~~

(e) ~~Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;~~

(f) ~~Was convicted of a drug related felony;~~

(g) ~~Was convicted of receiving benefits unlawfully;~~

(h) ~~Was convicted of misrepresenting residence to obtain assistance in two or more states;~~

(i) ~~Has gross earnings exceeding the TANF gross income level; or~~

(j) ~~Is not cooperating with WorkFirst requirements.~~

(4) ~~An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.~~

(5) ~~Except for a client described in WAC 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.)~~ Is a parent or caretaker relative of a dependent child who meets the criteria described in WAC 182-503-0565(2):

(b) Meets citizenship and immigration status requirements described in WAC 182-503-0505;

(c) Meets general eligibility requirements described in WAC 182-503-0535; and

(d) Has countable income below fifty-four percent of the federal poverty level (FPL).

(2) To be eligible for WAH coverage as a caretaker relative, a person must be related to a dependent child who meets the criteria described in WAC 182-503-0565(2).

(3) A person must cooperate with the state of Washington in the identification, use and collection of medical support from responsible third parties as described in WAC 182-503-0540.

(4) A person who does not cooperate with the requirements in subsection (3) of this section is not eligible for WAH coverage.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-505-0220 Definitions for premium-based health care coverage under programs included in apple health for kids.

WAC 182-505-0230 Waiting period for premium-based health care coverage under programs included in apple health for kids following employer coverage.

WAC 182-505-0245 Income and resource standards for family medical programs.

WAC 182-505-0515 Medical coverage resulting from a cash grant.

NEW SECTION

**WAC 182-505-0250 Washington apple health—MAGI-based adult medical.** (1) Effective on or after January 1, 2014, a person is eligible for Washington apple health (WAH) modified adjusted gross income (MAGI)-based adult coverage when he or she meets the following requirements:

- (a) Is age nineteen or older and under the age of sixty-five;
- (b) Is not entitled to, or enrolled in, medicare benefits under Part A or B of Title XVIII of the Social Security Act;
- (c) Is not otherwise eligible for and enrolled in mandatory coverage under one of the following programs:
  - (i) WAH SSI-related categorically needy (CN);
  - (ii) WAH foster care program; or
  - (iii) WAH adoption support program;
- (d) Meets citizenship and immigration status requirements described in WAC 182-503-0535;
- (e) Meets general eligibility requirements described in WAC 182-503-0505; and
- (f) Has net countable income that is at or below one hundred thirty-three percent of the federal poverty level for a household of the applicable size.

(2) Parents or caretaker relatives of an eligible dependent child as described in WAC 182-503-0565 are first considered for WAH for families as described in WAC 182-505-0240. A person whose countable income exceeds the standard to qualify for family coverage is considered for coverage under this section.

(3) Persons who are eligible under this section are eligible for WAH alternative benefit plan as defined in WAC 182-500-0010 coverage. A person described in this section is not eligible for medically needy WAH.

(4) Other coverage options for adults not eligible under this section are described in WAC 182-508-0001.

**Chapter 182-518 WAC****WASHINGTON APPLE HEALTH—LETTERS AND NOTICES**NEW SECTION

**WAC 182-518-0005 Washington apple health—Notice requirements—General.** (1) For the purposes of this chapter, "we" refers to the agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.

(2) This section applies only to notices and letters that we send about eligibility for Washington apple health (WAH) programs. WAC 182-501-0165 applies to notices and letters regarding prior authorization or other action on requests to cover specific fee-for-service health care services.

(3) We send you written notices (letters) when we:

- (a) Approve you for health care coverage for any program;
- (b) Reconsider your application for other types of health care coverage based on new information;
- (c) Deny you health care coverage (including because you withdrew your application) for any program (according to rules in WAC 182-503-0080);

(d) Ask you for more information to decide if you can start or renew health care coverage;

(e) Renew your health care coverage; or

(f) Change or terminate your health care coverage, even if we approve you for another kind of coverage.

(4) If you are receiving limited-English proficient services, we send notices to you in your primary language according to the rules in WAC 182-503-0110. If you are receiving equal access services, we follow the equal access rules described in WAC 182-503-0120.

(5) All WAH notices we send you include the following information:

- (a) The date of the notice;
- (b) Specific contact information for you if you have questions or need help with the notice;
- (c) Your appeal rights, if an appeal is available, and the availability of potentially free legal assistance; and
- (d) Other information required by state or federal law.

NEW SECTION

**WAC 182-518-0010 Washington apple health—Notice requirements approval and denial notices.** (1) We send written notice when we approve, reopen, reinstate, or deny coverage for any Washington apple health (WAH) program. The notice includes the information described in WAC 182-518-0005(4) and all of the following:

(a) The WAH coverage for each person approved, reopened or reinstated;

(b) The date that each person's coverage begins (the effective date); and

(c) The dates for which we approved each person's coverage (certification period).

(2) Denial and withdrawal notices include:

(a) The date of denial;

(b) Specific facts and reason(s) supporting the decision; and

(c) Specific rules or statutes that support or require the decision.

(3) If we deny your request for health care coverage or consider it withdrawn because you failed to give us requested information, the denial notice also includes:

(a) A list of the information you did not give us;

(b) The date we asked you for the information and the date it was due;

(c) Notice that we will reconsider your eligibility if we receive any information related to determining your eligibility, including any changes to information we have, within thirty days of the date of the notice; and

(d) Information described in subsection (1) of this section.

NEW SECTION

**WAC 182-518-0015 Washington apple health—Notice requirements verification requests.** (1) We send you written notice when we need more information as described in WAC 182-503-0050 to decide if you are eligible to receive or continue receiving Washington apple health (WAH) coverage. The notice includes:

(a) A description or list of the information that we need;

(b) When we must have the information (see WAC 182-503-0060 for applications and WAC 182-504-0035 for renewals);

(c) What action we will take and on what date, if we do not receive the information; and

(d) Information required in WAC 182-518-0005(4).

(2) If we have received conflicting information about facts we need to determine your coverage, the notice will also include:

(a) The information we received that does not match what you gave us and the source; and

(b) A request that you send us a statement explaining the difference(s) between the information from you and the information from the other source.

(3) We allow you at least ten days to return the information. If you ask, we may allow you more time to get us the information. If the tenth day falls on a weekend or holiday, the due date is the next business day.

(4) If the information we ask for costs money, we will pay for it or help you get the information in another way.

#### NEW SECTION

**WAC 182-518-0020 Washington apple health—Notice requirements—Renewals.** (1) We send you written notice before we stop your WAH coverage at the end of your certification period as described in WAC 182-504-0035.

(2) When we can administratively renew your coverage (as defined in WAC 182-500-0010), the notice includes:

(a) Your new certification period;

(b) The information we used to renew your coverage; and

(c) A request for you to give us updated information, if any of the information we used is inaccurate.

(3) When we cannot administratively renew your coverage, the notice includes:

(a) Information we currently have on record;

(b) How to complete the renewal using any of the methods described in WAC 182-504-0035 (1)(b);

(c) What action we will take on what date if we do not receive your completed renewal application on time; and

(d) That we follow the rules in WAC 182-518-0015.

(4) We send your renewal notice following the timeline in:

(a) WAC 182-504-0035(2) for programs based on modified adjusted gross income (MAGI); or

(b) WAC 182-504-0035(3) for non-MAGI based programs.

#### NEW SECTION

**WAC 182-518-0025 Washington apple health—Notice requirements—Changes in and terminations of coverage.** (1) We send you written notice before your Washington apple health (WAH) coverage changes or ends. The notice includes:

(a) The change in coverage;

(b) The date your coverage will change or end;

(c) Specific facts and reason(s) for the decision;

(d) Specific rules the decision is based on; and

(e) Information found in WAC 182-518-0005(4).

(2) Before we send any notices to end your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we determine if you are eligible for other health care coverage as described in WAC 182-504-0125.

(3) We notify you at least ten days before we change or end your health care coverage. The ten days start on the day we send you the notice and end on the tenth day. We are not required to give ten days' notice if:

(a) You asked us to change or end your coverage;

(b) We are changing or ending your coverage due only to a change in law;

(c) We are ending your coverage because everyone in your household either died or has been accepted to receive medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);

(d) We are ending your coverage because mail we sent you was returned to us with no forwarding address; or

(e) You are incarcerated and it is expected to last more than thirty days.

(4) If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action the notice is about.

(5) You may request an appeal if you disagree with our decision to change or end your health care coverage and you may request continued coverage as described in WAC 182-504-0130.

#### NEW SECTION

**WAC 182-518-0030 Washington apple health—Notice requirements—Electronic notices.** (1) We send you letters (notices) to inform you about your eligibility for Washington apple health (WAH) programs as described in WAC 182-518-0005 through 182-518-0025.

(2) For programs based on modified adjusted gross income (MAGI), you have the right to choose to get WAH eligibility notices by regular mail, in an electronic format, or both.

(3) To receive electronic notices you must:

(a) Have an account with Washington Healthplanfinder. (There is no charge to create an account); and

(b) Provide us with the following information: A valid e-mail address, your name, and your application identification number.

(4) You may ask to receive WAH notices electronically by:

(a) Mailing, delivering, or giving us a written letter to the address listed on our web site;

(b) Sending a facsimile letter to us as directed on our web site;

(c) Calling the WAH customer service center at the number listed on our web site;

(d) Logging on to your Healthplanfinder account online and selecting the "I would prefer to receive written communications by e-mail" check box on the contact information page; or

(e) Calling the Healthplanfinder customer support center.

(5) When you have asked for electronic notification, we:

(a) Send the notice to your Healthplanfinder account no later than one business day after creating the notice.

(b) Send you an e-mail message to notify you when a new WAH notice has been sent electronically to your Healthplanfinder account.

(i) The e-mail message will not include the notice, information about the content of the notice, or other confidential information; and

(ii) You must log on to your Healthplanfinder account to get the notice.

(6) We will stop sending WAH notices electronically to you if you ask us. You must notify us if your e-mail address changes.

Code and Bill Thomas, Facilities, LWIT, 11605 132nd Avenue N.E., Kirkland, WA 98034, (425) 739-8100.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These changes effect only internal college processes dealing with students and facilities. There is no financial impact on any small business or school district.

A cost-benefit analysis is not required under RCW 34.05.328. There are no new or additional costs associated with these changes.

May 2, 2014

Terry Byington  
Executive Director  
Government and  
External Relations

**WSR 14-10-061**  
**PROPOSED RULES**  
**LAKE WASHINGTON**  
**INSTITUTE OF TECHNOLOGY**

[Filed May 5, 2014, 12:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-039 and 14-06-084.

Title of Rule and Other Identifying Information: Chapter 495D-280 WAC, Student code of conduct, chapter 495D-121 WAC, Student code of conduct, WAC 495D-131-010 Student code of conduct, 495D-132-010 Student code of conduct, 495D-140-060 Trespass, and 495D-140-070 Prohibited conduct at college facilities.

Hearing Location(s): Lake Washington Institute of Technology, West Building W305A, 11605 132nd Avenue N.E., Kirkland, WA 98034, on June 10, 2014, at 11:00 a.m. and 5:00 p.m.

Date of Intended Adoption: June 20, 2014.

Submit Written Comments to: Terry Byington, 11605 132nd Avenue N.E., Kirkland, WA 98034, e-mail terry.byington@lwtech.edu, fax (425) 739-8299, by May 8, 2014.

Assistance for Persons with Disabilities: Contact Greg Roberts by June 9, 2014, TTY (425) 739-8282.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to the student code of conduct were necessitated by new federal laws including the Violence Against Women Act (VAWA), new guidance related to the United States Department of Education Title IX, Washington State Administrative Procedure Act, other policy updates and plain language edits.

The proposed changes to the student code of conduct necessitated corresponding changes to the facilities use policy to address trespass and prohibited conduct at college facilities.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Rule is necessary because of federal law, VAWA.

Name of Proponent: Lake Washington Institute of Technology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dennis Long, Student

NEW SECTION

**WAC 495D-121-310 Student conduct code—Statement of purpose.** (1) The state of Washington operates Lake Washington Institute of Technology to provide programs of instruction in higher education and related community services. Like any other institution that has its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, the college has special expectations regarding the conduct of the participants in the college community.

(2) Admission to the college carries the expectation that students will conduct themselves as responsible college community members. This includes an expectation that students will:

- (a) Obey appropriate laws;
- (b) Follow college and department rules;
- (c) Maintain a high standard of integrity and honesty.

(3) The college will deal with violations of college rules or conduct that interferes with the operation of college affairs. The college may impose sanctions independently of any action taken by civil or criminal authorities. Provisions of this code are subject to change. The college may report misconduct of students enrolled through the high school programs office to the student's parents. The college may report misconduct to any parent who claims the student as a dependent or as otherwise provided by the Family Educational Rights and Privacy Act of 1972, as amended.

NEW SECTION

**WAC 495D-121-320 Student conduct code—Jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
- (b) At or in connection with college sponsored activities;
- (c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:

- (a) Foreign or domestic travel;
- (b) Activities funded by the associated students;

- (c) Athletic events;
- (d) Training internships;
- (e) Cooperative and distance education;
- (f) Online education;
- (g) Practicums;
- (h) Supervised work experiences;
- (i) 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, and 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 495D-121-330 Student conduct code—Definitions.** The following definitions apply for the purposes of this student conduct code:

- (1) "Business day" means a weekday, excluding weekends and official 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 the college owns, uses, or controls.
- (3) "Conduct review officer" means the vice-president of student services or other college administrator the president designates to have responsibility to receive and review or refer appeals of student disciplinary actions consistent with the procedures of this code. The president can reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as reasonably necessary.
- (4) "Disciplinary action" means the process by which the student conduct officer imposes discipline against a student for violating the student conduct code.
- (5) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline the student conduct officer imposes. The student conduct committee hears disciplinary appeals for a suspension in excess of ten instructional days or a dismissal. The college will review appeals of all other appealable disciplinary action through brief adjudicative proceedings.
- (6) "Filing" means the process by which a document is officially delivered to a college official responsible to facilitate 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 for filing are considered filed when the specified college official actually receives the papers during office hours.

(7) "President" means the president of the college. The president can delegate any and all of his or her responsibilities as set forth in this chapter as reasonably necessary.

(8) "Respondent" means the student against whom the college initiates disciplinary action.

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

- (a) Hand delivery of the document to the party; or
- (b) Sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(10) "Student" includes all persons who take classes at or through the college, whether on a full-time or part-time basis, and whether such classes are credit courses, noncredit courses, online courses, or otherwise. People who withdraw after allegedly violating the code, are not officially enrolled for a particular term but who have a continuing relationship with the college, or who were notified of their acceptance for admission are considered students.

(11) "Student conduct committee" means a college committee as described in WAC 495D-121-400.

(12) "Student conduct officer" means a college administrator to whom the president or vice-president of student services designates responsibility to implement and enforce the student conduct code. The president or vice-president can reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

(13) "Title IX coordinator" means a college administrator to whom the president designates responsibility to implement and enforce the guidelines of federal Title IX legislation.

#### NEW SECTION

**WAC 495D-121-340 Student conduct code—Initiation of discipline.** (1) The student conduct officer initiates all disciplinary actions. If that officer is the subject of a complaint the respondent initiates, the president will, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities that relate to the complainant.

(2) The student conduct officer initiates disciplinary action by personally informing the student of the allegations or serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice will briefly describe the:

- (a) Factual allegations;
- (b) Provision(s) of the conduct code the respondent allegedly violated;
- (c) Range of possible sanctions for the alleged violation(s);
- (d) Time and location of the meeting.

At the meeting, the student conduct officer will present the allegations to the respondent and the respondent will be afforded an opportunity to explain what took place. If the respondent student fails or refuses to attend the meeting, the

student conduct officer may take disciplinary action based upon the available information.

(3) Within ten calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer will give the respondent a written decision that states:

- (a) The facts and conclusions that support the decision;
- (b) The specific student conduct code provisions that were violated;
- (c) The discipline imposed, if any;
- (d) A notice of any appeal rights with an explanation of the consequences of not filing a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

- (a) Exonerate the respondent and terminate the proceedings;
- (b) Impose a disciplinary sanction(s) as described in WAC 495D-121-290;
- (c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. The student conduct officer will make this referral in writing, to the attention of the student conduct committee's chair with a copy served on the respondent.

(5) Any college administrator or managing authority of a distance learning course, except the president and the vice-president who would hear any appeal, may initiate proceedings and recommend taking any of the disciplinary actions defined in WAC 495D-121-600, except that only the president, a vice-president, or designee may dismiss or suspend a student from the college. Before taking the action, the disciplining official will notify his or her supervisor and meet or attempt to meet with the student to explain the seriousness of the matter and hear any explanation by the student.

#### NEW SECTION

**WAC 495D-121-350 Student conduct code—Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

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

- (a) The imposition of disciplinary suspensions in excess of ten instructional days;
- (b) Dismissals; and
- (c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

#### NEW SECTION

**WAC 495D-121-360 Student conduct code—Brief adjudicative proceedings (BAPs) 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) Denials of requests for public records;
- (9) Student conduct appeals involving the following disciplinary actions:
  - (a) Suspensions of ten instructional days or less;
  - (b) Disciplinary probation;
  - (c) Written reprimands;
  - (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
  - (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
    - (i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
    - (ii) Issues a verbal warning to respondent.
- (10) 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 495D-121-370 Student conduct code—Brief adjudicative proceedings—Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

**WAC 495D-121-380 Student conduct code—Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which he or she has direct or personal interest, prejudice, or bias, or in which he or she has acted previously in an advisory capacity.

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

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

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

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

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

NEW SECTION

**WAC 495D-121-390 Student conduct code—Brief adjudicative proceedings—Review of an initial decision.**

(1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

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

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and

must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

NEW SECTION

**WAC 495D-121-400 Student conduct code—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;

(c) One administrative staff member, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

**WAC 495D-121-410 Student conduct code—Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions

concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of the student conduct officer's notification of imposition of discipline (or referral to the committee) and the notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 495D-121-420 Student conduct code—Student conduct appeals committee hearings—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent

to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

#### NEW SECTION

**WAC 495D-121-430 Student conduct code—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 days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

#### NEW SECTION

**WAC 495D-121-440 Student conduct code—Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions



issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

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

#### NEW SECTION

**WAC 495D-121-450 Student conduct code—Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privi-

lege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. 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.

#### NEW SECTION

**WAC 495D-121-460 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—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 495D-121-310 through 495D-121-450. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 495D-121-470 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—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" has the same meaning as the prohibited conduct set forth under this heading in WAC 495D-121-590(18).

#### NEW SECTION

**WAC 495D-121-480 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

**WAC 495D-121-490 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental appeal rights.** (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 495-121-340(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent,

will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

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

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

#### NEW SECTION

**WAC 495D-121-500 Student conduct code—Free movement on campus.** The president or designee is authorized in the instance of any event that he or she deems impedes the movement of persons or vehicles or which he or she deems to disrupt the ingress or egress of persons from the college facilities, to prohibit the entry of, or withdraw the license of, or privileges of a person or persons or any group of persons to enter onto or remain upon any portion of the college facility. The president may act through the vice-president of administrative services or any other person he or she may designate.

#### NEW SECTION

**WAC 495D-121-510 Student conduct code—Right to demand identification.** To determine if probable cause exists to apply any section of this code to any behavior by any person on a college facility, any college employee or other authorized personnel may demand that anyone on college facilities produce identification and/or evidence of student enrollment at the college by any of the following:

- (1) Student identification card;
- (2) Registration schedule;
- (3) Receipt for payment of fees for a current course.

#### NEW SECTION

**WAC 495D-121-520 Student conduct code—Civil disturbances.** In accordance with provisions contained in RCW 28B.10.571 and 28B.10.572:

(1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty, staff member, or student of the college who is in the peaceful discharge or conduct of his/her duties or studies.

(2) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty, staff member, or student of the college who is in the peaceful discharge of his/her duties or studies.

(3) The crimes described in RCW 28B.10.571 and 28B.10.572 shall not apply to any administrator, faculty, or staff member who is engaged in the reasonable exercise of their disciplinary authority.

(4) Any person or persons who violate the provisions of subsections (1) and (2) of this section will be subject to disciplinary action and referred to the authorities for prosecution.

#### NEW SECTION

**WAC 495D-121-530 Student conduct code—Authority to prohibit trespass.** (1) Individuals who are not students or members of the faculty or staff and who violate Lake Washington Institute of Technology's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW.

(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) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice-president of administrative services or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice-president of administrative services or designee will be the final decision of the college and should be issued within five business days.

#### NEW SECTION

**WAC 495D-121-540 Student conduct code—Academic dishonesty and classroom, lab, clinic conduct.** (1) Honest assessment of student performance is of crucial importance to all members of the academic community. The college views acts of dishonesty as serious breaches of honor and will deal with them using the following:

(a) College administration and faculty will provide reasonable and prudent security measures designed to minimize opportunities for acts of academic dishonesty.

(b) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as the student's work product, shall be deemed to have committed an act of academic dishonesty. Acts of academic dishonesty are cause for disciplinary action.

(c) Any student who aids or abets an act of academic dishonesty, as described in (b) of this subsection, is subject to disciplinary action.

(d) Faculty may adjust the student's grade on a particular project, paper, test, or class for academic dishonesty. This section shall not be construed as preventing a faculty from taking immediate disciplinary action when he or she must act upon such breach of academic dishonesty to preserve order and prevent disruptive conduct in the classroom.

(2) Instructors have the authority to take whatever summary actions necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the course objectives.

(a) Any student who, by any act of misconduct, substantially disrupts a class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty's class is subject to disciplinary action.

(b) The faculty of each course, or the managing authority of distance learning courses, can take steps as necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the course objectives, given that a student shall have the right to appeal the disciplinary action to the faculty's supervisor.

#### NEW SECTION

**WAC 495D-121-550 Student conduct code—Hazing prohibited.** (1) The college strictly bans hazing.

(2) **Hazing.** Any method of initiation into a student organization or living group or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person who attends any institution of higher education or post-secondary institution.

**(3) Penalties.**

(a) Any student organization, association, or club that knowingly permits hazing is:

(i) Liable for harm caused to people or property that result from hazing.

(ii) Denied recognition by the college as an official organization, association, or club on campus. If the organization, association, or club is a corporation, for profit or nonprofit, the college may hold individual directors of the corporation individually liable for damages.

(b) A person who takes part in hazing another gives up any entitlement to state-funded grants, scholarships, or awards for a period of one year.

(c) Forfeiture of state-funded grants, scholarships, or awards may include permanent forfeiture, based upon the seriousness of the violations.

(d) The student conduct code may apply to hazing violations.

(e) Hazing violations are also misdemeanors punishable under state criminal law according to RCW 9A.20.021.

**(4) Sanctions for impermissible conduct not amounting to hazing.**

(a) Impermissible conduct associated with initiation into a student organization or club or any pastime or amusement engaged in, with respect to the organization or club, will not be tolerated.

(b) Impermissible conduct, which does not amount to hazing, may include conduct that causes embarrassment,

sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

(c) Impermissible conduct not amounting to hazing is subject to any sanctions available under the student conduct code, depending upon the seriousness of the violation.

#### NEW SECTION

**WAC 495D-121-570 Student conduct code—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 495D-121-580 Student conduct code—Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

**(1) Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

**(2) Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

**WAC 495D-121-590 Student conduct code—Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized 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.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Disruptive activity.** Participation in any activity that obstructs or disrupts:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

(d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to himself or herself, or other students or persons in college facilities on or off campus, or to the education processes of the college.

(6) **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.

(7) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other person or organization; or

(d) Possession of such property or money after it has been stolen.

(8) **Noncompliance.** Failure to comply with:

(a) 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;

(b) A college attendance policy as published in the student handbook or course syllabus; or

(c) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(10) **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.

(11) **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, waterpipes, hookahs, chewing tobacco, and snuff.

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) **Drugs.** Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) **Obstruction.** Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities.

(17) **Discrimination.** Discriminatory action which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental, or physical disability; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(18) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex

including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, or 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.

(19) **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; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(20) **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.

(21) **Misuse of information 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;

(i) Failure to comply with the college's acceptable use policy.

(22) **Breach of campus safety.** 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. Breaching campus safety or security includes, but is not limited to:

(a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access cards; or propping open of exterior doors;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) 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.

(23) **Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

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

(25) **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 495D-121-600 Student conduct code—Disciplinary sanctions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495D-121-340.

(1) **Primary sanctions.**

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **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.

(c) **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.

(d) **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. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission.

(e) **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.

(2) 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 including, but not limited to, drug and alcohol education, anger management coursework, or ongoing treatment. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact orders and other summary relief.** The college may require a student to refrain from any form of contact with another student or college employee. Other forms or relief include, but are not limited to: Switching to alternate sections of individual classes or programs, delaying admission to an instructional program, assigned seating during a class, or behavioral contracts.

(3) **Secondary sanctions.** No order of severity is established for secondary sanctions:

(a) **Community/college service.** A student may be offered an opportunity to complete a specified number of hours of community/college service in lieu of other sanctions. The type of community/college service must be approved by the hearing officer.

(b) **Educational requirements.** A provision to complete a specific educational requirement directly related to the violation committed. The provision will be clearly defined. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, an anger management class, essays, or reports.

(c) **Restrictions.** The withdrawal of specified privileges for a definite period of time, but without the additional stipulations contained in the imposition of conduct probation. The restrictions involved will be clearly defined.

(d) **Loss of parking privileges on campus.** Revocation of parking privileges.

#### NEW SECTION

**WAC 495D-121-610 Student conduct code—Loss of eligibility, student activity participation.** Any student found to have violated chapter 69.50 RCW, the Uniform Controlled Substances Act or chapter 69.41 RCW, legend drugs, by virtue of a criminal conviction or by final decision of the college president or designee shall, in lieu of or in addition to any other disciplinary action which may be imposed, be disqualified from participation in any school-sponsored student events or activities.

#### NEW SECTION

**WAC 495D-121-620 Student conduct code—Refunds and access.** (1) The college's refund policy covers refund of fees for the quarter in which disciplinary action occurs.

(2) The college may deny a student access to all or any part of the campus or other facility if he or she was suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied.

#### NEW SECTION

**WAC 495D-121-630 Student conduct code—Readmission after suspension.** The college will normally readmit any student suspended from the college for academic or disciplinary reasons on a space available basis in the students' program of study, when the suspension ends.

(1) The college may readmit a student after receiving approval of a written petition submitted to the vice-president, or other designated administrator, who imposed such suspension if:

(a) A student who was suspended believes that circumstances merit reconsideration of the suspension before it ends.

(b) The student was suspended with conditions imposed for readmission.

(2) This petition must state reasons that support a reconsideration of the matter. The vice-president's or designee's decision, after reviewing the petition, is final.

#### NEW SECTION

**WAC 495D-121-640 Student conduct code—Reestablishment of academic standing.** Students who were dismissed or suspended consistent with disciplinary procedures set forth in WAC 495D-121-340 and 495D-121-600 and whose dismissal or suspension upon appeal is found unwarranted, will have the opportunity to reestablish their academic and student standing to the extent possible within the college's abilities, including an opportunity to retake exams or otherwise complete course offerings missed because of such action.

#### NEW SECTION

**WAC 495D-121-650 Student conduct code—Campus speakers.** (1) Student organizations officially recognized by the college may invite speakers to the campus to address their own membership and other interested students and faculty if:

(a) Suitable space is available.

(b) It does not interfere with the college's regularly scheduled programs.

Although allowed by the college, having such speakers on the campus does not imply the college's approval or disapproval of them or their viewpoints. For speakers who are candidates for political office, the college will make equal opportunities available to opposing candidates if they desire.

(2) To ensure an atmosphere of open exchange and to not obscure the college's educational objectives, the president or designee, in a case with strong emotional feeling, may set conditions for conducting the meeting, such as requiring:

(a) A designated member of the college community as chair; or

(b) Permission for comments and questions from the floor.

The president or designee may encourage the appearance of one or more additional speakers at any meeting or at following meetings so people can express other points of view. The president may designate representatives to recommend



conditions such as time, manner, and place for conducting particular meetings.

#### NEW SECTION

**WAC 495D-121-660 Student conduct code—Distribution of information.** (1) Students and members of recognized student organizations or college employees, may sell or distribute handbills, leaflets, newspapers, and similar materials free of charge on or in college facilities at locations specifically designated by the appropriate administrator, as long as the distribution or sale:

- (a) Does not interfere with people's ingress or egress;
- (b) Does not impede the free flow of vehicular or pedestrian traffic;
- (c) Is not obscene; or
- (d) Does not incite imminent violence.

(2) All nonstudents must contact the director of student programs or designee and get directions on where, when, and the manner of distribution before distributing any handbill, leaflet, newspaper, or related matter. This ensures that such distribution or sale does not interfere with the free flow of vehicular or pedestrian traffic.

(3) Anyone who violates provisions of subsections (1) and (2) of this section is subject to disciplinary action. Anyone who violates provisions of subsection (2) of this section is subject to removal from the college campus.

#### NEW SECTION

**WAC 495D-121-670 Student conduct code—Commercial activities.** (1) No one can use college facilities for commercial solicitation, advertising, or promotional activities except when these activities:

(a) Clearly serve educational objectives including, but not limited to, display of books of interest to the academic community or the display or demonstration of technical or research equipment.

(b) Are conducted under the sponsorship or at the request of the college or official college organizations if the solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic.

(2) Students cannot use college facilities, equipment, and supplies for personal commercial gain.

(3) For the purpose of this regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in WAC 495D-121-660.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495D-121-010 Student conduct code—Statement of purpose.

WAC 495D-121-020 Student conduct code—Definitions.

WAC 495D-121-030 Student conduct code—Jurisdiction.

WAC 495D-121-040 Student conduct code—Initiation of discipline.

WAC 495D-121-050 Student conduct code—Free movement on campus.

WAC 495D-121-060 Student conduct code—Right to demand identification.

WAC 495D-121-070 Student conduct code—Civil disturbances.

WAC 495D-121-080 Student conduct code—Authority to prohibit trespass.

WAC 495D-121-090 Student conduct code—Notice of summary suspension.

WAC 495D-121-100 Student conduct code—Initiation of summary suspension proceedings.

WAC 495D-121-110 Student conduct code—Summary suspension hearing procedures.

WAC 495D-121-120 Student conduct code—Summary suspension proceedings not duplicious.

WAC 495D-121-130 Student conduct code—Decision by vice-president of student services.

WAC 495D-121-140 Student conduct code—Academic dishonesty/and classroom/lab/clinic conduct.

WAC 495D-121-150 Student conduct code—Hazing prohibited.

WAC 495D-121-160 Student conduct code—Student misconduct.

WAC 495D-121-170 Student conduct code—Student conduct sanctions.

WAC 495D-121-180 Student conduct code—Loss of eligibility—Student activity participation.

WAC 495D-121-190 Student conduct code—Appeal of academic action or disciplinary action and student grievances.

WAC 495D-121-200 Student conduct code—Refunds and access.

WAC 495D-121-210 Student conduct code—Readmission after dismissal or suspension.

WAC 495D-121-220 Student conduct code—Reestablishment of academic standing.

WAC 495D-121-230 Student conduct code—Reporting, recording and maintaining records.

WAC 495D-121-240 Student conduct code—Campus speakers.

WAC 495D-121-250 Student conduct code—Distribution of information.

WAC 495D-121-260 Student conduct code—Commercial activities.

AMENDATORY SECTION (Amending WSR 11-19-083, filed 9/20/11, effective 10/21/11)

**WAC 495D-131-010 Scholarships.** The financial aid office keeps detailed information ~~((concerning))~~ about the criteria, eligibility, procedures for application, and other information ~~((regarding))~~ on scholarships ~~((at))~~ offered by Lake Washington Institute of Technology ~~((is located in the financial aid office on the Lake Washington Institute of Technology campus))~~ or administered by the financial aid office. Detailed information concerning the Lake Washington Foundation Scholarships is located in the foundation office at the college.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

**WAC 495D-132-010 Financial aid.** ~~((The college shall))~~ Lake Washington Institute of Technology will offer a comprehensive financial program for students ~~((using))~~ who use college, state, and federal financial aid resources ~~((as well as from))~~ and/or appropriate foundation resources. The financial aid office will:

- (1) Provide financial aid information in college publications ~~((assist))~~.
- (2) Help students ~~((in obtaining))~~ to get financial aid information ~~((s))~~.
- (3) Determine student eligibility for financial aid ~~((and))~~.
- (4) Manage the college's financial aid programs.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

**WAC 495D-140-060 Trespass.** ~~((1) Individuals who are not students or members of the faculty or staff and who violate ~~((these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by any appropriate administrator, 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))~~ Lake Washington Institute of Technology's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provision of chapter 9A.52 RCW.~~

~~((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 ~~((accordance))~~ accord with ~~((these rules))~~ established college policies.~~

~~((3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a~~

~~stated period of time, that person may file a request for review of the decision with the vice-president of administrative services or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice-president of administrative services will be the final decision of the college and should be issued within five business days.~~

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

**WAC 495D-140-070 Prohibited conduct at college facilities.** ~~((1) The use or possession of unlawful drugs or narcotics, not medically prescribed, or of intoxicants, except as specifically permitted by board of trustees policy as determined by the president or executive vice-president on college property or at college functions, is prohibited. Students under the influence of intoxicants, unlawful drugs, or narcotics while on college property are subject to disciplinary action.~~

~~((2) The use of tobacco, whether smoked, chewed, or otherwise used, is prohibited in accordance with state laws and health regulations. Smoking is permitted only where specifically designated by official signs posted on campus.~~

~~((3) Destruction of public property is also prohibited.))~~

(1) **Drugs.** Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that person by a licensed health care professional. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(2) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(3) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(4) **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, waterpipes, hookahs, chewing tobacco, and snuff.

(5) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing

bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A person with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(6) Property violation. Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other person or organization; or

(d) Possession of such property or money after it has been stolen.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 495D-280-010 Family Educational Rights and Privacy Act—General policy.
- WAC 495D-280-015 Family Educational Rights and Privacy Act—Definitions.
- WAC 495D-280-020 Family Educational Rights and Privacy Act—Annual notification of rights.
- WAC 495D-280-030 Family Educational Rights and Privacy Act—Procedure to inspect education records.
- WAC 495D-280-040 Family Educational Rights and Privacy Act—Disclosure of education records.
- WAC 495D-280-050 Family Educational Rights and Privacy Act—Limits on rights to review and inspect and obtain copies of education records.
- WAC 495D-280-060 Family Educational Rights and Privacy Act—Record of request and disclosures.
- WAC 495D-280-080 Family Educational Rights and Privacy Act—Requests for corrections, hearings, adding statements to education records.
- WAC 495D-280-090 Family Educational Rights and Privacy Act—Fees for copies.

WAC 495D-280-100 Family Educational Rights and Privacy Act—Waiver.

WAC 495D-280-110 Family Educational Rights and Privacy Act—Type and location of education records.

WAC 495D-280-120 Family Educational Rights and Privacy Act—Remedy for students protected by this act.

**WSR 14-10-068**  
**PROPOSED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed May 6, 2014, 10:10 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: Housekeeping changes to WAC 136-12-020, 136-16-035, 136-20-020, 136-20-030, 136-20-040, 136-20-050, 136-20-060, 136-60-050, 136-60-060, 136-70-010, 136-70-030, 136-70-040, 136-70-080, 136-70-090, 136-210-020, 136-210-030, 136-210-040, 136-210-050, 136-300-020, 136-300-040, 136-300-050, 136-300-060, 136-300-070, 136-300-090, 136-16-030, and 136-50-055.

Hearing Location(s): County Road Administration Board, 2404 Chandler Court S.W., Suite 280, Olympia, WA 98504-0913, on July 31, 2014, at 2:00 p.m.

Date of Intended Adoption: July 31, 2014.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, e-mail karen@crab.wa.gov, fax (360) 350-6094, by July 25, 2014.

Assistance for Persons with Disabilities: Contact Karen Pendleton by July 25, 2014, TTY (800) 833-6384 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Housekeeping changes to WAC 136-12-020, 136-16-035, 136-20-020, 136-20-030, 136-20-040, 136-20-050, 136-20-060, 136-60-050, 136-60-060, 136-70-010, 136-70-030, 136-70-040, 136-70-080, 136-70-090, 136-210-020, 136-210-030, 136-210-040, 136-210-050, 136-300-020, 136-300-040, 136-300-050, 136-300-060, 136-300-070, 136-300-090, 136-16-030, and 136-50-055.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: [County road administration board], governmental.

Name of Agency Personnel Responsible for Drafting: Derek Pohle, 2404 Chandler Court S.W., (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., (360) 753-5989.

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. Not applicable.

May 6, 2014  
Jay P. Weber  
Executive Director

AMENDATORY SECTION (Amending WSR 02-18-018, filed 8/22/02, effective 9/22/02)

**WAC 136-12-020 Procedure during vacancy.** It is unavoidable that vacancies will occur from time to time in the position of county engineer. When a vacancy occurs in the office of county engineer due to resignation, retirement, death or for any other reason, the county legislative authority shall take immediate steps to find a replacement, either by promotion from within the organization if a competent and eligible person is available, or by advertisement for, and interview of, qualified applicants. The county legislative authority or county executive shall, in writing, by electronic e-mail or official letter, within five working days, notify the county road administration board of the vacancy, and of the procedure to be followed during the period of vacancy. The notice to the county road administration board shall state that the legislative authority or county executive has reviewed the requirements within this chapter.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-16-030 Requirements of listing equipment.** In accordance with RCW 36.81.130. The annual program shall also include a list of all major road equipment purchases and repairs contemplated for the year, together with the estimated costs thereof. The total estimated cost of all equipment listed shall be approximately equal to the amount budgeted for equipment purchase in the annual equipment rental and revolving fund budget. The equipment list may include an item for miscellaneous minor equipment in any amount up to ten percent of the estimated total cost. The list may also include a list of alternate or additional items of equipment totaling up to fifteen percent of the basic list cost to allow for unforeseen conditions.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-16-035 Requirements of listing maintenance ~~((and special maintenance))~~.** In accordance with RCW 36.81.130, the annual program shall also include the amounts to be expended for maintenance ~~((and special maintenance))~~ but details of ~~((these))~~ the proposed expenditures shall not be made. This requirement shall be deemed satisfied by submission of a maintenance management work plan and budget per WAC 136-11-040.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-20-020 Inventory.** Each county engineer shall have available in his or her office a complete inventory

of all National Bridge Inventory (NBI) bridges on the county road system. The inventory shall list the location of each bridge by the state road log number and appropriate ~~((mile-point))~~ milepost, and shall include such other information as the engineer deems necessary. In addition, all data required for the ~~((state of))~~ Washington state bridge inventory ~~((of bridges and structures (SWIBS)))~~ system (WSBIS) data base system as maintained by the Washington state department of transportation (WSDOT) shall be submitted to the WSDOT ~~((TransAid Service Center))~~ highways and local programs bridge engineer on appropriate media furnished or otherwise approved by the WSDOT. It is highly recommended that each county engineer maintain a similar inventory of the short span bridges, drainage structures, and large culverts on the county road system.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-20-030 Inspection.** Each county engineer shall be responsible for all routine and special inspections of all NBI bridges on the county road system in accordance with the National Bridge Inspection Standards (NBIS) as promulgated and periodically revised by the WSDOT ~~((TransAid Service Center))~~ highways and local programs office. The county engineer shall note the date of all inspections and any changes since the previous inspection on the ~~((SWIBS))~~ bridge inspection report and the WSBIS form and submit all such forms to the WSDOT ~~((TransAid Service Center))~~ highways and local programs bridge engineer within ninety days of each inspection. It is highly recommended that each county engineer perform routine inspections of the short span bridges, drainage structures, and large culverts on the county road system.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-20-040 Certification.** Prior to April 1st of each calendar year, the WSDOT ~~((assistant secretary for the TransAid Service Center))~~ director of highways and local programs will provide the following to the county road administration board:

- (1) A listing on a county-by-county basis of all county NBI bridges which have not had a regular ~~((SWIBS))~~ WSBIS and bridge inspection report submitted within the previous thirty months; and
- (2) A listing on a county-by-county basis of all county NBI bridges which have not had a required special inspection report submitted within six months after the required inspection date; and
- (3) A listing of all counties which are not in compliance with the requirements of the National Bridge Inspection Standards and the status of efforts toward achieving such compliance.

Any county which is not in compliance with the NBIS or has a bridge or bridges on any of the above listings shall be assumed to be not in compliance with bridge inspection procedures.

AMENDATORY SECTION (Amending WSR 96-17-013, filed 8/12/96, effective 9/12/96)

**WAC 136-20-050 Failure to comply.** Failure of a county to be shown in compliance with required NBIS bridge inspection procedures may be cause for the county road administration board to withhold a certificate of good practice on behalf of that county in accordance with the procedures of chapter 136-04 WAC.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-20-060 Engineer's report.** Each county engineer shall furnish the county legislative authority with a written (~~(resume)~~) report of the findings of the bridge inspection effort. This (~~(resume)~~) report shall be made available to said authority and shall be consulted during the preparation of the proposed six-year transportation program revision. The (~~(resume)~~) report shall include the county engineer's recommendations as to replacement, repair or load restriction for each deficient bridge. The resolution of adoption of the six-year transportation program shall include assurances to the effect that the county engineer's report with respect to deficient bridges was available to said authority during the preparation of the program. It is highly recommended that deficient short span bridges, drainage structures, and large culverts be included in said report.

AMENDATORY SECTION (Amending WSR 02-18-020, filed 8/22/02, effective 9/22/02)

**WAC 136-50-055 Policy regarding accommodation of utilities on county road rights of way.** The county legislative authority shall adopt a written policy in conformance with chapter 136-40 WAC outlining the county's administrative, procedural, and technical requirements regarding the installation, replacement, adjustment, relocation, and maintenance of all utilities in, on, or above the county road right of way.

AMENDATORY SECTION (Amending WSR 03-05-009, filed 2/7/03, effective 3/10/03)

**WAC 136-60-050 Validation requirements for control fields.** Each update of a road log segment that involves a change in a control field (including additions or deletions of road segments) will be validated by the county road administration board. Documentation necessary to support control field changes is as follows:

**Function class** - Notice of FHWA approval from WSDOT.

**Pavement type** - Statement signed by county engineer with list of pavement type changes.

**Responsible agency** - The responsible agency is the legislative authority of the appropriate governmental agency with the authority to make the decision required for the action, or the state or federal government person authorized to approve changes.

**Addition of mileage** - Official document signed by responsible agency authorizing and describing the circum-

stances of the addition. For example, additions can occur through county legislative approval of new plat, construction/reconstruction on new alignment, or a change in jurisdiction.

**Deletion of mileage** - Official document signed by responsible agency authorizing and describing the circumstances of the deletion. For example, deletions can occur through legislative approval of vacations or a change in jurisdiction.

**Traffic volume** - Statement signed by county engineer with list of segments affected by change in traffic volume.

All changes to a control field will be located on appropriate map(s) with sufficient detail to identify the location of each change. All map(s) furnished in support of control field changes will be forwarded by the county road administration board to WSDOT for future (~~(map base updates)~~) reference and use.

AMENDATORY SECTION (Amending WSR 03-05-009, filed 2/7/03, effective 3/10/03)

**WAC 136-60-060 (~~(Utilization)~~) Use of common computer data base.** Each county shall (~~(utilize)~~) use the computer data base application software for the maintenance and updating of its county road log (~~(. This data base application software shall be)~~) prescribed by the county road administration board (~~(and)~~). Each county shall be responsible for the purchase and installation of the requisite software on its own Windows compatible computer. To assist each county to meet its eligibility requirements, the county road administration board shall provide technical support and training.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-70-010 Purpose and authority.** RCW (~~(46.68.095)~~) 46.68.090 authorizes the county road administration board to adopt rules for administering the county arterial preservation account, including the requirement that each county implement a pavement management system. This chapter outlines the method by which the use of a pavement management system will be assured.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-70-030 Application.** A pavement management system shall be used by all counties to guide the pavement preservation and rehabilitation activities on all county paved collector and arterial roads. Beginning January 1, 1996, each county shall utilize a computer-based PMS meeting the requirements of WAC 136-70-040 on all county paved collector and arterial roads in order to retain eligibility for CAPP funds. Application of the PMS to the local access system will not be required to retain eligibility for CAPP funds.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-70-040 Pavement management system requirements.** Each county's PMS shall meet the following minimum standards:

(1) All county jurisdiction paved collectors and arterials, as defined by the most recently approved county road log as described in chapter 136-60 WAC, shall be surveyed for visual pavement distress at least biennially. Distress rating information must be keyed to the county road log by both road number and mileposts.

(2) All visual distresses (or defects) for both flexible and rigid pavements, both in severity and extent, shall be as defined within the "*Pavement Surface Condition Rating Manual*" (March 1992, produced by the Washington state transportation center in cooperation with the northwest pavement management systems users group and the Washington state department of transportation). Only those distresses noted as "core program defect" are required to be surveyed. Measurement may be at the project, segment, or sample unit level. Measurement for each distress will be by one of the following:

(a) Selection of the most predominant severity and extent combination; or

(b) Determination of the extent percent of each level of severity.

Measurement may be by a manual or automated visual condition rating process. The distress information will be converted to a pavement condition rating in accordance with a standard deduct matrix or continuous deduct value curves as provided by the county road administration board. Alternate deduct matrices may be used by a county for internal management analyses. Alternate distress determination and evaluation methodologies may be used if approved by the county road administration board in accordance with WAC 136-70-050. The PMS shall provide for the recording and storage of pavement resurfacing, rehabilitation and reconstruction history data, including surfacing and base layer types and thicknesses, and year of application. Counties will not be required to determine such information for any work done prior to the county's implementation date.

(3) The PMS shall include a future pavement condition prediction model that uses the periodic pavement condition distress data to forecast future pavement condition and to determine an estimate of service life.

(4) The PMS shall provide for annual downloading to the county road administration board of one of the following for all paved collectors and arterials surveyed for pavement condition in the previous twelve months:

(a) The individual pavement distresses;

(b) The resultant pavement condition rating based on the standard deduct matrix provided by the county road administration board; or

(c) The resultant pavement condition rating for an approved alternative PMS as described in WAC 136-70-050.

Such downloading shall be called the pavement condition data file. It shall be keyed to the county road log, and shall be transmitted in the electronic medium and format specified by the county road administration board, along with the annual road log update required by chapter 136-60 WAC.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-70-080 County road administration board assistance.** To ~~((enable))~~ assist each county to meet its eligibility requirements, the county road administration board shall provide ~~((#))~~ PMS software, application and training ~~((as part of its agency supported county road information system. The county road administration board shall also provide to counties, upon request, administrative and technical assistance related to defining, developing, operating, managing and utilizing pavement management technology)).~~

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-70-090 Use of pavement management system data for distribution of county arterial preservation account funds.** The results and/or data from the individual or collective county pavement management systems will not be used to distribute CAPA funds nor to establish priorities for specific projects or otherwise alter the statutory fund distribution. Said results and/or data will be used to evaluate regional or statewide collector and arterial preservation and rehabilitation needs and to demonstrate compliance with the enabling legislation.

AMENDATORY SECTION (Amending WSR 01-17-104, filed 8/21/01, effective 9/21/01)

**WAC 136-210-020 Applicable design standards.** Geometric design of all RAP projects including all bridges shall, unless otherwise approved by the CRABoard, be in accordance with the city and county design standards for the construction of urban and rural arterials and collectors as currently adopted ~~((November 30, 1994, or as they may be revised from time to time thereafter in accordance with RCW 35.78.030 and 43.32.020)).~~

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-210-030 Deviations from design standards.** Deviation from the specified design standards may be requested by the county engineer in responsible charge of the project when circumstances exist which would make application of adopted standards exceedingly difficult. Whenever a deviation request is to be made on a project, it shall be so noted on the project application submitted in accordance with WAC 136-161-050. Request for deviation shall be made to the WSDOT ~~((assistant secretary for))~~ director of highways and local programs.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-210-040 Report of ~~((assistant secretary for))~~ director of highways and local programs.** Whenever the CRABoard meets to approve RAP projects the ~~((assistant secretary for))~~ director of highways and local programs shall provide a written report on his or her action in response to

deviation requests, if any, made on individual projects. Failure of the ~~((assistant secretary for))~~ director of highways and local programs to report in response to a deviation request within thirty days of receipt of such request shall be considered as approval.

**AMENDATORY SECTION** (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-210-050 Project approval with deviation.**

After having received the report of the ~~((assistant secretary for))~~ director of highways and local programs in response to deviation requests, the CRABoard shall proceed with RAP project approval in accordance with WAC 136-161-050. Proposed projects for which the deviation request has been denied shall not be approved.

**AMENDATORY SECTION** (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-300-020 Adoption of rules.** The county road administration board shall adopt rules in accordance with the provisions of the statute for purposes of administering the CAPP regarding the following:

- (1) Distribution of ~~((C))~~CAPA~~((S))~~ funds.
- (2) Pavement management systems.
- (3) Preparation of annual county arterial preservation programs.
- (4) Allowable activities for CAPA funding.
- (5) Accounting and audit provisions.
- (6) Annual CAPP accomplishments report.

**AMENDATORY SECTION** (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

**WAC 136-300-040 Staff services and facilities.** The county road administration board shall arrange for all necessary staff services and facilities necessary for the efficient administration of the county arterial preservation program. The costs of such services and facilities as well as all other lawful expenses of the county road administration board that are attributable to CAPP shall be paid from funds in the county arterial preservation account (CAPA) in the motor vehicle fund.

**AMENDATORY SECTION** (Amending WSR 06-11-067, filed 5/12/06, effective 6/12/06)

**WAC 136-300-050 Distribution of CAPA funds.** (1)

Certification of county arterial mileage.

(a) Classification. The statute specifies that expenditure of CAPA funds is restricted to paved arterials in the unincorporated area of each county. Arterials are defined as being those county roads:

- (i) In urban areas, classified within the federal functional classification system as arterials or collectors;
- (ii) In rural areas, classified within the federal functional classification system as arterials, major collectors, or minor collectors.

(b) Paved roads are defined as those roads which, at the time of CAPA allocation determination, are hard-surfaced

through the application of a bituminous surface treatment (BST), asphaltic concrete pavement (ACP), or portland cement concrete (PCC). Brick or block surfaces shall also be considered as paved.

(c) Source of information. The master county road log as maintained by the county road administration board in accordance with chapter 136-60 WAC shall be the source of official paved road mileage to be used for CAPA distribution.

(2) Establishment of allocation percentages. At its first regular meeting after July 1 of each year, the county road administration board shall establish the next calendar year's allocation percentages for the individual counties based on information contained in the most recently certified master county road log. Each county's allocation percentage shall be computed by the county road administration board as its percentage of paved arterial lane miles of the total statewide paved county arterial lane miles.

(3) Notice to counties. Upon their establishment, the county road administration board shall notify the county legislative authority and the county engineer of each county of the respective county's CAPA allocation percentage and the latest estimate of the amount of CAPA funds to be allocated during the next calendar year.

(4) Distribution to counties. Distribution of allocated CAPA funds shall be done monthly by the state treasurer. The state treasurer shall use the allocation percentages provided by the county road administration board as computed under the provisions of subsection (2) of this section.

(5) Eligibility. All arterial preservation work and related activities, and maintenance management done by each county shall be eligible for CAPA funding provided that:

(a) The county is determined to be in compliance with the pavement management system requirements as set forth in chapter 136-70 WAC; and

(b) The county engineer submits the annual ~~((CAPA))~~ county arterial preservation program (CAPP) to CRAB as required in WAC 136-300-060; and

(c) The work is in conformance with the allowable activities as specified in WAC 136-300-070.

**AMENDATORY SECTION** (Amending WSR 06-11-067, filed 5/12/06, effective 6/12/06)

**WAC 136-300-060 Annual county arterial preservation programs.** Each county engineer shall, in conjunction with the county's annual road construction program as required by RCW 36.81.130 and chapter 136-16 WAC, prepare an annual county arterial preservation program. Appropriate forms will be provided by the county road administration board.

The county's annual arterial preservation program shall consist of a list of all proposed county arterial preservation projects and activities as well as total planned expenditure of CAPA and non-CAPA funds for maintenance management and pavement management for the ensuing year. In order to evaluate the relative ability of CAPA funds to meet the county's total arterial pavement preservation needs, the annual county arterial preservation program shall identify those projects for which CAPA funding is available.

The county engineer shall submit the proposed county arterial preservation program to the county road administration board along with the county's annual road program and budget in accordance with chapter 136-16 WAC.

**AMENDATORY SECTION** (Amending WSR 06-11-067, filed 5/12/06, effective 6/12/06)

**WAC 136-300-070 Allowable activities within CAPP.**

For all CAPA-funded projects that involve structural resurfacing, the existing road must meet the following minimum width standards:

Shouldered roadway sections:

Current ADT	Lane width	Shoulder width
0 to 100	9 feet	2 feet
101 to 400	10 feet	2 feet
401 to 4000	10 feet	2 feet
Over 4000	11 feet	4 feet

Curbed roadway sections (minimum lane width):

Current ADT	Two-way undivided	One-way & two-way divided
All	10 feet	9 feet

All roadways built to less than the above standards for which a county proposes to perform structural resurfacing must be widened with other than CAPA funds.

Use of county arterial preservation account funds shall be limited to the following three groups of activities:

(1) Implementation of computerized systems to include:

(a) Acquisition of computer hardware and software that may be necessary to operate a computer-based pavement management and maintenance management systems.

(b) Pavement management system training not otherwise provided by the county road administration board. This can include software usage, pavement condition surveying, and other specialized training directly related to the operation and maintenance of a computer-based pavement management system.

(c) Payment for related services such as data entry, pavement condition surveys, and rental of specialized PMS-related equipment such as road raters.

Acquisition of equipment other than computer hardware as described in (a) of this subsection is not eligible.

(2) Direct and attributable indirect costs associated with paved surface preservation and rehabilitation activities on existing roadways, and maintenance management activities related to all county arterials, including the following:

(a) Nonstructural resurfacing projects. These include thin asphalt concrete overlays (one-inch or less); bituminous seal coats (single and double); slurry seals, sand seals, and fog seals; associated tack coats, paving fabrics, and preleveling; and associated surface grinding and planing.

(b) Structural resurfacing projects. These include thick asphalt concrete overlays (greater than one inch); portland cement concrete overlays; associated tack coats, paving fabrics,

rics, and preleveling; associated surface grinding and planing; and hot/cold bituminous road mixes.

(c) Associated activities. These include crack sealing (bituminous and portland cement pavements); full-depth, structural patching done in preparation for structural or non-structural overlays or seals; portland cement pavement joint reconstruction, undersealing, panel jacking and panel replacement; and other related activities as are directly attributable to nonstructural and structural resurfacing projects.

(d) Maintenance management activities. These include creating maintenance management reports and training in maintenance management per the requirements listed in chapter 136-11 WAC.

(3) Resurfacing work associated with the reconstruction and/or widening of existing paved arterials. This participation is limited as follows:

(a) The present roadway is a paved county arterial as defined by WAC 136-300-050;

(b) The county's approved pavement management system has identified the existing pavement as requiring resurfacing within two years of the expected reconstruction/widening project completion date;

(c) The reconstruction/widening project will bring the roadway to at least the lane and shoulder width standards and non-CAPA funding requirements of this section;

(d) The CAPA participation will be limited to the resurfacing portion of the project as described in this section.

**AMENDATORY SECTION** (Amending WSR 06-11-067, filed 5/12/06, effective 6/12/06)

**WAC 136-300-090 Submittal of annual report.** The county road administration board shall prepare and distribute to all counties standard reporting forms for use by the county engineer to annually summarize the pavement preservation and maintenance management activities, both CAPA and non-CAPA funded, in his or her county. For all CAPA-funded work, the report will require a specific listing of roads improved including a definition of scope of work and the amount of CAPA funds expended, as well as a listing of the county's share of CAPA funds used for maintenance management and pavement management.

At any time prior to April 1st of the year following, the county engineer shall, in conjunction with the annual construction report required by WAC 136-16-050 submit an annual summary of pavement preservation activities on the entire paved collector and arterial road system. This report shall be on the approved forms or in an equivalent format.

**WSR 14-10-071**  
**WITHDRAWL OF PROPOSED RULES**  
**WENATCHEE VALLEY COLLEGE**  
 (By the Code Reviser's Office)  
 [Filed May 6, 2014, 12:20 p.m.]

WAC 132W-115-110 and 132W-115-130, proposed by the Wenatchee Valley College in WSR 13-21-086, appearing in issue 13-21 of the Washington State Register, which was distributed on November 6, 2013, is withdrawn by the office of



the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 14-10-072**  
**PROPOSED RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed May 6, 2014, 12:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-058.

Title of Rule and Other Identifying Information: WAC 390-28-100 Reporting modifications—Possible qualifications—Statement of financial affairs, the rule describes specific circumstances under which the public disclosure commission (PDC) may justify a reporting modification, when in the public interest, requested by an individual subject to the personal financial disclosure requirements of RCW 42.17-700 [42.17A.700] through 42.17A.710.

Hearing Location(s): PDC, Evergreen Plaza Building, Room 206, 711 Capitol Way, Olympia, WA, on June 26, 2014, at 9:30 a.m.

Date of Intended Adoption: June 26, 2014.

Submit Written Comments to: Lori Anderson, P.O. Box 40908, Olympia, WA 98504-0908 (mail), 711 Capitol Way, Room 206, Olympia, WA (physical), e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by June 17, 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: The PDC is charged with ensuring that certain candidates and elected officials disclose personal financial information at regular intervals. The PDC may modify or suspend the disclosure requirement if it finds that "literal application" of the chapter "works a manifestly unreasonable hardship" and that the suspension or modification of the reporting requirement will not frustrate the purposes of chapter 42.17A RCW. In 2002, the PDC adopted interpretive statements that established protocols to be followed for common requests it received, namely:

- Motor vehicle dealers who seek exemption from disclosing business or governmental customers (Interpretation 02-05),
- Attorneys who seek exemption from disclosing business or governmental customers who are clients of the applicant or the applicant's law firm (Interpretation 02-03),
- Candidates or elected officials who seek exemption from disclosing business or governmental customers of a spouse/registered domestic partner (Interpretation 02-06), and
- Judges and judicial candidates who seek exemption from disclosing a home address and/or exemption from disclosing business or governmental custom-

ers who are clients of a judge's former law firm (Interpretation 02-04).

The proposed amendment inserts PDC Interpretations 02-03 through 02-06 in WAC 390-28-100. No substantive changes are proposed to the language lifted from the interpretive statements.

Reasons Supporting Proposal: Converting long-standing interpretive statements to rule is encouraged by the Administrative Procedure Act. Converting these long-standing interpretations to rule will assist the PDC in rendering consistent decisions for similar requests for personal financial affairs reporting modifications and better advise the public of the PDC's opinions, approaches, and likely courses of action.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.120.

Statute Being Implemented: RCW 42.17A.120.

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: Andrea Doyle, 711 Capitol Way, Room 206, Olympia, WA, (360) 664-2735.

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.

May 6, 2014  
Lori Anderson  
Communications and  
Training Office

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

**WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs.** (1) One or more of the following may be considered by the commission as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** (~~A candidate or official~~) An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1)(b) if:

(i) The financial institution or other entity in which the ~~((candidate or official))~~ applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by ~~((such candidate or official))~~ the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the ~~((candidate or official))~~ applicant; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** ~~((A candidate or official))~~ An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1)(f) and (g), if:

(i) Public disclosure would violate any legally recognized confidential relationship;

(ii) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the ~~((candidate or official))~~ applicant in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the ~~((candidate or official))~~ applicant including but not limited to adversely affecting the competitive position of an entity in which the ~~((filer))~~ applicant had an interest of ten percent or more as described in RCW 42.17A.120; and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** ~~((A candidate or official))~~ An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family ~~((of a candidate or official))~~, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest ~~((does))~~ is not ~~((constitute))~~ a present or prospective source of income to ~~((such candidate or official))~~ the applicant or to any other person who is dependent upon ~~((such candidate or official))~~ the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1)(h) through (k):

(i) Under WAC 390-24-200, the filer shall list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description shall be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may

consider a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety ~~((situation))~~ concern.

A prospective modification to allow nondisclosure of a residential address may be granted when the applicant or an immediate family member has received a threat, been issued a no contact order or presents a similar personal safety concern.

(e) **Other.** ~~((A candidate or official))~~ An applicant may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of ~~((members of professions often seeking modifications, and examples of other frequent situations that may result in modification requests, are described in commission interpretive statements.))~~ other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, web site, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, when the applicant certifies he or she is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a

modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW 42.17A.710 (1)(g) and WAC 390-24-020 by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.**

When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner and of the entity of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

**WSR 14-10-079**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed May 6, 2014, 4:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: **Phase 5 medicaid expansion WACs**, the following sections are being amended: WAC 182-508-0005 Eligibility for MCS, 182-508-0150 Enrollment cap for MCS, 182-509-0300 Modified adjusted gross income (MAGI), 182-523-0100 Medical extensions—Eligibility, 182-523-0130 Medical extensions—Redeterminations, 182-534-0100 EPSDT, 182-546-5550 Nonemergency transportation—Exclusions and limitations, 182-550-1200 Restrictions on hospital coverage, 182-550-1700 Authorization and utilization review of inpatient and outpatient hospital services, 182-550-2521 Client eligibility requirements for acute PM&R services, 182-550-2650 Base community psychiatric hospitalization payment method for medicaid and SCHIP clients and nonmedicaid and non-SCHIP clients, and 182-550-6700 Hospital services provided out-of-state.

The following sections are being repealed: WAC 182-503-0532 Citizenship requirements for MCS and ADATSA programs, 182-503-0555 Age requirement for MCS and ADATSA, 182-503-0560 Impact of fleeing felon status on eligibility for MCS, 182-504-0030 Medical certification periods for recipients of MCS, 182-504-0040 Requirements for a midcertification review for MCS, 182-504-0100 Changes of circumstances—Changes that must be reported by an MCS recipient, 182-506-0020 Assistance units for MCS, 182-508-0010 Incapacity requirements for MCS, 182-508-0015 Determining if an individual is incapacitated, 182-508-0020 Acceptable medical evidence, 182-508-0030 Required medical evidence, 182-508-0035 How severity ratings of impairment are assigned, 182-508-0040 PEP Step I—Review of medical evidence required for eligibility determination, 182-508-0050 PEP Step II—Determining the severity of mental impairments, 182-508-0060 PEP Step III—Determining the severity of physical impairments, 182-508-0070 PEP Step IV—Determining the severity of multiple impairments, 182-508-0080 PEP Step V—Determining level of function of mentally impaired individuals in a work environment, 182-508-0090 PEP Step VI—Determining level of function of physically impaired individuals in a work environment, 182-508-0100 PEP Step VII—Evaluating a client's capacity to perform relevant past work, 182-508-0110 PEP Step VIII—Evaluating a client's capacity to perform other work, 182-508-0120 Deciding how long a client is incapacitated, 182-508-0130 Medical care services—Limited coverage, 182-508-0160 Enrollment cap for medical care services (MCS), 182-508-0220 How alcohol or drug dependence affects an individual's eligibility for MCS, 182-508-0230 Eligibility standards for MCS; aged, blind or disabled (ABD); and ADATSA, 182-508-0300 What is the purpose of this chapter?, 182-508-0305 Detoxification—Covered services, 182-508-0310 ADATSA—Purpose, 182-508-0315 ADATSA—Covered services, 182-508-0320 ADATSA—Eligible indi-

viduals, 182-508-0325 When am I eligible for ADATSA treatment services?, 182-508-0330 What clinical incapacity must I meet to be eligible for ADATSA treatment?, 182-508-0335 Will I still be eligible for ADATSA outpatient services if I abstain from using alcohol or drugs, become employed, or have a relapse?, 182-508-0340 What is the role of the certified chemical dependency service provider in determining ADATSA eligibility?, 182-508-0345 What are the responsibilities of the certified chemical dependency service provider in determining eligibility?, 182-508-0350 What happens after I am found eligible for ADATSA services?, 182-508-0355 What criteria does the certified chemical dependency service provider use to plan my treatment?, 182-508-0360 Do I have to contribute to the cost of residential treatment?, 182-508-0365 What happens when I withdraw or am discharged from treatment?, 182-508-0370 What are the groups that receive priority for ADATSA services?, 182-508-0375 ADATSA—Eligibility for state-funded MCS, 182-509-0005 MCS income—Ownership and availability, 182-509-0015 MCS income—Excluded income types, 182-509-0025 MCS income—Unearned income, 182-509-0030 MCS income—Earned income, 182-509-0035 MCS income—Educational benefits, 182-509-0045 MCS income—Employment and training programs, 182-509-0055 MCS income—Needs-based assistance from other agencies or organizations, 182-509-0065 MCS income—Gifts—Cash and noncash, 182-509-0080 MCS income—Self-employment income, 182-509-0085 MCS income—Self-employment income—Calculation of countable income, 182-509-0095 MCS income—Allocating income—General, 182-509-0100 MCS income—Allocating income—Definitions, 182-509-0110 MCS income—Allocating income to legal dependents, 182-509-0135 MCS income—Allocating income of an ineligible spouse to an MCS client, 182-509-0155 MCS income—Exemption from sponsor deeming for MCS, 182-509-0165 MCS income—Income calculation, 182-509-0175 MCS income—Earned income work incentive deduction, 182-509-0200 MCS resources—How resources affect eligibility for MCS, 182-509-0205 MCS resources—How resources count toward the resource limits for MCS, 182-509-0210 MCS resources—How vehicles count toward the resource limits for MCS, 182-509-0225 Excluded resources for family medical programs, 182-523-0110 Medical extensions—Reporting requirements, 182-523-0120 Medical extensions—Premiums, and 182-550-5125 Payment method—Psychiatric indigent inpatient disproportionate share hospital (PIIDSH).

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://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf>, or directions can be obtained by calling (360) 725-1000), on June 10, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 11, 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](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on June 10, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 2, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates the HCA as the single state agency responsible for the administrations and supervision of Washington's medicaid program (Washington apple health (WAH)).

Reasons Supporting Proposal: See Purpose statement.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) [725-]1344; Implementation and Enforcement: Jessie M. Dean, P.O. Box 45534, Olympia, WA 98504-5534, (360) [725-]1301.

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.

May 6, 2014

Kevin M. Sullivan

Rules Coordinator

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-503-0532 Citizenship requirements for the medical care services (MCS) and ADATSA programs.
- WAC 182-503-0555 Age requirement for MCS and ADATSA.
- WAC 182-503-0560 Impact of fleeing felon status on eligibility for medical care services (MCS).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-504-0030 Medical certification periods for recipients of medical care services (MCS).
- WAC 182-504-0040 Requirements for a midcertification review for medical care services (MCS).
- WAC 182-504-0100 Changes of circumstances—Changes that must be reported by a recipient of medical care services (MCS).

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 182-506-0020 Assistance units for medical care services (MCS).

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-508-0005 Eligibility for Washington apple health medical care services.** (1) ~~((An individual))~~ A person is eligible for state-funded Washington apple health (WAH) medical care services (MCS) ~~((benefits))~~ coverage to the extent of available funds if the ~~((individual))~~ person is:

- (a) ~~((Completes an interview with the agency or its designee;~~
- (b) ~~Is incapacitated as required under WAC 182-508-0010 through 182-508-0120;~~
- (c) ~~Is at least eighteen years old or, if under eighteen, a member of a married couple;~~
- (d) ~~Is in financial need according to MCS' income and resource rules in chapter 182-509 WAC. The agency or the agency's designee determines who is in the individual's assistance unit according to WAC 182-506-0020;~~
- (e) ~~Meets the medical care services citizenship/alien status requirements under WAC 182-503-0532;~~
- (f) ~~Provides a Social Security number as required under WAC 388-476-0005;~~
- (g) ~~Resides in the state of Washington as required under WAC 182-503-0520;~~
- (h) ~~Reports changes of circumstances as required under WAC 182-504-0100; and~~
- (i) ~~Completes a midcertification review and provides proof of any changes as required under WAC 182-504-0040.~~
- (2) An individual is not eligible for MCS benefits if the individual:
- (a) Is eligible for temporary assistance for needy families (TANF) benefits.
- (b) Refuses or fails to meet a TANF rule without good cause.
- (c) Refuses to or fails to cooperate in obtaining federal aid assistance without good cause.

(d) Refuses or fails to participate in drug or alcohol treatment as required in WAC 182-508-0220.

(e) Is eligible for supplemental security income (SSI) benefits.

(f) Is an ineligible spouse of an SSI recipient.

(g) Refuses or fails to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated the individual's benefits.

(h) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 182-503-0560.

(i) Is eligible for a categorically needy (CN) medicaid program.

(j) Refuses or fails to cooperate with CN medicaid program rules or requirements.

(3) An individual who resides in a public institution and meets all other requirements may be eligible for MCS depending on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) An individual may be eligible for MCS if the individual is:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and is sixty-five years of age or older.

(b) An individual is not eligible for MCS when the individual is in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

(4) Determined by the department of social and health services to be eligible for benefits under either the aged, blind, or disabled program as described in WAC 388-400-0060 or the housing and essential needs referral program as described in WAC 388-400-0070; and

(b) Not eligible for another WAH program.

(2) A person is not eligible for WAH-MCS if he or she is eligible for federally funded or federally matched programs (see WAC 182-503-0505(2)).

(3) If an enrollment cap exists under WAC 182-508-0150, a waiting list of persons may be established.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

**WAC 182-508-0150 Enrollment cap for medical care services (MCS).** (1) Enrollment in medical care services (MCS) coverage is subject to available funds.

(2) The agency may limit enrollment into MCS coverage by implementing an enrollment cap and ~~((waiting))~~ wait list.

(3) If ~~((an individual))~~ a person is denied MCS coverage due to an enrollment cap:

(a) The ~~((individual))~~ person is added to the MCS ~~((waiting))~~ wait list based on the date the ~~((individual))~~ person applied.

(b) Applicants with the oldest application date will be the first to receive an opportunity for enrollment when MCS cov-

erage is available as long as the person remains on the MCS wait list.

(4) ~~((An individual))~~ A person is exempted from the enrollment cap and wait list rules when:

(a) MCS was terminated due to agency error;

(b) The ~~((individual))~~ person is in the thirty-day reconsideration period for incapacity reviews under WAC ~~((182-508-0160(4)))~~ 388-447-0110(4); ~~((or))~~

(c) The ~~((individual))~~ person is being terminated from a CN medical program and was receiving and eligible for CN coverage prior to the date a wait list was implemented and ~~((the following conditions are met:~~

~~(i) The individual met financial and program eligibility criteria for MCS at the time their CN coverage ended; and~~

~~(ii) The individual met the incapacity criteria for MCS at the time their CN coverage ended.~~

~~(d) The individual applied for medical coverage and an eligibility decision was not completed prior to the enrollment cap effective date.~~

~~(5) If the individual is sent an offer for MCS enrollment, the individual must submit a completed application no later than the last day of the month following the month of enrollment offer. The individual must reapply within this time period and subsequently be determined eligible before MCS coverage can begin. The individual must reapply and requalify even if the individual was previously determined eligible for MCS.~~

~~(6)) at the time their CN coverage ended, the person met eligibility criteria to receive benefits under either the aged, blind, or disabled program as described in WAC 388-400-0060 or the housing and essential needs referral program as described in WAC 388-400-0070; or~~

~~(d) The person applied for a determination by the department of social and health services (DSHS) to be eligible for benefits under either the aged, blind, or disabled program as described in WAC 388-400-0060 or the housing and essential needs referral program as described in WAC 388-400-0070, but the determination was not completed prior to the enrollment cap effective date.~~

(5) The ~~((individual))~~ person is removed from the MCS wait list if the ~~((individual))~~ person:

(a) Is not a Washington resident;

(b) Is deceased;

(c) Requests removal from the wait list;

~~(d) ((Fails to submit an application after an enrollment offer is sent as described in subsection (5) of this section;~~

~~(e) Reapplies as described in subsection (5) of this section, but does not qualify for MCS; or~~

~~(f)) Is found eligible for categorically or medically needy coverage; or~~

(e) Is no longer determined by DSHS to be eligible for benefits under either the aged, blind, or disabled program as described in WAC 388-400-0060 or the housing and essential needs referral program as described in WAC 388-400-0070.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-508-0010 Incapacity requirements for medical care services (MCS).
- WAC 182-508-0015 Determining if an individual is incapacitated.
- WAC 182-508-0020 Acceptable medical evidence.
- WAC 182-508-0030 Required medical evidence.
- WAC 182-508-0035 How severity ratings of impairment are assigned.
- WAC 182-508-0040 PEP Step I—Review of medical evidence required for eligibility determination.
- WAC 182-508-0050 PEP Step II—Determining the severity of mental impairments.
- WAC 182-508-0060 PEP Step III—Determining the severity of physical impairments.
- WAC 182-508-0070 PEP Step IV—Determining the severity of multiple impairments.
- WAC 182-508-0080 PEP Step V—Determining level of function of mentally impaired individuals in a work environment.
- WAC 182-508-0090 PEP Step VI—Determining level of function of physically impaired individuals in a work environment.
- WAC 182-508-0100 PEP Step VII—Evaluating a client's capacity to perform relevant past work.
- WAC 182-508-0110 PEP Step VIII—Evaluating a client's capacity to perform other work.
- WAC 182-508-0120 Deciding how long a client is incapacitated.
- WAC 182-508-0130 Medical care services—Limited coverage.
- WAC 182-508-0160 When medical care services benefits end.
- WAC 182-508-0220 How alcohol or drug dependence affects an individual's eligibility for medical care services (MCS).
- WAC 182-508-0230 Eligibility standards for medical care services (MCS); aged, blind, or disabled (ABD); and Alcohol and Drug Addiction Treatment and Support Act (ADATSA).
- WAC 182-508-0300 What is the purpose of this chapter?
- WAC 182-508-0305 Detoxification—Covered services.
- WAC 182-508-0310 ADATSA—Purpose.
- WAC 182-508-0315 ADATSA—Covered services.

- WAC 182-508-0320 ADATSA—Eligible individuals.
- WAC 182-508-0325 When am I eligible for ADATSA treatment services?
- WAC 182-508-0330 What clinical incapacity must I meet to be eligible for ADATSA treatment services?
- WAC 182-508-0335 Will I still be eligible for ADATSA outpatient services if I abstain from using alcohol or drugs, become employed, or have a relapse?
- WAC 182-508-0340 What is the role of the certified chemical dependency service provider in determining ADATSA eligibility?
- WAC 182-508-0345 What are the responsibilities of the certified chemical dependency service provider in determining eligibility?
- WAC 182-508-0350 What happens after I am found eligible for ADATSA services?
- WAC 182-508-0355 What criteria does the certified chemical dependency service provider use to plan my treatment?
- WAC 182-508-0360 Do I have to contribute to the cost of residential treatment?
- WAC 182-508-0365 What happens when I withdraw or am discharged from treatment?
- WAC 182-508-0370 What are the groups that receive priority for ADATSA services?
- WAC 182-508-0375 ADATSA—Eligibility for state-funded medical care services (MCS).
- WAC 182-509-0055 MCS income—Needs-based assistance from other agencies or organizations.
- WAC 182-509-0065 MCS income—Gifts—Cash and non-cash.
- WAC 182-509-0080 MCS income—Self-employment income.
- WAC 182-509-0085 MCS income—Self-employment income—Calculation of countable income.
- WAC 182-509-0095 MCS income—Allocating income—General.
- WAC 182-509-0100 MCS income—Allocating income—Definitions.
- WAC 182-509-0110 MCS income—Allocating income to legal dependents.
- WAC 182-509-0135 MCS income—Allocating income of an ineligible spouse to a medical care services (MCS) client.
- WAC 182-509-0155 MCS income—Exemption from sponsor deeming for medical care services (MCS).
- WAC 182-509-0165 MCS income—Income calculation.
- WAC 182-509-0175 MCS income—Earned income work incentive deduction.
- WAC 182-509-0200 MCS resources—How resources affect eligibility for medical care services (MCS).
- WAC 182-509-0205 MCS resources—How resources count toward the resource limits for medical care services (MCS).
- WAC 182-509-0210 MCS resources—How vehicles count toward the resource limit for medical care services (MCS).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 182-509-0225 Excluded resources for family medical programs.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-509-0005 MCS income—Ownership and availability.
- WAC 182-509-0015 MCS income—Excluded income types.
- WAC 182-509-0025 MCS income—Unearned income.
- WAC 182-509-0030 MCS income—Earned income.
- WAC 182-509-0035 MCS income—Educational benefits.
- WAC 182-509-0045 MCS income—Employment and training programs.

#### AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-523-0100 ((Medical extensions—Eligibility-)) Washington apple health—Medical extension. (((+)) A family who received temporary assistance for needy families (TANF), or family medical program in any three of the last six months in the state of Washington is eligible for extended medical benefits when they become ineligible for their current medical program because the family receives:**

(a) ~~Child or spousal support, which exceeds the payment standard described in WAC 388-478-0065, and they are not eligible for any other categorically needy (CN) medical program; or~~

(b) ~~Increased earned income, resulting in income exceeding the CN income standard described in WAC 388-478-0065.~~

(2) A family is eligible to receive extended medical benefits beginning the month after termination from TANF cash or family medical program for:

(a) Four months for a family described in subsection (1)(a) of this section; or

(b) Up to twelve months, in two six-month segments, for a family described in subsection (1)(b) of this section. For the purposes of this chapter, months one through six are the initial six-month extension period. Months seven through twelve are the second six-month extension period.

(3) A family member is eligible to receive six months of medical extension benefits as described in subsection (2)(b) of this section unless:

(a) The individual family member:

(i) Moves out of state;

(ii) Dies;

(iii) Becomes an inmate of a public institution;

(iv) Leaves the household; or

(v) Does not cooperate, without good cause, with the division of child support or with third-party liability requirements.

(b) The family:

(i) Moves out of state;

(ii) Loses contact with the department or the department does not know the whereabouts of the family; or

(iii) No longer includes a child as defined in WAC 388-404-0005(1).

(4) A family member is eligible to receive the second six months of medical extension benefits as described in subsection (2)(b) of this section unless:

(a) The family is no longer eligible for the reasons described in subsection (3)(a) or (b); or

(b) The individual family member is the caretaker adult who:

(i) Stops working or whose earned income stops;

(ii) Does not, without good cause, complete and return the completed medical extension report or otherwise provide the required income and child care information; or

(iii) Does not, without good cause, pay the billed premium amount for one month.

(5) A family described in subsection (3) will not receive medical extension benefits for any family member who has been found ineligible for TANF/SFA cash because of fraud in any of the six months prior to the medical extension period.

(6) For the purposes of this chapter, only individual family members that are eligible for medicaid are certified to receive medical benefits under this program.)) (1) A parent or caretaker relative who received coverage under Washington apple health (WAH) for parents and caretaker relatives, (described in WAC 182-505-0240), in any three of the last six months is eligible, along with all dependent children living in the household, for twelve months' extended health care coverage if the person becomes ineligible for his or her current coverage due to increased earnings or hours of employment.

(2) A person remains eligible for WAH medical extension unless:

(a) The person:

(i) Moves out of state;

(ii) Dies;

(iii) Becomes an inmate of a public institution; or

(iv) Leaves the household.

(b) The family:

(i) Moves out of state;

(ii) Loses contact with the agency or its designee or the whereabouts of the family are unknown; or

(iii) No longer includes an eligible dependent child as defined in WAC 182-503-0565(2).

(3) When a person or family is determined ineligible for WAH coverage under subsection (2)(a)(i) through (iii) or (b)(i) or (ii) of this section during the medical extension period, the agency or its designee redetermines eligibility for the remaining household members as described in WAC 182-504-0125 and sends written notice as described in chapter 182-518 WAC before WAH medical extension is terminated.

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

**WAC 182-523-0130 Medical extension—Redetermination.** (1) When the ((department)) agency or its designee determines the family or an individual family member is ineligible during the medical extension period, the ((department)) agency or its designee must determine if they are eligible for another medical program.

(2) Children are eligible for twelve month continuous eligibility beginning with the first month of the medical extension period.

(3) When a family reports a reduction of income, the family may be eligible for ((a family medical program)) the Washington apple health for parents and caretaker relatives program (described in WAC 182-505-0240) instead of medical extension benefits.

(4) When a medical extension period is ending, the family is required to complete a renewal of eligibility as described in WAC 182-504-0035.

(5) Postpartum and family planning extensions are described in WAC ((388-462-0015)) 182-505-0115.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-523-0110 Medical extensions—Reporting requirements.

WAC 182-523-0120 Medical extensions—Premiums.

AMENDATORY SECTION (Amending WSR 12-22-046, filed 11/2/12, effective 12/3/12)

**WAC 182-534-0100 EPSDT.** (1) Persons who are eligible for medicaid((, except those identified in subsection (4) of this section,)) are eligible for coverage through the early and periodic screening, diagnosis, and treatment (EPSDT) program up through the day before their twenty-first birthday.

(2) Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B which were in effect as of January 1, 1998.



(a) The standard for coverage for EPSDT is that the services, treatment or other measures are:

- (i) Medically necessary;
- (ii) Safe and effective; and
- (iii) Not experimental.

(b) EPSDT services are exempt from specific coverage or service limitations which are imposed on the rest of the CN and MN program. Examples of service limits which do not apply to the EPSDT program are the specific numerical limits in WAC 182-545-200.

(c) Services not otherwise covered under the medicaid program are available to children under EPSDT. The services, treatments and other measures which are available include but are not limited to:

- (i) Nutritional counseling;
- (ii) Chiropractic care;
- (iii) Orthodontics; and
- (iv) Occupational therapy (not otherwise covered under the MN program).

(d) Prior authorization and referral requirements are imposed on medical service providers under EPSDT. Such requirements are designed as tools for determining that a service, treatment or other measure meets the standards in subsection (2)(a) of this section.

(3) Transportation requirements of 42 C.F.R. 441, Subpart B are met through a contract with transportation brokers throughout the state.

~~((4) Persons who are nineteen through twenty years of age who are eligible for any of the following programs that receive medicaid funding under the transitional bridge demonstration waiver allowed under section 1115 (a)(2) of the Social Security Act are not eligible for EPSDT services:~~

- ~~(a) Basic health;~~
- ~~(b) Medical care services; or~~
- ~~(c) Alcohol and Drug Addiction Treatment and Support Act (ADATSA).))~~

AMENDATORY SECTION (Amending WSR 11-17-059, filed 8/15/11, effective 8/15/11)

**WAC 182-546-5550 Nonemergency transportation— Exclusions and limitations.** (1) The following service categories cited in WAC ((388-501-0060)) 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC ((388-546-5200)) 182-546-5200 (1)(d).

(c) Family planning services - Nonemergency transportation is not provided through the brokers for clients that are enrolled only in TAKE CHARGE or family planning only services.

(d) Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC ((388-551-1210)) 182-551-1210.

(e) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, with the exception of DME equipment that needs to be fitted to the client.

(f) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

(g) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

(h) Mental health services:

(i) Nonemergency transportation brokers generally provide one round trip per day to or from a mental health service. Additional trips for off-site activities, such as a visit to a recreational park, are the responsibility of the provider/facility.

(ii) Nonemergency transportation of involuntarily detained persons under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. See WAC ((388-546-4000)) 182-546-4000.

(i) Substance abuse services - Nonemergency transportation is not provided through the brokers for substance abuse services for clients under the state-funded medical programs (medical care services program (MCS)). See WAC ((388-546-5200)) 182-546-5200(2).

(j) Chemical dependency services - Nonemergency transportation is not provided through the brokers to or from the following:

- (i) Residential treatment;
- (ii) Intensive inpatient;
- (iii) Recovery house;
- (iv) Long-term treatment;
- (v) Information and assistance services, which include:
  - (A) Alcohol and drug information school;
  - (B) Information and crisis services; and
  - (C) Emergency service patrol.

(2) The ~~((following medical assistance programs have limitations on trips:~~

~~((a)) state-funded medical care services (MCS) program ((for clients covered by the disability lifeline program and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA))) - Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The ((department)) agency does pay for nonemergency transportation to and from medical services as specified in WAC ((388-501-0060)) 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules.~~

~~((b) Transitional bridge waiver for clients covered by the disability lifeline program and the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) - Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The department does pay for nonemergency transportation to and from medical services as covered in the transitional bridge waiver approved by the Centers for Medicare and Medicaid Services, excluding mental health services and sub-~~

~~stance abuse services, and subject to any other limitations in this chapter or other program rules.)~~

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

**WAC 182-550-1200 Restrictions on hospital coverage.** A hospital covered service provided to a ~~((client))~~ person eligible under a ~~((medical assistance))~~ Washington apple health (WAH) program that is paid by the ~~((department's))~~ agency's fee-for-services payment system must be within the scope of the ~~((client's medical assistance))~~ person's WAH program. Coverage restriction includes, but is not limited to the following:

(1) ~~((Clients))~~ Persons enrolled with the ~~((department's))~~ agency's managed care organization (MCO) plans are subject to the respective plan's policies and procedures for coverage of hospital services;

(2) ~~((Clients))~~ Persons covered by primary care case management are subject to the ~~((clients'))~~ persons' primary care physicians' approval for hospital services;

(3) For emergency care exemptions for ~~((clients))~~ persons described in subsections (1) and (2) of this section, see WAC ~~((388-538-100.))~~ 182-538-100;

(4) ~~((Coverage for psychiatric indigent inpatient (PI) clients is limited to voluntary inpatient psychiatric hospital services, subject to the conditions and limitations of WAC 388-865-0217 and this chapter:~~

~~(a) Out of state health care is not covered for clients under the PI program; and~~

~~(b) Bordering city hospitals and critical border hospitals are not considered instate hospitals for PI program claims.~~

~~((5))~~ Health care services provided by a hospital located out-of-state are:

(a) Not covered for ~~((clients))~~ persons eligible under the medical care services (MCS) program. However, ~~((clients))~~ persons eligible for MCS are covered for that program's scope of care in bordering city and critical border hospitals.

(b) Covered for:

(i) Emergency care for eligible medicaid and ~~((SCHIP clients))~~ CHIP persons without prior authorization, based on the medical necessity and utilization review standards and limits established by the ~~((department))~~ agency.

(ii) Nonemergency out-of-state care for medicaid and ~~((SCHIP clients))~~ CHIP persons when prior authorized by the ~~((department))~~ agency based on the medical necessity and utilization review standards and limits.

(iii) Hospitals in bordering cities and critical border hospitals, based on the same client eligibility criteria and authorization policies as for instate hospitals. See WAC ~~((388-501-0175))~~ 182-501-0175 for a list of bordering cities.

(c) Covered for out-of-state voluntary inpatient psychiatric hospital services for eligible medicaid and ~~((SCHIP))~~ CHIP clients based on authorization by a ~~((mental health division (MHD)))~~ division of behavioral health and recovery (DBHR) designee.

~~((6))~~ (5) See WAC ~~((388-550-1100))~~ 182-550-1100 for hospital services for chemical-using pregnant (CUP) women~~((:))~~;

~~((7))~~ (6) All psychiatric inpatient hospital admissions, length of stay extensions, and transfers must be prior authorized by a ~~((MHD))~~ DBHR designee. See WAC ~~((388-550-2600.))~~ 182-550-2600;

~~((8))~~ (7) For ~~((clients))~~ persons eligible for both medicaid and medicaid (dual eligibles), the ~~((department))~~ agency pays deductibles and coinsurance, unless the ~~((client))~~ person has exhausted his or her medicaid Part A benefits. If medicaid benefits are exhausted, the ~~((department))~~ agency pays for hospitalization for such ~~((clients))~~ persons subject to ~~((department))~~ agency rules. See also chapter ~~((388-502))~~ 182-502 WAC~~((:))~~;

~~((9))~~ (8) The ~~((department))~~ agency does not pay for covered inpatient hospital services for a ~~((medical assistance))~~ WAH client:

(a) Who is discharged from a hospital by a physician because the ~~((client))~~ person no longer meets medical necessity for acute inpatient level of care; and

(b) Who chooses to stay in the hospital beyond the period of medical necessity.

~~((10))~~ (9) If the hospital's utilization review committee determines the ~~((client's))~~ person's stay is beyond the period of medical necessity, as described in subsection ~~((9))~~ (8) of this section, the hospital must:

(a) Inform the ~~((client))~~ person in a written notice that the ~~((department))~~ agency is not responsible for payment (42 C.F.R. 456);

(b) Comply with the requirements in WAC ~~((388-502-0160))~~ 182-502-0160 in order to bill the ~~((client))~~ person for the service(s); and

(c) Send a copy of the written notice in (a) of this subsection to the ~~((department))~~ agency.

~~((11))~~ (10) Other coverage restrictions, as determined by the ~~((department))~~ agency.

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

**WAC 182-550-1700 Authorization and utilization review (UR) of inpatient and outpatient hospital services.**

(1) This section applies to the ~~((department's))~~ agency's authorization and utilization review (UR) of inpatient and outpatient hospital services provided to ~~((medical assistance))~~ Washington apple health (WAH) clients receiving services through the fee-for-service program. For clients eligible under other ~~((medical assistance))~~ WAH programs, see chapter ~~((388-538))~~ 182-538 WAC for managed care organizations, ~~((chapters 388-800 and 388-810 WAC for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA),))~~ and chapter 388-865 WAC for mental health treatment programs coordinated through the ~~((mental health division))~~ department of social and health services' division of behavioral health and recovery or its designee~~((:))~~. See chapter ~~((388-546))~~ 182-546 WAC for transportation services.

(2) All hospital services paid for by the ~~((department))~~ agency are subject to UR for medical necessity, appropriate level of care, and program compliance.

(3) Authorization for inpatient and outpatient hospital services is valid only if a client is eligible for covered ser-

vices on the date of service. Authorization does not guarantee payment.

(4) The ((department)) agency will deny, recover, or adjust hospital payments if the ((department)) agency or its designee determines, as a result of UR, that a hospital service does not meet the requirements in federal regulations and WAC.

(5) The ((department)) agency may perform one or more types of UR described in subsection (6) of this section.

(6) The ((department's)) agency's UR:

(a) Is a concurrent, prospective, and/or retrospective (including postpay and prepay) formal evaluation of a client's documented medical care to assure that the services provided are proper and necessary and of good quality. The review considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the condition(s) being treated; and

(b) Includes one or more of the following:

(i) "Concurrent utilization review"—An evaluation performed by the ((department)) agency or its designee during a client's course of care. A continued stay review performed during the client's hospitalization is a form of concurrent UR;

(ii) "Prospective utilization review"—An evaluation performed by the ((department)) agency or its designee prior to the provision of health care services. Preadmission authorization is a form of prospective UR; and

(iii) "Retrospective utilization review"—An evaluation performed by the ((department)) agency or its designee following the provision of health care services that includes both a post-payment retrospective UR (performed after health care services are provided and paid), and a prepayment retrospective UR (performed after health care services are provided but prior to payment). Retrospective UR is routinely performed as an audit function.

(7) During the UR process, the ((department)) agency or its designee notifies the appropriate oversight entity if either of the following is identified:

- (a) A quality of care concern; or
- (b) Fraudulent conduct.

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

**WAC 182-550-2521 Client eligibility requirements for acute PM&R services.** (1) Only a client who is eligible for one of the ((following)) Washington apple health programs may receive acute PM&R services, subject to the restrictions and limitations in this section and WAC ((388-550-2501, 388-550-2511, 388-550-2531, 388-550-2541, 388-550-2551, 388-550-2561, 388-550-3381)) 182-550-2501, 182-550-2511, 182-550-2531, 182-550-2541, 182-550-2551, 182-550-2561, 182-550-3381, and other rules:

- (a) Categorically needy program (CNP);
- (b) ((State)) Children's health insurance program ((SCHIP)) (CHIP);
- (c) ((Limited casualty program--)) Medically needy program (LCP-MNP);
- (d) Alien emergency medical (AEM)(CNP);
- (e) Alien emergency medical (AEM)(LCP-MNP);

(f) ((General assistance unemployable (GA-U—No out-of-state care); or

(g) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA)) Medical care services.

(2) If a client is enrolled in ((a department)) an agency managed care organization (MCO) plan at the time of acute care admission, that plan pays for and coordinates acute PM&R services as appropriate.

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

**WAC 182-550-2650 Base community psychiatric hospitalization payment method for medicaid and ((SCHIP)) CHIP clients and nonmedicaid and ((non-SCHIP)) non-CHIP clients.** (1) Effective for dates of admission from July 1, 2005 through June 30, 2007, and in accordance with legislative directive, the ((department)) agency implemented two separate base community psychiatric hospitalization payment rates, one for medicaid and ((SCHIP)) children's health insurance program (CHIP) clients and one for nonmedicaid and ((non-SCHIP)) non-CHIP clients. Effective for dates of admission on and after July 1, 2007, the base community psychiatric hospitalization payment method for medicaid and ((SCHIP)) CHIP clients and nonmedicaid and ((non-SCHIP)) non-CHIP clients is no longer used. (For the purpose of this section, a "nonmedicaid or ((non-SCHIP)) non-CHIP client" is defined as a client eligible under the ((general assistance unemployable (GA-U) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other state-administered)) medical care services (MCS) program, as determined by the ((department)) agency.)

(a) The medicaid base community psychiatric hospital payment rate is a minimum per diem for claims for psychiatric services provided to medicaid and ((SCHIP)) CHIP covered patients, paid to hospitals that accept commitments under the Involuntary Treatment Act (ITA).

(b) The nonmedicaid base community psychiatric hospital payment rate is a minimum allowable per diem for claims for psychiatric services provided to indigent patients paid to hospitals that accept commitments under the ITA.

(2) For the purposes of this section, "allowable" means the calculated allowed amount for payment based on the payment method before adjustments, deductions, or add-ons.

(3) To be eligible for payment under the base community psychiatric hospitalization payment method:

(a) A client's inpatient psychiatric voluntary hospitalization must:

(i) Be medically necessary as defined in WAC ((388-500-0005)) 182-500-0070. In addition, the ((department)) agency considers medical necessity to be met when:

(A) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(B) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician;

(C) The inpatient services can be reasonably expected to improve the client's condition or prevent further regression so that the services will no longer be needed; and

(D) The client, at the time of admission, is diagnosed as having an emotional/behavioral disturbance as a result of a mental disorder as defined in the current published Diagnostic and Statistical Manual of the American Psychiatric Association. The ~~((department))~~ agency does not consider detoxification to be psychiatric in nature.

(ii) Be approved by the professional in charge of the hospital or hospital unit.

(iii) Be authorized by the appropriate ~~((mental health division (MHD)))~~ division of behavioral health and recovery (DBHR) designee prior to admission for covered diagnoses.

(iv) Meet the criteria in WAC ~~((388-550-2600))~~ 182-550-2600.

(b) A client's inpatient psychiatric involuntary hospitalization must:

(i) Be in accordance with the admission criteria in chapters 71.05 and 71.34 RCW.

(ii) Be certified by a ~~((MHD))~~ DBHR designee.

(iii) Be approved by the professional in charge of the hospital or hospital unit.

(iv) Be prior authorized by the regional support network (RSN) or its designee.

(v) Meet the criteria in WAC ~~((388-550-2600))~~ 182-550-2600.

(4) The provider requesting payment must complete the appropriate sections of the Involuntary Treatment Act patient claim information (form DSHS 13-628) in triplicate and route both the form and each claim form submitted for payment, to the county involuntary treatment office.

(5) Payment for all claims is based on covered days within a client's approved length of stay (LOS), subject to client eligibility and ~~((department covered))~~ agency-covered services.

(6) The medicaid base community psychiatric hospitalization payment rate applies only to a medicaid or ~~((SCHIP))~~ CHIP client admitted to a nonstate-owned free-standing psychiatric hospital located in Washington state.

(7) The nonmedicaid base community psychiatric hospitalization payment rate applies only to a nonmedicaid or ~~((SCHIP))~~ CHIP client admitted to a hospital:

(a) Designated by the ~~((department))~~ agency as an ITA-certified hospital; or

(b) That has ~~((a department certified))~~ an agency-certified ITA bed that was used to provide ITA services at the time of the nonmedicaid or ~~((non-SCHIP))~~ non-CHIP admission.

(8) For inpatient hospital psychiatric services provided to eligible clients for dates of admission on and after July 1, 2005, through June 30, 2007, the ~~((department))~~ agency pays:

(a) A hospital's department of health (DOH)-certified distinct psychiatric unit as follows:

(i) For medicaid and ~~((SCHIP))~~ CHIP clients, inpatient hospital psychiatric services are paid using the ~~((department-specific))~~ agency-specific nondiagnosis related group (DRG) payment method.

(ii) For nonmedicaid and ~~((non-SCHIP))~~ non-CHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-administered program DRG allowable (including the high cost outlier allowable, if applicable), or

the ~~((department-specified))~~ agency-specified non-DRG payment method if no relative weight exists for the DRG in the ~~((department's))~~ agency's payment system; or

(B) The nonmedicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit as follows:

(i) For medicaid and ~~((SCHIP))~~ CHIP clients, inpatient hospital psychiatric services are paid using:

(A) The DRG payment method; or

(B) The ~~((department-specified))~~ agency-specified non-DRG payment method if no relative weight exists for the DRG in the ~~((department's))~~ agency's payment system.

(ii) For nonmedicaid and ~~((SCHIP))~~ CHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-administered program DRG allowable (including the high cost outlier allowable, if applicable), or the ~~((department-specified))~~ agency-specified non-DRG payment method if no relative weight exists for the DRG in the ~~((department's))~~ agency's payment system; or

(B) The nonmedicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A nonstate-owned free-standing psychiatric hospital as follows:

(i) For medicaid and ~~((SCHIP))~~ CHIP clients, inpatient hospital psychiatric services are paid using as the allowable, the greater of:

(A) The ratio of costs-to-charges (RCC) allowable; or

(B) The medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For nonmedicaid and ~~((non-SCHIP))~~ non-CHIP clients, inpatient hospital psychiatric services are paid the same as for medicaid and ~~((SCHIP))~~ CHIP clients, except the base community inpatient psychiatric hospital payment rate is the nonmedicaid rate, and the RCC allowable is the state-administered program RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the certified public expenditure (CPE) payment program, as follows:

(i) For medicaid and ~~((SCHIP))~~ CHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC ~~((388-550-4650))~~ 182-550-4650.

(ii) For nonmedicaid and ~~((non-SCHIP))~~ non-CHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC ~~((388-550-4650))~~ 182-550-4650 in conjunction with the nonmedicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the critical access hospital (CAH) program, as follows:

(i) For medicaid and ~~((SCHIP))~~ CHIP clients, inpatient hospital psychiatric services are paid using the ~~((department-specified))~~ agency-specified non-DRG payment method.

(ii) For nonmedicaid ~~((and non-SCHIP))~~ and non-CHIP clients, inpatient hospital psychiatric services are paid using the ~~((department-specified))~~ agency-specified non-DRG payment method.

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

**WAC 182-550-6700 Hospital services provided out-of-state.** (1) The ~~((department))~~ agency pays:

(a) For dates of admission before August 1, 2007, for only emergency care for an eligible medicaid and ~~((SCHIP))~~ CHIP client who goes to another state, except specified border cities, specifically for the purpose of obtaining medical care that is available in the state of Washington. See WAC ~~((388-501-0175))~~ 182-501-0175 for a list of border cities.

(b) For dates of admission on and after August 1, 2007, for both emergency and nonemergency out-of-state hospital services, including those provided in bordering city hospitals and critical border hospitals, for eligible medicaid and ~~((SCHIP))~~ CHIP clients based on the medical necessity and utilization review standards and limits established by the ~~((department))~~ agency.

(i) Prior authorization by the ~~((department))~~ agency is required for the nonemergency out-of-state hospital medical care provided to medicaid and ~~((SCHIP))~~ CHIP clients.

(ii) Bordering city hospitals are considered the same:

(A) As in-state hospitals for coverage of hospital services; and

(B) As out-of-state hospitals for payment methodology. ~~((Department))~~ Agency designated critical border hospitals are paid as in-state hospitals. See WAC ~~((388-550-3900 and 388-550-4000))~~ 182-550-3900 and 182-550-4000.

(c) For out-of-state voluntary psychiatric inpatient hospital services for eligible medicaid and ~~((SCHIP))~~ CHIP clients based on authorization by a ~~((mental health))~~ division of behavioral health designee.

(d) Based on the ~~((department's))~~ agency's limitations on hospital coverage under WAC ~~((388-550-1100 and 388-550-1200))~~ 182-550-1100 and 182-550-1200 and other applicable rules.

(2) The ~~((department))~~ agency authorizes and pays for comparable hospital services for a medicaid and ~~((SCHIP))~~ CHIP client who is temporarily outside the state to the same extent that such services are furnished to an eligible medicaid client in the state, subject to the exceptions and limitations in this section. See WAC ~~((388-550-3900 and 388-550-4000))~~ 182-550-3900 and 182-550-4000.

(3) The ~~((department))~~ agency limits out-of-state hospital coverage for ~~((clients))~~ persons eligible under state-administered programs as follows:

(a) For a ~~((client eligible under the psychiatric indigent inpatient (PII) program or))~~ person who receives services under the Involuntary Treatment Act (ITA), the ~~((department))~~ agency does not pay for hospital services provided in any hospital outside the state of Washington (including bordering city and critical border hospitals).

(b) For a ~~((client))~~ person eligible under ~~((a department's))~~ an agency's general assistance program, the ~~((department))~~ agency pays only for hospital services covered under the ~~((client's))~~ person's medical care services' program scope of care that are provided in a bordering city hospital or a critical border hospital. The ~~((department))~~ agency does not pay for hospital services provided to ~~((clients))~~ persons eligible under a general assistance program in other hospitals located outside the state of Washington. The ~~((department))~~ agency

or its designee may require prior authorization for hospital services provided in a bordering city hospital or a critical border hospital. See WAC ~~((388-550-1200))~~ 182-550-1200.

(4) The ~~((department))~~ agency covers hospital care provided to medicaid or ~~((SCHIP))~~ CHIP clients in areas of Canada as described in WAC ~~((388-501-0180))~~ 182-501-0180, and based on the limitations described in the state plan.

(5) The ~~((department))~~ agency may review all cases involving out-of-state hospital services, including those provided in bordering city hospitals and critical border hospitals, to determine whether the services are within the scope of the ~~((client's medical assistance))~~ person's WAH program.

(6) If the ~~((client))~~ person can claim deductible or co-insurance portions of medicare, the provider must submit the claim to the intermediary or carrier in the provider's own state on the appropriate medicare billing form. If the state of Washington is checked on the form as the party responsible for medical bills, the intermediary or carrier may bill on behalf of the provider or may return the claim to the provider for submission to the state of Washington.

(7) For payment for out-of-state inpatient hospital services, see WAC ~~((388-550-3900 and 388-550-4000))~~ 182-550-3900 and 182-550-4000.

(8) Out-of-state providers, including bordering city hospitals and critical border hospitals, must present final charges to the ~~((department))~~ agency 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 of charges received beyond three hundred sixty-five days from the "statement covers period from date" shown on the claim.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-5125 Payment method—Psychiatric indigent inpatient disproportionate share hospital (PIIDSH).

#### **WSR 14-10-080**

#### **PROPOSED RULES**

#### **OFFICE OF**

#### **INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2012-16—Filed May 7, 2014, 7:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-126.

Title of Rule and Other Identifying Information: Insurance producers sharing of commissions and paying referral fees to nonlicensed persons.

Hearing Location(s): Insurance Commissioner's Office (OIC), TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on June 10, 2014, at 9:00 a.m.

Date of Intended Adoption: June 11, 2014.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax (360) 586-3109, by June 9, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by June 9, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will provide guidance to licensed insurance producers as to what may or may not constitute improperly sharing commissions with nonlicensed persons.

Reasons Supporting Proposal: RCW 48.17.490 provides that licensed insurance producers may pay or assign commissions, fees, or other valuable consideration with nonlicensed persons who do not sell, solicit, or negotiate insurance, unless the payment would violate RCW 48.30.140, 48.30.150, 48.30.157, or 48.30.170. Insurance producers have made inquiries of the OIC as to whether or not certain activities comply with these statutes. The proposed rules will provide guidance to licensed producers as to what activities may or may not violate these statutes.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.17.490.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: John Hamje, P.O. Box 40256, Olympia, WA 98504-0256, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not impose any costs on a business. It allows licensed insurance producers to engage in certain activities (charitable contributions, compensation for the use of lead cards and mailing lists, small rewards for referrals, and conducting promotional games of chance) within certain prescribed limits but does not impose any costs for doing so nor require any specific reporting of these activities.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov).

May 7, 2014

Mike Kreidler

Insurance Commissioner

## SHARING COMMISSIONS

### NEW SECTION

**WAC 284-17-800 Charitable contributions.** An insurance producer may donate all or a portion of a commission, fee, or other compensation received in connection with the sale, solicitation, or negotiation of insurance to a charity only if all of the following conditions are met:

- (1) The insured or prospective insured has no influence over which charity receives the donation;
- (2) The donation is not made in the insured's or prospective insured's name;
- (3) The insured or prospective insured is not entitled to a tax benefit for the donation; and
- (4) The insured or prospective insured does not select or influence the selection of the person or persons who benefit from the charity.

### NEW SECTION

#### **WAC 284-17-810 Lead cards and mailing lists.** (1)

For the purposes of this section, lead card means communications distributed to the public which, regardless of form, content, or stated purpose, are used to compile a list containing names or other personal information regarding individuals who have expressed an interest in receiving information about insurance.

(2) A licensed insurance producer may compensate a person for the purchase of lead cards or a mailing list of prospective insureds, provided:

(a) The amount of the compensation is not based upon:

(i) The number of prospective insureds that apply for insurance or obtain insurance; or

(ii) The number of quotes issued to prospective insureds; and

(b) The person is in the business of selling lead cards or mailing lists.

(3) Lead cards may solicit interest in a particular line or type of insurance but must not:

(a) Seek information on behalf of or about a specific insurance company; or

(b) Seek information on behalf of or about a specific insurance producer.

### NEW SECTION

**WAC 284-17-820 Referrals.** (1) A licensed insurance producer may give to an individual, prizes, goods, wares, or merchandise not exceeding twenty-five dollars in value in the aggregate in any consecutive twelve-month period for the referral of insurance business to the insurance producer; provided the giving of the prizes, goods, wares, or merchandise is not conditioned upon the person who is referred either applying for, or obtaining, or both, insurance through the insurance producer.

(2) The payment for the referral must not be in cash, currency, bills, coins, check, or by money order.

### NEW SECTION

**WAC 284-17-830 Promotional games of chance.** An insurance producer may conduct a promotional game of chance provided that:

(1) The promotional game of chance is undertaken solely for the purpose of advertising and promoting the insurance producer;

(2) No person eligible to receive the prize is required to apply for insurance, purchase insurance, refer a person to the

insurance producer, or pay any other consideration to enter the promotional game of chance;

(3) The promotional game of chance is open to the general public;

(4) The value of the prize is limited to twenty-five dollars in value;

(5) No person receives a total of prizes exceeding twenty-five dollars in value in the aggregate in any consecutive twelve-month period from the insurance producer; and

(6) The promotional game of chance complies with chapter 9.46 RCW and any and all other applicable Washington state statutes and rules.

### WSR 14-10-082

#### PROPOSED RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket PL-140104—Filed May 7, 2014, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-089.

Title of Rule and Other Identifying Information: WAC 480-75-250 Civil penalty for violation of chapter 81.88 RCW.

Hearing Location(s): Commission's Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on July 2, 2014, at 10:30 a.m.

Date of Intended Adoption: July 2, 2014.

Submit Written Comments to: Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by June 9, 2014. Please include Docket PL-140104 in your communication.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by June 18, 2014, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making would consider changes to a section of chapter 480-75 WAC, Hazardous liquids pipelines—Safety, rules governing hazardous liquids pipeline operators to increase the maximum civil penalties for violations of the gas pipeline safety laws and regulations from \$100,000 to \$200,000 per violation, and a maximum penalty for a related series of violations from \$1,000,000 to \$2,000,000. The changes reflect amendments to federal rules by the Pipeline and Hazardous Materials Safety Administration (PHMSA), 49 C.F.R. 190.223 effective October 25, 2013, that increased maximum administrative civil penalties in conformance with the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112-90).

Reasons Supporting Proposal: The rules of the state agency must provide for the enforcement of pipeline safety standards by injunctive and monetary sanctions that are, at a minimum, as stringent as those set out at the federal level under the Code of Federal Regulations. State agency partici-

pation in the federal pipeline safety program requires the agency to adopt each federal safety standard applicable to intrastate pipelines under its jurisdiction.

Statutory Authority for Adoption: RCW 80.01.040(4), 81.04.160, and 81.88.040.

Statute Being Implemented: Not applicable.

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: David D. Lykken, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1219; 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 rule will not result in or impose more than minor costs. Because there will not be more than minor increases in costs resulting from the proposed rule change, 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 rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

May 7, 2014

Steven V. King  
Executive Director  
and Secretary

AMENDATORY SECTION (Amending WSR 08-12-045, filed 5/30/08, effective 6/30/08)

**WAC 480-75-250 Civil penalty for violation of chapter 81.88 RCW.** Any pipeline company that violates any pipeline safety provision of any commission order or any rule in this chapter including those rules adopted by reference, or chapter 81.88 RCW is subject to a civil penalty not to exceed (~~one~~) two hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is (~~one~~) two million dollars.

### WSR 14-10-083

#### PROPOSED RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket PG-140105—Filed May 7, 2014, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-090.

Title of Rule and Other Identifying Information: WAC 480-93-223 Civil penalty for violation of RCW 80.28.210 and commission gas safety rules.

Hearing Location(s): Commission's Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Ever-

green Park Drive S.W., Olympia, WA 98504-7250, on July 2, 2014, at 10:30 a.m.

Date of Intended Adoption: July 2, 2014.

Submit Written Comments to: Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by June 9, 2014. Please include Docket PG-140105 in your communication.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by June 18, 2014, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making would consider changes to a section of chapter 480-93 WAC, Gas companies—Safety, rules governing natural gas pipeline operators to increase the maximum civil penalties for violations of the gas pipeline safety laws and regulations from \$100,000 to \$200,000 per violation, and a maximum penalty for a related series of violations from \$1,000,000 to \$2,000,000. The changes reflect amendments to federal rules by the Pipeline and Hazardous Materials Safety Administration (PHMSA), 49 C.F.R. 190.223 effective October 25, 2013, that increased maximum administrative civil penalties in conformance with the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112-90).

Reasons Supporting Proposal: The rules of the state agency must provide for the enforcement of pipeline safety standards by injunctive and monetary sanctions that are at a minimum, as stringent as those set out at the federal level under the Code of Federal Regulations. State agency participation in the federal pipeline safety program requires the agency to adopt each federal safety standard applicable to intrastate pipelines under its jurisdiction.

Statutory Authority for Adoption: RCW 80.01.040(4), 80.04.160, and 81.88.040.

Statute Being Implemented: Not applicable.

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: David D. Lykken, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1219; 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 rule 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 change, 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 rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

May 7, 2014  
Steven V. King  
Executive Director  
and Secretary

AMENDATORY SECTION (Amending WSR 08-12-046, filed 5/30/08, effective 6/30/08)

**WAC 480-93-223 Civil penalty for violation of RCW 80.28.210 and commission gas safety rules.** Any gas pipeline company that violates any pipeline safety provision of any commission order or any rule in this chapter including those rules adopted by reference, or chapter 81.88 RCW is subject to a civil penalty not to exceed ~~((one))~~ two hundred thousand dollars for each violation for each day that the violation persists. The maximum civil penalty under this subsection for a related series of violations is ~~((one))~~ two million dollars.

**WSR 14-10-085**  
**PROPOSED RULES**  
**SPOKANE REGIONAL**  
**CLEAN AIR AGENCY**

[Filed May 7, 2014, 9:27 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Spokane Regional Clean Air Agency, **Regulation I, Article VIII, Solid Fuel Burning Device Standards**. Article VIII establishes emission standards, certification standards and procedures, curtailment rules and fuel restrictions for solid fuel burning devices (SFBDD). It is designed to reduce harmful wood smoke emissions and maintain compliance with the national ambient air quality standard (NAAQS) for fine particulate matter (PM<sub>2.5</sub>).

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on July 10, 2014, at 9:30 a.m.

Date of Intended Adoption: July 10, 2014.

Submit Written Comments to: Mark Rowe, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mrowe@spokanecleanair.org, fax (509) 477-6828, by June 20, 2014.

Assistance for Persons with Disabilities: Contact Barbara Nelson by June 20, 2014, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The primary intent of the rule making is to align SRCAA's stated procedure for issuing SFBDD curtailments (Section 8.07) with Washington state law (RCW 70.94.473), which establishes the criteria for Stage 1 and Stage 2 burn bans. The Washington state legislature's 2008 amendment of RCW 70.94.473 supersedes SRCAA Regulation I, Article VIII. Incorporating the amended RCW into Article VIII, Section 8.07 will not affect SRCAA's practices with respect to the issuance of burn bans because the agency already implements the statute as required.

Included in the proposal are substantive changes to Section 8.08, *Exemptions*, which provides a means for individuals to obtain authorization from SRCAA to use an SFBDD under certain well-defined circumstances when it would otherwise be prohibited during a burn ban. The proposed changes will have the following effects:



- Specify that individuals must qualify for the low-income exemption through Spokane Neighborhood Action Programs (SNAP; Section 8.08.A.1). Renewal of a low-income exemption would also be obtained through SNAP (Section 8.08.B).
- The fee for a low-income exemption will be waived (Section 8.08.C).
- The rule will no longer allow an exemption to use an SFBD because a residence has no other adequate source of heat if the structure was constructed or substantially remodeled on or after July 1, 1992. The rule will also include a definition of "inadequate source of heat" (Section 8.08.A.2).
- Clarify that a primary heat source that is temporarily inoperable must be repaired or replaced pursuant to an agreed-upon compliance schedule if an exemption is granted allowing the use of an SFBD in place of the inoperable heat source. Unlike other exemptions, this exemption will also be available to commercial establishments (Section 8.08.A.3).
- Provide for a temporary State of Emergency exemption (issued by the SRCAA director) from the burn ban provisions in Section 8.07 if a state of emergency is declared by an authorized local, state or federal government official due to a storm, flooding or other disaster which is in effect during a burn ban (Section 8.08.A.4).
- Provide for a one-time, ten-day temporary exemption, which is free-of-charge and can be requested by telephone (Section 8.08.D).
- The automatic exemption for furnaces will be eliminated and their use during burn bans will be limited to devices which meet Washington emission performance standards or to devices that have received written exemptions from SRCAA (former Section 8.08.C will be removed).
- Clarifies that, except for commercial establishments qualifying under Section 8.08.A.3 or 8.08.D, exemptions are limited to residences (Section 8.08.E).

Other proposed changes to Article VIII: Section 8.09, *Procedure to Geographically Limit Solid Fuel Burning Devices*, will be updated to reflect that the former Spokane PM<sub>10</sub> nonattainment area is now a maintenance area. Fireplaces will no longer be exempt from contingency measures in the event of a PM<sub>10</sub> NAAQS violation. Section 8.10, *Restrictions on Installation and Sales of Solid Fuel Burning Devices*, will clarify that any SFBD sold or installed within SRCAA's jurisdiction must be a Washington certified device. The meanings of the following terms are clarified in Section 8.03, *Definitions*: The terms "certified," "Washington certified device," "EPA certified," and "Oregon certified" are refined for clarity. Coal stoves are further defined as not configured for or capable of burning cordwood. The definition of "furnace" will be removed. The definition of "woodstove" will be revised for better consistency with state regulations.

Reasons Supporting Proposal: SRCAA must update the burning curtailment criteria (Section 8.08) to align it with RCW 70.94.473. The rule is included in the Spokane Area PM<sub>10</sub> limited maintenance plan and the United States Environmental Protection Agency requires its consistency with

Washington state law as a condition for approval of the second ten year PM<sub>10</sub> limited maintenance plan, which is due this year.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Statute Being Implemented: RCW 70.94.453, 70.94.455, 70.94.457, 70.94.460, 70.94.463, 70.94.470, 70.94.473, and 70.94.477.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mark Rowe and Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727; Enforcement: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW does not apply to local air pollution control authority rule development or amendments.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and, pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply.

May 6, 2014

Mark E. Rowe

Air Quality Technician

#### AMENDATORY SECTION

SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) REGULATION I, ARTICLE VIII - SOLID FUEL BURNING DEVICE STANDARDS

#### **SECTION 8.01 PURPOSE**

This article establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to attain the National Ambient Air Quality Standards for fine particulate matter (PM<sub>2.5</sub>) and to further the policy of the Agency as stated in Article I, Section 1.01 of this Regulation.

#### **SECTION 8.02 APPLICABILITY**

The provisions of this article apply to solid fuel burning devices in all areas of Spokane County.

#### **SECTION 8.03 DEFINITIONS**

Unless a different meaning is clearly required by context, words and phrases used in this article shall have the following meaning:

~~((A. Adequate Source of Heat means a permanently installed furnace or heating system, connected or disconnected from its energy source, designed to heat utilizing oil, natural gas, electricity, or propane and to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a residence or commercial establishment.))~~

A. Agency means the Spokane Regional Clean Air Agency.

~~((B. Certified means a solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100.))~~

~~((C)) B. Coal stove means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating or indoor cooking, which has ((substantially)) all the following characteristics:~~

1. An opening for loading coal which is located near the top or side of the appliance; and
2. An opening for emptying ash which is located near the bottom or the side of the appliance; and
3. A system which admits air primarily up and through the fuel bed; and
4. A grate or other similar device for shaking or disturbing the fuel bed; and
5. Listing by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes((-)); and
6. Not configured or capable of burning cordwood.

~~((D)) C. Cook stove means an appliance designed with the primary function of cooking food and containing an integrally built in oven with a volume of 1 cubic foot or greater where the cooking surface measured in square inches or square feet is one and one-half times greater than the firebox measured in cubic inches or cubic feet (e.g. a firebox of 2 cubic feet would require a cooking surface of at least 3 square feet).((-with)) It must have an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cook stove. A portion of at least four sides of the oven must be exposed to the flame path during the oven heating cycle, while a flue gas bypass will be permitted for temperature control. Devices designed or advertised as room heaters that also bake or cook do not qualify as cook stoves.~~

~~((E)) D. Ecology means the Washington State Department of Ecology.~~

~~((F)) E. EPA means the United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency or his/her designated representative.~~

~~F. EPA Certified means a woodstove certified and labeled by EPA under "40 CFR 60 Subpart AAA-Standards of Performance for Residential Wood Heaters"~~

~~G. Fireplace means a permanently installed masonry fireplace; or a factory-built solid fuel burning device designed to be used with an air-to-fuel ratio greater than or equal to thirty-five to one and without features to control the inlet air-to-fuel ratio other than doors or windows such as may be incorporated into the fireplace design for reasons of safety, building code requirements, or aesthetics.~~

~~((H. Furnace means a device which is designed and installed to heat an entire multiple room structure by forcing heated air through permanently installed ducts or by forcing heated water or steam through pipes which result in convective or direct radiation of heat into the rooms.))~~

~~H. National Ambient Air Quality Standards (NAAQS: 40 CFR 50) means outdoor air quality standards established by the United States Environmental Protection Agency under~~

authority of the federal Clean Air Act. EPA set standards for six principal air pollutants, called "criteria" pollutants, under the NAAQS. The criteria pollutants are carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, ozone and particulate matter (PM2.5 and PM10).

~~I. ((Reasonable Further Progress has the same meaning as in Section 171(1) of the Federal Clean Air Act (42 USC 7501)-)) Nonaffected pellet stove means that a pellet stove has an air-to-fuel ratio equal to or greater than 35:1 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 C.F.R. 60 Appendix A, REFERENCE METHOD 28A - MEASUREMENT OF AIR TO FUEL RATIO AND MINIMUM ACHIEVABLE BURN RATES FOR WOOD-FIRED APPLIANCES" as amended through July 1, 1990.~~

~~J. Nonattainment Area means a clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet, or it affects ambient air quality in a nearby area that does not meet, a national ambient air quality standard or standards for one or more of the criteria pollutants defined in 40 CFR 50, National Ambient Air Quality Standards.~~

~~K. Oregon Certified means a woodstove manufactured prior to 1989 which meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.~~

~~L. PM2.5 means particulate matter with a nominal aerodynamic diameter of two and one half micrometers and smaller measured as an ambient mass concentration in units of micrograms per cubic meter of air. Also called fine particulate matter.~~

~~M. PM10 means particulate matter with a nominal aerodynamic diameter of ten micrometers and smaller measured as an ambient mass concentration in units of micrograms per cubic meter of air.~~

~~((J)) N. Seasoned Wood means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.~~

~~((K)) O. Solid Fuel Burning Device ((same as solid fuel heating device)) means a device that is designed to burn wood, coal, or any other nongaseous or nonliquid fuels, and includes woodstoves, coal stoves, cook stoves, pellet stoves, and fireplaces, or any similar device burning any solid fuel. It includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which ((has)) have a heat input less than one million British thermal units per hour.~~

~~((L)) P. Smoke Control Zone means the ((geographic area, impacted by solid fuel combustion smoke, surrounding the)) Spokane/Spokane Valley Metropolitan area and((-)) surrounding geographic areas affected by combustion smoke from solid fuel burning devices, after consideration of the contribution of ((noncertified solid fuel burning)) devices that are not Washington certified devices, population density and urbanization, and ((impact to)) effect on the public health (RCW 70.94.477 (2)(a), (b) and (c)), is defined as follows:~~

Sections 1 through 6, Township 24 N, Range 42 E; Townships 25 and 26 N, Range 42 E; Sections 1 through 24, Township 24 N, Range 43 N; Townships 25, 26 and 27 N, Range 43 E; Sections 19 through 36, Township 28 N, Range 43 E; Sections 1 through 24, Township 24 N, Range 44 E; Township 25 N, Range 44 E; Sections 19 through 36, Township 26 N, Range 44 E; Township 25 N, Range 45 E; Sections 1 through 4, 9 through 16 and 19 through 36, Township 26 N, Range 45 E; Sections 33 through 36, Township 27 N, Range 45 E; Sections 6, 7, 18, 19, 30, and 31, Township 25 N, Range 46 E; Sections 6, 7, 18, 19, 30 and 31, Township 26 N, Range 46 E; Section 31, Township 27 N, Range 46 E.

~~(M. Substantially Remodeled means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period (RCW 70.94.455).~~

N) R. Treated Wood means wood of any species that has been chemically impregnated, painted, or similarly modified to improve resistance to insects, fungus or weathering.

S. Washington Certified Device means a solid fuel burning device, other than a fireplace, which has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100(3).

~~((O) T. Woodstove means ((a wood fueled appliance other than a cook stove with a closed fire chamber which maintains an air to fuel ratio of less than thirty-five to one during the burning of ninety percent or more of the fuel mass consumed at the minimum burn rate achievable. Any combination of parts, typically consisting of but not limited to, doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.)) an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:~~

~~(a) An air-to-fuel ratio in the combustion chamber averaging less than 35:1 as determined by EPA Reference Method 28A; and~~

~~(b) A useable firebox volume of less than twenty cubic feet; and~~

~~(c) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and~~

~~(d) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.~~

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published

above varies from its predecessor in certain respects not indicated by the use of these markings.

## SECTION 8.04 EMISSION PERFORMANCE STANDARDS

The Agency adopts ~~((section WAC 173-433-100 "Emission Performance Standards" and)) Chapter 173-433 WAC by reference and~~ Title 40, Part 60, Subpart AAA of the Code of Federal Regulations "Standards of Performance for New Residential Wood Heaters" by reference.

## SECTION 8.05 OPACITY STANDARDS

### A. Opacity Limit

A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

### B. Test ~~((m))~~Method and ~~((p))~~Procedures~~((:))~~

EPA reference method 9 - Visual Determination of Opacity of Emissions from Stationary Sources - shall be used to determine compliance with Section 8.05.A.

### C. Enforcement~~((:))~~

Smoke visible from a chimney, flue or exhaust duct in excess of the opacity ~~((standard))~~ limit shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## SECTION 8.06 PROHIBITED FUEL TYPES

A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device:

- A. Garbage;
- B. Treated wood (defined in Section 8.03);
- C. Plastic products;
- D. Rubber products;
- E. Animals;
- F. Asphaltic products;
- G. Waste petroleum products;
- H. Paints;

I. Any substance, other than properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal stove, which normally emits dense smoke or obnoxious odors;

J. Paper, other than an amount of non-colored paper necessary to start a fire.

## SECTION 8.07 CURTAILMENT (BURN BAN)

A. Except as provided in Section 8.08, no person shall operate a solid fuel burning device within a defined geographical area under any of the following conditions:

1. Air Pollution Episode

Whenever Ecology has declared curtailment under an alert, warning, or emergency air pollution episode for the geographical area pursuant to ~~((e))~~Chapter 173-435 WAC and RCW 70.94.715.

**2. Stage 1 Burn Ban**

Whenever the Agency has declared curtailment under a first stage of impaired air quality for the Smoke Control Zone or other geographical area unless the solid fuel burning device is one of the following:

- a. A nonaffected pellet stove; or
- b. A Washington Certified Device ~~((A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100));~~ or
- c. An EPA Certified Woodstove ~~((A woodstove certified and labeled by EPA under "40 SFR-CFR 60 Subpart AAA—Standards of Performance for Residential Wood Heaters"));~~ or
- d. An Oregon Certified Woodstove ~~((A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340 340 262 0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262—Woodstove Certification" Dated November 1999.))~~

In Spokane County ~~((until June 30, 2009))~~ as allowed by RCW 70.94.473 ~~(1)(b)(i) ((§1(2)(Effective July 22, 2007)))~~ a first stage of impaired air quality is reached and curtailment may be declared when the Agency determines that ~~((particulates))~~ particulate matter with a nominal aerodynamic diameter of two and one half ((microns)) micrometers and smaller ((in diameter)) (PM2.5) ((measured at any location inside Spokane County at an ambient level of twenty micrograms per cubic meter of air by a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent)), measured as an ambient mass concentration at any location within Spokane County using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, and updated hourly as a twenty-four hour running average, is likely to exceed thirty-five micrograms per cubic meter of air within forty-eight hours based on forecasted meteorological conditions.

**3. Stage 2 Burn Ban**

Whenever the Agency has declared curtailment under a second stage of impaired air quality for the Smoke Control Zone or other geographical area. In Spokane County ~~((until June 30, 2009))~~ as allowed by RCW 70.94.473 ~~(1)(c)(ii) ((§1(2) (Effective July 22, 2007)))~~ a second stage of impaired air quality is reached and curtailment may be declared whenever all of the following criteria are met:

- a. Issuing a Stage 2 Burn Ban Following a Stage 1 Burn Ban
  - i. A first stage of impaired air quality has been in force for a period of twenty-four hours or longer and, in the Agency's judgment, has not reduced the PM2.5 ambient mass concentration, measured as a twenty-four hour running average, sufficiently to prevent it from exceeding thirty-five

micrograms per cubic meter of air at any location inside Spokane County within twenty-four hours; and

ii. ~~((particulates two and one half microns and smaller in diameter (PM2.5) are))~~ A twenty-four hour running average PM2.5 ambient mass concentration equal to or greater than twenty-five micrograms per cubic meter of air is measured at any location inside Spokane County ((at an ambient level of thirty micrograms per cubic meter of air by)) using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent; and

iii. The Agency does not expect meteorological conditions to allow ambient mass concentrations of PM2.5 measured as a twenty-four hour running average to decline below twenty-five micrograms per cubic meter of air for a period of twenty-four hours or more from the time that it is measured at that concentration.

**b. Issuing a Stage 2 Burn Ban Without First Declaring a Stage 1 Burn Ban**

A second stage burn ban may be issued without an existing first stage burn ban as allowed by RCW 70.94.473 (1)(c)(ii) whenever all of the following criteria are met:

- i. The ambient mass concentration of PM2.5 at any location inside Spokane County has reached or exceeded twenty-five micrograms per cubic meter, measured as a running twenty-four hour average using a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent; and
- ii. Meteorological conditions have caused PM2.5 ambient mass concentrations to rise rapidly; and
- iii. The Agency predicts that meteorological conditions will cause PM2.5 ambient mass concentrations measured as a twenty-four hour running average to exceed thirty-five micrograms per cubic meter of air within twenty-four hours; and
- iv. Meteorological conditions are highly likely to prevent smoke from dispersing sufficiently to allow PM2.5 ambient mass concentrations to decline below twenty-five micrograms per cubic meter of air within twenty-four hours.

Issuance of a second stage burn ban without an existing first stage burn ban shall require the Agency to comply with RCW 70.94.473(3).

4. The following matrix graphically illustrates the applicability of Sections 8.07.A.1-3 of this Regulation.

Burn Condition	Impaired Air Quality		Air Pollution Episode
	First Stage Burn Ban	Second Stage Burn Ban	
Type of Device			
EPA Certified Woodstove	Allowed	Prohibited	Prohibited
Oregon Certified Woodstove	Allowed	Prohibited	Prohibited
Pellet Stove (nonaffected)	Allowed	Prohibited	Prohibited
Washington Certified Device	Allowed	Prohibited	Prohibited
All Other Devices	Prohibited	Prohibited	Prohibited

~~((4. After July 1, 1995, if the limitation in RCW 70.94.477(2) is exercised, following the procedure in Section 8.09, and the Agency has declared curtailment under a single stage of impaired air quality for the Smoke Control Zone or other geographical area. A single stage of impaired air quality is reached and curtailment may be declared when particulates two and one half microns and smaller in diameter (PM2.5) are measured at any location inside Spokane County at an ambient level of twenty five micrograms per cubic meter of air by a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent.))~~

5. After July 1, 1995, if the limitation in RCW 70.94.477 (2) is exercised, following the procedure in Section 8.09 (Procedure to Geographically Limit Solid Fuel Burning Devices), and the solid fuel burning device is not one of the following:

~~((a. A fireplace~~

~~b)) a. A nonaffected pellet stove; or~~

~~((e) b. Washington Certified Device ((A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100)); or~~

~~((d) c. EPA Certified Woodstove ((A woodstove certified and labeled by EPA under "40 SFR 60 Subpart AAA- Standards of Performance for Residential Wood Heaters")); or~~

~~((e) d. Oregon Certified Woodstove ((A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340-340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262- Woodstove Certification" Dated November 1999.))~~

B. In consideration of declaring curtailment under a stage of impaired air quality, the Agency shall consider the anticipated beneficial effect on ambient ((~~levels of particulates two and one half microns and smaller in diameter (PM2.5))~~) concentrations of PM2.5, taking into account meteorological factors, the contribution of emission sources other than solid fuel burning devices, and any other factors deemed to ((~~have an impact~~)) affect the PM2.5 mass concentration.

C. Any person responsible for a solid fuel burning device which is subject to curtailment and is already in operation at the time curtailment is declared under an episode or a stage of impaired air quality shall extinguish that device by withholding new solid fuel for the duration of the episode or impaired air quality. Smoke visible from a chimney, flue or exhaust duct after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.

D. The Agency, Ecology, Spokane County Health District, fire departments, fire districts, Spokane County Sheriff's Department, or local police having jurisdiction in the area may enforce compliance with solid fuel burning device cur-

tailment after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality.

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

## SECTION 8.08 EXEMPTIONS

### A. Categories

The provisions of Section 8.07 shall not apply to any person who possesses a valid written exemption for his/her residence, issued by the Agency. The Agency may issue written exemptions for residences if any one of the following is demonstrated to the satisfaction of the Agency:

#### 1. Low Income

An economic need to burn solid fuel for residential space heating purposes by qualifying through Spokane Neighborhood Action Partners (SNAP) for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program (L.I.E.A.P.).

#### 2. No Adequate Source of Heat

That the residence was constructed prior to July 1, 1992 and that the ability to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a dwelling is only possible with a solid fuel burning device. If any part of the heating system has been disconnected, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of the design on the system's capability prior to the disconnection, damage, improper maintenance, malfunction, or occurrence that rendered the system nonfunctional. A person's income level is irrelevant in the approval or denial of an exemption under this provision. ((That his/her heating system, other than a solid fuel heating device, is inoperable for reasons other than his/her own actions.))

#### 3. Primary Heating Source Temporarily Inoperable

That his/her heating system, other than a solid fuel burning device, is temporarily inoperable for reasons other than his/her own actions. When applying for this exemption, the applicant must submit a compliance schedule for bringing his/her heating system, other than a solid fuel burning device, back into operation to be used as his/her primary heating source. Unless otherwise approved by SRCAA, exemptions will be limited to 30 calendar days. A person's income level is irrelevant in the approval or denial of an exemption under this provision.

#### 4. State of Emergency

If a state of emergency is declared by an authorized local, state, or federal government official due to a storm, flooding, or other disaster, which is in effect during a burn ban declared pursuant to Section 8.07 of this Regulation, the Control Officer may temporarily issue a State of Emergency exemption. The State of Emergency exemption shall serve as a general exemption from burn ban provisions in Section 8.07. The temporary approval shall reference the applicable state of emergency, effective date, expiration date, and limitations, if any (e.g. specific geographic areas affected).

~~((3. That there is no adequate source of heat and the structure was constructed or substantially remodeled prior to July 1, 1992.~~

~~4. That there is no adequate source of heat and the structure was constructed or substantially remodeled after July 1, 1992 and is outside an urban growth area, as defined in RCW 36.70A.))~~

#### B. Exemption Duration and Renewals

Written exemptions shall be valid for a period determined by the Agency, which shall not exceed one (1) year from the date of issuance. Exemptions in Section 8.08.A.1 & 2 may be renewed by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. For renewals under Section 8.08.A.1, the applicant must demonstrate the low income status is met each time application is made. Exemption requests may be denied by the Agency, regardless of the applicant's exemption history.

~~((C. The provisions of Section 8.07 and the requirement in Section 8.08.A. to obtain a written exemption shall not apply to any person who operates a furnace that is designed to burn wood, coal, or any other nongaseous or non-liquid fuels.))~~

#### C. Fees

Exemption requests must be accompanied by fees specified in Section 10.10 and SRCAA's fee schedule. For exemptions which are requested and qualify under the low income exemption in Section 8.08.A.1, the fee is waived.

#### D. One-Time, 10-Day Temporary Exemption

SRCAA may issue one-time, 10-day temporary solid fuel burning device exemptions if persons making such requests qualify and provide all of the information below. Unless required otherwise by SRCAA, such exemptions requests may be taken via telephone.

1. Full name; and
2. Mailing address; and
3. Telephone number; and
4. Acknowledgement that he/she believes he/she qualifies for an exemption pursuant to Section 8.08.A.1, 2, or 3; and
5. Physical address where the exemption applies; and
6. Description of the habitable space for which the exemption is being requested; and
7. Acknowledge that s/he has not previously requested such an exemption for the same physical address, except as provided below, and that all of the information provided is accurate.

One-time, 10-day temporary solid fuel burning device exemptions are not valid for any physical address for which a one-time, 10-day temporary solid fuel burning device exemption has previously been issued unless a past exemption was issued for a residence under different ownership or there is a temporary breakdown that qualifies under Section 8.08.A.3.

#### E. Residential and Commercial Exemption Limitations

Except for commercial establishments qualifying under Section 8.08.A.3 or 8.08.D, exemptions are limited to residences. Exemptions are limited to normally inhabited areas of a residence, which includes areas used for living, sleeping, cooking and eating. Exemptions will not be issued for attached and detached garages, shops, and outbuildings. For commercial establishments, exemptions will be limited to

areas identified in exemption approvals issued by SRCAA pursuant to Section 8.08.A.3 or 8.08.D.

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

### **SECTION 8.09 PROCEDURE TO GEOGRAPHICALLY LIMIT SOLID FUEL BURNING DEVICES**

A. ~~((After July 1, 1995, if))~~ If the EPA finds that the Spokane PM10 ~~((Nonattainment))~~ Maintenance Area ~~((, as defined in CFR Title 40, Part 81, has either:~~

- ~~1. Failed to make Reasonable Further Progress; or~~
- ~~2. Failed to timely attain a National Ambient Air Quality Standard for particulates ten microns and smaller in diameter (PM10), as defined in CFR title 40, Part 50.6; or~~
- ~~3. Violated a National Ambient Air Quality Standard for PM10 after redesignation as an attainment area.))~~ has violated a National Ambient Air Quality Standard for PM10 and emissions from solid fuel burning devices are determined by the EPA, in consultation with Ecology and the Agency, to be a contributing factor to such failure or violation, then one year after such determination, the use of solid fuel burning devices not meeting the standards set forth in RCW 70.94.457 and WAC 173-433-100, is restricted to areas outside the Smoke Control Zone.

B. Within 30 days of the determination pursuant to Section 8.09.A(-), the Agency shall publish a public notice in a newspaper of general circulation, informing the public of such determination and of the date by which such restriction on the use of solid fuel burning devices becomes effective.

C. Nothing in Section 8.09 shall apply to ~~((the use of fireplaces or to))~~ persons who have obtained an exemption pursuant to Section 8.08~~((A.1))~~.

### **SECTION 8.10 RESTRICTIONS ON INSTALLATION AND SALES OF SOLID FUEL BURNING DEVICES**

#### A. Installation of Solid Fuel Burning Devices

~~((After July 1, 1992, n))~~ No person shall install a new or used solid fuel burning device that is not a Washington certified device in any new or existing building or structure unless the device is a cook stove ~~((, a fireplace,))~~ or a device which has been rendered permanently inoperable.

#### B. Sale or Transfer of Solid Fuel Burning Devices

~~((After July 1, 1992, n))~~ No person shall sell, offer for sale, advertise for sale, or otherwise transfer a new or used solid fuel burning device that is not a Washington certified device to another person unless the device is a cook stove ~~((, a fireplace,))~~ or a device which has been rendered permanently inoperable (RCW 70.94.457 (1)(a)).

#### C. Sale or Transfer of Fireplaces

~~((After January 1, 1997, n))~~ No person shall sell, offer for sale, advertise for sale, or otherwise transfer a new or used fireplace to another person, except masonry fireplaces, unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule (RCW 70.94.457 (1)(b)).

D. Sale or Transfer of Masonry Fireplaces

~~((After January 1, 1997, n))~~No person shall build, sell, offer for sale, advertise for sale, or otherwise transfer a new or used masonry fireplace, unless such fireplace meets Washington State building code design standards as established by the state building code council by rule (RCW 70.94.457 (1)(c)).

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

**SECTION 8.11 REGULATORY ACTIONS AND PENALTIES**

A person in violation of this article may be subject to the provisions of Article II, Section 2.11((;)) - Penalties.