WSR 14-11-004
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed May 7, 2014, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-053.

Title of Rule and Other Identifying Information: WAC 390-20-0101 Forms for lobbyist registration, 390-20-020 Forms for lobbyist report of expenditures, 390-20-052 Application of RCW 42.17A.635—Reports of agency lobbying, 390-20-111 Forms for lobbyist employers report of political contributions, 390-20-120 Forms for report of legislative activity by public agencies, 390-20-125 Forms for registration and reporting by sponsors of grass roots lobbying campaigns, 390-20-143 Application of lobbying provisions to organizations, 390-20-144 Registration and reporting by lobbyist organizations, and proposed new WAC 390-20-150 Changes in dollar amounts.

Hearing Location(s): Public Disclosure Commission (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 commission is charged with enforcing disclosure of lobbying expenditures required by RCW 42.17A.600 through 42.17A.640. In August 2013, during rule-making proceedings to amend lobbying disclosure forms, the commission received stakeholder comments related to lobbying disclosure other than the subject rule amendments. In response, the commission began rule making in November 2013 to consider addressing the other concerns raised by stakeholders.

Acting on comments received during a November 20, 2013, stakeholder meeting during which attendees expressed concern that the "more than $25" threshold triggering itemization of entertainment expenses had not been adjusted since 1978 and is too low, the commission proposes proceeding with inflationary adjustments to the lobbying expenditure disclosure thresholds. RCW 42.17A.125(2) authorizes the commission to revise, at least once every five years but no more often than every two years, the monetary reporting threshold and reporting code values of chapter 42.17A RCW. Since 2010, the law has required the commission equally adjust all dollar amounts in the (lobbying disclosure) category if/when it seeks to adjust any dollar amount. This is the first inflationary adjustment the commission has proposed since 2010, which means that the adjustment[s] to dollar amounts that have been in effect for the longest amount of time will be more drastic than those to the amounts that were adjusted more recently. The commission is proposing adjustments to only the dollar amounts that are unique to lobbying disclosure. Any lobbying disclosure dollar thresholds or code amounts derived from and aligned with disclosure thresholds or codes in other categories found in chapter 42.17A RCW, such as personal finance disclosure or campaign disclosure, are not included in this proposal.

Reasons Supporting Proposal: Stakeholders have raised valid concerns that the current disclosure thresholds for lobbying expenditures are outdated, considering that the most recent adjustment was made in 1990 and other current amounts have been in place since the 1970s. RCW 42.17A.125(1) requires the commission to consider inflationary adjustments for certain dollar amounts, including campaign contribution limits, every two years. Additionally, the commission's last inflationary adjustments to the dollar thresholds and codes in chapter 42.17A RCW, personal finance category, were made in 2008. Inflationary adjustments to the disclosure thresholds for lobbying expenditures are overdue.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.125.

Statute Being Implemented: RCW 42.17A.600 (1)(i), 42.17A.610(5), 42.17A.615 (2)(a), 42.17A.630 (2)(a), 42.17A.635 (5)(d)(v)(B), and 42.17A.640(1).

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 7, 2014
Lori Anderson
Communications and
Training Office

AMENDATORY SECTION (Amending WSR 14-01-011, filed 12/5/13, effective 1/5/14)

WAC 390-20-0101 Forms for lobbyist registration. The official form for lobbyist registration as required by RCW 42.17A.600 is designated "L-1," revised ((~~1/14~~)) 12/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any paper attachments shall be on 8-1/2" x 11" white paper.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2929

LOBBYIST REGISTRATION

L1
(1/14)

THIS SPACE FOR OFFICE USE

1. Lobbyist Name

Permanent Business Address

Business Telephone Numbers
Permanent ( )
Temporary ( )

City State Zip

Cell Phone ( )
or Pager

2. Temporary Thurston County address during legislative session

E-Mail Address

3. Employer's name and address (person or group for which you lobby)

Employer's occupation, business or description of purpose of organization

4. Name and address of person having custody of accounts, receipts, books or other documents which substantiate lobbyist reports. (Person responsible for producing the lobbyist employer's annual L-3 report.)

E-Mail Address

5. What is your pay (compensation) for lobbying?
$ _____ per _____
(hour, day, month, year)
Other: Explain:

Description of employment (check one or more boxes)
☐ Full time employee
☐ Part time or temporary employee
☐ Contractor, retainer or similar agreement
☐ Unsalaried officer or member of group
☐ Sole duty is lobbying
☐ Lobbying is only a part of other duties

6. Are you reimbursed for lobbying expenses? Explain which expenses.
☐ Yes: $ _____ per _____
☐ Yes: I am reimbursed for expenses.
☐ No: I am not reimbursed for expenses.

Does employer pay any of your lobbying expenses directly? If yes, explain which ones.

7. How long do you expect to lobby for this organization?
☐ Permanent lobbyist ☐ Only during legislative session ☐ Other, Explain:

8. Is your employer a business or trade association or organization which lobbies on behalf of its members or a representative entity which lobbies on behalf of businesses, groups, associations, or organizations? If "yes," attach a list showing the name and address of each member or funder who has paid fees, dues or other payments over $500 during either of the past two years or is expected to pay over $500 this year.
☐ No ☐ Yes. However, no member or funder has paid, pays, or is expected to pay over $500.
☐ Yes. The list is attached

9. Does your employer have a connected, related or closely affiliated political action committee which will provide funds for you to make political contributions including purchase tickets to fund raising events? If so, list the name of that political action committee.
☐ No
☐ Yes. Name of the committee is:

10. If lobbyist is a company, partnership or similar business entity which employs others to perform actual lobbying duties, list name of each person who will lobby. (See WAC 390-20-143 and 144 for instructions.)

11. Areas of interest. Lobbying is most frequent before legislative committee members or state agencies concerned with following subjects:

CODE	SUBJECT	CODE	SUBJECT
01 ☐	Agriculture	09 ☐	Health Care
02 ☐	Business and consumer affairs	10 ☐	Higher education
03 ☐	Constitutions and elections	11 ☐	Human services
04 ☐	Education	12 ☐	Labor
05 ☐	Energy and utilities	13 ☐	Law and justice
06 ☐	Environmental affairs - natural resources - parks	14 ☐	Local government
		15 ☐	State government
07 ☐	Financial institutions and insurance	16 ☐	Technology
		17 ☐	Transportation
08 ☐	Fiscal	18 ☐	Other - Specify:

Remarks:

CERTIFICATION: I hereby certify that the above is a true, complete and correct statement.

12. LOBBYIST'S SIGNATURE DATE

EMPLOYER'S AUTHORIZATION: Confirming the employment authority to lobby described in this registration statement.

EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE DATE

PDC Form L-1 (rev. 1/14)

NOT VALID UNLESS SIGNED BY BOTH

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2929

LOBBYIST REGISTRATION

L1 (12/14)

THIS SPACE FOR OFFICE USE

1. Lobbyist Name

Permanent Business Address

Business Telephone Numbers
Permanent ( )
Temporary ( )
Cell Phone ( ) or Pager

City State Zip

2. Temporary Thurston County address during legislative session

E-Mail Address

3. Employer's name and address (person or group for which you lobby)

Employer's occupation, business or description of purpose of organization

4. Name and address of person having custody of accounts, receipts, books or other documents which substantiate lobbyist reports. (Person responsible for producing the lobbyist employer's annual L-3 report.)

E-Mail Address

5. What is your pay (compensation) for lobbying?
$ _____ per _____ (hour, day, month, year)
Other: Explain:

Description of employment (check one or more boxes)
☐ Full time employee
☐ Part time or temporary employee
☐ Contractor, retainer or similar agreement
☐ Unsalaried officer or member of group
☐ Sole duty is lobbying
☐ Lobbying is only a part of other duties

6. Are you reimbursed for lobbying expenses? Explain which expenses.
☐ Yes: $ _____ per _____
☐ Yes: I am reimbursed for expenses.
☐ No: I am not reimbursed for expenses.

Does employer pay any of your lobbying expenses directly? If yes, explain which ones.

7. How long do you expect to lobby for this organization?
☐ Permanent lobbyist ☐ Only during legislative session ☐ Other, Explain:

8. Is your employer a business or trade association or organization which lobbies on behalf of its members or a representative entity which lobbies on behalf of businesses, groups, associations, or organizations? If "yes," attach a list showing the name and address of each member or funder who has paid fees, dues or other payments over $1,450 during either of the past two years or is expected to pay over $1.450 this year.
☐ No ☐ Yes. However, no member or funder has paid, pays, or is expected to pay over $1,450.
☐ Yes. The list is of parties attached

9. Does your employer have a connected, related or closely affiliated political action committee which will provide funds for you to make political contributions including purchase tickets to fund raising events? If so, list the name of that political action committee.
☐ No
☐ Yes. Name of the committee is:

10. If lobbyist is a company, partnership or similar business entity which employs others to perform actual lobbying duties, list name of each person who will lobby. (See WAC 390-20-143 and 144 for instructions.)

11. Areas of interest. Lobbying is most frequent before legislative committee members or state agencies concerned with following subjects:

CODE	SUBJECT	CODE	SUBJECT
01 ☐	Agriculture	09 ☐	Health Care
02 ☐	Business and consumer affairs	10 ☐	Higher education
03 ☐	Constitutions and elections	11 ☐	Human services
04 ☐	Education	12 ☐	Labor
05 ☐	Energy and utilities	13 ☐	Law and justice
06 ☐	Environmental affairs - natural resources - parks	14 ☐	Local government
		15 ☐	State government
07 ☐	Financial institutions and insurance	16 ☐	Technology
		17 ☐	Transportation
08 ☐	Fiscal	18 ☐	Other - Specify:

Remarks:

CERTIFICATION: I hereby certify that the above is a true, complete and correct statement.

EMPLOYER'S AUTHORIZATION: Confirming the employment authority to lobby described in this registration statement.

12. LOBBYIST'S SIGNATURE DATE

EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE DATE

PDC Form L-1 (rev. 12/14)

NOT VALID UNLESS SIGNED BY BOTH

LOBBYIST IDENTIFICATION FORM

Photo this size (2x2)

NAME:
BUSINESS ADDRESS:

PHONE:

OLYMPIA ADDRESS:

PHONE:

EMPLOYERS' NAMES:

YEAR FIRST EMPLOYED AS A LOBBYIST:
BIOGRAPHY:

INSTRUCTIONS

- **ATTACH THIS PAGE TO YOUR L-1 REGISTRATION.**
- **ATTACH 2" x 2" PASSPORT TYPE PHOTO. PHOTO SHOULD BE HEAD AND SHOULDERS, FULL FACE, AND TAKEN WITHIN LAST 12 MONTHS.**
- **PLEASE WRITE NAME, LIGHTLY IN PENCIL, ON BACK OF PHOTO BEFORE ATTACHING.**
- **PHOTOS WILL NOT BE RETURNED.**
- **PLEASE SEE INSTRUCTION BOOKLET FOR EXAMPLE OF BIOGRAPHY.**
- **LIST ALL EMPLOYERS ON THIS PAGE.**

PDC FORM L-1, PAGE 2 (Rev. 2/05)

AMENDATORY SECTION (Amending WSR 14-01-011, filed 12/5/13, effective 1/5/14)

WAC 390-20-020 Forms for lobbyist report of expenditures. The official form for the lobbyist report of expenditures is designated "L-2," revised ((~~1/14~~)) 12/14 which includes the L-2 Memo Report, dated 1/02. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any attachments shall be on 8-1/2" x 11" white paper.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L2
1/14

PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by Chapter 397, 1995 Session Laws)

1. Lobbyist Name

Mailing Address

City State Zip + 4

New Address? ☐ Yes ☐ No

2. This report is for the period _____ (Month) _____ (Year)

This report corrects or amends the report for _____ (Month) _____ (Year)

Business Telephone ( ) -

ALL COMPLETE THIS PART			COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER		
Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period			Amount attributed to each employer		
Expense Category	TOTAL AMOUNT THIS MONTH All employers plus own expense (Columns a + b + c + d and attached pages)	Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A	Employer No. ___ Column B	Employer No. ___ Column C	Employer No. ___ Column D
3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer)	$		$	$	$
4. PERSONAL EXPENSES for travel, food and refreshments		$			
5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15)					
6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16)					
7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE					
8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17)					
9. OTHER EXPENSES AND SERVICES (See #18)					
10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH	$	$	$	$	$

(Attach additional page(s) if you lobby for more than three employers.)

11. EMPLOYERS' NAMES No. ___ (B)
No. ___ (C)
No. ___ (D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented

☐ Continued on attached pages

13. Of the time spent lobbying, what percentage was devoted to lobbying: the Legislature _____% State Agencies _____%.

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: Employer's name:

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All registrations terminate automatically on the second Monday in January of each odd numbered year.

CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.	LOBBYIST SIGNATURE	DATE

CONTINUE ON REVERSE

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L2
12/14

PDC OFFICE USE

Lobbyist Monthly Expense Report

(as required by Chapter 397, 1995 Session Laws)

1. Lobbyist Name

Mailing Address

City State Zip + 4

New Address? ☐ Yes ☐ No

2. This report is for the period _____ (Month) _____ (Year) This report corrects or amends the report for _____ (Month) _____ (Year)

Business Telephone ( ) -

Expense Category	TOTAL AMOUNT THIS MONTH All employers plus own expense (Columns a + b + c + d and attached pages)	Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A	Employer No. ___ Column B	Employer No. ___ Column C	Employer No. ___ Column D
	ALL COMPLETE THIS PART		COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER		
	Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period		Amount attributed to each employer		
3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer)	$		$	$	$
4. PERSONAL EXPENSES for travel, food and refreshments		$			
5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15)					
6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16)					
7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE					
8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17)					
9. OTHER EXPENSES AND SERVICES (See #18)					
10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH	$	$	$	$	$

(Attach additional page(s) if you lobby for more than three employers.)

11. EMPLOYERS' NAMES No. ___ (B)
No. ___ (C)
No. ___ (D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.

Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented

☐ Continued on attached pages

13. Of the time spent lobbying, what percentage was devoted to lobbying: the Legislature _____% State Agencies _____%.

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CERTIFICATION

I certify that this report is true and complete to the best of my knowledge.	LOBBYIST SIGNATURE	DATE

CONTINUE ON REVERSE

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Page 2 L2

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. **In the total amount column, show the total amount spent for each occasion including any staging costs, tax, and gratuity. Also show the actual amount spent entertaining each individual, as shown in the example. When reporting a reception or similar event, show the amount fairly attributed to each individual.**
- Entertainment expenditures exceeding $25 per occasion (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.
- Travel, lodging and subsistence expenses in connection with a speech, presentation, appearance, trade mission, seminar or educational program.
- Enrollment and course fees in connection with a seminar or educational program.

Lobbyists must provide an elected official with a copy of the L-2 or Memo Report if the lobbyist reports: 1) spending on one occasion over $50 for food or beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

Date	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment	Description, Place, etc.	Sponsoring Employer	Total Amount
mm/dd/year	*Example: Sen Bow ($32), Rep Arrow ($28), and J. D. Lobbyist ($36) tax & gratuity ($25.41)*	*Dinner at Anthony's, Olympia*	*XYZ Corporation*	*$121.41*
				$
N/A	Total expenses itemized on attached Memo Reports →			

☐ Continued on attached pages.

16. If a monetary or in-kind contribution exceeding $25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding $25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			$
N/A	Total contributions itemized on attached Memo Reports →		

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be again included in this L-2 report.)

☐ Continued on attached pages. PAC Name: _____

17. Expenditures for: a) political advertising supporting or opposing a state or local candidate or ballot measure; or b) public relations, telemarketing, polling or similar activities that directly or indirectly are lobbying-related must be itemized by amount, vendor or person receiving payment, and a brief description of the activity. Itemize each expenditure on an attached page that also shows lobbyist name and report date. Put the aggregate total of these expenditures on line 8.

18. Payments by the lobbyist for other lobbying expenses and services, including payments to subcontract lobbyists, expert witnesses and others retained to provide lobbying services or assistance in lobbying and payments for grass roots lobbying campaigns (except advertising/printing costs listed in Item 7).

Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			$

☐ Continued on attached page.

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Page 2 L2

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. **In the total amount column, show the total amount spent for each occasion including any staging costs, tax, and gratuity. Also show the actual amount spent entertaining each individual, as shown in the example. When reporting a reception or similar event, show the amount fairly attributed to each individual.**
- Entertainment expenditures exceeding $50 per occasion (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.
- Travel, lodging and subsistence expenses in connection with a seminar or educational program.
- Enrollment and course fees in connection with a seminar or educational program.

Lobbyists must provide an elected official with a copy of the L-2 or Memo Report if the lobbyist reports: 1) spending on one occasion over $50 for food or beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

Date	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment	Description, Place, etc.	Sponsoring Employer	Total Amount
mm/dd/year	*Example: Sen Bow ($32), Rep Arrow ($28), and J. D. Lobbyist ($36) tax & gratuity ($25.41)*	*Dinner at Anthony's, Olympia*	*XYZ Corporation*	*$121.41*
				$
N/A	Total expenses itemized on attached Memo Reports →			

☐ Continued on attached pages.

16. If a monetary or in-kind contribution exceeding $25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding $25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			$
N/A	Total contributions itemized on attached Memo Reports →		

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be again included in this L-2 report.)

☐ Continued on attached pages. PAC Name: _____

17. Expenditures for: a) political advertising supporting or opposing a state or local candidate or ballot measure; or b) public relations, telemarketing, polling or similar activities that directly or indirectly are lobbying-related must be itemized by amount, vendor or person receiving payment, and a brief description of the activity. Itemize each expenditure on an attached page that also shows lobbyist name and report date. Put the aggregate total of these expenditures on line 8.

18. Payments by the lobbyist for other lobbying expenses and services, including payments to subcontract lobbyists, expert witnesses and others retained to provide lobbying services or assistance in lobbying and payments for grass roots lobbying campaigns (except advertising/printing costs listed in Item 7).

Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			$

☐ Continued on attached page.

INFORMATION CONTINUED

L2

(Use this page if you need additional space for Items 12, 15 or 16)

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

12.	Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented

15. Date	Names of all Persons Entertained or Provided Travel, etc.	Description, Place, etc.	Sponsoring Employer	Amount
				$

16. Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			$

INFORMATION CONTINUED

L2

(Use this page if you need additional space for Items 17 or 18)

Lobbyist Name

Reporting Period _____ (Month) _____ (Year)

17. Date	Names of Vendor or Person Receiving Payment	Description, Place, etc.	Sponsoring Employer	Amount
				$

18. Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			$

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L-2 Memo Report
1/02

Instructions: This Memo Report may be used by a lobbyist to notify a state elected official or other recipient of contributions, meals, travel expenses or educational benefits that have been provided during the preceding calendar month. The specific list of persons to whom a copy of this report must be delivered is shown below in the "Contributions" and "Meals, Travel, Seminars" sections. If the expenditures disclosed on this Memo Report do not also appear on the lobbyist's L-2 Report, a copy of this Memo Report must accompany the L-2 filing. See L-2 instruction manual for further details.

PDC OFFICE USE

TO: Recipient's Name*

FROM: Lobbyist's Name

Mailing Address

City State Zip + 4

This report is for the period (Month) (Year)

This report corrects or amends the report for (Month) (Year)

Business Telephone ( ) -

CONTRIBUTIONS to state or local candidate, elected official, or employee, legislative staff person or ballot issue committee.

Date Made	Amount or Value	Description (if in-kind)	Source of Contribution (Employer's Name or Own Funds)
	$		

MEALS, TRAVEL, SEMINARS to a state elected official, including a legislator, or members of the official's immediate family. Disclose: a) expenditures totaling over $50 on one occasion for food or beverages for the official and/or the official's family; or b) expenditures for providing permissible travel, lodging, subsistence expenses or enrollment or course fees for the official and the official's family.

Date Given	Amount or Value	Description	Source of Gift (Employer's Name or Own Funds)	Recipient (if family member)
	$			

Lobbyist's Signature Date

***Recipients of Contributions** will report receipt of a cash donation on a C-3 report or in-kind on a Schedule B to the C-4 report; **recipients of meals, travel and seminars** will report receipt of these items on their annual F-1 statement.

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

WAC 390-20-052 Application of RCW 42.17A.635—Reports of agency lobbying. Pursuant to the authority granted in RCW 42.17A.635(8), the commission adopts the following interpretations regarding the reporting of lobbying by public agencies pursuant to RCW 42.17A.635:

(1) The phrase "in-person lobbying" contained in RCW 42.17A.635 (5)(d)(v)(B) includes activity which is intended to influence the passage or defeat of legislation, such as testifying at public hearings, but does not include activity which is not intended to influence legislation, such as attending a hearing merely to monitor or observe testimony and debate.

(2) The phrase "a legislative request" contained in RCW 42.17A.635 (5)(d)(ii) includes an oral request from a member of the legislature or its staff.

(3)(a) When any subagency (i.e., department, bureau, board, commission or agency) within a state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district (i.e., primary agency) has independent authority to expend public funds for lobbying, that subagency may file a separate L-5 reporting the information required by RCW 42.17A.635(5).

(b) When a subagency elects to file its own, separate L-5, it shall notify the commission and the administrative head of the primary agency of its intentions in writing. The primary agency shall not thereafter include information for the subagency in its L-5, and shall have no legal obligation for the filings of the subagency.

(4) Pursuant to RCW 42.17A.635(6), certain local agencies may elect to have lobbying activity on their behalf reported by their elected officials, officers and employees in the same manner as lobbyists who register and report under RCW 42.17A.600 and 42.17A.615:

(a) Whenever such a local agency makes such an election, it shall provide the commission with a written notice.

(b) After such an election, those who lobby on behalf of such local agency shall register and report all lobbying activity reportable under RCW 42.17A.635(5) in the same manner as lobbyists who are required to register and report under RCW 42.17A.600 and 42.17A.615. Such a local agency shall report pursuant to RCW 42.17A.630.

(c) In order to terminate such an election, such a local agency shall provide the commission with a written notice and it shall report pursuant to RCW 42.17A.635(5) thereafter.

(d) The exemptions from reportable lobbying activity contained in RCW 42.17A.635 (5)(d) apply to all agencies, whether or not they have exercised the election to report in the same manner as lobbyists who report under RCW 42.17A.600, 42.17A.615, and 42.17A.630. The exemptions contained in RCW 42.17A.610 (1), (4) and (5) do not apply to any agency.

(5) Unless an agency has elected to report its lobbying pursuant to RCW 42.17A.635(6) and subsection (3) of this section, an agency shall include the reportable lobbying activity on its behalf by an elected official in its quarterly report. Such an elected official does not file any separate report of that activity.

(6) Reportable in-person lobbying by elected officials, officers and employees:

(a) An elected official does not engage in reportable in-person lobbying on behalf of ((~~this~~)) an agency unless and until that elected official has expended in excess of ((~~fifteen~~)) twenty-five dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington during any three-month period as provided in RCW 42.17A.635 (5)(d)(v)(B).

(b) Other officers and employees do not engage in reportable in-person lobbying on behalf of their agency unless and until they have, in the aggregate, expended in excess of ((~~fifteen~~)) twenty-five dollars of nonpublic funds in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington or they have, in the aggregate, engaged in such lobbying for more than four days or parts thereof during any three month period as provided in RCW 42.17A.635 (5)(d)(v)(B).

(c) When limits in (a) or (b) of this subsection have been exceeded, the agency shall report such elected official, officer, or employee as a "person who lobbied this quarter" on the front of PDC Form L-5 and include a listing of those excess expenditures as noted on that form.

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

WAC 390-20-111 Form for lobbyist employers report of political contributions. The official form entitled "Employer of Lobbyist Monthly Political Contribution Report" as required by RCW 42.17A.630 (2)(a) is designated "L-3c" revised ((~~1/02~~)) 12/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington, 98504-0908. Any attachments must be on 8-1/2" x 11" white paper.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Employer of Lobbyist Monthly Political Contribution Report

L-3C 1/02

THIS SPACE FOR OFFICE USE

Employer's Name (Use complete company, association, union or entity name.)

Mailing Address

City State Zip

Who Must File Report: Employers of lobbyists registered in Washington State making one or more contributions, including in-kind contributions, during one calendar month totaling more than $100 to a candidate for state or local office, an elected state or local official, an officer or employee of any public agency, or a political committee. *Employer contributions made through and reported by a registered lobbyist or an employer-affiliated PAC are not reportable on an L-3c*

What Must Be Reported: Contributions, including a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, or transfer of anything of value, including personal and professional services for less than full consideration. Contributions to campaign accounts and public office fund accounts are reportable.

When Is The Report Filed: Within 15 days after the last day of each calendar month during which reportable contributions were made. Reports are considered filed as of the post mark or hand-delivery date to PDC.

Itemize contributions that alone, or together with other contributions to the same recipient, total over $100 during the calendar month specified above. If space provided is insufficient, use additional L-3c forms or 8 1/2" x 11" white paper.

Date of Contribution	Name and Address of Recipient	Description of Contribution*	Amount or Value*
			$

*See next page for details.

Certification: I certify that the information contained herein is true and complete to the best of my knowledge.

Name and title of person authorized to sign on employer's behalf	Signature	Date

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

Employer of Lobbyist Monthly Political Contribution Report

L-3c
12/14

THIS SPACE FOR OFFICE USE

Employer's Name (Use complete company, association, union or entity name.)

Mailing Address

City State Zip

Who Must File Report: Employers of lobbyists registered in Washington State making one or more contributions, including in-kind contributions, during one calendar month totaling more than $110 to a candidate for state or local office, an elected state or local official, an officer or employee of any public agency, or a political committee. *Employer contributions made through and reported by a registered lobbyist or an employer-affiliated PAC are not reportable on an L-3c.*

What Must Be Reported: Contributions, including a loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, or transfer of anything of value, including personal and professional services for less than full consideration. Contributions to campaign accounts and public office fund accounts are reportable.

When Is The Report Filed: Within 15 days after the last day of each calendar month during which reportable contributions were made. Reports are considered filed as of the post mark or hand-delivery date to PDC.

Itemize contributions that alone, or together with other contributions to the same recipient, total over $110 during the calendar month specified above. If space provided is insufficient, use additional L-3c forms or 8 1/2" x 11" white paper.

Date of Contribution	Name and Address of Recipient	Description of Contribution*	Amount or Value*
			$

*See next page for details.

Certification: I certify that the information contained herein is true and complete to the best of my knowledge.

Name and title of person authorized to sign on employer's behalf	Signature	Date

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L3C

Description of Contribution

Monetary Monetary contributions are those made in cash or by check, money order or other negotiable instrument. If total in amount column represents aggregate total given that recipient during the month (i.e., more than one contribution), indicate the date and amount of each contribution figured into the total.

For contributions given to incumbent candidates and elected officials, indicate whether the contribution is for the recipient's campaign account or public office account.

In-Kind Donated goods or services qualify as reportable contributions. In-kind contributions include such things as discounts on products or services, free transportation, free or reduced-rate office space, personal services, polling services, professional assistance to campaign managers and help with preparation of political advertising.

Amount or Value of Contribution

If the aggregate amount or value contributed to one recipient (candidate, elected official, agency officer or employee, or political committee) during a calendar month was over $100 -- and the aggregate contribution was not reported by your lobbyist on his/her monthly report or the aggregate contribution was not made through and reported by your affiliated PAC -- put the total contributed in the Amount or Value column and provide the other required information.

In-Kind Value in-kind contributions at the amount you actually paid for the donated item or service or, if no purchase was made, value them at their fair market value. Fair market value is the amount a well-informed buyer or lessee, willing but not obligated to buy or lease, would pay; and what a well-informed seller, or lessor, willing but not obligated to sell or lease, would accept.

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L3c

Description of Contribution

Monetary

Monetary contributions are those made in cash or by check, money order or other negotiable instrument. If total in amount column represents aggregate total given that recipient during the month (i.e., more than one contribution), indicate the date and amount of each contribution figured into the total.

For contributions given to incumbent candidates and elected officials, indicate whether the contribution is for the recipient's campaign account or public office account.

In-Kind

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Amount or Value of Contribution

If the aggregate amount or value contributed to one recipient (candidate, elected official, agency officer or employee, or political committee) during a calendar month was over $110 -- and the aggregate contribution was not reported by your lobbyist on his/her monthly report or the aggregate contribution was not made through and reported by your affiliated PAC -- put the total contributed in the Amount or Value column and provide the other required information.

In-Kind

Value in-kind contributions at the amount you actually paid for the donated item or service or, if no purchase was made, value them at their fair market value. Fair market value is the amount a well-informed buyer or lessee, willing but not obligated to buy or lease, would pay; and what a well-informed seller, or lessor, willing but not obligated to sell or lease, would accept.

AMENDATORY SECTION (Amending WSR 12-01-031, filed 12/13/11, effective 1/13/12)

WAC 390-20-120 Forms for report of legislative activity by public agencies. The official form for the report of legislative activity by public agencies as required by RCW 42.17A.635 is designated "L-5," revised ((~~1/12~~)) 12/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

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711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM
L-5
(Rev 1/12)

LOBBYING BY STATE AND LOCAL GOVERNMENT AGENCIES

Instructions Are Printed On Reverse

Agency or Governmental Entity Name and Address	Date prepared County	Report for calendar quarter ending Month Year

PERSONS WHO LOBBIED THIS QUARTER

Name	Job title	Annual salary	% of time spent lobbying during quarter
		$	

General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

☐ Check if person spent more than $15 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary	% of time spent lobbying during quarter
		$	

General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

☐ Check if person spent more than $15 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary	% of time spent lobbying during quarter
		$	

General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

☐ Check if person spent more than $15 of non-public funds in lobbying. See instructions on reverse.

EXPENDITURES FOR LOBBYING THIS QUARTER
Report only the separately identifiable and measurable expenditures incurred for lobbying purposes

Salaries Of Persons Who Lobbied (Include only portion of quarterly salary attributable to lobbying)	$
Travel (Include food, lodging, per diem payments and cost of transportation used)	$
Brochures And Other Publications Whose Principal Purpose Is To Influence Legislation	$
Consultants Or Other Contractual Services	$
Total This Quarter	$
Total To Date This Year	$

CERTIFICATION: I certify that to the best of my knowledge the above is a true, complete and correct statement in accordance with RCW 42.17A.635.	Name of employee completing report
Signature of agency head	Work telephone Number Work E-mail

Attach additional sheets if more room is required

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PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

PDC FORM **L-5** (Rev 12/14)

LOBBYING BY STATE AND LOCAL GOVERNMENT AGENCIES

Instructions Are Printed On Reverse

Agency or Governmental Entity Name and Address	Date prepared	Report for calendar quarter ending
	County	Month Year

PERSONS WHO LOBBIED THIS QUARTER

Name	Job title	Annual salary	% of time spent lobbying during quarter
		$	

General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

☐ Check if person spent more than $25 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary	% of time spent lobbying during quarter
		$	

General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

☐ Check if person spent more than $25 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary	% of time spent lobbying during quarter
		$	

General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

☐ Check if person spent more than $25 of non-public funds in lobbying. See instructions on reverse.

EXPENDITURES FOR LOBBYING THIS QUARTER

Report only the separately identifiable and measurable expenditures incurred for lobbying purposes

Salaries Of Persons Who Lobbied (Include only portion of quarterly salary attributable to lobbying)	$
Travel (Include food, lodging, per diem payments and cost of transportation used)	$
Brochures And Other Publications Whose Principal Purpose Is To Influence Legislation	$
Consultants Or Other Contractual Services	$
Total This Quarter	$
Total To Date This Year	$

CERTIFICATION: I certify that to the best of my knowledge the above is a true, complete and correct statement in accordance with RCW 42.17A.635.	Name of employee completing report
Signature of agency head	Work telephone Number Work E-mail

Attach additional sheets if more room is required

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THESE INSTRUCTIONS APPLY ONLY TO GOVERNMENT AGENCIES REPORTING PURSUANT TO RCW 42.17A.635.

WHO SHOULD REPORT?

Each state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district which expends public funds for "lobbying". Please study the definitions of what is and is not included in lobbying to determine if your agency is required to report.

"Lobbying" means attempting to influence the passage or defeat of any legislation by the state legislature or the adoption or rejection of any rule, standard, rate or other legislative enactment by any state agency under the state administrative procedure act, chapter 34.05 RCW. "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and resolutions which having passed both houses, are pending approval by the Governor.

LOBBYING DOES NOT INCLUDE

1. Requests for appropriations by a state agency to OFM pursuant to RCW 43.88 or requests by OFM to the legislature for appropriations other than its own agency budget. Note that an agency representative who, in person, contacts a legislator or committee on appropriations matters is lobbying.

2. Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation or report on a particular subject.

3. Official reports including recommendations submitted annually or biennially by a state agency as required by law.

4. Requests, recommendations or other communications between or within state agencies or between or within local agencies.

5. Telephone conversations or preparation of written correspondence.

6. Preparation or adoption of policy positions within an agency or group of agencies. Note that once a position is adopted, further action to advocate it may constitute lobbying.

7. Attempts to influence federal or local legislation.

LOBBYING NOT REPORTABLE

1. In person lobbying totaling no more than four days or parts of days during any three month period in aggregate for all officials and employees of the agency. In person lobbying includes testifying at legislative committee hearings and state agency hearings on rules and regulations but does not include attendance merely to monitor or observe testimony and debate.

2. In person lobbying by any elected official on behalf of his agency or in connection with his powers, duties or compensation.

EXPENDITURES OVER $15 OF NON-PUBLIC FUNDS

Any person (including an elected official) who expends more than $15 of personal or non-public funds for or on behalf of one or more legislators, state elected officials or state public officers or employees in connection with in person lobbying must be listed on the L-5 report. Attach a page showing the spender's name, and date, the source of funds and amount spent, and for whom the money was spent. Examples of these expenditures include entertainment, dinners and campaign contributions.

REPORTS REQUIRED

The L-5 report is submitted to cover each calendar quarter in which lobbying occurs. No report is required if no reportable lobbying has taken place during the quarter.

DUE DATES: April 30 (1st quarter) July 31 (2nd quarter)
October 31 (3rd quarter) January 31 (4th quarter)

ONE CONSOLIDATED REPORT SHOULD BE SUBMITTED TO INCLUDE LOBBYING ACTIVITIES OF ALL DIVISIONS OR OFFICES OF AN AGENCY.

Send Reports To:
Public Disclosure Commission
711 Capitol Way, Rm 206
PO Box 40908
Olympia, WA 98504-0908

SPECIAL NOTE: In lieu of reporting as provided in RCW 42.17A.635 any agency or lobbyist for an agency may elect to register and report as provided in RCW 42.17A.600, .610, .615 and .630. An agency so choosing must notify PDC of that fact and obtain necessary reporting forms and instructions.

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THESE INSTRUCTIONS APPLY ONLY TO GOVERNMENT AGENCIES REPORTING PURSUANT TO RCW 42.17A.635.

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Each state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district which expends public funds for "lobbying". Please study the definitions of what is and is not included in lobbying to determine if your agency is required to report.

"Lobbying" means attempting to influence the passage or defeat of any legislation by the state legislature or the adoption or rejection of any rule, standard, rate or other legislative enactment by any state agency under the state administrative procedure act, chapter 34.05 RCW. "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and resolutions which having passed both houses, are pending approval by the Governor.

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1. Requests for appropriations by a state agency to OFM pursuant to RCW 43.88 or requests by OFM to the legislature for appropriations other than its own agency budget. Note that an agency representative who, in person, contacts a legislator or committee on appropriations matters is lobbying.

2. Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation or report on a particular subject.

3. Official reports including recommendations submitted annually or biennially by a state agency as required by law.

4. Requests, recommendations or other communications between or within state agencies or between or within local agencies.

5. Telephone conversations or preparation of written correspondence.

6. Preparation or adoption of policy positions within an agency or group of agencies. Note that once a position is adopted, further action to advocate it may constitute lobbying.

7. Attempts to influence federal or local legislation.

LOBBYING NOT REPORTABLE

1. In person lobbying totaling no more than four days or parts of days during any three month period in aggregate for all officials and employees of the agency. In person lobbying includes testifying at legislative committee hearings and state agency hearings on rules and regulations but does not include attendance merely to monitor or observe testimony and debate.

2. In person lobbying by any elected official on behalf of his agency or in connection with his powers, duties or compensation.

EXPENDITURES OVER $25 OF NON-PUBLIC FUNDS

Any person (including an elected official) who expends more than $25 of personal or non-public funds for or on behalf of one or more legislators, state elected officials or state public officers or employees in connection with in person lobbying must be listed on the L-5 report. Attach a page showing the spender's name, and date, the source of funds and amount spent, and for whom the money was spent. Examples of these expenditures include entertainment, dinners and campaign contributions.

REPORTS REQUIRED

The L-5 report is submitted to cover each calendar quarter in which lobbying occurs. No report is required if no reportable lobbying has taken place during the quarter.

DUE DATES: April 30 (1st quarter) July 31 (2nd quarter)
October 31 (3rd quarter) January 31 (4th quarter)

ONE CONSOLIDATED REPORT SHOULD BE SUBMITTED TO INCLUDE LOBBYING ACTIVITIES OF ALL DIVISIONS OR OFFICES OF AN AGENCY.

Send Reports To:
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SPECIAL NOTE: In lieu of reporting as provided in RCW 42.17A.635 any agency or lobbyist for an agency may elect to register and report as provided in RCW 42.17A.600, .610, .615 and .630. An agency so choosing must notify PDC of that fact and obtain necessary reporting forms and instructions.

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NON-PUBLIC FUNDS ATTACHMENT L-5

Agency or Governmental Entity Name	Report for calendar quarter ending Month Year
Expenditures over $15 of non-public funds	
Name of Lobbyist:	

Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			

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NON-PUBLIC FUNDS ATTACHMENT

L-5

Agency or Governmental Entity Name	Report for calendar quarter ending Month Year

Expenditures over $25 of non-public funds

Name of Lobbyist:

Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
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Date	Source of funds	Person on Whom Funds Spent	Amount
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Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			
Date	Source of funds	Person on Whom Funds Spent	Amount
Purpose:			

SERVICES ATTACHMENT		L-5
Agency or Governmental Entity Name	Report for calendar quarter ending Month Year	
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount
Date Purpose	Name	Amount

TRAVEL ATTACHMENT			L-5
Agency or Governmental Entity Name		Report for calendar quarter ending Month Year	
Date	Name	Vendor Name	Amount
Purpose			
Date	Name	Vendor Name	Amount
Purpose			
Date	Name	Vendor Name	Amount
Purpose			
Date	Name	Vendor Name	Amount
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Purpose			
Date	Name	Vendor Name	Amount
Purpose			

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

WAC 390-20-125 Forms for registration and reporting by sponsors of grass roots lobbying campaigns. The official form for registration and reporting by sponsors of grass roots lobbying campaigns as required by RCW 42.17A.640 is designated "L-6," revised ((~~1/02~~)) 12/14. Copies of this form are available on the commission's web site, pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

GRASS ROOTS LOBBYING

PDC FORM **L-6** (1/02)

THIS SPACE FOR OFFICE USE

Sponsor's name

Address

City State Zip Telephone ( ) -

1. Describe the topic(s) or legislation about which the campaign is conducted. Include bill, rule, rate, standard number, if any.

2. This report covers:
- ☐ Registration (Initial report)
- ☐ Monthly report From To
- ☐ Final report (Campaign is ended)

3. List the principal officers of the group or organization if the sponsor is a business, union, association, political organization or other entity.

NAME	TITLE	ADDRESS

4. Who is organizing or managing the campaign? List persons or firms hired to assist in the campaign, including public relations and advertising agents.

NAME AND ADDRESS	OCCUPATION OR BUSINESS	TERMS OF COMPENSATION

5. Expenditures Made Or Incurred In The Campaign:

1.	Previous expenditures (from line 4, last L-6 report)		$
2.	Expenses this reporting period:	$	
	A. Radio		
	B. Television		
	C. Newspapers, magazines		
	D. Brochures, signs		
	E. Printing and mailing		
	F. Consultants, public relations		
	G. Office expense, travel, salaries		
	H. Contributions		
	I. Entertainment		
	J. Other expenses		
3.	Total expenditures this period (lines 2a-2j)		$
4.	Total expenditures in the campaign (lines 1 + 3)		$

Continue On Reverse

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PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

GRASS ROOTS LOBBYING

PDC FORM **L-6** (12/14)

THIS SPACE FOR OFFICE USE

Sponsor's name

Address

City State Zip Telephone ( ) -

1. Describe the topic(s) or legislation about which the campaign is conducted. Include bill, rule, rate, standard number, if any.

2. This report covers:
- ☐ Registration (Initial report)
- ☐ Monthly report From To
- ☐ Final report (Campaign is ended)

3. List the principal officers of the group or organization if the sponsor is a business, union, association, political organization or other entity.

NAME	TITLE	ADDRESS

4. Who is organizing or managing the campaign? List persons or firms hired to assist in the campaign, including public relations and advertising agents.

NAME AND ADDRESS	OCCUPATION OR BUSINESS	TERMS OF COMPENSATION

5. Expenditures Made Or Incurred In The Campaign:

1.	Previous expenditures (from line 4, last L-6 report)		$
2.	Expenses this reporting period:	$	
	A. Radio		
	B. Television		
	C. Newspapers, magazines		
	D. Brochures, signs		
	E. Printing and mailing		
	F. Consultants, public relations		
	G. Office expense, travel, salaries		
	H. Contributions		
	I. Entertainment		
	J. Other expenses		
3.	Total expenditures this period (lines 2a-2j)		$
4.	Total expenditures in the campaign (lines 1 + 3)		$

Continue On Reverse

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Page 2 **L-6**

Sponsor's name This report covers:

Contributions:

List each person or organization who has contributed $25 or more during this report period

NAME	ADDRESS, CITY, ZIP	AMOUNT
		$

List Total Amount From Any Attached Pages ..... $

Total Amount Received In Contributions Less Than $25 Where Contributor's Name Is Not Listed .....

Total Contributions This Period .....

Total Contributions During The Campaign .....

CERTIFICATION: I hereby certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Name and title	Signature	Date

INSTRUCTIONS

WHO SHOULD FILE THIS FORM: Any person making grass roots lobbying expenditures not reported by a registered lobbyist, a candidate, or a political committee exceeding $1,000 in the aggregate in any three month period or exceeding $500 in the aggregate in any one month in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence state legislation.

FILING DEADLINE: Within 30 days after becoming a sponsor of a grass roots lobbying campaign. Thereafter, sponsors file monthly reports on the 10th of the month covering the preceding calendar month. Termination notice is to accompany the final monthly report.

SEND REPORT TO: Public Disclosure Commission
711 Capitol Way, Rm 206
PO Box 40908
Olympia, WA 98504-0908

QUESTIONS: CALL (360) 753-1111, OR TOLL FREE 1-877-601-2828

))

Page 2 **L-6**

Sponsor's name This report covers:

6. Contributions:

List each person or organization who has contributed $25 or more during this report period

NAME	ADDRESS, CITY, ZIP	AMOUNT
		$

List Total Amount From Any Attached Pages ..... $

Total Amount Received In Contributions Less Than $25 Where Contributor's Name Is Not Listed .....

Total Contributions This Period .....

Total Contributions During The Campaign .....

CERTIFICATION: I hereby certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.

Name and title | Signature | Date

INSTRUCTIONS

WHO SHOULD FILE THIS FORM: Any person making grass roots lobbying expenditures not reported by a registered lobbyist, a candidate, or a political committee exceeding $1,400 in the aggregate in any three month period or exceeding $700 in the aggregate in any one month in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence state legislation.

FILING DEADLINE: Within 30 days after becoming a sponsor of a grass roots lobbying campaign. Thereafter, sponsors file monthly reports on the 10th of the month covering the preceding calendar month. Termination notice is to accompany the final monthly report.

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

WAC 390-20-143 Application of lobbying provisions to organizations. (1) A lobbyist other than a natural person shall be deemed to have properly restricted its lobbying activities and is eligible for the RCW 42.17A.610(5) "casual lobbying" exemption during any three-month period in which its agents or employees do not make an expenditure of more than ((~~twenty-five~~)) thirty-five dollars for or on behalf of legislators, state elected officials, public officers or employees of the state of Washington.

(2) A lobbyist other than a natural person which does sponsor or coordinate or directly make unreported expenditures exceeding ((~~twenty-five~~)) thirty-five dollars during a three-month period, as fully described in subsection (1) of this section, must register and report as required by RCW

42.17A.600 and 42.17A.615: Provided, That it can satisfy these requirements by having an individual agent (a) register and reports as a lobbyist, and (b) include as part of Form L-2 a report of these and all other lobbying expenditures made on behalf of the nonnatural person during that three-month period.

(3) An entity, including but not limited to a law firm, consulting firm, advertising agency, or other similar organization, which receives or expects to receive compensation for lobbying from any person, must register and report as a lobbyist pursuant to RCW 42.17A.600 and 42.17A.615: Provided, That membership dues or contributions to a nonprofit organization made for the purpose of promoting a general interest and not in return for lobbying on behalf of any specific member or contributor shall not be regarded as compensation for this purpose. Registration statements and reports shall list as the lobbyists both the firm or organization and each individual acting on its behalf. The person paying the compensation shall report under RCW 42.17A.630 as a lobbyist's employer.

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

WAC 390-20-144 Registration and reporting by lobbyist organizations. (1) Any firm, company, association or similar organization required to register as a lobbyist shall file one registration statement (PDC Form L-1) for each employer for whom the organization will lobby.

(a) The lobbying organization will attach to the registration statement a photo and the biographical information required by RCW 42.17A.605 (page 3 of the L-1 Form) for each individual agent of the organization who is authorized to lobby for that particular employer.

(b) If the agent is authorized to lobby for several employers, only one photo and biographical sheet need be submitted.

(c) The organization will notify the commission in writing when there is any change in the employment or assignment of agents who lobby.

(2) One monthly expenditure report (PDC Form L-2) shall be submitted showing all expenditures made by the organization and its agents. It is unnecessary to prorate or attribute expenditures to individual agents of the organization. However, expenditures for entertainment exceeding ((~~$25~~)) fifty dollars per occasion shall identify the individual agent(s) who were present at the occasion. The L-2 report shall be signed by the president or chief executive officer of the lobbying organization.

(3) If any individual agent of the organization ceases to lobby or the organization terminates that agent's authority to lobby, the organization shall notify PDC in writing or by notation on the L-2 report of the termination.

NEW SECTION

WAC 390-20-150 Changes in dollar amounts. Pursuant to the commission's authority in RCW 42.17A.125(2) to revise the monetary reporting thresholds found in chapter 42.17A RCW to reflect changes in economic conditions, the following revisions are made:

Statutory Section	Subject Matter	Amount and Date Enacted or Last Revised	Revision Effective December 1, 2014
.600 (1)(i)	Lobbyist employer's members or funders	$500 (1973)	$1,450
.610(5)	Casual lobbying threshold	$25 (1982)	$35
.615 (2)(a)	Itemize entertainment expenditures	$25 (1978)	$50
.630 (2)(a)	Contributions disclosed by lobbyist employer on monthly report (L-3c)	$100 (1990)	$110
.635 (5)(d)(v)	Nonpublic funds spent on gifts provided by public agency	$15 (1979)	$25
.640(1)	Grass roots lobbying	$500/ $1,000 (1985)	$700/ $1,400

WSR 14-11-011
WITHDRAWL OF PROPOSED RULES
LOWER COLUMBIA COLLEGE
[Filed May 8, 2014, 9:58 a.m.]

Lower Columbia College would like to withdraw our CR-102 WSR 14-07-018 filed March 7, 2014. Based upon legal advice, we need to revise our proposed rules and will resubmit a CR-102 when those revisions are ready.

Please contact Kendra Sprague if you have any questions, (360) 442-2121.

Kendra Sprague
Director of Human Resources
and Legal Affairs

WSR 14-11-014
PROPOSED RULES
GREEN RIVER COMMUNITY COLLEGE
[Filed May 8, 2014, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-119.

Title of Rule and Other Identifying Information: Green River Community College code of student conduct revision. Student rights and responsibilities.

Hearing Location(s): Glacier Room, Lindbloom Student Center, on June 26, 2014, at 1 p.m.

Date of Intended Adoption: July 14, 2014.

Submit Written Comments to: Timothy Malroy, 12401 S.E. 320th Street, e-mail conduct@greenriver.edu, fax (253) 288-3467, by June 20, 2014.

Assistance for Persons with Disabilities: Contact Jamie Hatleberg by June 10, 2014, (253) 833-9111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise the rules in place to govern student conduct at Green River Community College. The existing code is being revised to reflect current best practices in student conduct and proper legal language.

Reasons Supporting Proposal: Code has not been revised since 2008.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: Chapter 132J-126 WAC.

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

Name of Proponent: Green River Community College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tim Malroy, LC-126, (253) 288-3397.

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. There is no cost to implement the code.

May 7, 2014
Timothy Malroy
Judicial Officer

Chapter 132J-126 WAC

RULES OF STUDENT CONDUCT

NEW SECTION

WAC 132J-126-010 Purpose. (1) Green River Community College, an agency of the state of Washington, provides a variety of educational opportunities for students; namely the opportunities to examine the academic, vocational, technical, cultural, social, and recreational aspects of society. Green River Community College as an institution of society must maintain conditions conducive to the effective performance of its functions. Consequently, Green River Community College has special expectations regarding the conduct of students. Student conduct that detracts from, or interferes with, the accomplishment of college purposes is not acceptable.

(2) The student is a member of the community at large, and as such has the rights and responsibilities of any citizen. In addition, admission to Green River Community College carries with it the presumption that students will conduct themselves as responsible members of the college community. This includes an expectation that students will obey the law, will comply with rules and regulations of the college, will maintain a high standard of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

(3) The following rules regarding the conduct of students are adopted in order to provide students a full understanding of the rules that will enable the college to maintain conditions conducive to the effective performance of the college's functions. Sanctions for violations of the rules of student conduct will be administered by the college in the manner provided by said rules. When violation(s) of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to the appropriate authorities. In cases of minors, this conduct may also be referred to parents or legal guardians.

(4) The office of judicial programs, under the leadership of the vice-president of student affairs, maintains and administers the student code of conduct for Green River Community College. The office of judicial programs and Green River Community College strive to engage our students to become civic minded citizens who positively contribute to society and achieve their educational goals. The office of judicial programs seeks to educate students as to their rights, responsibilities, and expectations as members of Green River Community College while providing a fair and educational process through which alleged violations of the code of conduct are adjudicated.

NEW SECTION

WAC 132J-126-020 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. Inappropriate conduct by students who have completed classes and are awaiting graduation ceremony are covered by this student conduct code.

NEW SECTION

WAC 132J-126-030 Definitions. The following definitions shall apply for the purpose of this student conduct code:

"Arbitrary or capricious" refers to willful or unreasonable action, taken without consideration of, or in disregard of, facts or circumstances of a particular case. Where there is room for two reasonable opinions, an action shall not be deemed to be arbitrary or capricious when taken honestly and upon due consideration, however much it may be believed that an erroneous conclusion has been reached.

"Assembly" is any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or groups of persons.

"Business day" means a weekday, excluding weekends and college holidays.

"College" means Green River Community College.

"College academic board" means any person or persons authorized by the vice-president of instruction or designee to consider an appeal from a grievance determination or academic discipline process as to whether the grievance or academic discipline should be upheld or overturned.

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

"College groups" shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

"College official" includes any person employed by the college, performing assigned administrative or professional responsibilities.

"College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

"Complainant" means any person who submits a charge alleging that a student violated the student code. When a student believes that she/he has been a victim of another student's misconduct, the student who believes she/he has been a victim will have the same rights under this student code as are provided to the complainant, even if another member of the college community submitted the charge himself or herself.

"Conduct review officer" is the vice-president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

"Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

"Faculty member" means any person hired by the college to conduct classroom, counseling, or teaching activities or who is otherwise considered by the college to be a member of its faculty.

"Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address. Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

"May" is used in the permissive sense.

"Member of the college community" includes any person who is a student, faculty member, college official or any other person employed by the college. A person's status in a particular situation shall be determined by the vice-president of student affairs or designee.

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

"Organization" means number of persons who have complied with the formal requirements for college recognition/registration.

"Policy" means the written regulations of the college as found in, but not limited to, the student code, the college web page and computer use policy, and catalogs.

"The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

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

"Respondent" is the student against whom disciplinary action is initiated.

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

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

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

"Shall" is used in the imperative sense.

"Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

"Student conduct officer" is a college administrator designated by the president or vice-president of student affairs to

be responsible for implementing and enforcing the student conduct code. The president or vice-president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Vice-president of student affairs" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The vice-president of student affairs may designate a student conduct officer to fulfill this responsibility.

NEW SECTION

WAC 132J-126-040 Student code authority. (1) The vice-president of student affairs or designee shall develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct hearings that are not inconsistent with provisions of the student code.

(2) The vice-president of student affairs or designee shall determine the composition of the student conduct committee in accordance with WAC 132J-126-220.

(3) Decisions made by a student conduct officer shall be final, pending the normal appeal process.

NEW SECTION

WAC 132J-126-050 Freedom of expression. The right of free speech is fundamental to the democratic process. Students and other members of the college community shall be free to express their views or support causes by orderly means and in accordance with the guidelines and policies that govern vendors and solicitation and do not disrupt the regular and essential operations of the college.

NEW SECTION

WAC 132J-126-060 Right to expressive activity. (1) Subject to the regulations and requirements of this policy, groups may use the campus limited forums for expressive activities between the hours of 7 a.m. and 10 p.m.

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

(3) Groups are encouraged to notify the campus safety department no later than twenty-four hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

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

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

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

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

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

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

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

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

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

NEW SECTION

WAC 132J-126-070 Additional requirements for noncollege groups. (1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. When renting college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy. When the college grants permission to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage. Noncollege groups may otherwise use college facilities for expressive activity as identified in this policy.

(2) The college's designated limited public forum areas by noncollege groups for expressive activity are set forth in the facilities usage policy. Noncollege groups should contact conference services for a list of the areas. The public use areas may be scheduled. Scheduled groups have priority of use over unscheduled groups.

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

(a) The area is not otherwise scheduled; and

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

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

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

(iii) The nature and purpose of the event; and

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

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

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

NEW SECTION

WAC 132J-126-080 Right to outside speakers. (1) Any recognized student organization, after written notification to the vice-president of student affairs or designee as prescribed herein, may invite a speaker to the college, subject to any restraints imposed by law.

(2) The appearance of an invited speaker at the college does not represent an endorsement, either implicit or explicit, by the college.

(3) The scheduling of facilities for hearing invited speakers shall be made through the college conference and scheduling office.

(4) The vice-president of student affairs or designee must be notified in writing at least four academic days prior to the appearance of an invited speaker. Notification shall include time, location, and sponsoring organization. An exception to the four day notification requirement may be made by the vice-president of student affairs or designee.

(5) All speakers shall allow time, insofar as circumstances reasonably permit, for a question and answer session.

NEW SECTION

WAC 132J-126-090 Right to sale of personal property. (1) Students have the right to engage in legal, incidental sales of personal property in private transactions.

(2) All other sales shall take place in Lindbloom Student Center subject to the approval and requirements of the vice-president of student affairs or designee.

NEW SECTION

WAC 132J-126-100 Distribution of materials. (1) Handbills, leaflets, newspapers and similar materials may be distributed free of charge upon college facilities designated by the vice-president of student affairs, provided that such distribution does not interfere with the ingress and egress of persons or interfere with the free flow of vehicle or pedestrian traffic.

(2) All students and nonstudents shall register with the vice-president of student affairs or designee prior to distributing any handbill, leaflet, newspaper or related matter including, but not limited to, materials to be posted on college bulletin boards.

(3) The distribution of materials is prohibited in parking areas.

(4) All handbills, leaflets, newspapers and similar materials should identify the publisher and the distributing organization or individual.

(5) Distribution by means of accosting individuals or unreasonably disruptive behavior is prohibited.

(6) Any student who violates any provision of this rule relating to the distribution and sale of handbills, leaflets, newspapers or similar materials shall be subject to discipline.

(7) Any distribution of the materials regulated in this section shall not be construed as approval of the same by the college.

NEW SECTION

WAC 132J-126-110 Denial of access to Green River Community College. (1) The vice-president of student affairs may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to self or other members of the campus community.

(2) Denial of access decisions may be appealed, as or like disciplinary actions, to the student conduct committee or vice-president of student affairs.

NEW SECTION

WAC 132J-126-120 Trespass. (1) In the instance of any event that the vice-president of student affairs or designee deems to be disruptive of order, or deems to impede the movement of persons or vehicles, or deems to disrupt or threaten to disrupt the ingress or egress of persons from college facilities, the vice-president of student affairs or designee is authorized to:

(a) Prohibit the entry of any person, or withdraw from any person the license or permission to enter onto or remain, upon any portion of a college facility;

(b) Give notice against trespass to any person from whom the license or permission has been withdrawn or who has been prohibited from entering onto or remaining upon all or any portion of a college facility;

(c) Order any person to leave or vacate all or any portion of a college facility.

(2) Any student who disobeys a lawful order given by the vice-president of student affairs or designee pursuant to subsection (1) of this section shall be subject to discipline.

NEW SECTION

WAC 132J-126-130 Rights of ownership of works. It shall be the policy of Green River Community College that employees of the college shall not use students' published or unpublished works for personal gain without written consent of the student.

NEW SECTION

WAC 132J-126-140 Conduct—Student responsibilities. Any student shall be subject to disciplinary action as provided for in this chapter, who either as a principal actor, aide, abettor, or accomplice as defined in RCW 9A.08.020:

Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;

Violates any provision of this chapter; or

Commits any prohibited act including, but not limited to, the following:

(1) **Academic dishonesty.** In academically honest writing or speaking, the student documents his/her source of information whenever:

Another person's exact words are quoted;

Another person's idea, opinion or theory is used through paraphrase; and

Facts, statistics, or other illustrative materials are borrowed.

In order to complete academically honest work, students should:

Acknowledge all sources according to the method of citation preferred by the instructor;

Write as much as possible from one's own understanding of the materials and in one's own voice;

Ask an authority on the subject, such as the instructor who assigned the work; and

Seek help from academic student services such as the library and/or writing center.

(2) **Definition of plagiarism.** Plagiarism is defined as using others' original ideas in your written or spoken work without giving proper credit.

Ideas include, but are not limited to:

Facts;

Opinions;

Images;

Statistics;

Equations;

Hypotheses;

Theories.

Plagiarism can occur in two ways: Intentional and unintentional.

Ways that intentional plagiarism occur include, but are not limited to:

Turning in someone else's work as your own;

Copying words or ideas from someone else without giving credit;

Failing to put a quotation in quotation marks;

Giving incorrect information about the source of a quotation;

Changing words but copying the sentence structure of a source without giving credit;

Copying so many words or ideas from a source that it makes up the majority of your work, whether you give credit or not.

Unintentional plagiarism may occur when a student has tried in good faith to document their academic work but fails to do so accurately and/or thoroughly. Unintentional plagiarism may also occur when a student has not had course work covering plagiarism and documentation and is therefore unprepared for college academic writing or speaking.

(3) **Definition of cheating.** Cheating is defined as intentional deception in producing or creating academic work. Cheating includes, but is not limited to:

Intentional plagiarism;

Selling or giving your own completed work to others who intend to turn it in as their own;

Purchasing or accepting the work of others with the intent of turning it in as your own;

Acquiring and/or using teachers' editions of textbooks, without the permission of the specific instructor, in order to complete your course assignments;

Obtaining or attempting to obtain an examination prior to its administration;

Referring to devices, materials or sources not authorized by the instructor;

Receiving assistance from another person when not authorized by the instructor;

Providing assistance to another person when not authorized by the instructor;

Taking an examination for another person;

Obtaining or attempting to obtain another person to take one's own examination;

Falsifying laboratory results or copying another person's laboratory results; and

Falsifying or attempting to falsify the record of one's grades or evaluation.

(4) **Definition of fabrication.** Fabrication is defined as intentional misrepresentation of an activity done by a student for an academic project or practicum. Fabrication includes, but is not limited to:

Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

Counterfeiting a record of internship or practicum experiences;

Submitting a false excuse for absence or tardiness; and

Unauthorized multiple submission of the same work; sabotage of others' work.

(5) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products are not allowed on college premises. This includes 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.

(6) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(7) **Drugs/substance abuse.**

(a) Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells any narcotic drug or controlled substance as defined in RCW 69.50.101, in violation of law or in a manner which significantly disrupts a college activity, shall be subject to disci-

pline. For purposes of this section, "sell" includes the statutory meaning in RCW 69.50.410.

(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(8) **Conduct at college functions.** Any student who significantly disrupts or obstructs any teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.

(9) **Theft; stolen property; robbery.** Any student who, while in any college facility or participating in a college-related program, commits or attempts to commit theft as defined in RCW 9A.56.020, or possesses stolen property as defined in RCW 9A.56.140, or commits or attempts to commit robbery as defined in RCW 9A.56.190, shall be subject to discipline.

(10) **Damaging property.**

(a) Any student who causes or attempts to cause physical damage to property owned, controlled or operated by the college, or to property owned, controlled or operated by another person while said property is located on college facilities, shall be subject to discipline.

(b) Any student who in this or any other manner is guilty of malicious mischief in violation of RCW 9A.48.070 through 9A.48.100.

(11) **Abuse; intimidation.** Physical abuse, verbal abuse, threats, intimidation, coercion, and/or other conduct which threatens or endangers the health or safety of any person.

(12) **Offensive language.** Any student who, while in any college facility or participating in a college-related program, and without a privilege to do so, uses language which he/she knows or should know is offensive to a reasonable person.

(13) **Hazing.** Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing are not neutral acts; they are violations of this rule.

(14) **Failure to comply.** Failure to comply with directions of college officials, campus safety officers, or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

(15) **Possession of keys.** Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.

(16) **Policy violation.** Violation of any college policy, rule, or regulation published in hard copy or available electronically on the college web site.

(17) **Violation of laws.** Violation of any federal, state, or local law.

(18) **False alarms.** Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(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; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(20) **Sexual misconduct.**

(a) Sexual misconduct is any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.

(b) Consent to sexual activity requires that, at the time of the act, there are actual words or conduct demonstrating freely given agreement to sexual activity, silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(i) Force or blackmail is threatened or used to procure compliance with the sexual activity; or

(ii) The person is unconscious or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(iii) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause.

(c) A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.

(21) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(22) **Weapons and fireworks.** Possession or use of fireworks anywhere on campus; possession, holding, wearing, transporting, storage or presence of any firearm, dagger,

sword, knife, or any other cutting or stabbing instrument, or club, or incendiary device, or explosive, or any facsimile weapons, or any other weapon apparently capable of producing bodily harm and/or property damage is prohibited on the college campus, subject to the following exceptions: Commissioned law enforcement personnel, legally-authorized military personnel, or bank-related security personnel required by their office to carry such weapons or devices; or the president may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose.

(23) **Demonstrations.** Participating in an on-campus or off-campus demonstration, riot, or activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.

(24) **Disorderly conduct.** Conduct that is disorderly, lewd, or indecent; breach of peace; or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored by, or participated in by, the college or members of the college community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or without his/her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(25) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of his/her race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(26) **Stalking.** Stalking, defined as intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.

(27) **Improper use of technology.** Theft or other abuse of computer facilities and resources including, but not limited to:

(a) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(b) Unauthorized transfer of a file.

(c) Use of another individual's identification and/or password.

(d) Use of computing facilities and resources to interfere with the work of another student, faculty member, or college official.

(e) Use of computing facilities and resources to view or send obscene or abusive messages.

(f) Use of computing facilities and resources to interfere with normal operation of the college computing system.

(g) Use of computing facilities and resources in violation of copyright laws.

(h) Any violation of the Student Affairs Policy SA-24 - Student Acceptable Computer Use.

(28) **Forgery or alteration of records.** Any student who, while in any college facility or participating in a college-related program, engages in forgery, as defined in RCW 9A.60.020.

(29) **Disruption of conduct process.** Abuse of the student conduct system including, but not limited to:

(a) Falsification, distortion, or misrepresentation of information before a student conduct officer.

(b) Disruption or interference with the orderly conduct of a student conduct hearing proceeding.

(c) Institution of a student conduct code proceeding in bad faith.

(d) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(e) Attempting to influence the impartiality of a member of a student conduct officer prior to, and/or during the course of, the student conduct hearing proceeding.

(f) Harassment (verbal or physical) and/or intimidation of a member of a student conduct officer prior to, during, and/or after a student conduct hearing proceeding.

(g) Failure to comply with the sanction(s) imposed under the student code.

(h) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(30) **False complaint.** Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(31) **Classroom conduct.** Any student who significantly disrupts any college class and makes it unreasonably difficult to conduct the class in an orderly manner shall be subject to disciplinary action. An instructor/faculty member may impose any of the following actions for classroom conduct:

(a) Warning: An oral or written notice to a student that college and/or classroom expectations about conduct have not been met.

(b) Reprimand: A written notice which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct shall result in further disciplinary action.

(c) Summary suspension for a maximum of two days: As defined in WAC 132J-126-270.

At any time, severe misconduct or continued misconduct shall be just cause for the matter to be forwarded immediately to the vice-president of student affairs or designee for further action.

NEW SECTION

WAC 132J-126-150 Violation of law and college discipline. (1) College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and this student code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the vice-president of stu-

dent affairs or designee. Determinations made or sanctions imposed under this student code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of, or against the criminal law defendant.

(2) When a student is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the student code, the college may advise off-campus authorities of the existence of the student code and of how such matters are typically handled within the college community. The college will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the college community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

NEW SECTION

WAC 132J-126-160 Purpose of disciplinary action. The college may apply sanctions or take other appropriate action for violations of the student code of conduct. Disciplinary proceedings shall determine whether and under what conditions the violator may continue as a student of the college.

NEW SECTION

WAC 132J-126-170 Disciplinary terms. The following definitions of disciplinary terms have been established to provide consistency in the application of penalties:

(1) **Warning -** A notice in writing to the student that the student is violating or has violated institutional regulations.

(2) **Probation -** A written reprimand for violation of specified regulations. Probation is indefinite or for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period.

(3) **Loss of privileges -** Denial of specified college privileges for a designated period of time.

(4) **Fines -** Previously established and published fines may be imposed.

(5) **Restitution -** Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(6) **Discretionary sanctions -** These may include, but are not limited to, work assignments, essays, service to the college, or other related discretionary assignments.

(7) **College suspension -** Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(8) **College dismissal -** Permanent separation of the student from the college.

(9) **Revocation of admission and/or degree -** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(10) **Registration hold -** Students may have their registration privileges put on hold pending the completion of specified sanctions/conditions. Holds may be placed and removed only by the vice-president of student affairs or designee.

(11) Deactivation, loss of privileges, including college recognition, for a specified period of time, applies to groups and organizations.

NEW SECTION

WAC 132J-126-180 Initiation of disciplinary action. (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC 132J-126-170;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION

WAC 132J-126-190 Appeal from disciplinary action. 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 consti-

tutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(1) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(2) The parties to an appeal shall be the respondent and the conduct review officer.

(3) 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.

(4) 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.

(5) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(6) 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.

(7) 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.

(8) 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 132J-126-200 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter; and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

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

NEW SECTION

WAC 132J-126-210 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

NEW SECTION

WAC 132J-126-220 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 132J-126-230 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee); and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132J-126-240 Student conduct appeals committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either (a) proceed with the hearing and issuance of its decision; or (b) serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that 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 recordings 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 132J-126-250 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 132J-126-260 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 132J-126-270 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 disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

NEW SECTION

WAC 132J-126-280 Supplemental procedures for sexual misconduct cases. Both the respondent and the com-

plainant 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 132J-126-180 through 132J-126-270. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132J-126-290 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual- or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking;

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132J-126-300 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 that prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132J-126-310 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 132J-126-300. 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 a 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 board.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. The 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 the 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.

BRIEF ADJUDICATIVE PROCEEDINGS (BAPs) AUTHORIZATION

NEW SECTION

WAC 132J-126-320 Brief adjudicative proceedings authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) 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;

(e) Summary suspensions; and

(f) 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.

(2) 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 132J-126-330 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matters 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 132J-126-340 Appeal of academic discipline—Filing of academic grievance. (1) A student may appeal academic discipline or initiate an academic grievance by the following steps:

(a) Step one. Within ten days of the earlier of mailing or personal receipt of notice of the disciplinary action or receipt of notice or information about the facts on which the grievance is based, the student must meet or deliver a written request to meet immediately with his/her instructor to discuss the specific academic discipline or grievance.

(b) Step two. If no resolution occurs, the student must notify the vice-president of instruction. That vice-president or his/her designee shall attempt to arrange a meeting with the student, faculty member, and division chairperson.

(c) Step three. If no resolution occurs, the student must again notify the vice-president of instruction or designee, who shall attempt to arrange a meeting between the student and the appropriate instructional dean.

(d) Step four. If no resolution occurs, the student must again notify the vice-president of instruction, who shall arrange a meeting with the student. The decision of the vice-president of instruction shall be final.

(2) Every affected person shall act promptly and in good faith to complete these four steps in an expeditious manner. Failure to act promptly and in good faith shall be cause for the vice-president of instruction or designee to immediately uphold or dismiss the appeal or grievance.

NEW SECTION

WAC 132J-126-350 Recordkeeping. (1) The vice-president of student affairs shall maintain for at least six years the following records of student grievance and disciplinary actions and proceedings:

(a) Only initial and final orders in cases where a student's grievance has been sustained or a disciplinary action against a student has been reversed and the student fully exonerated;

(b) The complete records, including all orders, in all other cases where adjudication has been requested;

(c) A list or other summary of all disciplinary actions reported or known to the vice-president and not appealed.

(2) Final disciplinary actions shall be entered on student judicial records, provided that the vice-president of student affairs shall have discretion to remove some or all of that information from a student's judicial record upon the student's request and showing of good cause.

WSR 14-11-015
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed May 9, 2014, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-01-085.

Title of Rule and Other Identifying Information: WAC 246-817-770 General anesthesia and deep sedation, adding end-tidal carbon dioxide (CO_2) monitoring requirements when dentists administer general anesthesia or deep sedation.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on July 18, 2014, at 8:05 a.m.

Date of Intended Adoption: July 18, 2014.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by July 11, 2014.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by July 11, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adds end-tidal CO_2 monitoring requirement to WAC 246-817-770, which sets out specific requirements to obtain the authorizing permit, and procedures, equipment, and medications for administration of general anesthesia.

Reasons Supporting Proposal: The proposed change to monitoring requirements will help ensure patient safety and to remain consistent with the recognized standard of care. A change in CO_2 level is the first indication there may be a problem with a patient under general anesthesia. The American Association of Oral and Maxillofacial Surgeons required oral and maxillofacial surgeons with their national certification to begin end-tidal CO_2 monitoring in January 2014. Requiring all dentists with a general anesthesia permit to monitor expired CO_2 provides consistent practice standards.

Statutory Authority for Adoption: RCW 18.32.640 and 18.32.0365.

Statute Being Implemented: RCW 18.32.640.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

May 9, 2014
LouAnn Mercier, D.D.S.
Chair

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-770 General anesthesia and deep sedation. Deep sedation and general anesthesia must be administered by an individual qualified to do so under this chapter.

(1) Training requirements: To administer deep sedation or general anesthesia, the dentist must meet one or more of the following criteria:

(a) Any provider currently permitted as of the effective date of this revision to provide deep sedation or general anesthesia by the state of Washington will be grandfathered regarding formal training requirements, provided they meet current continuing education and other ongoing applicable requirements.

(b) New applicants with anesthesia residency training will be required to have had two years of continuous full-time anesthesia training meeting the following requirements based on when they began their anesthesia training:

(i) For dentists who began their anesthesia training prior to 2008, training must include two full years of continuous full-time training in anesthesiology beyond the undergraduate dental school level, in a training program as outlined in part 2 of "*Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry*," published by the American Dental Association, Council on Dental Education (last revised October 2005).

(ii) For dentists who begin their anesthesia training in January 2008 or after, must have either received a certificate of completion.

(A) From a dental anesthesiology program accredited by CODA (ADA Commission on Dental Accreditation, "*Accreditation Standards for Advanced General Dentistry Education Programs in Dental Anesthesiology*," January 2007); or

(B) From a dental anesthesiology program approved by the Dental Quality Assurance Commission; or

(C) With a minimum of two years of full-time anesthesia residency training at a medical program accredited by the Accreditation Council for Graduate Medical Education (ACGME).

(c) New applicants who completed residency training in oral and maxillofacial surgery must meet at least one of the following requirements:

(i) Be a diplomate of the American Board of Oral and Maxillofacial Surgery;

(ii) Be a fellow of the American Association of Oral and Maxillofacial Surgeons; or

(iii) Be a graduate of an Oral and Maxillofacial Residency Program accredited by CODA.

(2) In addition to meeting one or more of the above criteria, the dentist must also have a current and documented proficiency in advanced cardiac life support (ACLS).

(3) Procedures for administration:

(a) Patients receiving deep sedation or general anesthesia must have continual monitoring of their heart rate, blood pressure, ((~~and~~)) respiration, and expired carbon dioxide (CO_2). In so doing, the licensee must utilize electrocardiographic monitoring ((~~and~~)), pulse oximetry, and end-tidal CO_2 monitoring;

(b) The patient's blood pressure and heart rate shall be recorded every five minutes and respiration rate shall be recorded at least every fifteen minutes;

(c) During deep sedation or general anesthesia, the person administering the anesthesia and the person monitoring the patient may not leave the immediate area;

(d) During the recovery phase, the patient must be continually observed by the anesthesia provider or credentialed personnel;

(e) A discharge entry shall be made in the patient's record indicating the patient's condition upon discharge and the responsible party to whom the patient was discharged.

(4) Dental records must contain appropriate medical history and patient evaluation. Anesthesia records shall be recorded during the procedure in a timely manner and must include:

(a) Blood pressure;

(b) Heart rate;

(c) Respiration;

((~~blood oxygen saturation~~)) (d) Pulse oximetry;

(e) End-tidal CO_2;

(f) Drugs administered including amounts and time administered;

(g) Length of procedure; and

(h) Any complications of anesthesia.

(5) Equipment and emergency medications: All offices in which general anesthesia (including deep sedation) is administered must comply with the following equipment standards:

(a) An operating theater large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least three individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which is adequate to permit evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit conclusion of any operation underway at the time of general power failure;

(d) Suction equipment capable of aspirating gastric contents from the mouth and pharyngeal cavities. A backup suction device must be available;

(e) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate portable backup system;

(f) A recovery area that has available oxygen, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theater;

(g) Ancillary equipment which must include the following:

(i) Laryngoscope complete with adequate selection of blades, spare batteries, and bulb;

(ii) Endotracheal tubes and appropriate connectors, and laryngeal mask airway (LMA) and other appropriate equipment necessary to do an intubation;

(iii) Oral airways;

(iv) Tonsillar or pharyngeal suction tip adaptable to all office outlets;

(v) Endotracheal tube forceps;

(vi) Sphygmomanometer and stethoscope;

(vii) Adequate equipment to establish an intravenous infusion;

(viii) Pulse oximeter or equivalent;

(ix) Electrocardiographic monitor;

(x) End-tidal CO_2 monitor;

(xi) Defibrillator or automatic external defibrillator (AED) available and in reach within sixty seconds from any area where general or deep anesthesia care is being delivered. Multiple AEDs or defibrillators may be necessary in large facilities. The AED or defibrillator must be on the same floor. (In dental office settings where sedation or general anesthesia are not administered, AEDs or defibrillators are required as defined in WAC 246-817-722.)((;))

(h) Emergency drugs of the following types shall be maintained:

(i) Vasopressor or equivalent;

(ii) Corticosteroid or equivalent;

(iii) Bronchodilator;

(iv) Muscle relaxant;

(v) Intravenous medications for treatment of cardiac arrest;

(vi) Narcotic antagonist;

(vii) Benzodiazepine antagonist;

(viii) Antihistaminic;

(ix) Anticholinergic;

(x) Antiarrhythmic;

(xi) Coronary artery vasodilator;

(xii) Antihypertensive;

(xiii) Anticonvulsant.

(6) Continuing education:

(a) A dentist granted a permit to administer general anesthesia (including deep sedation) under this chapter, must complete eighteen hours of continuing education every three years.

A dentist granted a permit must maintain records that can be audited and must submit course titles, instructors, dates attended, sponsors, and number of hours for each course every three years.

(b) The education must be provided by organizations approved by the DQAC and must be in one or more of the following areas: General anesthesia; conscious sedation; physical evaluation; medical emergencies; pediatric advanced life support (PALS); monitoring and use of monitoring equipment; pharmacology of drugs; and agents used in sedation and anesthesia.

(c) Hourly credits earned from certification in health care provider basic life support (BLS) and advanced cardiac life support (ACLS) courses may not be used to meet the continuing education hourly requirements for obtaining or renewing a general anesthesia and deep sedation permit, however these continuing education hours may be used to meet the renewal requirement for the dental license.

(7) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

WSR 14-11-023
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed May 12, 2014, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-047.

Title of Rule and Other Identifying Information: Chapter 308-124A WAC, Real estate licensing and examination; chapter 308-124C WAC, Real estate records and responsibilities; and chapter 308-124H WAC, Real estate course approval.

Hearing Location(s): Department of Licensing, Real Estate Programs, 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on July 24, 2014, at 3:00 p.m.

Date of Intended Adoption: July 25, 2014, or later.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mail jmcdonald @dol.wa.gov, fax (360) 570-7051, by July 22, 2014.

Assistance for Persons with Disabilities: Contact Sally Adams by July 22, 2014, TTY (360) 664-0166 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Correct misspelling of two words in chapter 308-124C WAC. Eliminate the reference to transition course which is no longer required by statute. Implement LEAN improvements to the course approval process, including changing course approval from two to four years as nearly all schools renew their approvals. The cost per credit hour remains the same, but since the time approval is increased the price is adjusted accordingly so that there is no fiscal impact to continuing education providers and the department.

Reasons Supporting Proposal: Process improvement for both the department of licensing and licensees on course approval process. Reduces education providers' costs in staff time, copying and mailing. Discontinues a course requirement no longer required by statute.

Statutory Authority for Adoption: RCW 18.85.041(1).

Statute Being Implemented: RCW 18.85.041 (2)(b) and (6), 18.85.481(2).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No fiscal impact. Rule changes are a result of LEAN process improvement for approved real estate schools and the agency.

Name of Proponent: Real estate commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are for the certification approval of prelicensed and continuing education credit for individual applicants or licensees. The fees are used to administer the director's education duties under RCW 18.85.041. The department of licensing and the real estate commission utilized stakeholders and individual professional licensees to participate in the rule-making process.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this chapter.

May 12, 2014
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-14-077, filed 7/1/13, effective 8/1/13)

WAC 308-124A-790 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.85.211, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of an active license shall submit evidence of completion of at least thirty clock hours of instruction in a course(s) approved by the real estate program and commenced within forty-eight months of a licensee's renewal date. A minimum of fifteen clock hours must be completed within twenty-four months of the licensee's current renewal date, and a portion of that fifteen must include three hours of the prescribed core curriculum defined in WAC 308-124A-800. Up to fifteen clock hours of instruction beyond the thirty clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to report successful completion of the prescribed core curriculum clock hours shall result in denial of license renewal.

(2) The thirty clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in WAC 308-124H-820. A portion of the thirty clock hours of

continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 ((~~and three clock hours of prescribed transition course pursuant to RCW 18.85.481(2)~~)).

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) A licensee shall not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. A licensee shall submit evidence of completion of continuing education clock hours to activate a license if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license. A licensee shall submit evidence of completing the post-licensing requirements if not previously satisfied upon returning to active status.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credit for continuing education shall not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, managing broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors shall not receive clock hour credit for teaching or course development.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-124A-787	Previously licensed salesperson—First active renewal.

AMENDATORY SECTION (Amending WSR 13-14-077, filed 7/1/13, effective 8/1/13)

WAC 308-124C-105 Required records. The designated broker is required to keep the following on behalf of the firm:

(1) Trust account records:

(a) Duplicate receipt book or cash receipts journal recording all receipts;

(b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;

(c) Validated duplicate bank deposit slips or daily verified bank deposit;

(d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;

(e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required ((~~entrees~~)) entries;

(f) Reconciled bank statements and canceled checks for all trust bank accounts.

(2) Other records:

(a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.

(b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.

(c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and material correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account.

(d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

AMENDATORY SECTION (Amending WSR 10-20-100, filed 9/30/10, effective 10/31/10)

WAC 308-124C-130 Branch manager responsibilities. Branch manager responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensuring that copies of required records are made available upon demand.

(4) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(5) Ensuring all persons employed, contracted or representing the firm at the branch location are appropriately licensed.

(6) Overseeing of the branch licensees, employees and contractors.

(7) Ensuring affiliated licensees are submitting their transaction documents to the designated broker or delegated managing broker within two business days of mutual acceptance.

(8) Hiring, transferring and releasing licensees to and from the branch.

(9) Overseeing all activity within the branch office including supervision of brokers and managing brokers, and heightened supervision of brokers licensed for less than two years.

(10) If delegated - Client/customer funds or property:

(a) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(b) Ensuring monthly trial balances are completed, accurate and up-to-date.

(c) Ensuring that the ((~~trail~~)) trial balance and the reconciliation show the account(s) are in balance.

(d) Ensuring safe handling of customer/client funds and property.

(e) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(11) If delegated - Other duties:

(a) Record maintenance.

(b) Proper and legal advertising.

(c) Review of contracts.

(d) Modify or terminate brokerage service contracts on behalf of the firm.

(e) Following and implementing the designated brokers written policy:

(i) On referral of home inspectors.

(ii) Addressing levels of supervision of all brokers and managing brokers.

(iii) That includes a review of all brokerage service contracts involving any broker licensed for less than two years. Review must be completed within five business days of mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-805 Course approval required. (1) Any education provider or course developer may submit a course to the department for approval.

(2) Course approval by the department is required prior to the date on which the course is offered for clock hour credit.

(3) Each application for approval of a course shall be submitted to the department on the appropriate application form provided by the department.

(4) The director or designee shall approve, disapprove, or conditionally approve applications based upon criteria established by the commission.

(5) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire ((~~two~~)) four years after the effective date of approval, except for the core course which shall expire after two years.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-810 Course titles reserved for prescribed curriculum courses. Any approved school desiring to offer fundamentals, business management, broker management, real estate law, advanced real estate law, real estate practices, or advanced real estate practices, ((~~and/or transition course~~)) shall utilize the most recent course curriculum prescribed by the department, and shall include in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real estate practices," or "advanced real estate practices," ((~~or "transition course"~~)) if submitted for approval for clock hours. No other courses shall use these phrases in their titles.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-825 Secondary education provider course content approval application. (1) An approved school may offer courses, except for the mandated courses, that are currently approved for another education provider or course developer provided a secondary provider course content approval application is submitted to the department;

(2) The applicant must also provide written authorization by the original education provider/developer permitting use of the course content by the applicant;

(3) A certificate of course approval will be provided to the secondary education provider;

(4) The applicant must use the course approval number issued by the department on all certificates of course completion;

(5) Course approval is valid only for the dates of the original education provider/course developer's approval; and

(6) Secondary provider course content approval applications may not be used for real state fundamentals, real estate brokerage management, real estate law, advanced real estate law, business management, real estate practices, advanced real estate practices, or core course((~~, or transition course~~)).

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-870 Grounds for denial or withdrawal of course approval. Course approval may be denied or withdrawn if the instructor or any owner, administrator or affiliated representative of a school, or a course provider or developer:

(1) Submits a false or incomplete course application or any other information required to be submitted to the department;

(2) Includes in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real estate practice," and "advanced real estate practice," ((~~and "transition course"~~)) if the course was not submitted for approval of clock hours pursuant to WAC 308-124H-810;

(3) If the title of the course misleads the public and/or licensees as to the subject matter of the course;

(4) If course materials are not updated within thirty days of the effective date of a change in the statute or rules;

(5) If course content or material changes are not submitted to the department for approval prior to the date of using the changed course content;

(6) Failed to meet the requirements under WAC 308-124H-820, 308-124H-825, and 308-124H-840;

(7) If a course or prescribed core curriculum was approved through the mistake or inadvertence of the director.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124H-990 Real estate course, school, and instructor approval fees. (1) The following fees shall be charged for applications for approval of real estate courses, schools, and instructors. An application fee shall accompany

each application. Approval for schools and instructors, if granted, shall be two years from the date of approval. Approval for courses, except for the core course, if granted, shall be four years from the date of approval. Applications submitted and disapproved may be resubmitted at no additional fee.

(2) Application for course content approval - A fee of five dollars per clock hour credit being offered, with a minimum fee of fifty dollars per core course. A fee of ten dollars per clock hour credit being offered, with a minimum of one hundred dollars per course other than the core course. Except, the application fee for approval of the sixty clock hour course in real estate fundamentals shall be ((~~one~~)) three hundred ((~~fifty~~)) dollars.

(3) Application for school approval - A fee of two hundred fifty dollars.

(4) Application for instructor approvals:

(a) Approval to teach a specific course on one occasion - A fee of fifty dollars;

(b) Approval to teach as many subject areas as requested at time of initial application - A fee of seventy five dollars. Approval shall be for two years from the approval date;

(c) Approval to teach additional subject area(s) not requested at time of initial application or renewal - A fee of twenty-five dollars for each application to teach additional subject area(s). Approval, if granted, shall be for remainder of two year approval period. Applications submitted under (a), (b) and (c) of this section and disapproved may be resubmitted at no additional fee.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-124H-815	Application process for previously approved courses.

WSR 14-11-036
PROPOSED RULES
SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed May 14, 2014, 10:55 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 (SRCAA), **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 (SFBD). It is designed to reduce harmful wood smoke emissions and maintain compliance with the national ambient air quality standard (NAAQS) for fine particulate matter ($PM_{2.5}$).

Hearing Location(s): 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 SFBD 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 SFBD 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 or was not originally constructed with an SFBD as a source of heat. 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, 10-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_{10} nonattainment area is now a maintenance area. Fireplaces will no longer be exempt from contingency measures in the event of a PM_{10} 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 "wood stove" 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_{10} 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_{10} 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; and 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 14, 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 (PM2.5) 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: 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.

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		
Type of Device	First Stage Burn Ban	Second Stage Burn Ban	Air Pollution Episode
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

((~~c~~)) 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 curtailment 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.

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

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 his/her heating system, other than a solid fuel heating device, is inoperable for reasons other than his/her own actions.~~)) An exemption may be issued if all of the following apply:

a. The residence was constructed prior to July 1, 1992; and

b. The residence was originally constructed with a solid fuel burning device as a source of heat; and

c. A person in a residence does not have an adequate source of heat without using a solid fuel burning device (RCW 70.94.477 (6)(a)).

i. Adequate source of heat means the ability to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a dwelling (WAC 173-433-030(1)); and

ii. If any part of the heating system has been disconnected/removed, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of design for providing an adequate source of heat in Section 8.08.2.c.i, above, on the system's capability prior to the disconnection/removal, 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.

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.

WSR 14-11-051
PROPOSED RULES
GAMBLING COMMISSION

[Filed May 16, 2014, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-007.

Title of Rule and Other Identifying Information: Proposed amendments to WAC 230-06-030 Restrictions and conditions for gambling promotions and 230-11-070 Defining "members-only" raffles; and new WAC 230-11-091 Members-only progressive raffles.

Hearing Location(s): Grand Mound Great Wolf Lodge, 20500 Old Highway 99 S.W., Grand Mound, WA 98531, (360) 273-7718, on July 11, 2014, at 9:00 a.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 11, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Rocky Mountain Elk Foundation has petitioned for a rule change. They are proposing a new rule and changes to two rules to allow progressive raffles as a part of members-only raffles.

- WAC 230-06-030, this proposed change exempts members-only progressive raffles from the prohibition against giving another chance to participate in a gambling activity as a promotional item.
- WAC 230-11-070, this proposed change exempts members-only progressive raffles from the requirement that all aspects of members-only raffles must take place at the same event and location.
- WAC 230-11-091, a new rule is proposed that defines a "members-only progressive raffle" as a raffle in which winner(s) of one or more members-only raffle may, without further purchase, receive an entry into another members-only raffle.

The second raffle may or may not take place in the state of Washington. For the petitioner, the national organization which holds a raffle license is located in Montana.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0277.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Rocky Mountain Elk Foundation, raffle licensee, private.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 16, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-17-066, filed 8/18/08, effective 9/18/08)

WAC 230-06-030 Restrictions and conditions for gambling promotions. Licensees may conduct gambling promotions to encourage players to participate in a gambling activity, but you must follow these restrictions and conditions:

(1) You must give all players an equal opportunity to participate; and

(2) You must establish standards to determine how you will give promotional items to players. You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game; and

(3) Except for members-only progressive raffles conducted as authorized in WAC 230-11-091, you must not give another chance to participate in a gambling activity as a promotional item; and

(4) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(5) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

WAC 230-11-070 Defining "members-only" raffles. A "members-only raffle" means a raffle where the organization sells tickets only to full and regular members and a limited number of guests and does not include enhanced raffles. Except for members-only progressive raffles, all aspects of the raffle must take place during the same event at the same location. Winners must be determined from among those members and guests that have purchased tickets.

NEW SECTION

WAC 230-11-091 Members-only progressive raffle. A "members-only progressive raffle" is a raffle in which winner(s) of one or more members-only raffles may, without further purchase, receive an entry into another members-only raffle.

WSR 14-11-052
PROPOSED RULES
GAMBLING COMMISSION

[Filed May 16, 2014, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-008.

Title of Rule and Other Identifying Information: WAC 230-15-030 Authorized nonhouse-banked card games.

Hearing Location(s): Grand Mound Great Wolf Lodge, 20500 Old Highway 99 S.W., Grand Mound, WA 98531, (360) 273-7718, on July 11, 2014, at 9:00 a.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 11, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Omega Gaming USA, a licensed distributor, has petitioned for a rule change. The petitioner is proposing an amendment to allow nonhouse-banked card games to be approved by the director or the director's designee. The petitioner's intent is to give staff the ability to approve a variation of the card game poker.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Omega Gaming USA, licensed distributor, private.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule change would not impose additional costs on any licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 16, 2014
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-030 Authorized nonhouse-banked card games. (1) ((~~Only~~)) The following nonhouse-banked card games are authorized:

(a) Poker;
(b) Hearts;
(c) Pinochle;
(d) Cribbage;
(e) Rummy;
(f) Panguingue (Pan);
(g) Pitch; ((~~and~~))
(h) Bid Whist; and
(i) Other games approved by the director or the director's designee.

(2) Card game licensees must operate these games in the manner explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or similar authoritative book on card games we have approved, or when operated as described in the commission approved game rules on our web site. Card game licensees may make immaterial modifications to the games.

WSR 14-11-055
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed May 16, 2014, 10:37 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors, 182-508-0001 Washington apple health—Coverage options for adults not eligible under MAGI methodologies, and 182-509-0300 Modified adjusted gross income (MAGI).

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 24, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 25, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on June 24, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 16, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Phase 4.7 ACA WACS,** 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 (Washington apple health (WAH)).

Reasons Supporting Proposal: See Purpose statement above.

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 Dean, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1501.

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 16, 2014
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-505-0117 Washington apple health—Eligibility for pregnant minors. (1) A pregnant minor who meets Washington state residency requirements under WAC 182-503-0520 and 182-503-0525 is eligible for the Washington apple health (WAH) for kids program.

(2) The medical assistance unit (MAU) of a pregnant minor is the pregnant minor.

(3) There are no income standards and no resource tests for a pregnant minor to be eligible for WAH for kids.

(4) To ensure reimbursement from the U.S. Department of Health and Human Services, every pregnant minor applicant for WAH for kids must provide her Social Security number, if she has one, and her citizenship or immigration status. The immigration status of a pregnant minor who is an undocumented alien (see WAC 182-503-0530) will not be disclosed to any third party.

(5) The assignment of rights as described in WAC 182-503-0540 does not apply to pregnant minors.

(6) A pregnant minor covered by the WAH for kids program will have a one year certification period unless she has her nineteenth birthday during her pregnancy, at which time she will be automatically enrolled in the WAH for pregnant women program. Under the WAH for pregnant women program, her coverage will continue through the end of her pregnancy and she will be eligible for extended medical coverage for postpartum care through the end of the month of the sixtieth day after the end of her pregnancy.

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

WAC 182-508-0001 ((~~Medical assistance coverage~~)) Washington apple health—Coverage options for adults not ((~~covered under family medical programs~~)) eligible under MAGI methodologies. (((~~(1) An adult who does not meet the institutional status requirements as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for categorically needy (CN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for CN coverage when the individual:~~

~~(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and~~

~~(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010; and~~

~~(c) Is sixty-five years of age or older, or meets the blind and/or disability criteria of the federal SSI program.~~

~~(2) An adult not meeting the conditions of subsection (1)(b) of this section is eligible for CN medical coverage if the individual:~~

~~(a) Is a current beneficiary of Title II of the Social Security Act (SSA) benefits who:~~

~~(i) Was a concurrent beneficiary of Title II and supplemental security income (SSI) benefits;~~

~~(ii) Is ineligible for SSI benefits and/or state supplementary payments (SSP); and~~

~~(iii) Would be eligible for SSI benefits if certain cost-of-living (COLA) increases are deducted from the client's current Title II benefit amount:~~

~~(A) All Title II COLA increases under P.L. 94-566, section 503 received by the individual since their termination from SSI/SSP; and~~

~~(B) All Title II COLA increases received during the time period in (d)(iii)(A) of this subsection by the individual's spouse or other financially responsible family member living in the same household.~~

~~(b) Is an SSI beneficiary, no longer receiving a cash benefit due to employment, who meets the provisions of section 1619(b) of Title XVI of the SSA;~~

~~(c) Is a currently disabled individual receiving widow's or widower's benefits under section 202 (e) or (f) of the SSA if the disabled individual:~~

~~(i) Was entitled to a monthly insurance benefit under Title II of the SSA for December 1983;~~

~~(ii) Was entitled to and received a widow's or widower's benefit based on a disability under section 202 (e) or (f) of the SSA for January 1984;~~

~~(iii) Became ineligible for SSI/SSP in the first month in which the increase provided under section 134 of P.L. 98-21 was paid to the individual;~~

~~(iv) Has been continuously entitled to a widow's or widower's benefit under section 202 (e) or (f) of the SSA;~~

~~(v) Would be eligible for SSI/SSP benefits if the amount of that increase, and any subsequent COLA increases provided under section 215(i) of the SSA, were disregarded;~~

~~(vi) Is fifty through fifty-nine years of age; and~~

~~(vii) Filed an application for medicaid coverage before July 1, 1988.~~

~~(d) Was receiving, as of January 1, 1991, Title II disabled widow or widower benefits under section 202 (e) or (f) of the SSA if the individual:~~

~~(i) Is not eligible for the hospital insurance benefits under medicare Part A;~~

~~(ii) Received SSI/SSP payments in the month before receiving such Title II benefits;~~

~~(iii) Became ineligible for SSI/SSP due to receipt of or increase in such Title II benefits; and~~

~~(iv) Would be eligible for SSI/SSP if the amount of such Title II benefits or increase in such Title II benefits under section 202 (e) or (f) of the SSA, and any subsequent COLA increases provided under section 215(i) of the act were disregarded.~~

~~(e) Is a disabled or blind individual receiving Title II Disabled Adult Childhood (DAC) benefits under section 202(d) of the SSA if the individual:~~

~~(i) Is at least eighteen years old;~~

~~(ii) Lost SSI/SSP benefits on or after July 1, 1988, due to receipt of or increase in DAC benefits; and~~

~~(iii) Would be eligible for SSI/SSP if the amount of the DAC benefits or increase under section 202(d) of the DAC and any subsequent COLA increases provided under section 215(i) of the SSA were disregarded.~~

~~(f) Is an individual who:~~

~~(i) In August 1972, received:~~

~~(A) Old age assistance (OAA);~~

~~(B) Aid to blind (AB);~~

~~(C) Aid to families with dependent children (AFDC); or~~

~~(D) Aid to the permanently and totally disabled (APTD); and~~

~~(ii) Was entitled to or received retirement, survivors, and disability insurance (RSDI) benefits; or~~

~~(iii) Is eligible for OAA, AB, AFDC, SSI, or APTD solely because of the twenty percent increase in Social Security benefits under P.L. 92-336.~~

~~(3) An adult who does not meet the institutional status requirement as defined in WAC 388-513-1320 and who does not receive waiver services as described in chapter 388-515 WAC is considered for medically needy (MN) coverage under this chapter. Individuals excluded from this section have rules applied to eligibility from chapter 388-513 WAC. Under this section an individual is eligible for MN coverage when the individual:~~

~~(a) Meets citizenship/immigrant, residency, and Social Security number requirements as described in WAC 182-503-0505; and~~

~~(b) Has MN countable income that does not exceed the income standards in WAC 182-512-0010, or meets the excess income spenddown requirements in WAC 388-519-0110; and~~

~~(c) Meets the countable resource standards in WAC 182-519-0050; and~~

~~(d) Is sixty-five years of age or older or meets the blind and/or disability criteria of the federal SSI program.~~

~~(4) MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 388-519-0100 for additional information.~~

~~(5) An adult may be eligible for the alien emergency medical program as described in WAC 182-507-0110.~~

~~(6) An adult is eligible for the aged, blind, or disabled program when the individual:~~

~~(a) Meets the requirements of the aged, blind, or disabled program in WAC 388-400-0060 and 388-478-0033; or~~

~~(b) Meets the SSI-related disability standards but cannot get the SSI cash grant due to immigration status or sponsor deeming issues. An adult may be eligible for aged, blind, or disabled cash benefits and CN medical coverage due to different sponsor deeming requirements.~~

~~(7) An adult is eligible for the medical care services (MCS) program when the individual:~~

~~(a) Meets the requirements under WAC 182-508-0005; or~~

~~(b) Meets the aged, blind, or disabled requirements of WAC 388-400-0060 and is a qualified alien as defined in WAC 388-424-0001 who is subject to the five-year bar as described in WAC 388-424-0006(3); or a nonqualified alien as defined in WAC 388-424-0001; or~~

~~(c) Meets the requirements of the ADATSA program as described in WAC 182-508-0320 and 182-508-0375.~~

~~(8) An adult receiving MCS who resides in a county designated as a mandatory managed care plan county must enroll in a plan, pursuant to WAC 182-538-063.~~)) (1) This chapter provides information on eligibility determinations for adults who:

(a) Need a determination of eligibility on the basis of being aged, blind, or disabled;

(b) Need a determination of eligibility based on the need for long-term institutional care or home and community-based services;

(c) Are excluded from coverage under a modified adjusted gross income (MAGI)-based program as referenced in WAC 182-503-0510 on the basis of medicare entitlement;

(d) Are not eligible for health care coverage under chapter 182-505 WAC due to citizenship or immigration requirements; or

(e) Are not eligible for health care coverage under chapter 182-505 WAC due to income which exceeds the applicable standard for coverage.

(2) The agency determines eligibility for Washington apple health (WAH) noninstitutional categorically needy (CN) coverage under chapter 182-512 WAC for an adult who is age sixty-five or older, or who meets the federal blind or disabled criteria of the federal SSI program, and:

(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC; and

(b) Has CN countable income and resources that do not exceed the income and resource standards in WAC 182-512-0010.

(3) The agency determines eligibility for WAH health care for workers with disabilities (HWD) CN coverage for adults who meet the requirements described in WAC 182-511-1050, as follows:

(a) Are age sixteen through sixty-four;

(b) Meet citizenship/immigration, residency, and Social Security number requirements as described in chapter 182-503 WAC;

(c) Meet the federal disability requirements described in WAC 182-511-1150;

(d) Have net income that does not exceed the income standard described in WAC 182-511-1060; and

(e) Are employed full- or part-time (including self-employment) as described in WAC 182-511-1200.

(4) The agency determines eligibility for WAH long-term care CN coverage for adults who meet the institutional status requirements defined in WAC 182-513-1320 under the following rules:

(a) When the person receives coverage under a MAGI-based program and needs long-term care services in an institution, the agency follows rules described in chapter 182-514 WAC;

(b) When the person meets aged, blind, or disabled criteria as defined in WAC 182-512-0050 and needs long-term care services, the agency follows rules described in:

(i) Chapter 182-513 WAC, for an adult who resides in an institution; and

(ii) Chapter 182-515 WAC, for an adult who is determined eligible for WAH home and community-based waiver services.

(5) The agency determines eligibility for WAH noninstitutional CN or medically needy (MN) health care coverage for an adult who resides in an alternate living facility under rules described in WAC 182-513-1305.

(6) The agency determines eligibility for WAH-CN coverage under institutional rules described in chapters 182-513 and 182-515 WAC for an adult who:

(a) Has made a voluntary election of hospice services;

(b) Is not otherwise eligible for noninstitutional CN or MN health care coverage or for whom hospice is not included in the benefit service package available to the person; and

(c) Meets the aged, blind, or disabled criteria described in WAC 182-512-0050.

(7) The agency uses the following rules to determine eligibility for an adult under the WAH-MN program:

(a) Noninstitutional WAH-MN is determined under chapter 182-519 WAC for an adult with countable income that exceeds the applicable CN standard; and

(b) WAH-MN long-term care coverage is determined under WAC 182-514-0255 for an adult age nineteen or twenty who:

(i) Meets institutional status requirements described in WAC 182-513-1320;

(ii) Does not meet blind or disabled criteria described in WAC 182-512-0050; and

(iii) Has countable income that exceeds the applicable CN standard.

(c) WAH-MN long-term care coverage is determined under WAC 182-513-1395 for an aged, blind, or disabled adult who resides in an institution and has countable income that exceeds the special income level (SIL).

(8) An adult is eligible for WAH-MN coverage when he or she:

(a) Meets citizenship/immigration, residency, and Social Security number requirements as described in WAC 182-503-0505;

(b) Has MN countable income that does not exceed the effective MN income standards in WAC 182-519-0050, or meets the excess income spenddown requirements in WAC 182-519-0110;

(c) Meets the countable resource standards in WAC 182-519-0050; and

(d) Is sixty-five years of age or older or meets the blind or disabled criteria of the federal SSI program.

(9) WAH-MN coverage is available for an aged, blind, or disabled ineligible spouse of an SSI recipient. See WAC 182-519-0100 for additional information.

(10) An adult who does not meet citizenship or alien status requirements described in WAC 182-503-0535 may be eligible for the WAH alien emergency medical program as described in WAC 182-507-0110.

(11) An adult is eligible for the state-funded medical care services (MCS) program when he or she meets the requirements under WAC 182-508-0005.

(12) A person who is entitled to medicare is eligible for coverage under a medicare savings program or the state-funded buy-in program when he or she meets the requirements described in chapter 182-517 WAC.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0300 Modified adjusted gross income (MAGI). (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health (WAH) programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income; and

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child whose net countable income is below ((~~thirty-five~~)) fifty-four percent of the FPL (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010.

WSR 14-11-064
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed May 19, 2014, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-088.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-125 to clarify board intent for assuring objective evaluation of candidates earning teacher certification in a field placement with a school district.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on July 22, 2014, at 8:30.

Date of Intended Adoption: July 22, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 15, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by July 15, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies requirements for objective evaluation.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

May 19, 2014
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 11-23-073, filed 11/15/11, effective 12/16/11)

WAC 181-78A-125 Field placement agreements. Beginning September 1, 2010, all educator preparation programs approved or authorized by the professional educator standards board or programs approved in other states operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement.

Each field placement agreement shall include, but not be limited to:

(1) Assurances that:

(a) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate; and

(b) ((~~Candidates will not be placed in settings in which personal relationships or previous experiences could interfere with objective evaluation of candidates~~)) Programs shall ensure candidates are placed in settings where they can be objectively evaluated.

(2) Qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(3) Clear description by institution of duties and responsibilities of site supervisor and cooperating educator/administrator;

(4) Anticipated length and nature of field experience;

(5) Signatures from district representative.

WSR 14-11-069
PROPOSED RULES
STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES
[Filed May 19, 2014, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-057.

Title of Rule and Other Identifying Information: Method of assessing tuition and fee charges.

Tuition and fees charged to students enrolled in competency-based degree programs.

Hearing Location(s): Alderbrook Resort, Mt. Washington Conference Center, Room B&C, 7101 East State Highway 106, Union, WA 98592, on September 10, 2014, at 9:30 a.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Denise Graham, 1300 Quince Street S.E., Olympia, WA 98504, e-mail dgraham@sbctc.edu, by August 4, 2014.

Assistance for Persons with Disabilities: Contact Beth Gordon by August 4, 2014, TTY (360) 704-4309 or bgordon@sbctc.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to allow tuition charges based on term length for students enrolled in competency-based degree programs.

Reasons Supporting Proposal: The community and technical colleges are piloting competency-based degree programs in which students will earn academic credits based on demonstration of meeting course competencies rather than on seat time. Tuition will be charged based on a flat rate per term rather than on credits. The state board for community and technical colleges is responsible for setting tuition rates for the community and technical college system. Under current rules, tuition must be charged on a per credit rate. A rule change is needed to allow the state board to authorize tuition

charges for competency-based programs that are based on term length rather than on the number of credits taken.

Statutory Authority for Adoption: RCW 28B.15.067.

Statute Being Implemented: RCW 28B.15.067.

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: Staff proposes to amend WAC 131-28-025 to allow term-based tuition and fees for competency-based degree programs. The proposed rule would require term-based tuition charges to be equivalent to tuition and fee rates charged for a fifteen-credit load for one quarter, prorated for the length of the competency-based degree program term.

Name of Proponent: State board for community and technical colleges, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Denise Graham, 1300 Quince Street S.E., Olympia, WA 98504, (360) 704-4350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not impact small business or school district costs.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes do not create or change any costs.

May 19, 2014
Beth Gordon
Executive Assistant
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-22-010, filed 10/26/01, effective 11/26/01)

WAC 131-28-025 Method of assessing tuition and fee charges. Tuition and fees charged to students shall conform to chapter 28B.15 RCW, the legislative budget and policies of the state board and the following:

(1) For credit- and credit equivalent-based programs, tuition, and fees charged to students:

(a) Shall be based upon the number of credits assigned to such courses as listed in the official and current catalog of the college, or for courses not given such credit designations, the number of credit equivalents as computed by the method for deriving such equivalents established by the state board.

((~~(2)~~)) (b) Shall be assessed on a per-credit basis at uniform rates for resident and for nonresident students, respectively. Partial credits shall be assessed on a proportionate basis. The respective maximums charged to any resident or nonresident student shall not exceed the amount allowed by law.

((~~(3)~~)) (c) Shall be assessed for part-time students, for each credit of registration or its equivalent.

((~~(4)~~)) (d) Shall include an additional operating fee for each credit in excess of eighteen at the tuition fee rate charged to part-time students.

((~~(5) Shall conform with chapter 28B.15 RCW, the legislative budget and policies of the state board.~~)) (2) For competency-based degree programs, tuition and fees charged to students:

(a) Shall be based on the tuition and fee rates charged for a fifteen-credit load for one quarter, prorated for the length of the competency-based degree program term.

(b) For the purposes of the proration required under (a) of this subsection, a quarter shall be considered to be three months long.

WSR 14-11-072
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed May 19, 2014, 4:17 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 182-526-0025 Use and location of the office of administrative hearings.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf, or directions can be obtained by calling (360) 725-1000), on June 24, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 25, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on June 24, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 16, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Housekeeping change. Correcting outdated administrative hearings Spokane office address.

Reasons Supporting Proposal: To prevent the public from submitting hearing requests to the wrong address.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348.

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 19, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0025 Use and location of the office of administrative hearings. (1) HCA may utilize administrative law judges employed by the office of administrative hearings (OAH) to conduct administrative hearings and issue initial orders in accordance with RCW 34.05.425 (1)(c). In some situations, HCA may use presiding officers employed by HCA to conduct administrative hearings and issue final orders in accordance with RCW 34.05.425 (1)(a) and (b). When HCA uses HCA-employed presiding officers to conduct administrative hearings, the HCA presiding officer shall have all the duties and responsibilities set forth in this chapter relating to administrative law judges and the office of administrative hearings. The notice of hearing will identify whether the case is to be heard by OAH or an HCA-employed presiding officer.

(2)(a) The office of administrative hearings (OAH) headquarters location is:

Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
fax: 360-664-8721

(b) The headquarters office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(3) OAH field offices are at the following locations:

Olympia
Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42489
Olympia, WA 98504-2489
360-407-2700
1-800-583-8271
fax: 360-586-6563

Seattle
Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
206-389-3400
1-800-845-8830
fax: 206-587-5135

Vancouver
Office of Administrative Hearings
5300 MacArthur Blvd., Suite 100
Vancouver, WA 98661
360-690-7189
1-800-243-3451
fax: 360-696-6255

Spokane
Office of Administrative Hearings
((~~Old City Hall Building, 5th Floor~~
~~221 N. Wall Street, Suite 540~~))
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA ((~~99201~~)) 99216
509-456-3975
1-800-366-0955
fax: 509-456-3997

Yakima
Office of Administrative Hearings
32 N. 3rd Street, Suite 320
Yakima, WA 98901-2730
509-249-6090
1-800-843-3491
fax: 509-454-7281

(4) Contact the Olympia field office, under subsection (2) of this section, if unable to identify the correct field office.

(5) Further hearing information can be obtained at the OAH web site: www.oah.wa.gov.

WSR 14-11-074
PROPOSED RULES
HOUSING FINANCE COMMISSION
[Filed May 20, 2014, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-078.

Title of Rule and Other Identifying Information: WAC 262-01-100 Financing energy efficiency improvements.

Hearing Location(s): Washington State Housing Finance Commission (WSHFC), 28th Floor Board Room, 1000 Second Avenue, Seattle, WA 98104-3601, on June 26, 2014, at 1:00 p.m.

Date of Intended Adoption: July 24, 2014.

Submit Written Comments to: David Clifton, WSHFC, Multifamily Housing and Community Facilities (MHCF) Division, 1000 Second Avenue, Suite 2700, Seattle, WA 98104-3601, e-mail david.clifton@wshfc.org, fax (206) 587-5113, by 5 p.m. on Wednesday, June 25, 2014.

Assistance for Persons with Disabilities: Contact the MHCF division by 1:00 p.m. on Tuesday, June 24, 2014, at (206) 464-7139.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends WAC 262-01-100 Financing energy efficiency improvements, to provide greater clarity to sustainable energy trust program participants regarding the operation of the program.

Reasons Supporting Proposal: The proposed rule provides greater clarity to sustainable energy trust program participants regarding the operation of the program.

Statutory Authority for Adoption: RCW 43.180.140, 43.180.260.

Statute Being Implemented: RCW 43.180.260.

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: As noted above, the rules govern the financing of energy efficiency improvements. The proposed rule change is intended to make the applicable rule clearer for program participants.

Name of Proponent: WSHFC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Clifton, 1000 Second Avenue, Suite 2700, Seattle, WA 98104-3601, (206) 287-4407.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Statement not required under RCW 19.85.030(1) because the proposed rule will not impose "more than minor costs on businesses in an industry."

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328(5), the statute does not apply to this rule adoption because the WSHFC is not an agency listed in subsection (5)(a)(i) nor has it voluntarily made the statute applicable to the agency as listed in subsection (5)(a)(ii).

May 19, 2014
Paul R. Edwards
Deputy Director

AMENDATORY SECTION (Amending WSR 83-24-001 (Resolution No. 83-12), filed 11/28/83)

WAC 262-01-100 (Financing energy efficiency improvements) as follows: (1) The commission, in developing its plan of housing finance, shall consider energy efficiency improvements that may reasonably be achieved through the housing finance programs of the commission.

(2) The commission may, as part of a particular single family mortgage purchase bond issue, require minimum energy efficiency standards as a condition of eligibility for housing finance assistance or the commission may make bond proceeds available for rehabilitation or home improvement loans for energy efficiency enhancement.

(3) The commission ((~~shall~~)) may require applicants for multifamily housing financing to specify what steps will be taken to insure energy efficiency in the project to be financed. The commission ((~~shall~~)) may consider such plans in determining whether or not bond proceeds may be used for such purposes.

(4) In administering a sustainable energy trust program pursuant to RCW 43.180.260, the commission may (a) provide loan financing for qualified energy efficiency and renewable energy improvements by making loans or by buying or investing in loans or participations therein, and (b) establish eligibility criteria for projects and borrowers.

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.

WSR 14-11-078
WITHDRAWL OF PROPOSED RULES
LIQUOR CONTROL BOARD
(By the Code Reviser's Office)
[Filed May 20, 2014, 11:25 a.m.]

WAC 314-23-060, 314-23-065, 314-23-070, 314-23-075, 314-23-080, and 314-23-085, proposed by the liquor control board in WSR 13-22-095, appearing in issue 13-22 of the Washington State Register, which was distributed on November 20, 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 14-11-085
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed May 20, 2014, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-04-126.

Title of Rule and Other Identifying Information: WAC 458-20-168 (Rule 168) Hospitals, nursing homes, ~~boarding homes~~ assisted living facilities, adult family homes and similar health care facilities and 458-20-18801 (Rule 18801) ~~Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.~~ Medical substances, devices, and supplies for humans; drugs prescribed for human use; medically prescribed oxygen; prosthetic devices; mobility enhancing equipment; and durable medical equipment.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on June 24, 2014, at 1:30 p.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: July 1, 2014.

Submit Written Comments to: Gayle Carlson, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by June 24, 2014.

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 hearing 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: The department is proposing to revise WAC 458-20-168 and 458-20-18801 for general updating and reformatting in addition to the following:

Rule 168:

- Includes changes due to legislation pertaining to blood and tissue banks, RCW 82.04.324, and that provides a deduction for amounts a health or social welfare organization receives as compensation for providing child welfare services under a government-funded program, RCW 82.04.4275.
- Reflects that the hospital safe patient handling credit expired December 2010.
- As the quality maintenance fee imposed on nursing homes was repealed in 2007, the subsection describing it has been removed.
- References to "boarding homes" have been changed to "assisted living facilities" to correspond to the change in RCW 18.20.020.

Rule 18801:

- The proposed revision has been organized into five parts:
  - Introduction,
  - Medical products,
  - Applicable taxes,
  - Common sales and use tax exemptions, and
  - Bundled transactions.
- The part for medical products has tables of examples added for:
  - Durable medical equipment,
  - Drugs,
  - Mobility enhancing equipment,
  - Over-the-counter drugs, and
  - Prosthetic devices.

A change in the title to the rule to "medical substances, devices, and supplies for humans' drugs prescribed for human use; medically prescribed oxygen; prosthetic devices; mobility enhancing equipment; and durable medical equipment" better captures the revised content.

Reasons Supporting Proposal: To update the rules to provide businesses with current tax-reporting information.

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

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: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

May 20, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-069, filed 2/25/10, effective 3/28/10)

WAC 458-20-168 Hospitals, nursing homes, ((~~boarding homes~~)) assisted living facilities, adult family homes and similar health care facilities. (1) **Introduction.** ((~~This section explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating hospitals as defined in RCW 70.41.020, nursing homes as defined in RCW 18.51.010, boarding homes as defined in RCW 18.20.020, adult family homes as defined in RCW 70.128.010, and similar health care facilities.~~

~~The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:~~

~~(a) WAC 458-20-150 Optometrists, ophthalmologists, and opticians;~~

~~(b) WAC 458-20-151 Dentists and other health care providers, dental laboratories, and dental technicians;~~

~~(c) WAC 458-20-18801 Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen; and~~

~~(d) WAC 458-20-233 Tax liability of medical and hospital service bureaus and associations and similar health care organizations.~~

~~(2) **Personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities.** This subsection provides information about the application of B&O tax to the personal and professional services of hospitals, nursing homes, boarding homes, and similar health care facilities. For information regarding B&O tax deductions and exemptions for persons operating health care facilities, readers should refer to subsection (3) of this section.~~

~~(a) **Public or nonprofit hospitals.** The gross income of public or nonprofit hospitals derived from providing personal or professional services to inpatients, is subject to B&O tax under the public or nonprofit hospitals classification. RCW 82.04.260. For the purpose of this section, "public or nonprofit hospitals" are hospitals, as defined in RCW 70.41.020, operated as nonprofit corporations, operated by political subdivisions of the state (e.g., a hospital district operated by a county government), or operated by but not owned by the state.~~

~~Gross income of public or nonprofit hospitals derived from providing personal or professional services for persons other than inpatients is generally subject to B&O tax under the service and other activities classification. RCW 82.04.290. Thus, for example, amounts received for services provided to outpatients, income received for providing nonmedical services, interest received on patient accounts receivable, and amounts received for providing transcribing services to physicians are subject to service and other activities B&O tax.~~

~~(i) **Clinics and departments operated by public or nonprofit hospitals.** Gross income derived from medical clinics and departments providing services to both inpatients~~

and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the public or nonprofit hospitals classification where the clinic or department is an integral, interrelated, and essential part of the hospital. Otherwise, the gross income derived from medical clinics and departments providing services to both inpatients and outpatients and operated by a public or nonprofit hospital is subject to B&O tax under the service and other activities classification.

Relevant factors for determining whether a medical clinic or department operated by a public or nonprofit hospital is an integral, interrelated, and essential part of the hospital include whether the clinic or department is located at the hospital facility and whether the clinic or department furnishes the type of services normally provided by hospitals, such as twenty-four hour intake and emergency services.

The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(A) Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is separate but physically located within the hospital. However, the clinic is open only during regular business hours and provides no domiciliary care or overnight facilities to its patients. The clinic is staffed, equipped, administered, and provides the type of medical services that one would expect to receive in the average physician's office. Acme's medical clinic is not an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the medical clinic are subject to service and other activities B&O tax.

(B) Acme Hospital is a nonprofit hospital. Acme has a cancer treatment facility that is physically located within the hospital. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients. Acme's cancer treatment facility is an integral, interrelated, and essential part of Acme Hospital. Gross receipts by the cancer treatment facility are subject to public or nonprofit hospitals B&O tax.

(ii) **Educational programs and services.** Amounts received by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if they are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services (i.e., services that will be, have been, or are currently being provided to the participants). Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts derived from educational programs and services are subject to service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(b) **Other hospitals, nursing homes, and similar health care facilities.** The gross income derived from personal and professional services of hospitals, clinics, nursing homes, and similar health care facilities, other than public or nonprofit hospitals described above in (a) of this subsection and hospitals owned by the state, is subject to service and other activities B&O tax. The gross income received by the state of Washington from operating a hospital or other health care facility, whether or not the hospital or other facility is owned by the state, is not subject to B&O tax. Nursing homes should refer to subsection (6) of this section for information regarding the quality maintenance fee imposed under chapter 82.71 RCW.

The following definitions apply for purposes of this section:

(i) "Hospital" has the same meaning as in RCW 70.41.020; and

(ii) "Nursing home" has the same meaning as in RCW 18.51.010.

(c) **Boarding homes.** Effective July 1, 2004, persons operating boarding homes licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed boarding homes should report their gross income derived from providing room and domiciliary care to residents under the licensed boarding homes B&O tax classification. For the purpose of this section, "boarding home" and "domiciliary care" have the same meaning as in RCW 18.20.020. Refer to subsection (3)(h) of the section for B&O tax deductions and exemptions available to boarding homes.

(d) **Nonprofit corporations and associations performing research and development.** There is a separate B&O tax rate that applies to nonprofit corporations and nonprofit associations for income received in performing research and development within this state, including medical research. See RCW 82.04.260.

(e) **Can a nursing home or boarding home claim a B&O tax exemption for the rental of real estate?** The primary purpose of a nursing home is to provide medical care to its residents. The primary purpose of boarding homes is to assume general responsibility for the safety and well-being of its residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Boarding homes may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the primary purpose of nursing homes and boarding homes is to provide services and not to lease or rent real property, no part of the gross income of a nursing home or boarding home may be exempted from B&O tax as the rental of real estate.

(f) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax

returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(g) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income amounts paid to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount received from the hospital for providing these services for the hospital. If the service provider subcontracts with third parties, such as physicians or nurses, to help provide medical services as independent contractors, the service provider may not deduct from its gross income amounts paid to the subcontractors where the service provider is personally liable, either primarily or secondarily, for paying the subcontractors. If, however, the hospital is alone liable for paying the subcontractors, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income amounts paid to the subcontractors. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111 (Advances and reimbursements).

(3) **B&O tax deductions, credits, and exemptions.** This subsection provides information about several B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

(a) **Organ procurement organizations.** Amounts received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326. This exemption is effective March 22, 2002.

(b) **Contributions, donations, and endowment funds.** A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts received from a state university for work-study programs or training seminars for doctors, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this section, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and certain nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts received as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.4289. This exemption applies only if no part of the net earnings received by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nursing homes and homes for unwed mothers operated as religious or charitable organizations include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to a health or social welfare organization, as defined in RCW 82.04.431, for amounts received directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services. A deduction is not allowed, however, for amounts that are received under an employee benefit plan. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the tax return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return. Readers should refer to WAC 458-20-169 (Nonprofit organizations) for additional information regarding this deduction.

For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, com-

mingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts received under a health service program subsidized by federal or state government.** A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. The deductible amounts should be included in the gross income reported on the excise tax return and then deducted on the return to determine the amount of taxable income. Deductions taken must be identified on the appropriate deduction detail page of the excise tax return.

For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

(i) **Effective date of deduction.** The deduction for a public hospital owned by a municipal corporation or political subdivision and for a nonprofit hospital is effective April 2, 2002. Taxpayers who have paid B&O taxes between January 1, 1998, and April 2, 2002, on amounts that would qualify for this deduction are entitled to a refund. In addition, tax liability for accrued but unpaid taxes that would be deductible under this subsection (3)(f) are waived. For information regarding refunds, refer to WAC 458-20-229 (Refunds).

The deduction for a nonprofit community health center or a network of nonprofit community health centers is effective August 1, 2005.

(ii) **Example.** Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives $1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays $20 to Acme as patient copayments. Medicare pays $600 to Acme for the health care services, and the medicare plus plan pays $380. Acme may only deduct the $600 received from medicare.

(g) **Blood and tissue banks.** Amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax. RCW 82.04.324. For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 607 and Part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(h) **Boarding homes.** Effective July 1, 2004, licensed boarding home operators are entitled to a B&O tax deduction for amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and heath services authorized by chapter 74.39A RCW to residents who are medicaid recipients. RCW 82.04.4337. For the purpose of this section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

Effective July 1, 2005, B&O tax does not apply to the amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home. RCW 82.04.4264. For purposes of this section, "nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** Effective July 1, 2006, B&O tax does not apply to the amounts received by a comprehensive cancer center to the extent the amounts are

exempt from federal income tax. RCW 82.04.4265. For purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Hospital safe patient handling credit.**

(i) RCW 82.04.4485 allows a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. In order to qualify for credit, the purchases must be made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(ii) No application is necessary for the credit; however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this subsection. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.

(iii) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(iv) Credits are available on a first-in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this subsection to exceed ten million dollars. If the ten million dollar limitation is reached, the department will notify hospitals that the annual statewide limit has been met. In addition, the department will provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice will indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department will not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(v) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before June 7, 2006.

(vi) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.

(vii) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.

(viii) For the purposes of this subsection, "hospital" has the meaning provided in RCW 70.41.020.

(k) **Prescription drugs administered by the medical service provider.** Effective October 1, 2007, RCW 82.04.620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290(2)) for amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total of amounts received for a specific drug charge. If the total amount received by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount received qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting their taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (2)(f) of this section. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that is not in excess of the federal rate.

(l) **Temporary medical housing provided by a health or social welfare organization.** Effective July 1, 2008, RCW 82.08.997 created an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under RCW 67.40.090 and 67.40.130;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(4) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, boarding homes, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, retail sales tax must be collected from the buyer and remitted to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services and are subject to B&O tax under either the public or nonprofit hospital B&O tax classification or the service and other activities classification depending on the person making the charge. For example, charges for drugs physically administered by the seller are subject to B&O tax under either the public or nonprofit hospital classification or the service and other activities classification depending on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, boarding homes, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts received by hospitals, nursing homes, boarding homes, and similar health care facilities for furnishing meals to patients or residents as part of the services provided to those patients or residents are subject to B&O tax under the service and other activities, public or nonprofit hospital, or licensed boarding homes classifications, depending upon the person furnishing the meals.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, boarding homes, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold for cash or credit to doctors, nurses, other employees, and visitors. Some of these facilities may provide meals to their employees at no charge. Under these circumstances, all sales of meals to such persons are subject to retailing B&O and retail sales taxes, including the value of meals provided at no charge to employees. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-119 (Sales of meals). Hospitals, nursing homes, boarding homes, and similar health care facilities that provide free meals to persons other than employees, such as visitors, should refer to WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses) for information about the taxability of meals given away free of charge.

(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Effective July 1, 2006, sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. RCW 82.08.808 and 82.12.808. This exemption, however, does not apply to the sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(5) Equipment and supplies used by health care providers. Hospitals, nursing homes, adult family homes, boarding

~~homes, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding exemptions that are available to these health care providers, as well as persons performing medical research and organ procurement organizations.~~

~~(a) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a resale certificate for purchases made before January 1, 2010, or a reseller permit for purchases made on or after January 1, 2010, to the seller to document the wholesale nature of the sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.~~

~~(b) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178 (Use tax).~~

~~(i) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. The excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's excise tax return. If a deferred sales tax or use tax liability is incurred by a person who is not required to obtain a tax registration endorsement from the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.~~

~~(ii) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's internet site at: http://dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706.~~

~~(6) **Quality maintenance fee imposed on nursing homes.** Effective July 1, 2007, the quality maintenance fee imposed on operators of nonexempt nursing facilities in Washington was repealed. Legislation passed in 2006 (section 1, chapter 241, Laws of 2006) repealed chapter 82.71 RCW, which imposed the fee. Originally effective on July 1, 2003, RCW 82.71.020 imposed a quality maintenance fee on every nursing home in this state not exempt from the fee under RCW 74.46.091. The amount of the quality maintenance fee was in addition to any other tax imposed upon nursing homes. Nursing homes were required to report the number of patient days and remit the fee to the department on a monthly basis. Persons with questions about how the quality maintenance fee affected individual nursing home operators or about the exemption provided by RCW 74.46.091 should contact the department of social and health services.~~

~~For purposes of this section, "patient day" means a calendar day of care provided to a nursing home resident, excluding a medicare patient day. Patient days include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. "Medicare patient day" means a patient day for medicare beneficiaries on a medicare Part A stay and a patient day for persons who have opted for managed care coverage using their medicare benefit.~~)) This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating:

• Hospitals as defined in RCW 70.41.020;

• Nursing homes as defined in RCW 18.51.010;

• Assisted living facilities as defined in RCW 18.20.020;

• Adult family homes as defined in RCW 70.128.010; and

• Similar health care facilities.

(a) **Examples.** This rule contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **What other rules might apply?** The department of revenue (department) has adopted other rules that may apply to the provision of health care. Readers may want to refer to the following rules for additional information:

(i) WAC 458-20-102, Reseller permits;

(ii) WAC 458-20-111, Advances and reimbursements;

(iii) WAC 458-20-150, Optometrists, ophthalmologists, and opticians;

(iv) WAC 458-20-151, Dentists and other health care providers, dental laboratories, and dental technicians;

(v) WAC 458-20-169, Nonprofit organizations;

(vi) WAC 458-20-178, Use tax;

(vii) WAC 458-20-18801, Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment;

(viii) WAC 458-20-233, Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals.** For the purpose of this subsection, the following definitions apply:

• **"Hospital" -** The term hospital is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.

• **"Public hospital" or "nonprofit hospital" -** Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) **Hospital services to patients.** Gross income earned by hospitals for providing personal or professional services to both inpatients and outpatients is subject to B&O tax as shown on the table below. RCW 82.04.260.

Report Income From Providing Personal or Professional Services	Time Frame Prior to May 1, 2010	Time Frame May 1, 2010 and After
For profit hospitals	Service and other B&O tax classification	For profit hospitals B&O tax classification

Report Income From Providing Personal or Professional Services	Time Frame Prior to May 1, 2010	Time Frame May 1, 2010 and After
Public and nonprofit hospitals	Public or nonprofit hospitals B&O tax classification	Public or nonprofit hospitals B&O tax classification

Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for providing transcribing services to physicians are subject to service and other activities B&O tax.

(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to both inpatients and outpatients and operated by a hospital is subject to B&O tax as shown in the table in subsection (2)(a) of this rule, where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to inpatients and outpatients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital. Acme has a medical clinic that is physically located within the hospital. The clinic is open only during regular business hours (8:00 a.m. to 5:00 p.m.) and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification.

(ii) **Example 2.** Mountain Hospital is a for profit hospital with a cancer treatment facility that is located one mile from the hospital campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to B&O tax as shown in the table in subsection (2)(a) of this rule.

(c) **Educational programs and services.** Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities tax classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs or services could be provided by any physician, clinic, or trained lay person.

(3) **Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.** Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) **Assisted living facilities and domiciliary care.** For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. Persons operating assisted living facilities licensed under chapter 18.20 RCW are entitled to a preferential B&O tax rate. See RCW 82.04.2908. Persons operating licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9)(h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) **Hospitals or other health care facilities operated by the state of Washington.** The gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

(6) **Nonprofit corporations and associations performing research and development.** A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes as defined in RCW 18.51.010, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. In addition, the seller must collect retail sales tax from the buyer and remit the tax to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, charges for drugs physically administered by the seller are subject to B&O tax under the appropriate tax classification as shown in the table in subsection (2)(a) of this rule based on the person making the charge. On the other hand, charges for drugs sold to patients or their caregivers, either for patient self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed

information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents. Such amounts are not subject to retail sales tax.

Prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293. The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, assisted living facilities, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-124.

(8) **Industry reporting.** This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) **Adjustments to revenues.** Many hospitals will provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(b) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help provide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111.

(c) **Can nursing homes or assisted living facilities claim a B&O tax exemption for the rental of real estate?** The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities may be exempted from B&O tax as the rental of real estate.

(9) **B&O tax deductions, credits, and exemptions.** This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the excise tax return and then identified on the appropriate deduction detail line of the excise tax return to determine the amount of taxable income.

(a) **Organ procurement organizations.** Amounts earned by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax, are exempt from B&O tax. RCW 82.04.326.

(b) **Contributions, donations, and endowment funds.** A B&O tax deduction is provided by RCW 82.04.4282 for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital is not allowed to take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives

business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** The gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS, is exempt from B&O tax under RCW 82.04.327. The exemption under RCW 82.04.327 does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** B&O tax does not apply to amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. RCW 82.04.-4289. This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** A B&O tax deduction is provided by RCW 82.04.4297 to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivision of the state of Washington as compensation for health or social welfare services.

Effective August 1, 2011, RCW 82.04.4275 provides a deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts earned under a health service program subsidized by federal or state government.**

• A public hospital that is owned by a municipal corporation or political subdivision; or

• A nonprofit hospital; or

• A nonprofit community health center; or

• A network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of B&O tax amounts earned as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. RCW 82.04.4311. This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, this deduction does not apply to amounts received from patient copayments or patient deductibles. For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

Example 3. Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives $1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays $20 to Acme as patient copayments. Medicare pays $600 to Acme for the health care services, and the medicare plus plan pays $380. Acme may only deduct the $600 received from medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank are exempt from B&O tax to the extent the amounts are exempt from federal income tax. RCW 82.04.324.

Effective October 1, 2013, persons claiming this exemption must report amounts exempt under this subsection to the department on their excise tax returns. Except for persons whose primary business purpose is the collection, preparation, and processing of blood, the exemption per person is limited to one hundred fifty thousand dollars in tax per calendar year. RCW 82.04.324(3) is scheduled to expire June 30, 2016.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, that is registered under 21 C.F.R., Part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

Effective October 1, 2013, the definition of "qualifying blood bank" includes an exempt organization, as described above, that tests or processes blood, on behalf of itself or

other qualifying blood bank or qualifying blood and tissue bank. This definition is scheduled to expire June 30, 2016. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Parts 607 and 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

Effective October 1, 2013, the definition of "qualifying blood and tissue bank" includes an exempt organization, as described in (g)(iii) of this subsection, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. This definition is scheduled to expire June 30, 2016.

(h) **Assisted living facilities.** Licensed assisted living facility operators may take a B&O tax deduction for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients. RCW 82.04.4337. For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

In addition, B&O tax does not apply to the amounts earned by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. RCW 82.04.4264. For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** B&O tax does not apply to the amounts earned by a comprehensive cancer center to the extent the amounts are exempt from federal income tax. RCW 82.04.4265. For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** Effective October 1, 2007, RCW 82.04.-620 allows a deduction from the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

(i) Are separately stated on invoices or other billing statements;

(ii) Do not exceed the then current federal rate; and

(iii) Are covered or required under a health care service program subsidized by the federal or state government.

For the purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (8)(a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that does not exceed the federal rate.

(k) **Hospital safe patient handling credit - Expired December 30, 2010.**

(i) RCW 82.04.4485 allowed a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. To qualify for the credit, the purchases must have been made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit was equal to one hundred percent of the cost of the mechanical lifting devices or other equipment. This credit does not apply to purchases made after December 30, 2010.

(ii) No application is necessary for the credit; however, a hospital taking a credit under this rule must maintain records, as required by the department, necessary to verify eligibility for the credit. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.

(iii) The maximum credit that may be earned under this rule for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(10) **Sales, use, and other specified taxes deductions and exemptions.** Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The following deductions and exemptions are available to qualified persons.

(a) **Temporary medical housing provided by a health or social welfare organization.** Effective July 1, 2008, RCW 82.08.997 authorized an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100 RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(b) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a reseller permit to the seller to document the wholesale nature of the sale. Reseller permits replaced resale certificates effective January 1, 2010. Even though resale certificates are no longer used, they must be kept on file by the seller for five years from the date of last use or December 31, 2014. For additional information on reseller permits see WAC 458-20-102.

(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** Sales of medical supplies, chemicals, or materials to a comprehensive cancer center are exempt from retail sales and use tax. RCW 82.08.808 and 82.12.808. This exemption does not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(11) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. As the excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's web site at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706.

AMENDATORY SECTION (Amending WSR 92-05-065, filed 2/18/92, effective 3/20/92)

WAC 458-20-18801 ((~~Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen.~~)) Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment. (((~~(1) **Definitions.** As used in this section:~~

~~(a) "Prescription drugs" are medicines, drugs, prescription lenses, or other substances, other than food for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans ordered by (i) the written prescription to a pharmacist by a practitioner authorized by the laws of this state or laws of another jurisdiction to issue prescriptions, or (ii) an oral prescription of such practitioner which is reduced promptly to writing and filled by a duly licensed pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is promptly reduced to writing and filled by the pharmacist, or (iv) physicians or optometrists by way of written directions and specifications for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.~~

~~(b) "Prescription" means a formula or recipe or an order written by a medical practitioner for the composition, preparation and use of a healing, curative or diagnostic substance, and also includes written directions and specifications by physicians or optometrists for the preparation, grinding, and fabrication of lenses intended to aid or correct visual defects or anomalies of humans.~~

~~(c) "Other substances" means products such as catalytics, hormones, vitamins, and steroids, but the term generally does not include devices, instruments, equipment, and similar articles. However, "other substances" does include the needles, tubing, and the bag which are part of an intravenous set for delivery of prescription drugs. It also includes infusion pumps and catheters when used to deliver prescription drugs to a specific patient. These items are not conceptually distinct from the prescription drug solution. This same rationale applies to tubing and needles which are used in placing prescribed nutritional products in the patient's system. The stand which holds the intravenous set is not included nor are plain glass slides, plain specimen collection devices, and similar items which are used in the laboratory. This term does include diagnostic substances and reagents, including prepared slides, tubes and collection specimens devices which contain diagnostic substances and reagents at the time of purchase by a laboratory.~~

~~(d) "Medical practitioner" means a person within the scope of RCW 18.64.011(9) who is authorized to prescribe drugs, but excluding veterinarians, and for the purposes of this rule includes also persons licensed by chapter 18.53 RCW to issue prescriptions for lenses.~~

~~(e) "Licensed dispensary" means a drug store, pharmacy, or dispensary licensed by chapter 18.64 RCW or a dispensing optician licensed by chapter 18.34 RCW.~~

~~(f) "Prosthetic devices" are artificial substitutes which generally replace missing parts of the human body, such as a limb, bone, joint, eye, tooth, or other organ or part thereof, and materials which become ingredients or components of prostheses.~~

~~(g) "Orthotic devices" are apparatus designed to activate or supplement a weakened or atrophied limb or function. They include braces, collars, casts, splints, and other similar apparatus as well as parts thereof. Orthotic devices do not include durable medical equipment such as wheelchairs, crutches, walkers, and canes nor consumable supplies such as embolism stockings, arch pads, belts, supports, bandages, and the like, whether prescribed or not.~~

~~(h) "Ostomic items" are medical supplies used by colostomy, ileostomy, and urostomy patients. These include bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and sundry related supplies.~~

~~(i) "Medically prescribed oxygen" means oxygen prescribed for the use in the treatment of a medical condition. For periods after July 27, 1991, this term shall include, but is not limited to, the sale or rental of oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems for use by an individual under a prescription. (See RCW 82.08.0283.)~~

~~(j) "Legend drugs" are those drugs which may not be legally dispensed without a prescription. These drugs are listed in the official United States pharmacopeia or similar source. (See RCW 69.41.010(8).) WAC 246-865-010(5) requires legend drugs to have a label stating that federal law prohibits dispensing without a prescription. Also refer to RCW 69.41.010(9).~~

~~(k) "Nutrition products" are prescribed dietary substances formulated to provide balanced nutrition as a sole source of nourishment.~~

~~(2) **Business and occupation tax.** The business and occupation tax applies to the gross proceeds from sales of drugs, medicines, prescription lenses, or other substances used for diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments in humans. Sales of these items to persons for resale are taxable under the wholesaling classification. Sales to consumers are taxable under the retailing classification. Persons who provide medical services to patients are taxable under the service and other business activities classification on the gross charge to the patient, notwithstanding that some prescription drugs may be separately charged to the patient. Persons who provide medical services should refer to WAC 458-20-151 and 458-20-168 for additional tax reporting information.~~

~~(3) **Deductions.** The following may be deducted from gross proceeds for computing business and occupation tax:~~

~~(a) Sales of prescription drugs and other medical and healing supplies furnished as an integral part of services rendered by a publicly operated or nonprofit hospital, nonprofit kidney dialysis facility, nursing home, or home for unwed mothers operated as a religious or charitable organization which meets all the conditions for exemption for services generally under RCW 82.04.4288 or 82.04.4289 (see WAC 458-20-168).~~

~~(4) **Retail sales tax.** The retail sales tax applies upon all retail sales of tangible personal property unless expressly exempted by law.~~

(5) **Exemptions.** The following exemptions apply from the retail sales tax and use tax.

(a) Legend drugs are exempt from retail sales tax or use tax when sold for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or other ailments of humans. This exemption applies to all levels of sales and distribution of legend drugs, including legend drugs given away as samples. Legend drugs are exempt from sales tax when sold to hospitals, doctors, dentists, or any other medical practitioner, as well as to patients. Sellers of legend drugs are not required to retain a resale certificate or other exemption documentation from the legend drug purchaser. The exemption applies at the time of purchase even if the hospital or medical practitioner who makes such purchases will not resell the legend drug as a separate line item charge to its patient.

(b) The retail sales tax does not apply to sales of nonlegend drugs, nutrition products including dietary supplements or dietary adjuncts, medicines, prescription lenses, or other substances, but only when

(i) Dispensed by a licensed dispensary

(ii) Pursuant to a written prescription

(iii) Issued by a medical practitioner

(iv) For diagnosis, cure, mitigation, treatment, or prevention of disease or other ailment in humans. (See RCW 82.08.0281.)

(c) Laboratory reagents and other diagnostic substances are exempt from retail sales tax when used as part of a test prescribed to diagnose disease in humans. These items include, among others, reagents, calibrators, chemicals, gases, vacutainers with heparin or other chemicals or medicines, and prepared media. Control reagents are exempt, but only when the control reagents are used in performing tests prescribed for a patient. Reagents which are used to merely calibrate equipment and are not related to a test prescribed for a specific patient are not exempt.

(d) The retail sales tax exemption applies also to intravenous sets, including the needles and tubing, when used for the administration of drugs prescribed to a patient. This also includes catheters, infusion pumps, syringes, and similar items when used for the delivery of prescription drugs. Medical gas delivery system components, including tubes, nebulizers, ventilators, masks, cannulae and similar items, are not conceptually distinct from the prescribed gases they deliver and are exempt from retail sales or use tax. The medical delivery system includes airway devices (tubes) which are prescribed to keep a patient's airways open and to deliver medical gases.

(e) The retail sales tax does not apply to sales of prosthetic devices, orthotic devices prescribed by physicians, osteopaths, or chiropractors, nor to sales of ostomic items. (See RCW 82.08.0283.) Sutures, pacemakers, hearing aids, and kidney dialysis machines are examples of prosthetic devices. Drainage devices which are particularly prescribed for use on or in a specific patient are exempt from sales or use taxes as prostheses because they either replace missing body parts or assist dysfunctional ones, either on a temporary or permanent basis. A prosthetic device can include a device that is implanted for cosmetic reasons. Hearing aids are also exempt when dispensed or fitted by a person licensed under chapter 18.35 RCW. A heart-lung machine used by a hospital in its surgical department is not an exempt prosthetic device.

(f) The sale of medically prescribed oxygen is not subject to retail sales or use tax when sold to an individual having a prescription issued by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(g) The retail sales tax does not apply to the purchase of anesthesia gases, medical gases, contrast media, or irrigation solutions when these items are used under a physician's order as part of a medical treatment for a specific patient.

(6) **Proof of exemption.** Persons selling legend drugs need only to substantiate that the drugs meet the definition of legend drugs and are for use in the diagnosis, cure, mitigation, treatment, prevention of disease or other ailments in humans. Resale certificates or other exemption certificates are not required for these sales. For sales to consumers of nonlegend drugs, sellers must retain in their files the written prescription bearing the signature of the medical practitioner who issued the prescription and the name of the patient for whom prescribed. See also WAC 458-20-150 Optometrists, ophthalmologists, and oculists; 458-20-151 Dentists, dental laboratories and physicians; and 458-20-168 Hospitals.

(a) Hospitals and physicians who purchase drugs for use in providing medical services to patients may purchase the drugs without payment of retail sales tax if the drugs will only be dispensed under a physician's order. It is not required that the hospital or physician make a specific charge to the patient for drugs dispensed under a physician's order for the drug purchase to be exempt from retail sales or use tax. This also includes the purchases of intravenous sets, catheters, infusion pumps, syringes, and similar items which will be used for delivery of prescription drugs. The hospital or physician may give the nonlegend drug supplier an exemption certificate. The certificate should be retained by the seller for a period of five years after the last sale covered by the certificate. Certificates should not be sent to the department of revenue. The certificate should be in the following form:

Prescription drug exemption certificate

. . . . . .

(name of purchaser)

. . . . . .

(address of purchaser)

I hereby certify: That I am a registered Washington taxpayer. I may legally prescribe or dispense drugs or other substances. I further certify that the drugs and other substances listed below purchased from . . . . . (name of vendor) will be prescribed and used for the treatment of illness or ailments of human beings. I shall maintain invoices and prescriptions or such other records as are necessary to account for the disposition of the drugs or other substances for which I have not paid retail sales tax. In the event that any such drug

or substance is used without a prescription being issued, it is understood that I am required to report and pay use tax measured by its purchase price. If I have indicated that this is a blanket certificate, this certificate shall be considered part of each order which I may hereafter give to you, unless otherwise specified, and shall be valid for a period of four years or until revoked by me in writing. Description of drugs and other substances to be purchased:

. . . . . .

. . . . . .

. . . . . .

Dated: . . . . . .

Single Purchase . . . . . Blanket Certificate . . . . . .

(indicate by check mark if certificate is for a single purchase or continuing purchases)

. . . . . .

(signature of purchaser or authorized agent)
(title)

. . . . . .

(Revenue registration number of buyer)

(b) A blanket exemption certificate may be given if there will be continuing purchases from a particular supplier. Blanket exemption certificates should be renewed at intervals not to exceed four years. The purchaser should indicate by an appropriate check mark on the certificate whether the certificate is being used for a single purchase or will be for continuing purchases. It is unnecessary to list each and every drug on the exemption certificate if all drugs purchased from a particular supplier are exempt.

(7) **Use tax.** The use tax does not apply to the use of articles and products which are exempt from sales tax as specified herein. (See RCW 82.12.0277.) This includes legend drugs which are given away as samples.

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Hospital purchases both legend and nonlegend drugs. These drugs are held in inventory and dispensed to patients only under the written order of the patient's physician. These drugs are not billed specifically to the patient, but the cost is recovered through a general floor charge to the patient. ABC Hospital may purchase these drugs without payment of sales or use tax.

(b) ABC Hospital purchases reagents for use in its laboratory which are nonlegend drugs. Laboratory reagents are chemical compounds used to promote reactions in the laboratory to aid in determining disease pathology and are not administered directly to the patient. These reagents are used for three purposes consisting of tests on the tissue from a specific patient, a control reagent which is not applied to the tissue from the patient but is used to measure or control the reaction, and a reagent used to calibrate equipment. The reagents used for the first two purposes may be purchased without payment of sales or use tax. The reagents for the calibration of equipment are also exempt if the equipment is calibrated as part of tests for a specific patient. Reagents used to calibrate equipment that is not part of a prescribed test for a patient are taxable.

(c) XY Blood Bank purchases reagents which are nonlegend drugs. These reagents are used in determining the blood type and presence of disease. The blood is sold to local hospitals. The purchase of these reagents is taxable since they are not used to provide treatment for a specific patient.))

PART 1 - INTRODUCTION

(101) **Introduction.** This rule provides tax-reporting information for persons making sales of medical products. It also provides information about the retail sales tax and use tax exemptions available for the sale and use of certain medical products for humans.

(102) **How is this rule organized?** This rule is divided into five parts as follows:

(a) **Part 1 - Introduction.** Part 1 provides information relating to the purpose of the rule, how the rule is organized, and provides a listing of additional rules that may be helpful to the reader in determining taxability related to medical products.

(b) **Part 2 - Medical products.** Part 2 of this rule identifies what "medical products" include for purposes of this rule. Medical products is not a statutory term, but instead, is a term used simply to collectively describe the medical items addressed by this rule.

(c) **Part 3 - Applicable taxes.** Part 3 of this rule provides information on the taxes that apply to the sale, use, purchase, or manufacture of medical products.

(d) **Part 4 - Common exemptions.** Part 4 of this rule provides information on common retail sales tax and use tax exemptions related to medical products.

(e) **Part 5 - Bundled transactions.** Part 5 of this rule addresses the treatment of bundled transactions involving medical products.

(103) **How are examples included in this rule to be used?** This rule contains examples which identify a number of facts and then states a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(104) **What are some other department of revenue rules that address medical or health related providers that might apply?** The department of revenue (department) has adopted other rules addressing the taxability of various activities related to the providing of health care. Readers may want to refer to the following list of rules for additional information:

(a) WAC 458-20-150, Optometrists, ophthalmologists, and opticians;

(b) WAC 458-20-151, Dentists and other health care providers, dental laboratories, and dental technicians;

(c) WAC 458-20-168, Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

PART 2 - MEDICAL PRODUCTS

(201) **What are medical products for purposes of this rule?** Medical products include durable medical equipment, drugs, mobility enhancing equipment, over-the-counter drugs, and prosthetic devices as defined by Washington statute. Medical products also include other tangible personal property used for medical purposes, not covered by one of the statutory definitions. The remainder of Part 2 of this rule describes these medical products.

(202) **What is durable medical equipment?** Durable medical equipment is equipment, including repair and replacement parts for durable medical equipment that:

(a) Can withstand repeated use;

(b) Is primarily and customarily used to serve a medical purpose;

(c) Generally is not useful to a person in the absence of illness or injury; and

(d) Is not worn in or on the body. See RCW 82.08.0283. Also, see subsection (206)(b) of this rule for an explanation of what is considered "worn in or on the body."

Table 1 provides a nonexclusive list of durable medical equipment product examples.

Table 1

Durable Medical Equipment Examples
• Anesthesia machine and ventilator
• Apnea monitors
• Atomizers (medical - Reusable)
• Beds, bags, trays, bedpans, commodes, pads, pillows, crash carts, lamps, bulbs, and tables (medical)
• Blood parameter monitor, pulse oximetry equipment, and blood gas analyzer
• Bone growth stimulator (not worn on the body)
• Bovie (cauterization)
• Cardiopulmonary bypass machine
• Cofflator
• Continuous passive motion devices
• Continuous positive airway pressure (CPAP & BI-PAP) machine (not worn on the body)
• Diagnostic equipment - Audiology, cardiology, mammography, radiology
• Electronic speech aids (not worn on the body)
• Endoscopes
• Enteral feeding bags, tubing, and connectors
• Feeding plugs
• Glucose meters
• Instruments - Reuseable, e.g., clamps, drills, forceps, retractors, scalpels, reamers, scissors
• Intravenous (IV) stands and poles
• Kidney dialysis devices
• Lasers
• Lithotripters
• Nebulizers
• Respiratory humidifier
• Reusable needles or reusable staplers
• Sling scales
• Stapler (must be empty as staples are not durable medical equipment)
• Stethoscopes, stirrups, and stretchers (medical)
• Suction regulators
• TENS units (not worn on the body)
• Tourniquets
• Ultrasound probes, transducers, and mini dopplers
• Whirlpools (medical)
• X-ray equipment

(203)(a) **What is a drug?** A "drug" is a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body. See RCW 82.08.0281.

Table 2 provides a nonexclusive list of drug product examples.

Table 2

Drug Examples
• Dermal fillers - Injectable
• Dialysis dialysate solution
• Federal prescription (RX) drugs, including biologicals
• Gases - Medical grade (nitrous oxide, oxygen, carbon dioxide, helium)
• Implanted radioactive isotopes
• Insulin
• Parenteral nutrition formulas - By prescription
• Prescription medicated cotton swabs and gauze wraps
• Sterile water - 1cc, 5cc, 10cc vials, sterile normal saline (.9%) - 1cc, 5cc, 10cc vials - Solutions for adding to mixtures and irrigation
• Vaccines

(b) **Substances that are necessary to the performance of durable medical equipment are not drugs.** A compound, substance, or preparation that is necessary for durable medical equipment to perform its function is not a drug, even

when it otherwise meets the definition of drug in this subsection.

(c) **Examples of compounds, substances, preparations that are necessary in order for the durable medical equipment to perform its function.**

Example 1. A Coulter Blood Cell Counter uses an electrolytic solution to perform its function. The solution is entirely contained within the device and does not physically interact with the patient's tissue (blood) apart from the device. The device cannot perform its function without the electrolytic solution. The solution is an integral part of the Coulter Blood Cell Counter and is not a drug even though the device is used to diagnose disease and the test it performs is conducted pursuant to a prescription.

Example 2. A cryoablation device uses extremely cold, thermally conductive solution inside a hollow probe or needle to freeze and remove diseased or malfunctioning cells within a patient's body. The solution is entirely contained within the device and does not physically interact with the patient's tissue apart from the device. The device cannot perform its function without the solution. The solution is an integral part of the device and is not a drug even though the device is used in the cure, mitigation, and treatment of disease as part of a prescribed procedure.

Example 3. A specialized medical laser uses certain gases (e.g., argon, helium) to determine the wavelength of the light emitted. This allows the laser to identify specific cells or substance types. The gas is entirely contained within the laser and does not physically interact with the patient's tissue apart from the device. The device cannot perform its function without the gas. The gas is an integral part of the device and is not a drug even though the gas is consumed and the laser is used in the cure, mitigation, and treatment of disease as part of a prescribed procedure.

(204) **What is mobility enhancing equipment?** Mobility enhancing equipment is equipment, including repair and replacement parts for mobility enhancing equipment that:

(a) Is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle;

(b) Is not generally used by persons with normal mobility; and

(c) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. See RCW 82.08.0283.

Table 3 provides a nonexclusive list of mobility enhancing equipment products.

Table 3

Mobility Enhancing Equipment Examples
• Bath aids - Raised toilet seat, tub and shower stools
• Bed pull-up T
• Canes
• Car seats (mobility enhancing)
• Crutches
• Handrails and grab bars to assist in rising from commode, tub, or shower
• Lift chairs and replacement parts
• Lifts (hydraulic or electric) used to raise or transfer patients from bed to chair, commode, or bath
• Scooters and transporters
• Swivel seats enabling the disabled to rotate in order to rise from a chair
• Transfer belts to assist in the transfer of patients
• Walkers
• Wheelchairs
• Wheelchairs adapted for specific uses or functions, e.g., all terrain wheelchairs

(205) **Over-the-counter drugs.** An over-the-counter drug is a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(a) A "drug facts" panel; or

(b) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation. See RCW 82.08.0281.

Table 4 provides a nonexclusive list of over-the-counter drug products.

Table 4

Over-the-Counter Drug Examples
• Antihistamines
• Anti-inflammatory
• Analgesic
• Contact lenses solution
• Eternal nutrition formulas with drug facts box
• Hydrogen peroxide
• Medicated cotton swabs and gauze wraps (nonlegend)
• Paviodine iodine
• Rubbing alcohol

(206)(a) **What is a prosthetic device?** A prosthetic device is a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

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

(ii) Prevent or correct a physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body. See RCW 82.08.0283.

Table 5 provides a nonexclusive list of prosthetic device products.

Table 5

Prosthetic Device Examples
• Abdominal belts, binders, and supports
• Acetabular cups

Prosthetic Device Examples
• Ankle brace
• Antiembolism stocking
• Artificial eyes, heart valves, larynx, limbs
• Back braces
• Bone cement and wax
• Bone pins, plates, nails, screws
• Breast implants and external prosthesis
• Cervical collars
• Cochlear implant
• Continuous positive airway pressure (CPAP) machines which are specifically designed to be wholly worn on the body and portable
• Corrective eye glasses and contact lenses
• Dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers
• Drainage devices for single patient use because they serve the same drainage functions as the body's natural systems
• Ear, nose, and throat implants
• Eye glass frames and lenses
• Foley catheter
• Gastric bands and intragastric balloons
• Hand and feet implants
• Head halters
• Hearing aids
• Implanted pacemakers
• Insulin pumps
• Knee immobilizers
• Mastectomy surgical bras
• Maxillofacial devices implanted
• Membrane implants (neutron, spinal, joint)
• Ocular implants
• Orthobiologics implants
• Orthopedic shoes, shoe lifts, inserts, arch supports, heel protectors
• Pressure garments - Edema gloves
• Pressure garments - Mast pants, burn garments
• Salem sump with anti-reflux valve
• Shoulder and elbow implants
• Skin implants - Synthetic
• Slings, braces, collars, casts, splints, embolism stockings, arch pads, pelvic traction belts, traction pulley clamp assemblies and cords
• Slings - Medical

Prosthetic Device Examples
• Specialized orthotic shoes, post-operation shoes, cast shoes, diabetic shoes and inserts, and other similar apparatus
• Speech aids (electronic) worn on the body
• Sphincters - Medical
• Splints and splint materials
• Stent implants through endoscopy
• Stents (biliary, coronary and urinary)
• Stockings - Compression
• Sutures, staples, and skin glue for closing wounds
• Tendon implants
• TENS units worn on the body
• Testicular and penile implants
• Trachea tubes
• Trusses

(b) **When is a device not worn on or in the body?** For the purpose of this exemption, "worn on the body" means the entire device is something a person puts on or has on their person, to be carried with and habitually becomes part of the person as a whole, much in the sense that a person wears clothing or other personal items. Such devices are designed to be wholly worn on the body and portable. A device is not "worn on or in the body" simply because part of it is attached to the body in some way for a period of time. These devices cannot be partially floor-standing, plugged into an outlet, or moved by virtue of dragging, wheels, or with the assistance of a separate device (e.g., a cart or intravenous stand).

(c) **Examples of items that are not prosthetic devices worn on or in the body.** The following are examples of items not considered prosthetic devices worn on or in the body.

Example 4. Continuous positive airway pressure (CPAP) machines are commonly used by patients with sleep apnea disorders to facilitate normal breathing. Patients using a CPAP machine are normally hooked up to the machine via tubing and individually tailored masks. Even though the mask is normally "worn" for significant periods of time each night, the mask by itself cannot accomplish the intended purpose. The machine performing the function is not worn on the body as a complete system. Neither the mask separately, nor the machine as a whole system, is a prosthetic device.

Example 5. Heart-lung machines generally replace the function of the heart and lungs during surgery, as well as regulating body temperature and providing an avenue of introduction for anesthetics or other medications directly into a patient's bloodstream. While a heart-lung machine is attached to the patient, it is commonly a floor-standing or wheeled unit and is not a prosthetic device.

PART 3 - APPLICABLE TAXES

(301) **What basic tax information do I need to be aware of when selling, purchasing, using or manufacturing medical products?** This subsection provides general tax-

reporting information for persons who sell, purchase, use, or manufacture, medical products.

(302) **How are medical products taxed?** In general, sales of medical products are taxable. Sales of medical products to consumers such as doctors, hospitals, or patients are subject to retailing business and occupation (B&O) tax and the retail sales tax. These taxes apply to the sale of medical products as follows:

(a) **Retail sales tax.** Retail sales tax applies to the sale of medical products to a consumer unless a specific exemption applies. RCW 82.04.050 and 82.08.020. Specific exemptions are discussed in Part 4 of this rule.

(b) **Retailing B&O tax.** There is no general B&O tax exemption for sales of medical products. Even if a sale of a medical product is exempt from retail sales tax, the gross proceeds from the sale of the medical product to a consumer is subject to the retailing B&O tax.

(c) **Wholesaling B&O tax.** Sales to persons who resell the medical products (e.g., pharmacies) are subject to the wholesaling B&O tax. Persons making wholesale sales should refer to WAC 458-20-102 for information regarding their responsibility to obtain a reseller permit.

(d) **Manufacturing B&O tax.** Persons who manufacture products including medical products, in this state are subject to the manufacturing B&O tax upon the value of these products. Manufacturers selling the products at retail or wholesale in this state are also subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications of the B&O tax, and claim a Multiple Activities Tax Credit (MATC). Refer to WAC 458-20-19301 for a more detailed explanation of the MATC.

Persons who manufacture molds or other products that they use in a manufacturing process are subject to the manufacturing B&O tax upon the value of the product manufactured. (See also WAC 458-20-112 and 458-20-134 regarding "value of products" and "commercial or industrial use," respectively.) Such persons also incur a use tax liability with respect to their use of the molds or products, unless a specific exemption applies. For example, RCW 82.12.02565 provides a use tax exemption for the use of certain molds in a manufacturing operation. Refer to WAC 458-20-13601 for additional information regarding the manufacturers machinery and equipment sales tax and use tax exemptions.

(e) **Use tax or deferred retail sales tax.** Purchases of medical products at retail are subject to retail sales tax unless a specific exemption exists in the law. If the seller does not collect retail sales tax, a buyer who is not reselling the products must pay the retail sales tax (commonly referred to as the "deferred retail sales tax") or use tax directly to the department, unless the specific items purchased are exempt under the law. For additional information on use tax see WAC 458-20-178.

(303) **Retail sales tax should be paid by the consumer based on the principal use of the product.** Some medical products can be put to both an exempt and taxable use. At the time of purchase a buyer may not know exactly how the item or items will be used. In such cases, retail sales tax must be paid to the seller at the time of purchase when the buyer expects to principally (i.e., more than fifty percent of the time) put the item to a taxable use in the normal course of business. However, if the buyer expects to principally put the item to use in an exempt manner, the buyer may provide the seller with an appropriately completed exemption certificate that lists the retail sales tax exempt item or types of items included in the purchase. See subsection (304) of this rule for more information on exemption certificates. When a seller receives an appropriately completed exemption certificate, that seller is relieved of the responsibility to collect the retail sales tax for those specific items or types of items identified on the certificate and sold in that transaction.

(a) **Items put to taxable use where tax was not paid.** If the buyer does not pay sales tax on an item, and later puts that item to use in a manner that is not exempt of sales tax, the buyer must pay deferred sales or use tax to the department. The deferred sales tax liability should be reported by the buyer on the use tax lines of the excise tax return (including both state and local portions of the tax). The tax should be reported based on the location and sales tax rate which is in effect where the buyer took possession of the item.

(b) **Items put to exempt use where tax was paid.** If the buyer does not give an exemption certificate to the seller indicating a certain item is exempt of retail sales tax, the seller must collect the tax at the time of purchase on that item. If the buyer later puts that item to first use in an exempt manner, the buyer may take a deduction on the excise tax return equal to the value of the item. This deduction should be claimed in the deduction column of the retail sales tax line, and should be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet. When completing the local sales tax section of the tax return, the value of the item must be credited using the seller's tax location code (assuming the buyer took possession of the item at the seller's location) and computed at the local sales tax rate paid to the seller.

(c) **Examples.**

Example 6. Purchase of items which are principally exempt. ABC Medical Center (ABC) purchases a case of sterile silicon tubing. One case contains twenty units of sterile tubing in individually sealed sterile packaging. The tubing purchased by ABC is either used to deliver medically prescribed oxygen from tanks to a patient (an exempt use), or used by ABC's laboratory to conduct certain tests (not an exempt use). At the time of purchase, ABC does not know how many of the twenty packages in the case will be used for oxygen tank systems versus how many will be drawn out of inventory by the lab. However, according to ABC's inventory records from past periods, the tubing will principally be used as part of the medically prescribed oxygen systems. ABC provides the seller of the tubing with a properly completed exemption certificate (in this case, the "Sales Tax Exemption Certificate for Health Care Providers"). The seller is not required to collect retail sales tax on the case of sterile tubing. As ABC puts the tubing to use, it must keep track of when a package of tubing is used by the laboratory. Deferred sales tax is due and should be reported on and remitted with the excise tax return for the period in which ABC used the tubing.

Example 7. Purchase of items which are principally taxable. Assume the same items and situation as in Example 6, except that for this example, according to ABC's inventory records from past periods, the tubing will be principally used for retail sales taxable purposes in the laboratory. ABC cannot provide an exemption certificate for purchase of the tubing and must pay retail sales tax to the seller. As ABC puts the tubing to use, it may keep track of when a package of tubing is put to exempt use with a medically prescribed oxygen system. ABC may then take on its excise tax return a tax paid at source deduction for the value of the package used.

(304) **Sellers must obtain an exemption certificate on any retail sales exempted from the retail sales tax.** Unless otherwise provided in this rule, sellers making retail sales to medical practitioners, nursing homes, and hospitals must obtain an exemption certificate to document any tax-exempt sales of the products discussed in this rule when those businesses are the consumers. Information about exemption certificates may be obtained by:

(a) Using the department's web site at dor.wa.gov/; or

(b) Calling the department's telephone information center at 1-800-647-7706.

PART 4 - COMMON RETAIL SALES TAX AND USE TAX EXEMPTIONS

(401) **What common retail sales tax and use tax exemptions apply to the sale of medical products?** This part of the rule provides a non-exhaustive list of retail sales tax and use tax exemptions available with respect to various medical products.

(402) **Sales of medical products pursuant to a prescription.** Most retail sales tax exemptions available for sales of medical products require that the item is purchased under authority of a prescription.

(a) **What is a prescription?** A "prescription" is an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe. See RCW 82.08.0281. The specific requirements for a prescription may differ depending on the item exempted and the RCW chapter under which the person issuing the prescription is licensed. Close attention must be paid to the details given for each specific exemption explained in the following subsections of this rule.

(b) **No automatic exemption.** A prescription does not automatically qualify a sale of a medical product for a sales tax or use tax exemption. Unless a specific exemption exists in statute for the sale or use of the item in question the item is not exempt, even with a prescription. For example, if a physician prescribes a regimen of exercise at the local fitness club, the mere issuance of the prescription does not qualify the sales of that service for a retail sales tax exemption because no such exemption exists in statute.

(c) **When medical procedures are prescribed.** When a medical procedure is prescribed by a duly licensed practitioner authorized to prescribe the same, that overall prescription fulfills the prescription requirement (if any) for each eligible exempt item used in the procedure. For example, an orthopedic surgeon conducts joint replacement surgery for a patient's diseased joint. As part of that surgical procedure, prescription drugs and other eligible exempt items are used. The surgeon does not specifically issue a separate written prescription for each eligible exempt item. The surgeon's order for the surgical procedure and the oral directions provided by the surgeon during the procedure fulfill any prescription requirement for each eligible item used in an exempt manner during that procedure.

(d) **Dispensed pursuant to a prescription.** The purchase of drugs to be dispensed in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure or any function of the body, by hospitals or other persons licensed to prescribe such drugs, are considered dispensed pursuant to a prescription and therefore exempt, providing the buyer gives the seller an exemption certificate as discussed in Part 3 of this rule.

(403) **Sales tax and use tax exemptions available with respect to various medical products.**

(a) **Sales to a free hospital are exempt from sales tax and use tax.** RCW 82.08.02795 and 82.12.02745 provide retail sales tax and use tax exemptions for items sold to and used by a "free hospital" when those items are reasonably necessary for the operation of, and provision of health care by a free hospital. For the purpose of these exemptions, "free hospital" is a hospital that does not charge patients for health care provided by the hospital.

(b) **Sales of drugs for human use can be exempt from retail sales tax and use tax when sold under the authority of a prescription.** RCW 82.08.0281 and 82.12.0275 provide retail sales tax and use tax exemptions for drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. These exemptions apply to the distribution of "sample" prescription drugs provided free of charge to duly licensed practitioners authorized by the laws of this state to prescribe. For the exemptions to apply, the drug involved must be intended to interact with a specific patient through direct contact with that patient, whether applied internally or externally to the patient's body, or as part of a test conducted on a tissue sample taken from that patient. A seller is not required to collect sales tax when it obtains a properly completed exemption certificate indicating prescription drugs, intended for human use sold to medical practitioners, nursing homes, and hospitals, will be put to an exempt use under the authority of a prescription. Otherwise, the retail sales tax must be collected. See Part 3 of this rule for information about exemption certificates.

(c) **Sales of disposable devices used to deliver prescription drugs for human use.** RCW 82.08.935 and 82.12.935 provide retail sales tax and use tax exemptions for disposable devices used to deliver drugs for human use, pursuant to a prescription.

(i) **What are disposable devices used to deliver drugs?** "Disposable devices used to deliver drugs" include single-use items such as a single-use syringe, intravenous (IV) tubing, and IV catheters. A stand or device that holds the tubing or catheter is not a disposable device used to deliver drugs.

(ii) **Example 8. Disposable devices.** A nursing home purchases single-use syringes, tubing used to deliver drugs, and stands used to hold the IV fluid containers. If the nursing home provides the seller with a completed "Sales Tax Exemption Certificate for Health Care Providers," retail sales tax does not apply to the purchase of single-use syringes and

tubing. However, retail sales tax applies to the IV stands because the stands are "durable medical equipment," not disposable or single-use, and no specific exemption for them exists in the law. For information about durable medical equipment, see Part 2 of this rule.

(d) **Sales of "over-the-counter" drugs with a prescription are exempt from retail sales tax and use tax.** RCW 82.08.940 and 82.12.940 provide retail sales tax and use tax exemptions for over-the-counter drugs sold for human use, pursuant to a prescription. See subsection (205) of this rule for the definition of over-the-counter drug.

(i) **Example 9.** A patient's medical practitioner prescribes over-the-counter pain relief medication. The patient takes the prescription to a pharmacy. The sale of the over-the-counter drug is exempt from retail sales tax. In contrast, if the patient's medical practitioner simply recommends that the patient use an over-the-counter pain relief medication, without completing a prescription for the medication, the sale of the over-the-counter drug is subject to retail sales tax.

(ii) **Example 10.** A hospital makes bulk purchases of various over-the-counter drugs to dispense to patients pursuant to a doctor's prescription. The hospital's purchases of such drugs are exempt from retail sales tax providing the hospital gives the seller an exemption certificate as discussed in Part 3 of this rule.

(iii) **Example 11.** An employer purchases drug test kits from a local drug store and administers them to current and prospective employees as a condition of employment. The employer's purchase of the drug tests is subject to retail sales tax because the tests are not prescribed by a licensed physician for the employees or prospective employees.

(e) **Dietary supplements (also known as nutrition products) with a prescription are exempt from retail sales and use taxes.** Sales of dietary supplements not covered by either of the retail sales tax or use tax exemptions for "food and food ingredients" are generally subject to retail sales tax or use tax. See RCW 82.08.0293 and 82.12.0293. However, RCW 82.08.925 and 82.12.925 provide specific retail sales tax and use tax exemptions for sales of "dietary supplements" for human use, pursuant to a prescription. A "dietary supplement" is any product, other than tobacco, intended to supplement the diet, and that satisfies all three of the criteria listed in (e)(i) through (iii) of this subsection.

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection.

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003. See RCW 82.08.0293.

(f) **Licensed naturopaths have their own retail sales tax and use tax exemptions available.** The sale or use of medicines of mineral, animal, and botanical origin which are prescribed, administered, dispensed, or used by a licensed naturopath in the treatment of a human patient are exempt from retail sales and use taxes. See RCW 82.08.0283 and 82.12.0277.

"Naturopathic medicines" are vitamins, minerals, botanical medicines, homeopathic medicines, hormones, and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the secretary of health. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW. See RCW 18.36A.020.

(g) **Drugs and devices used for family planning may be exempt.** RCW 82.08.0281 and 82.12.0275 provide sales tax and use tax exemptions for drugs and devices sold or used under certain conditions for family planning purposes. Family planning purposes include promoting, inhibiting, preventing, and determining of conception. This includes all single-patient use items, whether ingested, attached, or applied to persons for family planning purposes. Persons making tax-exempt sales of these drugs and devices to medical practitioners, clinics, or hospitals must obtain an exemption certificate to substantiate the exempt nature of any sale, as discussed in Part 3 of this rule.

The purchase, sale, or use qualifies for exemption when either one of the following conditions exists:

• The drug or device is supplied by a family planning clinic that is under contract with the Washington state department of health to provide family planning services; or

• The family planning items are or will be dispensed to patients, pursuant to a prescription. Persons dispensing these items are required to obtain and maintain files of prescriptions to document the exempt nature of such sales.

(h) **Medically prescribed oxygen is exempt from retail sales tax and use tax.** RCW 82.08.0283 provides a retail sales tax exemption for sales of medically prescribed oxygen for an individual prescribed by a person licensed under chapter 18.57 RCW (Osteopathy—Osteopathic medicine and surgery) or chapter 18.71 RCW (Physicians) for use in the medical treatment of that individual. A comparable use tax exemption is provided in RCW 82.12.0277. Persons making tax-exempt sales of these items must obtain an exemption certificate to substantiate the exempt nature of any sale as discussed in Part 3 of this rule.

(i) **What is medically prescribed oxygen?** The exemption for "medically prescribed oxygen" is not limited to gaseous or liquid oxygen (chemical designation O^2). Medically prescribed oxygen is defined by RCW 82.08.0283 to include, among other things, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems. The primary use of the equipment must be for the generation or storage of medically prescribed oxygen (O^2). These systems include regulators, cannulae, masks, and similar items used to deliver the oxygen to the individual from the tax-exempt oxygen generation or storage device.

(ii) **Accessories may not be exempt.** Exempt medical oxygen systems are sometimes connected to the patient through taxable systems. The exemption for medically prescribed oxygen only applies to items up to the point the exempt oxygen system is connected to the taxable system. From that point of connection forward to the patient, masks, tubing, or other similar items remain part of the taxable system and are subject to retail sales tax.

(iii) **Examples.**

(A) **Example 12.** A physician prescribes oxygen for a patient. The patient rents an oxygen concentrator system and a separate cart to transport the system. The prescribed oxygen concentrator system can be rented exempt of sales tax. However, the exemption for "medically prescribed oxygen" does not include a separate cart used to transport a tax-exempt system. For information about durable medical equipment, see Part 2 of this rule. If the oxygen concentrator system and cart are rented for one nonitemized price the rental may be a bundled transaction. See Part 5 of this rule for information on how tax applies to a bundled transaction.

(B) **Example 13.** A physician prescribes a "continuous positive airway pressure (CPAP)" system for a patient diagnosed with a sleep apnea disorder. The CPAP system primarily supplies room air, under pressure, to keep the patient's airway passages open and thereby prevent obstruction of airflow in and out of the lungs. As a result, the sale of the CPAP system is subject to retail sales tax because it is not a system that satisfies the statutory definition of "medically prescribed oxygen." Note: Certain CPAP systems, when designed to be entirely worn on the body, can qualify for exemption from retail sales tax as prosthetic devices. See Part 2 of this rule for more information.

(C) **Example 14.** Assume the same facts for a CPAP system as provided in the previous example (h)(i)(B) of this subsection. In addition, the physician prescribes an oxygen trickle by which medical oxygen is provided to the patient from an oxygen tank through a tube attached to the mask of the CPAP system. The addition of an oxygen trickle does not change the purpose or taxability of any part of the CPAP system. The CPAP system does not generate or store oxygen and is not eligible for the exemption provided for medically prescribed oxygen. The oxygen, oxygen tank, and any tubing used to convey the oxygen is covered by the exemption for medically prescribed oxygen, but only up to the point that it attaches to the taxable CPAP system.

(i) **Insulin has its own specific exemption from retail sales tax and use tax - No prescription is required.** RCW 82.08.985 and 82.12.985 provide specific sales tax and use tax exemptions for insulin for human use. A prescription is not required for the sale of insulin to be exempt from tax.

(j) **Sales of laboratory reagents and other diagnostic substances may be exempt from retail sales and use taxes, under the right circumstances.** The definition of drug includes compounds, substances, or preparations (e.g., laboratory reagents and other diagnostic substances) used for the diagnosis of disease. Thus, sales of laboratory reagents and other diagnostic substances are not subject to retail sales tax when prescribed for an individual by a duly licensed practitioner and used to diagnose, cure, mitigate, treat, or prevent disease in humans. RCW 82.08.0281. A comparable use tax exemption is provided in RCW 82.12.0275. Laboratory reagents and diagnostic substances must physically interact with a specific patient's specimen to qualify for exemption. Persons making tax-exempt sales of these items must obtain an exemption certificate to substantiate the exempt nature of any sale as discussed in Part 3 of this rule.

(i) **What are laboratory reagents and other diagnostic substances?** "Laboratory reagents and other diagnostic substances" are substances employed to produce a chemical reaction in order to detect, measure, or produce, other substances. To be a diagnostic substance, the application of the substance to a patient's specimen must result in identification of the characteristics of a particular disease.

(ii) **Laboratory reagents, other diagnostic substances or prepared media when sold in a container.** Reagents, diagnostic substances, and prepared media often come prepared in a container (test tube, vial, cylinder, Petri dish, etc.) ready for use. It makes no difference to the taxability of the substance if it is sold with or without a container. The function of the substance determines its taxability. The term "prepared media" includes transport media if the resulting culture grown on the medium is used in performing diagnostic tests for specific patients.

(iii) **Laboratory reagents and other diagnostic substances.** This subsection provides examples of laboratory reagents and other diagnostic substances that may qualify for sales and use tax exemptions under RCW 82.08.0281 and 82.12.0275, provided all requirements for the exemptions are met. The following items are reagents or other diagnostic substances:

(A) Stains, dyes, and decolorizers that react with and cause a change in a cellular tissue. The substances are used to stain the cell tissues in a manner that will mark or highlight certain portions of cells;

(B) Decalcifying solution, dehydrating solution, and clearing agents that chemically react with the patient's specimen; and

(C) Test strips impregnated with a reagent which, when applied to a patient's specimen, test for indicators of a disease.

(iv) **What substances are not reagents?** Some substances are used solely for purposes of preparing specimens for examination and diagnosis or to facilitate examination of a specimen. Such substances do not themselves produce a chemical reaction resulting in the detection, measurement, or production of another substance. They merely facilitate or enable specimen testing and are not exempt under RCW 82.08.0281 or 82.12.0275. The following lists examples of substances and items which are not reagents:

(A) Paraffin that is extracted from a tissue specimen without having chemically altered the cells;

(B) Gelatin that is extracted out of the specimen before staining and leaves the cell structures unaffected;

(C) Electrodes;

(D) Tissue cassettes;

(E) Freezing medium;

(F) Liquid agar when used to gel patient specimens;

(G) Test tubes or cylinders that do not contain a reagent;

(H) Plain slides and cover slips that are not coated with a reagent;

(I) Mounting medium to adhere the cover slip to the slide; and

(J) Acids and other solutions when used for cleaning purposes.

(v) **What about reagents and diagnostic substances that can be used in more than one way (multiple use substances)?** Some reagents or other diagnostic substances have multiple uses, some of which may qualify for a sales or use tax exemption. Such substances are exempt only to the extent they are used as part of a test prescribed to diagnose disease in humans. For example, alcohol can be used either as a reagent (e.g., to react with a cellular tissue) or to clean counters, furniture, etc. Alcohol used as a cleaning agent is subject to retail sales or use tax. See Part 3 of this rule for guidance on when to apply retail sales tax to products with multiple uses, with both retail sales taxable and exempt uses being possible.

(k) **Sales of controls, calibrators, and standards used with laboratory test equipment are not exempt from retail sales and use taxes.** The sales tax and use tax exemptions provided by RCW 82.08.0281 and 82.12.0275 do not apply to drugs (compounds, substances, or preparations) used as a control, calibrator or standard in conjunction with the test of patient specimens in a medical laboratory.

(i) **What are controls?** A "control" is a material, solution, lyophilized (freeze-dried) preparation or pool of collected serum designed to be used in the process of quality control. Controls do not physically interact with a specific patient's specimen. The concentrations of the substances of interest in the control are known within limits determined during its preparation or before routine use. Controls are generally used with each test of patient specimens to validate the accuracy of that particular test.

(ii) **What are calibrators?** A "calibrator" is a material, solution, or lyophilized (freeze-dried) preparation designed to be used in calibration of medical laboratory machines. The values or concentrations of substances of interest in the calibration material are known within limits determined during its preparation or before use. Calibrators are generally used at specified intervals such as every eight hours, at midnight, or at shift changes, in accordance with the machine manufacturer's requirements or the requirements of administering agencies to verify the accuracy of the machine.

Calibrators are subject to retail sales tax or use tax because they are used to diagnose problems with machines and they do not physically interact with a patient's specimen to diagnose disease.

(iii) **What are standards?** A "standard" is a reference material of fixed and known chemical composition capable of being prepared in an essentially pure form. Standard also includes any certified reference material generally accepted or officially recognized as the unique standard used to test and calibrate medical lab equipment. Standards are often used in the original setup of medical lab equipment.

A standard is subject to retail sales tax and use tax because it is used to test and calibrate equipment and does not physically interact with a patient's specimen.

(l) **Sales of human blood, tissue, organs, or body parts may be exempt from retail sales and use taxes - No prescription or exemption certificate is required.** RCW 82.08.02806 provides a retail sales tax exemption for human blood, tissue, organs, bodies or body parts when used for medical research or quality control testing purposes. RCW 82.12.02748 provides a comparable use tax exemption.

(i) **Definitions of human blood, tissue, organs, or body parts.** For the purposes of this exemption the following definitions apply:

(A) "Blood" means human whole blood, plasma, blood derivatives, and related products (e.g., bone marrow).

(B) "Tissue" includes human musculoskeletal tissue, musculoskeletal tissue derivatives, ligament tissue, skin tissue, heart valve tissue, human bone, and human eye tissue.

(C) "Organs" or "body parts" means a part of a human body having a special function.

(ii) **Materials consisting of both human and animal components.** Materials consisting of both human and animal components are not "human blood, tissue, organs, or body parts" and do not qualify for this exemption.

(iii) **Sales of spermatozoa.** These retail sales tax and use tax exemptions do not apply to sales or purchases of spermatozoa (male reproductive cell).

(m) **Durable medical and mobility enhancing equipment - Retail sales tax or use tax applies in most cases.** Retail sales tax or use tax applies to the sale or use of durable medical equipment and mobility enhancing equipment, unless a specific exemption applies. See subsections (202) and (204) of this rule for the definition of durable medical and mobility enhancing equipment.

(n) **Sales of prosthetic devices may be exempt of retail sales and use taxes.** RCW 82.08.0283 provides a retail sales tax exemption for sales of prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices. The exemption includes repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving prosthetic devices. RCW 82.12.0277 provides a corresponding use tax exemption. Persons making tax-exempt sales of these prosthetic devices to medical practitioners, nursing homes, and hospitals, must obtain an exemption certificate to substantiate the exempt nature of any sale as described in Part 3 of this rule. See subsection (206) of this rule for the definition of prosthetic device.

(o) **Kidney dialysis devices are exempt of retail sales and use taxes with a prescription.** RCW 82.08.945 provides a retail sales tax exemption for sales of kidney dialysis devices for human use pursuant to a prescription. The exemption also includes repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving kidney dialysis devices. RCW 82.12.945 provides a comparable use tax exemption. For the purpose of this exemption, a "kidney dialysis device" is a device which physically performs the dialyzing or separating process on blood. Kidney dialysis device does not include other equipment or tools used in conjunction with a kidney dialysis device.

Example 15. A kidney dialysis device is wired to a dedicated backup generator that exists only to service the dialysis device when the main source of power is interrupted or is unavailable. Under those conditions the dialysis process can-

not be performed without the use of the generator to power the dialysis device. Even so, the generator does not perform the actual dialysis process on the patient's blood and is not a kidney dialysis device.

(p) **Nebulizers are exempt of retail sales and use taxes with a prescription.** RCW 82.08.803 and 82.12.803 provide sales tax and use tax exemptions in the form of a refund for the sale or use of a nebulizer for human use pursuant to a prescription. A nebulizer is "a device, and not a building fixture, that converts a liquid medication into a mist so that it can be inhaled." The exemptions include repair and replacement parts, as well as labor and services rendered in respect to repairing, cleaning, altering, or improving a nebulizer.

Under these exemptions, sellers must collect the tax on sales subject to these exemptions. To obtain a refund of tax paid, buyers must apply for a refund directly from the department by submitting a completed refund application form to the department and including the original sales receipt. Any buyer submitting an application for refund should refer to WAC 458-20-229 or use the department's web site at dor.wa.gov/content/ContactUs.

(q) **Ostomic items are exempt of retail sales and use taxes - No prescription is required.** RCW 82.08.804 and 82.12.804 provide specific sales tax and use tax exemptions for ostomic items for colostomy, ileostomy, or urostomy patients. "Ostomic items" are disposable medical supplies used by colostomy, ileostomy, and urostomy patients and include bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and related supplies. "Ostomic items" do not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets. A prescription is not required for the sale of ostomic items to be exempt from tax.

PART 5 - BUNDLED TRANSACTIONS

(501) **What is a bundled transaction?** A "bundled transaction" is the retail sale of two or more products, except real property and services to real property, where:

• The products are otherwise distinct and identifiable; and

• The products are sold for one nonitemized price.

A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the buyer of the products included in the transaction.

(a) **How are bundled transactions generally taxed for retail sales tax purposes?** A transaction is generally considered a bundled transaction subject to retail sales tax if more than ten percent of the purchase price or sales price is attributable to retail sales taxable products. RCW 82.08.190 and 82.08.195.

(b) **Exception.** A transaction which otherwise meets the definition of a "bundled transaction" is not a bundled transaction when both of the following are true:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies; and

(ii) The seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

(502) **How are kits (or trays) used for medical procedures taxed if they contain a combination of individually taxable and nontaxable items?** Medical procedure kits are often purchased as a plastic-wrapped package that includes the various items needed to perform a particular medical procedure. A procedure kit can combine items that are either subject to retail sales tax or exempt from retail sales tax if sold separate from a kit or tray, as individual items. However, when a kit involves a bundled transaction sold for one nonitemized price, the sale of the entire kit is either subject to retail sales tax or exempt. This subsection explains how to determine whether a particular medical procedure kit is subject to or exempt from retail sales tax. Persons making a tax-exempt sale of a kit must obtain an exemption certificate from the buyer that lists the general item types within the kit that are exempt as discussed in Part 3 of this rule. If a particular item within a kit is only exempt pursuant to a prescription, the item (or the procedure in which the item is used) must be prescribed by a duly licensed practitioner authorized by the laws of this state to prescribe the same.

Example 16. A glucose testing kit is prescribed for a human patient. The kit includes a glucose meter, five sample test reagent strips, and a lancet. The glucose meter is durable medical equipment, has a purchase price of $40.00, and is subject to retail sales tax when sold separately. (See Part 2 of this rule for more information concerning durable medical equipment.) The lancet is a single-use tool not covered by any exemption, has a purchase price of $40.00, and is subject to retail sales tax when sold separately. In this case, the test reagent strips qualify as disposable drug delivery devices, have a purchase price of $20.00, and are exempt from retail sales tax when sold separately pursuant to a prescription. The total purchase price of the kit is $100.00.

To determine if the full purchase price of the kit is subject to retail sales tax, the purchase (or sales) price of the taxable components should be compared to the total purchase (or sales) price of the kit. If the taxable components exceed fifty percent of the price, the entire kit is subject to retail sales tax. In this case, the purchase price for both the glucose meter and lancet ($40.00 + $40.00 = $80.00) are more than fifty percent of the total kit purchase price of $100.00. Therefore, retail sales tax is due on the sale of the kit. But if the taxable components were fifty percent or less of the total kit purchase price, sales tax would not be due on the kit.

WSR 14-11-090
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Behavioral Health and Service Integration Administration)

[Filed May 21, 2014, 7:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-103.

Title of Rule and Other Identifying Information: Amending WAC 388-865-0511 Evaluation and treatment facility certification, 388-877-0300 Agency licensure—General information, 388-877-0305 Agency licensure—Application, 388-877-0335 Agency licensure and program-specific certification—Denials, suspensions, revocations, and penalties, 388-877-0365 Agency licensure and program-specific certification—Fee requirements, 388-877-0420 Agency administration—Policies and procedures, 388-877-0620 Clinical—Individual service plan, 388-877-0640 Clinical—Record content, 388-877-0650 Clinical—Access to clinical records, 388-877A-0180 Optional outpatient mental health services requiring program-specific certification—Psychiatric medication services, 388-877A-0195 Optional outpatient mental health services requiring program-specific certification—Less restrictive alternative (LRA) support services, 388-877A-0240 Crisis mental health services—Outreach services, 388-877A-0280 Crisis mental health services—Emergency involuntary detention services, 388-877A-0300 Recovery support services requiring program-specific certification—General, 388-877B-0110 Chemical dependency detoxification services—Agency staff requirements, 388-877B-0200 Chemical dependency residential treatment services—General, 388-877B-0220 Chemical dependency residential treatment services—Clinical record content and documentation requirements, 388-877B-0310 Chemical dependency outpatient treatment services—Agency staff requirements, 388-877B-0370 Chemical dependency outpatient treatment services requiring program-specific certification—Chemical dependency counseling required under RCW 46.61.5056, 388-877B-0550 Chemical dependency assessment only services requiring program-specific certification—DUI assessment services, and 388-877B-0640 Chemical dependency information and assistance services requiring program-specific certification—Information and crisis services.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on July 22, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 23, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 22, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 8, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments update sections in chapters 388-877, 388-877A, and 388-877B WAC which contain the department's new rules for licensing agencies as behavioral health agencies and certifying the behavioral health services the agencies choose to provide. WAC 388-865-0511 is also updated. The purpose of these amendments is to respond and make changes due to comments received from stakeholders on the existing rules; to provide clarification and updates to language; to correct a cross-reference; and to make minor "housekeeping" corrections.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.08.090, chapters 70.02, 71.24 RCW.

Statute Being Implemented: RCW 43.20A.550, 74.04.-050, 74.08.090, chapters 70.02, 71.24 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Pete Marburger, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1513.

A small business economic impact statement has been prepared under chapter 19.85 RCW. See Reviser's note below.

A copy of the statement may be obtained by contacting Kathy Sayre, Rules Manager, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

May 15, 2014
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-13 issue of the Register.

WSR 14-11-091
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed May 21, 2014, 7:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-123.

Title of Rule and Other Identifying Information: The department is amending and adding new sections to chapter 388-106 WAC, specifically residential support waivers.

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

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

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

Assistance for Persons with Disabilities: Contact Contact Jennisha Johnson, DSHS Rules Consultant by June 24, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is creating new rules for the development of a new residential support waiver using specialized behavior support adult family homes (as negotiated in collective bargaining). The rules will identify the scope of services and client eligibility, as well as make some minor changes regarding updated statutory and regulatory references and terminology.

Reasons Supporting Proposal: Read the purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sandy Robertson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2576.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

May 15, 2014
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-12 issue of the Register.

WSR 14-11-093
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 21, 2014, 7:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-101.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on June 24, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 25, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 24, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 10, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Title 7 of the Code of Federal Regulations (C.F.R.) §273.2(j) contains rules regarding which households are considered categorically eligible based on the receipt of cash assistance benefits. Washington state is proposing to amend WAC 388-414-0001 to clarify this rule and fully comply with the federal regulation.

Proposed changes are not expected to impact eligibility and benefits for the Washington Basic Food program and the state-funded food assistance program (FAP) for legal immigrants as these rules and procedures are already in effect and being applied to Basic Food eligibility decisions. Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program (SNAP) except for the provisions pertaining to immigrant status.

Reasons Supporting Proposal: The United States Department of Agriculture, Food and Nutrition Service (FNS) enforces the provisions of the federal supplemental nutrition assistance program (SNAP) as enacted in the 2008 Food and Nutrition Act and codified in the C.F.R. DSHS incorporates regulations from federal agencies, exercises state options, and implements approved waivers and demonstration projects by adopting administrative rules for food assistance administered as the Washington Basic Food program, the Washington combined application program (WASHCAP), and transitional food assistance.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.2(j).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain households served by DSHS who receive food assistance under Basic Food and cash assistance under TANF/SFA or aged, blind, or disabled programs by clarifying conditions for categorical eligibility status.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

May 15, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-15-137, filed 7/22/08, effective 10/1/08)

WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food? (1) **What is "categorically eligible" (CE)?**

(a) Being categorically eligible (CE) means that you have already met requirements for the program. If you are CE, you do not have to meet **every** program requirement to be eligible for Basic Food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for Basic Food:

(i) Residency under WAC 388-468-0005;

(ii) Countable resource limit under WAC 388-470-0005;

(iii) Maximum gross monthly income under WAC 388-478-0060; and

(iv) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for Basic Food:

(i) Social Security number information under WAC 388-476-0005; and

(ii) Sponsored alien information under WAC 388-450-0155.

(d) Being CE does not mean that your AU is guaranteed to get Basic Food benefits. If your AU is CE:

(i) You must still meet the other Basic Food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

(2) **Who is categorically eligible for Basic Food?**

Your Basic Food AU is CE when your household meets the conditions in subsection 2(a) or 2(b) below:

(a) Your AU's income that we do not exclude under WAC 388-450-0015 is at or under two hundred percent of the federal poverty guidelines we use for department programs.

(((~~(a)~~))) (i) The federal government publishes the federal poverty guidelines on the health and human services web site. These are currently posted at http://aspe.hhs.gov/poverty/index.shtml.

(((~~(b)~~))) (ii) The department uses the monthly value of the income guidelines for the current year beginning the first of April every year.

(((~~(c)~~))) (iii) If your income is not over two hundred percent of the federal poverty guidelines, we provide your AU information about the department programs and resources in the community.

(b) Everyone in your AU receives one of the following cash assistance programs:

(i) Temporary Assistance for Needy Families (TANF)/State Family Assistance (SFA) or Tribal TANF under WAC 388-400-0005 and WAC 388-400-0010;

(ii) Aged, Blind, or Disabled (ABD) cash assistance under WAC 388-400-0060;

(iii) Supplemental Security Income (SSI) under Title XVI of the Social Security Act; or

(iv) Diversion Cash Assistance (DCA) under WAC 388-432-0005. DCA makes the Basic Food AU CE for the month it receives DCA and the following three months.

(3) **Who is not CE even if my AU meets the above criteria?**

(a) Even if your AU is CE, members of your AU are not eligible for Basic Food if they:

(i) Are not eligible because of their alien or student status;

(ii) Were disqualified from Basic Food under WAC 388-444-0055 for failing work requirements;

(iii) Are not eligible for failing to provide or apply for a Social Security number;

(iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or

(v) Live in an institution not eligible for Basic Food under WAC 388-408-0040.

(b) If a person in your AU is not eligible for Basic Food, we do not include them as an **eligible member** of your CE AU.

(c) Your AU is not CE if:

(i) Your AU is not eligible because of striker requirements under WAC 388-480-0001;

(ii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;

(iii) Your AU refused to cooperate in providing information that is needed to determine your eligibility;

(iv) The head of household for your AU failed to meet work requirements; or

(v) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

WSR 14-11-095
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed May 21, 2014, 7:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-115.

Title of Rule and Other Identifying Information: WAC 170-100-080 Eligibility for services and 170-100-090 Staff qualifications.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on June 24, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than June 24, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by June 10, 2014, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise early childhood education and assistance program (ECEAP) eligibility, prioritization, and enrollment rules, and align them with clarified ECEAP performance standards Section B: Enrollment and eligibility. This includes updating eligibility rules such that children ages three and four who are receiving child protective services or family assessment response services are eligible and prioritized for ECEAP services. Also, to update staff qualifications rules consistent with revised ECEAP performance standards Section C: Human resources going into effect July 1, 2014.

Reasons Supporting Proposal: Effective July 1, 2013, ECEAP performance standards Section B: Enrollment and eligibility was clarified. Eligibility and prioritization for children receiving child protective services and family assessment response services is needed to ensure children involved in the child welfare system can connect with quality early care and education programming. Performance standards Section C: Human resources is currently being revised. The proposed rules are needed to eliminate inconsistencies between ECEAP rules and performance standards Section B, and to update rules concurrent with revisions to performance standards Section C.

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

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

May 21, 2014
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 10-20-059, filed 9/27/10, effective 10/28/10)

WAC 170-100-080 Eligibility for services. (1) ((~~Contractors must write and follow a recruitment procedure, including active recruitment of age-eligible homeless children, children in the foster care system, and children with disabilities.~~

~~(2)~~)) Children are eligible for ECEAP if they are at least three years old, but not yet five years old, by August 31st of the school year, and one of the following:

(a) Returning to the same ECEAP contractor from the previous school year.

(b) Qualified by their school district for special education services under RCW 28A.155.020. All children on a school district individualized education program (IEP) meet this requirement.

(c) Receiving child protective services under RCW 26.44.020(3) or family assessment response services under RCW 26.44.260.

(d) From a family with income at or below one hundred ten percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services.

(((~~(d) From a family that is not income-eligible but is impacted by either:~~

~~(i) Developmental risk factors, such as developmental delay or disability, but not on an IEP.~~

~~(ii) Environmental risk factors that could affect school success such as domestic violence, chemical dependency, homelessness, parental incarceration, or child protective services involvement.~~

~~Each contractor's maximum percentage of over-income children is in their ECEAP client services contract.~~

~~(3) Children cannot be simultaneously enrolled in Head Start and ECEAP. Children served by school district special education may be simultaneously enrolled in ECEAP.~~

~~(4)~~)) (e) From a family with income that exceeds one hundred ten percent federal poverty level and is impacted by specific developmental or environmental risk factors that are linked by research to school performance.

(f) Ninety percent of enrolled families statewide must qualify by income or IEP. DEL establishes over-income limits for each contractor annually.

(2) Children who are eligible for ECEAP are not automatically enrolled in ECEAP. They must still be prioritized.

(3) Eligible, enrolled children are allowed to remain in ECEAP until kindergarten, without reverification.

(4) Children may not be simultaneously enrolled in both ECEAP and Head Start.

(5) Children served by school district special education may be simultaneously enrolled in ECEAP.

(6) Contractors must ((~~write and follow a procedure for prioritizing enrollment of the eligible children who are most in need of ECEAP services. From the pool of eligible children,~~)) systematically review all applications of eligible children and prioritize them to determine which children to enroll in the available ECEAP slots. Contractors must prioritize children who are:

(a) Four years old by August 31st of the school year.

(b) From families ((~~with~~)) at the lowest ((~~incomes~~)) federal poverty levels, as published annually by the U.S. Department of Health and Human Services.

(c) Homeless, as defined by the federal McKinney-Vento Homeless Assistance Act.

(d) ((~~In the foster care system.~~

~~(e)~~)) Receiving child protective services under RCW 26.44.020(3) or family assessment response services under RCW 26.44.260.

(e) From families with multiple needs.

(((~~(5) Contractors may determine additional prioritization categories to best meet the needs of their community, such as:~~

~~(a) English language learners.~~

~~(b) Refugee status.~~

~~(c) Transferring from other ECEAP or Head Start sites.~~)) (7) Contractors must use either the standard or customized priority point system built into the early learning management system (ELMS). Contractors may customize the environmental risk factor section of the priority points built into ELMS to best meet the needs of families in their community.

AMENDATORY SECTION (Amending WSR 06-18-085, filed 9/5/06, effective 9/5/06)

WAC 170-100-090 Staff qualifications. (1) Contractors must provide adequate staff to comply with all ECEAP performance standards. ((~~Contractors must have written policies and procedures for recruitment and selection of staff, including procedures for advertising all position openings to the public.~~))

(2) All persons serving in the role of ECEAP lead teacher must meet one of the following qualifications:

(a) An associate or higher degree with the equivalent of thirty college quarter credits of early childhood education. These thirty credits may be included in the degree or in addition to the degree; or

(b) A valid Washington state teaching certificate with an endorsement in early childhood education (pre-K - grade 3) or early childhood special education.

(3) All persons serving in the role of ECEAP assistant teacher must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program assistant teacher in the same agency before July 1, 1999;

(b) The equivalent of twelve college quarter credits in early childhood education; ((~~or~~))

(c) Initial or higher Washington state early childhood education certificate; or

(d) A current Child Development Associate (CDA) credential awarded by the Council for Early Childhood Professional Recognition.

(4) All persons serving in the role of ECEAP family support ((~~specialist~~)) staff must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family ((~~service worker~~)) support staff in the same agency before July 1, 1999; ((~~or~~))

(b) An associate's or higher degree with the equivalent of thirty college quarter credits of adult education, human development, human services, family support, social work, early childhood education, child development, psychology, or another field directly related to their job responsibilities. These thirty credits may be included in the degree or in addition to the degree; or

(c) A degree, credential or certificate from a comprehensive and competency-based program that increases knowledge and skills in providing direct family support services to families.

(5) All persons serving in the role of ((~~family support aide or~~)) ECEAP health ((~~aide~~)) advocate must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family support aide or health aide in the same agency before July 1, ((~~1999~~)) 2014; or

(b) The equivalent of twelve college quarter credits in family support, public health, health education, nursing, or another field directly related to their job responsibilities.

(6) The early childhood education and assistance program health ((~~professional~~)) consultant must meet one of the following qualifications:

(a) Licensed in Washington state as a registered nurse (R.N.) or physician (M.D., N.D., D.O.); or

(b) A bachelor's or higher degree in public health, nursing, health education, health sciences, medicine, or related field.

(7) The early childhood education and assistance program ((~~dietitian~~)) nutrition consultant must meet ((~~all~~)) one of the following qualifications:

(a) ((~~A bachelor's or higher degree in nutrition science, public health nutrition, dieteties, or other related field; and~~

~~(b)~~)) Registered dietitian ((~~with~~)) (RD) credentialed through the Commission on Dietetic Registration (CDR), the credentialing agency for the Academy of Nutrition and Dietetics (formerly the American Dietetic Association ((~~or certified as a dietitian~~)); or

(b) Washington state certified nutritionist under chapter 18.138 RCW.

(8) The early childhood education and assistance program mental health ((~~professional~~)) consultant must meet one of the following qualifications:

(a) Licensed by the Washington state department of health as a mental health counselor, marriage and family therapist, social worker, psychologist, psychiatrist, or psychiatric nurse; ((~~or~~))

(b) Approved by the Washington state department of health as an agency affiliated or certified counselor, with a master's degree in counseling, social work or related field; or

(c) Credentialed by the Washington state office of the superintendent of public instruction as a school counselor, social worker, or psychologist.

(9) ((~~Contractors may provisionally hire lead teachers, assistant teachers, family service workers, family service aides, or health aides who do not fully meet the qualifications for the position if all of the following conditions are met:~~

~~(a) Contractors have attempted to recruit and hire fully qualified staff and are unable to because of a documented labor pool shortage;~~

~~(b) Contractors are able to recruit a person competent to fulfill the role and implement all related performance standards; and~~

~~(c) Contractors write a professional development plan describing how the provisional hire will obtain full qualifications within five years of appointment.~~)) Contractors must hire and employ staff who meet the qualifications for their position.

(a) If the best candidate for the position is not fully qualified, the contractor must ensure the newly hired staff person is on a professional development plan (PDP) to fully meet the qualifications of their role within five years from the date of hire.

(b) Contractors must monitor progress on all PDPs and ensure staff make adequate yearly progress to meet the required qualifications.

(10) Equivalent degrees and certificates from other states and countries are accepted for ECEAP staff qualifications.

WSR 14-11-096
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed May 21, 2014, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-075.

Title of Rule and Other Identifying Information: WAC 182-550-3850 Budget neutrality adjustment and measurement, 182-550-7000 Outpatient prospective payment system (OPPS)—General, 182-550-7200 OPPS—Billing requirements and payment method, 182-550-7300 OPPS—Payment limitations, 182-550-7400 OPPS EAPG relative weights, 182-550-7450 OPPS budget target adjustor, 182-550-7500 OPPS rate, 182-550-7550 OPPS payment enhancements, 182-550-7600 OPPS payment calculation, and 182-550-7100 OPPS—Exempt hospitals.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on June 24, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 25, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on June 24, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 19, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is rebasing the outpatient prospective payment system. HCA will move from the ambulatory patient classification to the enhanced ambulatory payment group system, and update the pricing methods and rates associated with outpatient services. HCA has also defined rules for measuring and ensuring budget neutrality after rebased payment system implementation.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Chapter 74.60 RCW.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, Olympia, Washington 98504-2716, (360) 725-1346; Implementation and Enforcement: Dylan Oxford, Olympia, Washington 98504-5500, (360) 725-2130.

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

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

May 21, 2014
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-550-3850 Budget neutrality adjustment and measurement. (1) The medicaid agency measures the effectiveness of budget neutral rebasing by applying a budget neutrality adjustment factor to the base payment rates for both inpatient and outpatient hospitals as needed to maintain aggregate payments under rebased payment systems.

(a) The agency performs budget-neutrality adjustments and measurement by prospectively adjusting conversion factors and rates to offset unintentional aggregate payment system decreases or increases. The agency publishes conversion factors and rates which reflect any required budget neutrality adjustment.

(b) The following rates and factors are not adjusted by the BNAF:

(i) Inpatient per diem;

(ii) Ratio of costs-to-charges (RCC);

(iii) Critical access hospital (CAH) weighted costs-to-charges (WCC);

(iv) Inpatient pain management and rehabilitation (PM&R);

(v) Per-case rates;

(vi) Administrative day rates;

(vii) Long-term acute care (LTAC);

(viii) Chemical-using pregnant women (CUP);

(ix) Outlier parameters;

(x) Outpatient services paid at the resource-based relative value scale (RBRVS) fee;

(xi) Outpatient corneal transplants; and

(xii) Diabetic education.

(2) The agency measures budget neutrality on an ongoing basis after rebased system implementation as follows:

(a) The agency gathers inpatient and outpatient claims and encounter data from the rebased system implementation date to the end of the measurement period.

(i) The first measurement period is the initial six months following rebased payment system implementation.

(ii) Additional measurement periods occur no more frequently than quarterly thereafter.

(iii) The agency performs a final measurement period for data received through June 30, 2016.

(b) The agency sums the aggregate payment amounts separately for inpatient and outpatient services. The agency will make the following adjustments to the base data:

(i) The agency removes any reductions due to third-party liability (TPL), client responsibility, and client spenddown from the payment summary;

(ii) The agency removes any increase awarded by RCW 74.09.611(2) from inpatient services;

(iii) The agency includes any outpatient service lines which are bundled under the enhanced ambulatory patient group (EAPG) system, but would be otherwise payable under the ambulatory payment classification (APC) system; and

(iv) Other adjustments as necessary.

(c) The agency processes all claims and encounters using the rates, factors, and policies which were in effect on June 30, 2014, with the following exceptions:

(i) The agency uses the RCC effective on the date of service;

(ii) The agency uses the most recent RBRVS values for any outpatient service paid using the RBRVS; and

(iii) The agency updates APC relative weights to reflect the most recent relative weights supplied by CMS;

(iv) The agency adjusts the outpatient budget target adjuster (BTA) to offset the inflation factor applied to OPPS in the CMS OPPS final rule; and

(v) The agency may include other adjustments as necessary to ensure accurate payment determination.

(d) The agency aggregates payment amounts calculated under (c) of this subsection separately for inpatient and outpatient services.

(3) The agency will modify the conversion factors and rates to reflect aggregate changes in the overall payment system as follows:

(a) If the amount calculated in subsection (2)(b) of this section is between ninety-nine percent and one hundred one percent of the amount calculated in subsection (2)(d) of this section, no adjustment will be made to the conversion factors and rates currently in effect;

(b) If the amount calculated in subsection (2)(b) of this section is greater than one hundred one percent of the amount calculated in subsection (2)(d) of this section, the conversion factors and rates will be adjusted to reach a target expenditure of one hundred one percent from the rebased payment system implementation date to the end of the subsequent six-month period;

(c) If the amount calculated in subsection (2)(b) of this section is less than ninety-nine percent of the amount calculated in subsection (2)(d) of this section, the conversion factors and rates will be adjusted to reach a target expenditure decrease of ninety-nine percent from the rebased payment system implementation date to the end of the subsequent six-month period.

(4) The agency applies adjustments to the BNAF to rates prospectively at the beginning of the calendar quarter following the measurement.

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

WAC 182-550-7000 Outpatient prospective payment system (OPPS)—General. (1) The ((~~department's~~)) medicaid agency pays for outpatient services using an outpatient prospective payment system (OPPS) ((~~uses an ambulatory payment classification (APC) based reimbursement methodology as its primary reimbursement method. The department is basing its OPPS on the centers for medicare and medicaid services (CMS) prospective payment system for hospital outpatient department services.~~

~~(2) For a complete description of the CMS outpatient hospital prospective payment system, including the assignment of status indicators (SIs), see 42 C.F.R., Chapter IV, Part 419. The Code of Federal Regulations (C.F.R.) is available from the C.F.R. web site and the Government Printing Office, Seattle office. The document is also available for public inspection at the Washington state library (a copy of the document may be obtained upon request, subject to any pertinent charge)~~)) for all hospitals that do not qualify as in-state critical access hospitals per WAC 182-550-2598.

(2) The agency uses the enhanced ambulatory payment group (EAPG) software provided by 3M™ Health Information Systems to group OPPS claims based on services performed and resource intensity.

(3) The agency uses the group established in subsection (2) of this section to determine payment for OPPS claims.

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

WAC 182-550-7200 OPPS—Billing requirements and payment method. (((~~(1)~~))) This section describes hospital provider billing requirements and the payment methods the ((~~department~~)) medicaid agency uses to pay for covered outpatient hospital services provided by hospitals ((~~not exempted from~~)) included in the outpatient prospective payment system (OPPS).

(((~~(2)~~))) (1) Providers must bill according to national correct coding initiative (NCCI) standards((~~. NCCI standards are based on:~~

~~(a) Coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual;~~

~~(b) Current standards of medical and surgical coding practice;~~

~~(c) Input from specialty societies; and~~

~~(d) Analysis of current coding practices.~~

~~The centers for medicare and medicaid services (CMS) maintains NCCI policy.~~)) maintained by the Centers for Medicare and Medicaid Services (CMS).

ENHANCED AMBULATORY ((~~PAYMENT CLASSIFICATION (APC)~~)) PATIENT GROUP (EAPG) METHOD

(((~~(3)~~))) (2) The ((~~department~~)) agency uses the ((~~APC~~)) enhanced ambulatory patient group (EAPG) method ((~~when (CMS) has established a national payment rate to pay for covered services. The APC method is~~)) as the primary payment ((~~methodology~~)) method for OPPS. Examples of services paid by the ((~~APC methodology~~)) EAPG method include((~~, but are not limited to~~)):

(a) ((~~Ancillary services;~~)) Surgeries;

(b) ((~~Medical visits;~~)) Significant procedures;

(c) ((~~Nonpass-through drugs or devices;~~

~~(d)~~)) Observation services;

(((~~(e) Packaged services subject to separate payment when criteria are met;~~

~~(f) Pass-through drugs;~~

~~(g) Significant procedures that are not subject to multiple procedure discounting (except for dental-related services);~~

~~(h) Significant procedures that are subject to multiple procedure discounting~~)) (d) Medical visits;

(e) Dental procedures; and

(((~~(i) Other services as identified by the department.~~)) (f) Ancillary services.

OPPS MAXIMUM ALLOWABLE FEE SCHEDULE

(((~~(4)~~))) (3) The ((~~department uses~~)) agency pays using the outpatient fee schedule ((~~published in the department's billing instructions to pay for covered~~)) for:

(a) Covered services ((~~that are~~)) exempted from the ((~~APC~~)) EAPG payment ((~~methodology or services for which there are no established weight(s)~~))) method due to agency policy;

(b) ((~~Procedures that are on the CMS inpatient only list;~~)) Covered services for which there are no established relative weights, such as:

(i) Durable medical equipment procedures grouped to EAPG type 7; and

(ii) Physical therapy procedures grouped to EAPG type 21;

(c) ((~~Items, codes, and services that are not covered by medicare;~~

~~(d)~~)) Corneal tissue acquisition((~~;~~

~~(e) Devices that are pass-throughs (see WAC 388-550-7050 for definition of pass-throughs); and~~

~~(f) Dental clinic services.~~)); and

(d) Other services as identified by the agency and posted on the agency's web site.

HOSPITAL OUTPATIENT ((~~RATE~~)) RATIO OF COSTS-TO-CHARGES (RCC)

(((~~(5)~~))) (4) The ((~~department~~)) agency uses the hospital outpatient ((~~rate described~~)) ratio of costs-to-charges (RCC) in WAC ((~~388-550-3900 and 388-550-4500~~)) 182-550-3900 and 182-550-4500 to pay for the services listed in subsection (((~~(4)~~))) (3) of this section for which the ((~~department~~)) agency has not established a maximum allowable fee.

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

WAC 182-550-7300 OPPS—Payment limitations. (1) The ((~~department~~)) medicaid agency limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient fee schedule ((~~and~~)) published ((~~in~~)) on the ((~~department's hospital billing instructions~~)) agency's web site, subject to the following limitations:

(a) To receive payment for services, providers must bill claims according to national correct coding initiative (NCCI) standards. ((~~See WAC 388-550-7200(2) for more information on NCCI standards.~~)) When a unit limit for services is not stated in the outpatient fee schedule, ((~~department~~)) the agency pays for services according to the program's unit limits stated in applicable WAC and published ((~~issuances~~)) provider guides.

(b) ((~~Because multiple units for services may be factored into the ambulatory payment classification (APC) weight, department pays for services according to the unit limit stated in the outpatient fee schedule when the limit is not the same as the program's unit limit stated in applicable WAC and published issuances.~~

~~(2) The department does not pay separately for covered services that are packaged into the APC rates. These services are paid through the APC rates.~~

~~(3) The department :~~

~~(a) Limits surgical dental services payment to the ambulatory surgical services fee schedule and pays:~~

~~(i) The first surgical procedure at the applicable ambulatory surgery center group rate; and~~

~~(ii) The second surgical procedure at fifty percent of the ambulatory surgery center group rate.~~

~~(b) Considers all surgical procedures not identified in subsection (a) to be bundled.~~)) The average resource, including units of service, are factored into the enhanced ambulatory patient group (EAPG) weight determination, and the allowable units of service for EAPGs is equal to one.

(2) The following service categories are included in the EAPG payment for significant procedure(s) on the claim and do not receive separate payments under EAPG:

(a) Services classified as the same or clinically related to the main significant procedure;

(b) Routine ancillary services;

(c) Chemotherapy services grouped as class I, class II, or minor; and

(d) Pharmacotherapy services grouped as class I, class II, or minor.

(3) The agency reduces the EAPG payment by fifty percent based on the default EAPG grouper settings for services subject to one or more of the following discounts:

(a) Multiple procedures;

(b) Repeat ancillary services; or

(c) A terminated procedure.

(4) The ((~~department~~)) agency limits outpatient services billing to one claim per episode of care. If ((~~there are late charges, or if~~)) any line of the claim is denied, or a service that was provided was not stated on the initial submitted claim, the ((~~department~~)) agency requires the entire claim to be adjusted.

(5) The agency limits payments to the total billed charges.

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

WAC 182-550-7400 OPPS ((~~APC~~)) EAPG relative weights. (1) The ((~~department~~)) medicaid agency uses ((~~the ambulatory payment classification (APC)~~)) national relative weights established by ((~~the centers for medicare and medicaid services (CMS) at the time the budget target adjustor is established. See WAC 388-550-7050 for the definition of budget target adjustor~~)) 3M™ as part of its enhanced ambulatory patient group (EAPG) payment system.

(2) The agency may update the relative weights used for calculating OPPS payments on July 1st of each year, beginning on July 1, 2015.

(3) The agency may update relative weights more frequently for newly added EAPGs in order to maintain current EAPG grouper system functionality.

(4) The agency will post all relative weights used on the agency's web site.

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

WAC 182-550-7450 OPPS budget target adjustor. (((~~(1) The outpatient prospective payment system (OPPS) budget target adjustor is a component of the ambulatory payment classification (APC) payment calculation. The budget target adjustor allows the department to reach but not exceed the established budget target. The same OPPS budget target adjustor value is applied to payments for all hospitals.~~

~~(2) The department calculates the OPPS budget target adjustor using:~~

~~(a) A payment system model developed by the department;~~

~~(b) The department's budget target;~~

~~(c) The department's outpatient fee schedule;~~

~~(d) Addendum B to 42 C.F.R. Part 410 (medicare's hospital outpatient regulations and notices); and~~

~~(e) The wage index established and published by the centers for medicare and medicaid services (CMS) at the time the OPPS budget target adjustor is set for the upcoming year.~~

~~(3) In response to direction from the legislature, the department may change the method for calculating the OPPS~~)) The medicaid agency may apply an outpatient prospective payment system (OPPS) budget target adjustor to ((~~achieve the legislature's targeted expenditure levels for outpatient hospital services.~~)) the enhanced ambulatory patient group (EAPG) payment. The agency calculates the OPPS budget target adjustor based on legislative direction to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the ((~~department~~)) agency in the Biennial Appropriations Act.

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

WAC 182-550-7500 OPPS rate. (1) The ((~~department~~)) medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using:

(a) A ((~~payment method model~~)) base conversion factor established by the ((~~department~~)) agency; ((~~and~~))

(b) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) at the time the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located; and

(c) An adjustment for graduate medical education (GME).

(2) ((~~The department may adjust OPPS rates to pay for graduate medical education (GME) costs.~~)) Base conversion factors. The agency calculates the average, or base, enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its web site.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) The amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) GME. The ((~~department~~)) agency obtains the GME information from ((~~a~~)) the hospital's ((~~"as filed" annual~~)) most recently filed medicare cost report (((~~(Form 2552-96) and applicable patient revenue reconciliation data provided by the hospital~~)) as available in the CMS HCRIS dataset.

(a) The hospital's ((~~"as filed"~~)) medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS form 2552-10 to calculate GME.

(c) In the case where a ((~~delay in submission of the~~)) hospital has not submitted a CMS medicare cost report ((~~to the medicare fiscal intermediary is granted by medicare~~)) in greater than eighteen months from the end of the hospital's cost reporting period, the ((~~department~~)) agency may ((~~adjust the hospital's OPPS rate.~~

~~(b) The department may not pay GME expenses for hospitals in specified categories, and hospitals that meet, or fail to meet, conditions specified in statute or WAC.~~

~~(3) In response to direction from the legislature, the department may change the method for calculating OPPS rates to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropri-~~

~~ated to the department in the Biennial Appropriations Act.~~)) remove the hospital's GME adjustment.

(d) The agency calculates the hospital-specific GME by dividing the durable medical equipment cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

EAPG base rate x (.6(wage index) + .4)/(1-GME)

NEW SECTION

WAC 182-550-7550 OPPS payment enhancements. (1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age eighteen years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals (SCH).

(a) To qualify as an SCH, a hospital must meet all of the following criteria. The hospital must:

(i) Be certified as an SCH by the Centers for Medicare and Medicaid Services (CMS) as of January 1, 2013;

(ii) Have a level III adult trauma service designation by the department of health as of January 1, 2014;

(iii) Have less than one hundred fifty acute-care-licensed beds in state fiscal year 2011; and

(iv) Be owned and operated by the state or one of its political subdivisions.

(b) Effective January 1, 2015, the agency will apply an adjustor of one point twenty-five (1.25) to the EAPG conversion factor for any hospital that meets the conditions in (a) of this subsection.

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

WAC 182-550-7600 OPPS payment calculation. (1) The ((~~department follows the discounting and modifier policies of the centers for medicare and medicaid services (CMS). The department calculates the ambulatory payment classification (APC) payment as follows:~~

~~APC payment =~~

~~National payment rate x Hospital OPPS rate x Discount factor (if applicable) x~~

~~Units of service (if applicable) x Budget target adjustor~~))

medicaid agency calculates the enhanced ambulatory patient group (EAPG) payment as follows:

EAPG payment =

EAPG relative weight x

Hospital-specific conversion factor x

Discount factor (if applicable) x

Policy adjustor (if applicable)

(2) The total OPPS claim payment is the sum of the ((~~APC~~)) EAPG payments plus the sum of the ((~~lesser of the billed charge or~~)) allowed ((~~charge~~)) amounts for each non-((~~APC~~)) EAPG service.

(3) ((~~The department pays hospitals for claims that involve clients who have third-party liability (TPL) insurance, the lesser of either the:~~

~~(a) Billed amount minus the third-party payment amount; or~~

~~(b) Allowed amount minus the third-party payment amount.~~

~~(4) In response to direction from the legislature, the department may change the method for calculating OPPS payments to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the department in the Biennial Appropriations Act.~~)) If a client's third-party liability insurance has made a payment on a service, the agency subtracts any such payments made from the medicaid allowed amount.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-7100 OPPS—Exempt hospitals.

WSR 14-11-097
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed May 21, 2014, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-099.

Title of Rule and Other Identifying Information: WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf, or directions can be obtained by calling (360) 725-1000), on June 24, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 25, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on June 24, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 19, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule will require fluoride treatment and sealants to be provided on the same day as an encounter-eligible service. If provided on another day, the rules for nonfederal qualified health centers services will apply.

Reasons Supporting Proposal: This amendment is necessary to efficiently administer Washington apple health: Federally qualified health centers are required to provide preventative primary services to any eligible client that comes in for services; under federal law, preventative primary services do not include preventative dental services such as fluoride treatment and sealant application.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Mick Pettersen, HCA, P.O. Box 45504, (360) 725-1842; Implementation and Enforcement: Ed Hicks, HCA, P.O. Box 45500, (360) 725-1987

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule and concludes that it does not impose more than minor costs for affected 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 21, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-16-060, filed 7/30/12, effective 8/30/12)

WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of one hundred percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection

(3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebasing will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(10) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (11) of this section apply.

(11) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

((~~(11)~~)) (12) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

((~~(12)~~)) (13) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the FQHC has been overpaid, the agency will recoup the appropriate amount. If the FQHC has been underpaid, the agency will pay the difference.

((~~(13)~~)) (14) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

WSR 14-11-105
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed May 21, 2014, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-113 on December 1, 2013.

Title of Rule and Other Identifying Information: WAC 220-40-021 Willapa Bay salmon summer fishery and 220-40-027 Salmon—Willapa Bay fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on June 24, 2014, at 10:00 a.m. - 12:00 noon.

Date of Intended Adoption: On or after June 25, 2014.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by June 24, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by June 17, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect species of fish listed as endangered while supporting commercial salmon fishing in Willapa Bay.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: These rule changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Willapa Bay while taking reasonable and prudent measures to protect local salmon and steelhead stocks of concern and nonlocal species of fish listed under the federal Endangered Species Act as threatened or endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay.

2. Kinds of Professional Services that a Small Business is Likely to Need in Order to Comply With Such Requirements: None - these rule changes clarify dates for anticipated open periods, show areas in Willapa Bay that are closed to commercial harvest methods, and explain legal gear requirements. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules as [are] similar to previous years and primarily only adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there are no additional costs to comply with the proposed rules.

4. Will Compliance With the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to commercial fisher[s] licensed to fish in Willapa Bay. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore no costs for compliance are anticipated.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating the agreements underlying these rules.

8. A List of Industries That will be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Willapa Bay will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements to those for previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

May 21, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-17-001, filed 8/7/13, effective 8/12/13)

WAC 220-40-021 Willapa Bay salmon—Summer fishery. From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except ((~~that~~)):

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook salmon:

Time:	Areas:
6:00 a.m. August ((~~12~~)) 4 through 6:00 p.m. August ((~~15, 2013~~)) 7.	Area 2N, ((~~Area 2R,~~)) Area 2T (except those waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) to range marker "B"), and Area 2U
((~~6:00 a.m. August 12 through 6:00 p.m. August 13, 2013~~	~~Area 2M~~))

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

It is unlawful to use a gillnet to fish for salmon ((~~or white sturgeon~~)) if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) Mesh size must not exceed nine inches.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U. Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) ((~~Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.~~

~~(c)~~)) When fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2M, 2N, 2R, 2T, and 2U, all wild (unmarked) Chinook, chum, ((~~nonlegal~~)) green and white sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay ((~~or an operating recovery box when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2M, 2N, 2R, 2T, and 2U~~)) unless a salmon or steelhead is bleeding or lethargic.

(((~~d~~))) (c) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection. Lethargic is defined as having or showing very little movement or is nonresponsive.

(((~~e~~))) (d) All fish placed in recovery boxes must remain until at least the completion of the deployment of next subsequent set before released to the river/bay and must be released to the river/bay prior to landing or docking.

(e) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon((~~, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches,~~)) and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited.

(6) Report ALL encounters of wild (unmarked) Chinook, green sturgeon, and steelhead (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) ((~~White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork-length measure of no less than 43 inches and no more than 54 inches.~~

~~(8)~~)) Do NOT remove tags from white sturgeon ((~~that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon,~~)). Please obtain available information from tags

without removing the tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

((~~(9)~~)) (8) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

((~~(10)~~)) (9) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on ((~~August 8, 2013~~)) July 28.

AMENDATORY SECTION (Amending WSR 13-17-001, filed 8/7/13, effective 8/12/13)

WAC 220-40-027 Salmon—Willapa Bay fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook:

Time:	Area:
((~~6:00~~)) 7:00 p.m. August ((~~19~~)) 18 through ((~~6:00 p.m.~~)) 7:00 a.m. August ((~~20, 2013~~)) 19;	**2N((~~, 2R,~~))** and **2U**
((~~6:00~~)) 7:00 p.m. August ((~~21~~)) 20 through ((~~6:00 p.m.~~)) 7:00 a.m. August ((~~22, 2013~~)) 21;	
6:00 ((~~p.m.~~)) a.m. August ((~~26~~)) 25 through 6:00 a.m. August ((~~27, 2013~~)) 26;	
((~~AND~~))	
((~~6:00~~)) 7:00 p.m. August ((~~28~~)) 26 through ((~~6:00~~)) 7:00 a.m. August ((~~29, 2013~~)) 27;	
((~~6:00~~)) 7:00 p.m. ((~~September 3~~)) August 27 through ((~~6:00~~)) 7:00 a.m. ((~~September 4, 2013~~)) August 28;	((~~**2M, 2N, 2R,** and **2U**~~))
((~~6:00~~)) 7:00 p.m. September ((~~5~~)) 1 through ((~~6:00~~)) 7:00 a.m. September ((~~6, 2013~~)) 2;	((~~**2N, 2R,** and **2U**~~))
6:00 p.m. September ((~~9~~)) 2 through 6:00 p.m. September ((~~10, 2013~~)) 3;	((~~**2M, 2N, 2R,** and **2U**~~))
((~~AND~~))	
6:00 p.m. September ((~~12~~)) 4 through 6:00 p.m. September ((~~13, 2013~~)) 5;	
6:00 p.m. September ((~~15~~)) 7 through 6:00 p.m. ((~~October 12, 2013~~)) September 8;	((~~**2M, 2N, 2R,** and **2T**~~))
6:00 p.m. September ((~~15~~)) 9 through ((~~5:59 a.m.~~)) 6:00 p.m. September ((~~22, 2013~~)) 10;	
((~~6:01~~)) 6:00 p.m. September ((~~22~~)) 11 through ((~~5:59 a.m.~~)) 6:00 p.m. September ((~~29, 2013~~)) 12;	((~~**2U**~~))
AND	
((~~6:01~~)) 6:00 p.m. September ((~~29~~)) 14 through ((~~5:59 a.m. October 6, 2013;~~)) 6:00 p.m. September 15.	
((~~AND~~ ~~6:01 p.m. October 6 through 6:00 p.m. October 12, 2013;~~))	~~**2M, 2N, 2R, 2T,** and **2U**~~
6:00 p.m. September 16 through 6:00 p.m. September 19;	**2M, 2N, 2R,** and **2T** (except those waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green) to range marker "B")
6:00 p.m. September 20 through 6:00 p.m. September 22;	
6:00 p.m. September 23 through 6:00 p.m. September 26;	
AND	
6:00 p.m. September 27 through 6:00 p.m. September 30.	
6:00 p.m. September 16 through 6:00 p.m. September 18;	**2U**

Time:	Area:
6:00 p.m. September 20 through 6:00 p.m. September 22;	
6:00 p.m. September 23 through 6:00 p.m. September 25;	
6:00 p.m. September 27 through 6:00 p.m. September 30;	
AND	
6:00 p.m. October 1 through 6:00 p.m. October 2.	
6:00 p.m. October 1 through 6:00 p.m. October 3.	**2M, 2N, 2R,** and **2T**
6:00 p.m. October 4 through 6:00 p.m. October 7;	**2M, 2N, 2R, 2T,** and **2U**
6:00 p.m. October 8 through 6:00 p.m. October 11;	
12:00 p.m. November ((~~6~~)) 5 through 12:00 p.m. November ((~~20, 2013.~~)) 10;	
12:00 p.m. November 11 through 12:00 p.m. November 15;	
AND	
12:00 p.m. November 16 through 12:00 p.m. November 19.	

Gear:

(2) Gillnet gear restrictions - All areas:

(a)(i) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(ii) It is unlawful to use a gillnet to fish for salmon ((~~and/or white sturgeon~~)) if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) From August ((~~19~~)) 18 through ((~~September 13, 2013~~)) November 19: Mesh size must not exceed ((~~nine-inch~~)) six and one-half inch maximum mesh.

(((~~c) From September 15 through September 22, 2013: Mesh size must not exceed six inch maximum mesh.~~

~~(d) From September 23 through October 12, 2013: Mesh size must not exceed six and one-half inch maximum mesh.~~

~~(e) From November 6 through November 20, 2013: There are two alternatives for mesh size:~~

~~(i) Use six and one-half inch maximum mesh; or~~

~~(ii) Use nine-inch minimum mesh.~~

~~Only one net of either six and one-half inch or nine-inch configuration, not exceeding fifteen hundred feet, may be used when in the act of fishing.~~))

Other:

(3) Recovery boxes and soak time:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U from August ((~~19~~)) 18 through ((~~October 12, 2013~~)) November 19.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches((~~,~~));

(B) The inside width measurements must be at or within 8 to 10 inches((~~,~~)); and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) ((~~From August 19 through October 12, 2013, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.~~

~~(c)~~)) When fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U, from August ((~~19~~)) 18 through ((~~October 12, 2013~~)) November 19, all chum, ((~~nonlegal~~)) green and white sturgeon, all steelhead, and all wild (unmarked) Chinook must be handled with care to minimize injury to the fish and must be released immediately to the river/bay ((~~or to an operating recovery box when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.~~

~~From November 6 through November 20, 2013, all chum, all nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U~~)) unless a salmon or steelhead is bleeding or lethargic.

(((~~d)~~)) (c) Any steelhead or salmon required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The

recovery box must meet the requirements in (a) of this subsection. Lethargic is defined as having or showing very little movement or is nonresponsive.

(((e))) (d) All fish placed in recovery boxes must remain until at least to the completion of deployment of the next subsequent set before released to the river/bay and must be released to the river/bay prior to landing or docking.

(e) From August 18 through November 19, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon((, white sturgeon with fork length measure not less than 43 inches and not more than 54 inches,)) and hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) ((White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(8))) Do NOT remove tags from white sturgeon ((that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon,)). Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(((9))) (8) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(((10))) (9) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on ((August 13, 2013)) July 28.

WSR 14-11-110
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2014-03—Filed May 21, 2014, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-103.

Title of Rule and Other Identifying Information: Essential health benefit (EHB) categories transplant waiting period.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on June 24, 2014, at 8:30 a.m.

Date of Intended Adoption: June 24, 2014.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by June 16, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by June 20, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to remove the waiting period for transplant services, supplies, and treatment currently permitted as an optional limitation under the commissioner's rules implementing the state EHB in WAC 284-43-878.

Reasons Supporting Proposal: The current rule permits a benefit specific waiting period for an EHB without the federal authority to do so and also conflicts with existing federal law and regulations relating to treatment of preexisting conditions and discrimination in providing health insurance coverage. The Patient Protection and Affordable [Care] Act (ACA) established federal standards for the EHB that must be offered by nongrandfathered individual and small group health plans. The ACA also prohibits limitations on benefits on the basis of a preexisting condition or other discriminatory bases. Specifically, recent federal guidance has clarified a distinction between eligibility-related waiting periods (which may be permitted under certain circumstances), and benefit-specific waiting periods (which are not permitted for plans subject to the EHB benchmark plan). See e.g., Department of Health and Human Services, "Frequently Asked Questions on Health Insurance Market Reforms and Marketplace Standards" (May 16, 2014), available on CMS's web site.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Statute Being Implemented: RCW 48.43.715.

Rule is necessary because of federal law, 45 C.F.R. §146.111, 45 C.F.R. §156.125, and 42 U.S.C. §300gg-3.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Emily Brice, 302 Sid Snyder, Olympia, WA 98504-0258, (360) 725-7043; Implementation: Molly Nollette, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellerman, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The current rule permits a benefit specific waiting period for an EHB without the federal authority to do so and also conflicts with existing federal law and regulations relating to treatment of preexisting conditions and discrimination in providing health insurance coverage. This proposed rule revision will eliminate those conflicts and align the state's EHB rules with current federal regulation. Therefore, under the provisions of RCW 34.05.328 (5)[(b)](iii), no cost-benefit analysis is required.

May 21, 2014
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-15-025, filed 7/9/13, effective 7/10/13)

WAC 284-43-878 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services." For purposes of determining a plan's actuarial value, an issuer must classify as ambulatory patient services medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and out-patient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, and surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category.

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth, but not excluding services or appliances necessary for or resulting from medical treatment if the service is:

(A) Emergency in nature; or

(B) Requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease. Oral surgery related to trauma and injury must be covered.

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them, other than for cochlear implants, which are covered, and for hearing screening tests required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category;

(viii) Obesity or weight reduction or control other than covered nutritional counseling.

(c) The base-benchmark plan establishes specific limitations on services classified to the ambulatory patient services category that conflict with state or federal law as of January 1, 2014. The base-benchmark plan limits nutritional counseling to three visits per lifetime, if the benefit is not associated with diabetes management. This lifetime limitation for nutritional counseling is not part of the state EHB-benchmark plan. An issuer may limit this service based on medical necessity, and may establish an additional reasonable visit limitation requirement for nutritional counseling for medical conditions when supported by evidence based medical criteria.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime;

(iv) One hundred thirty visits per calendar year for home health care.

(e) State benefit requirements classified to this category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530);

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services." For purposes of determining a plan's actuarial value, an issuer must classify care and services related to an emergency medical condition to the emergency medical ser-

vices category, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical care category.

(c) The base-benchmark base plan does not establish specific limitations on services classified to the emergency medical services category that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified to this category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization." For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(iii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly; and

(C) Sexual reassignment treatment and surgery;

(iv) Reversal of sterilizations;

(v) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2014. ((~~The state EHB-benchmark plan limitations for these services are:~~

~~(i) The transplant waiting period must not be longer than ninety days, inclusive of prior creditable coverage, if an issuer elects to apply a limitation to the benefit.~~

~~(ii) Where transplant benefit services are delivered in a nonhospital setting, the same waiting period limitation may be applied.~~)) The base-benchmark plan allows for a transplant waiting period. This waiting period is not part of the state EHB-benchmark plan.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. This benefit may be classified to this category for determining actuarial value or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to this category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530);

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn" services. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery, and to newborn children, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include the following service as part of the EHB-benchmark package. Genetic testing of the child's father is specifically excluded by the base-benchmark plan, and should not be included in determining actuarial value.

(c) The base-benchmark plan establishes specific limitations on services classified to the maternity and newborn category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Maternity coverage for dependent daughters must be included in the EHB-benchmark plan on the same basis that the coverage is included for other enrollees;

(ii) Newborns delivered of dependent daughters must be covered to the same extent, and on the same basis, as newborns delivered to the other enrollees under the plan.

(d) The base-benchmark plan's limitations on services in this category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(e) State benefit requirements classified to this category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the post-natal coverage for the mother, for no less than three weeks (RCW 48.43.115);

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment." For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential and outpatient mental health and substance use disorder treatment, including partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to include, the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value.

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the DSM-IV, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, and bereavement for children five years of age or younger, unless this exclusion is preempted by federal law;

(iii) Not medically necessary court-ordered mental health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Coverage for eating disorder treatment must be covered when associated with a diagnosis of a DSM categorized mental health condition;

(ii) Chemical detoxification coverage must not be uniformly limited to thirty days. Medical necessity, utilization review and criteria consistent with federal law may be applied by an issuer in designing coverage for this benefit;

(iii) Mental health services and substance use disorder treatment must be delivered in a home health setting on parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include: Court ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355);

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services." For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services the medically necessary prescribed drugs, medication and drug therapies, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (f) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA approved contraceptive methods, and prescription based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order;

(v) Medical foods to treat inborn errors of metabolism.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan establishes specific limitations on services classified to the prescription drug services category that conflict with state or federal law as of January 1, 2014. The EHB-benchmark plan requirements for these services are:

(i) Preauthorized tobacco cessation products must be covered consistent with state and federal law;

(ii) Medication prescribed as part of a clinical trial, which is not the subject of the trial, must be covered in a manner consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(e) State benefit requirements classified to this category include:

(i) Medical foods to treat phenylketonuria (RCW 48.44.440, 48.46.510, 48.20.520, and 48.21.300);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241).

(f) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services."

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled, in a manner substantially equal to the base-benchmark plan.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) In-patient rehabilitation facility and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatuses used to support, align or correct deformities or to improve the function of moving parts;

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Off the shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) **Supplementation:** The base-benchmark plan does not cover certain federally required services under this category. A health benefit plan must cover habilitative services, but these services are not specifically covered in the base-benchmark plan. Therefore, this category is supplemented. The state EHB-benchmark plan requirements for habilitative services are:

(i) For purposes of determining actuarial value and complying with the requirements of this section, the issuer must classify as habilitative services and provide coverage for the range of medically necessary health care services and health care devices designed to assist an individual in partially or fully developing, keeping or learning age appropriate skills and functioning within the individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness.

(ii) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include reference based limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age, and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(iii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all of the services in a plan of treatment are provided by a public or government program.

(iv) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(v) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(vi) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vii) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in this category include:

(i) In-patient rehabilitation facility and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services." For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging;

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. An enrollee's not medically indicated procurement and storage of personal blood supplies provided by a member of the enrollee's family is specifically excluded by the base-benchmark plan, and should not be included by an issuer in establishing a health benefit plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management." For purposes of determining a plan's actuarial value, an issuer must classify as preventative and wellness services, including

chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic, services that assist in the multidisciplinary management and treatment of chronic diseases, services of particular preventive or early identification of disease or illness of value to specific populations, such as women, children and seniors, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services as preventive and wellness services:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii) Screening and tests with A and B recommendations by the U.S. Preventive Services Task Force for prevention and chronic care, for recommendations issued on or before the applicable plan year;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration Bright Futures guidelines as set forth by the American Academy of Pediatricians;

(iv) Services, tests, screening and supplies recommended in the U.S. Health Resources and Services Administration women's preventive and wellness services guidelines;

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(b) The base-benchmark plan does not exclude any services that could reasonably be classified to this category.

(c) The base-benchmark plan does not apply any limitations or scope restrictions that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275);

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) State benefit requirements that are limited to those receiving pediatric services, but that are classified to other categories for purposes of determining actuarial value, are:

(a) Neurodevelopmental therapy to age six, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories;

(b) Congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.