

**WSR 14-14-027**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed June 24, 2014, 7:47 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider for home and community services, residential care services, and developmental disabilities administration (DDA) while also clarifying background check requirements.

This consolidated locations and list provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language, and help preserve the health and safety of our clients.

DDA and the aging and long-term support administration have coordinated these changes with the DSHS background check central unit.

Other housekeeping changes such as WAC and RCW references, names of organizations, etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-0001, 388-97-1800, 388-97-1820, and 388-97-4220.

Statutory Authority for Adoption: RCW 74.39A.056 and chapters 74.42, 18.51 RCW.

Adopted under notice filed as WSR 14-05-074 on February 18, 2014.

A final cost-benefit analysis is available by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley  
Secretary

AMENDATORY SECTION (Amending WSR 13-04-093, filed 2/6/13, effective 3/9/13)

**WAC 388-97-0001 Definitions. "Abandonment"** means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable

individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

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

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

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

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

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

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrative law judge (ALJ)"** means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

**"Administrator"** means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

**"Advanced registered nurse practitioner (ARNP)"** means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

**"Applicant"** means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

**"ASHRAE"** means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

**"Attending physician"** means the doctor responsible for a particular individual's total medical care.

**"Berm"** means a bank of earth piled against a wall.

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

**"Civil adjudication proceeding"** means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

**"Civil fine"** is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

**"Condition on a license"** means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

**"Deficiency"** is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Deficiency citation"** or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

**"Deficient facility practice"** or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

**"Dementia care"** means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

**"Denial of payment for new admissions"** is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nurs-

ing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

**"Department"** means the state department of social and health services (DSHS).

**"Department on-site monitoring"** means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

**"Dietitian"** means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

**"Disclosure statement"** means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

**"Drug"** means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

**"Drug facility"** means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

**"Emergency closure"** is an order by the department to immediately close a nursing home.

**"Emergency transfer"** means immediate transfer of residents from a nursing home to safe settings.

**"Entity"** means any type of firm, partnership, corporation, company, association, or joint stock association.

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

**"Habilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

**"Highest practicable physical, mental, and psychosocial well-being"** means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

**"Informal department review"** is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

**"Inspection"** or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

**"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)"** means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

**"License revocation"** is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

**"License suspension"** is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

**"Licensee"** means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

**"Licensed practical nurse"** means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

**"Mandated reporter"** as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living facility, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"NFPA"** means National Fire Protection Association, Inc.

**"Neglect":**

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

**"Noncompliance"** means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

**"Nursing assistant"** means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

**"Nursing facility (NF)"** or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

**"Nursing home"** means any facility licensed to operate under chapter 18.51 RCW.

**"Officer"** means an individual serving as an officer of a corporation.

**"Owner of five percent or more of the assets of a nursing home"** means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

**"Partner"** means an individual in a partnership owning or operating a nursing home.

**"Permanent restraining order"** means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

**"Person"** means any individual, firm, partnership, corporation, company, association or joint stock association.

**"Pharmacist"** means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

**"Pharmacy"** means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

**"Physical restraint"** means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

**"Physician's assistant (PA)"** means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

**"Plan of correction"** is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their recurrence.

**"Reasonable accommodation"** and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

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

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

(2) Reasonable accommodations are not required if:

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

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

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

**"Receivership"** is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

**"Recurring deficiency"** means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

**"Registered nurse"** means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

**"Rehabilitative services"** means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

**"Resident"** generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

**"Resident care unit"** means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

**"Respiratory isolation"** is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

**"Siphon jet clinic service sink"** means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

**"Skilled nursing facility (SNF)"** or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

**"Social/therapeutic leave"** means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

**"Staff work station"** means a location at which nursing and other staff perform charting and related activities throughout the day.

**"Stop placement"** or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

**"Substantial compliance"** means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicare certified facility, no deficiencies higher than a scope and severity "C."

**"Surrogate decision maker"** means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

**"Survey"** means the same as **"inspection"** as defined in this section.

**"Temporary manager"** means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

**"Temporary restraining order"** means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

**"Termination"** means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicare certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicare or medicare recipients, or both.

**"Toilet room"** means a room containing at least one toilet fixture.

**"Uncorrected deficiency"** is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

**"Violation"** means the same as **"deficiency"** as defined in this section.

**"Volunteer"** means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

**"Vulnerable adult"** includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

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

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

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

**"Whistle blower"** means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, finan-

cial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

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

#### NEW SECTION

##### **WAC 388-97-1790 Background checks—General.**

(1) If any background check results show that an employee or prospective employee has a conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, then the nursing home must:

(a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care; and

(b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the nursing home. In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.051.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

**WAC 388-97-1800 Criminal history disclosure and background inquiries.** (1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

(2) The nursing home must:

(a) Have a valid criminal history background check for any individual employed, directly or by contract, or any individual accepted as a volunteer or student who may have unsupervised access to any resident; and

(b) Repeat the check every two years.

(3) A nursing home licensed under chapter 18.51 RCW, or nursing facility or skilled nursing facility must make a background inquiry request to one of the following:

(a) ~~((The Washington state patrol;~~  
~~(b)))~~ The department;

~~((c)))~~ (b) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

~~((d)))~~ (c) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home.

(4) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job ~~((has))~~ is, or may ~~((have))~~ be ~~((, a disqualifying conviction or finding))~~ disqualified under the requirements of WAC 388-97-1820.

(5) Nursing homes must:

(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify ~~the~~ appropriate licensing or certification agency of any individual ~~((resigning))~~ who resigns or is terminated ((as a result of a criminal conviction or a civil adjudication proceeding)) because he or she is disqualified from employment under WAC 388-97-1820.

(6) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty ~~((of))~~ of perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may request a copy of the results of the completed background inquiry described in this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

(7) The nursing home must establish procedures ensuring that:

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

~~((8))~~ ~~The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.)~~

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

**WAC 388-97-1820 Disqualification from nursing home employment.** (1) The nursing home must not employ

directly or by contract, or accept as a volunteer or student, any individual:

~~(a) ((Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health;~~

~~(b) With a finding of abuse or neglect of a child that is:~~

~~(i) Listed on the department's background check central unit (BCCU) report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998.~~

~~(c) With a finding of abandonment, abuse, neglect, or financial exploitation of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.~~

~~(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:~~

~~(a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:~~

~~(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or~~

~~(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed.~~

~~(b) Has been convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:~~

~~(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;~~

~~(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or~~

~~(iii) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.~~

~~(c) Has been convicted of:~~

~~(i) Violation of the Imitation Controlled Substances Act (VICSA);~~

~~(ii) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(d) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.~~

~~(e) Has been convicted of criminal mistreatment.~~

~~(f) Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (e) of this section.~~

~~(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.~~

~~(4)) Who has a criminal conviction or pending charge for a crime, which is automatically disqualifying under chapter 388-113 WAC;~~

~~(b) Who has one or more of the following disqualifying negative actions:~~

~~(i) Is on a registry based upon a final finding of abuse, neglect, or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;~~

~~(ii) Has a founded finding of abuse or neglect of a child that was made against the person, unless the finding was made by child protective services prior to October 1, 1998;~~

~~(iii) Had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;~~

~~(iv) Has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult;~~

~~(v) Was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;~~

~~(vi) Was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;~~

~~(vii) A court has issued a permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or~~

~~(viii) Is a registered sex offender.~~

~~(2) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).~~

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

**WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.** (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) Failed or refused to comply with the:

(i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and by regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and medicaid regulations, including 42 C.F.R., Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol ~~((or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830, unless subsection (3)(c) applies)), unless automatically disqualifying under chapter 388-113 WAC;~~

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) ~~((Been convicted of a felony or other))~~ Has a conviction or pending charge for a crime that ((would) is not ((be)) automatically disqualifying under ((RCW 74.39A.050(8) or this)) chapter 388-113 WAC, if the conviction or pending charge reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Had a sanction, corrective, or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(k) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

(l) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

(m) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

(n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

(o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

(p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

(q) Discriminated against medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has ~~((been:~~

~~(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830 unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:~~

~~(i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;~~

~~(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed;~~

~~(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830 unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:~~

~~(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;~~

~~(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or~~

~~(iii) Forgery, or the same offense as it may hereafter be renamed, and five or more years have passed.~~

~~(c) Convicted of:~~

~~(i) Violation of the Imitation Controlled Substances Act (VICSA);~~

~~(ii) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(d) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(e) Convicted of criminal mistreatment;~~

~~(f) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;~~

~~(g) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;~~

~~(h) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;~~

~~(i) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor;~~

~~(j) Found to have abused or neglected a child, and the finding is:~~

~~(i) Listed on the department's background check central unit (BCCU) report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998.~~

~~(k) Found to have abandoned, abused, neglected, or financially exploited a vulnerable adult, and the finding is:~~

~~(i) Listed on any registry, including the department registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.);~~

(a) A conviction or pending charge for a crime that is automatically disqualifying under chapter 388-113 WAC; or

(b) One or more of the disqualifying negative actions listed under WAC 388-97-1820.

## WSR 14-14-028

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 24, 2014, 7:50 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider for home and community services, residential services, and developmental disabilities administration (DDA) while also clarifying background check requirements.

This consolidated locations and list provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language, and help preserve the health and safety of our clients.

DDA and the aging and long-term support administration have coordinated these changes with the DSHS background check central unit.

Other housekeeping changes such as WAC and RCW references, names of organizations etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10000, 388-76-10120, 388-76-10125, 388-76-10130, 388-76-10135, 388-76-10145, 388-76-10150, 388-76-10163, 388-76-101631, 388-76-101632, 388-76-10164, 388-76-10166, 388-76-10174, 388-76-10175, 388-76-10180, 388-76-10181, and 388-76-10955.

Statutory Authority for Adoption: RCW 74.39A.056 and chapters 74.34, 18.20 RCW.

Adopted under notice filed as WSR 14-05-075 on February 18, 2014.

A final cost-benefit analysis is available by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 17, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley  
Secretary



AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

**WAC 388-76-10000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

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

**"Adult family home"** means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

**"Affiliated with an applicant"** means any person listed on the application as a partner, officer, director, resident man-

ager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

**"Applicant"** means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

**"Capacity"** means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

**"Caregiver"** means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

**"Dementia"** is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

**"Department case manager"** means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

**"Developmental disability"** means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

**"Direct supervision"** means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

**"Domestic partners"** means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

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

**"Financial solvency"** means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

**"Entity representative"** means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

**"Home"** means adult family home.

**"Imminent danger"** or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

**"Indirect supervision"** means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

**"Inspection"** means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

**"Management agreement"** means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

**"Mandated reporter"** means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Boarding homes), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

**"Medical device"** as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

**"Medication administration"** means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

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

**"Mental illness"** is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

**"Minimal"** means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

**"Moderate"** means violations that result in negative outcome and actual or potential harm for a resident.

**"Multiple facility provider"** means a provider who is licensed to operate more than one adult family home.

**"Neglect"** means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or
- (2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Nurse delegation"** means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

**"Over-the-counter medication"** is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

**"Permanent restraining order"** means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

**"Personal care services"** means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

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

**"Placement agency"** is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services

or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

**"Practitioner"** includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

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

**"Provider"** means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

**"Recurring" or "repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

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

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

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

**"Resident"** means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

**"Resident manager"** means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

**"Serious"** means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; ~~((and or))~~ and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

**"Severity"** means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

**"Significant change"** means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

**"Special care"** means care beyond personal care services as defined in this section.

**"Staff"** means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

**"Temporary restraining order"** means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

**"Uncorrected"** means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

**"Unsupervised"** means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

**"Usable floor space"** means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules(( )); and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

**"Water hazard"** means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

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

**"Vulnerable adult"** includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW;

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

(4) Admitted to any facility;

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

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10120 License—Must be denied.** The adult family home license will not be granted if:

(1) The applicant has not successfully completed a department-approved forty-eight hour adult family home administration and business planning class except as provided in WAC 388-76-10064.

(2) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice of the department's initiation of a denial, suspension, nonrenewal or revocation of the license.

(3) The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has prior violations of federal or state laws or regulations relating to residential care facilities resulting in revocation, suspension, or nonrenewal of a license or contract with the department within the past ten years;

(c) Has ~~(been convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime under subsections (3)(d), (e), (f), (g) or (h), below;~~

~~(d) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since conviction;~~

~~(e) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years have passed since conviction;~~

~~(f) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs, under one of the following laws:~~

~~(i) Violation of the Imitation Controlled Substance Act (VICSA);~~

~~(ii) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(g) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(h) Has been convicted of criminal mistreatment;~~

~~(i) Has been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;~~

~~(j) Has a finding of abuse or neglect of a child that is:~~

~~(i) Listed on the department's background check central unit report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998.~~

~~(k) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department's registry;~~

~~(ii) Listed on the department's background check central unit report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003)) a conviction or pending criminal charge for a crime that is automatically disqualifying under chapter 388-113 WAC;~~

~~(d) Has one or more of the following disqualifying negative actions:~~

~~(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;~~

~~(ii) The person is a registered sex offender;~~

~~(iii) The person is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;~~

~~(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;~~

~~(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;~~

~~(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;~~

~~(vii) The individual has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or~~

~~(viii) The individual has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.~~

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**WAC 388-76-10125 License—May be denied.** The adult family home license may be denied if the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

- (1) ~~((Has been convicted of:
 
  - (a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;
  - (b) Forgery or theft in the second degree and more than five years has passed since conviction;
  - (c) Any felony))
 Has any conviction or pending criminal charge for crime that is not automatically disqualifying under chapter 388-113 WAC, but that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; ~~((or~~
  - (d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.))
 (2) Has abused, neglected, or financially exploited a vulnerable adult, unless denial is required under WAC 388-76-10120.
  - (3) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;
    - ~~((3) Has committed an act of domestic violence toward a family or household member.))~~
  - (4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;
  - (5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed. In connection with the operation of any facility for the care of children or vulnerable adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;
    - (6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;
    - (7) Has been enjoined from operating a facility for the care and services of children or adults;
    - (8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;
    - (9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;
    - (10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;
    - (11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a~~

license or any data attached to the application, or in any matter involving the department;

- (12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;
- (13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;
- (14) Failed or refused to comply with:
  - (a) A condition imposed on a license or a stop placement order; or
  - (b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.
- (15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;
- (16) Exceeded licensed capacity in the operation of an adult family home;
- (17) Operated a facility for the care of children or adults without a license or with a revoked license;
- (18) ~~((In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;~~
  - ~~(19))~~ When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;
  - ~~((20))~~ (19) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;
  - ~~((21))~~ (20) Has failed to meet personal financial obligations;
  - ~~((22))~~ (21) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;
  - ~~((23))~~ (22) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or
    - ~~((24))~~ (23) The home is currently licensed:
      - (a) As ~~((a boarding home))~~ an assisted living facility; or
      - (b) To provide care for children in the same home, unless:
        - (i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;
        - (ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and
        - (iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

~~((25))~~ (24) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090.

(25) Has demonstrated any other factors that give evidence the individual lacks the appropriate character, competence, and suitability to provide care or services to vulnerable adults.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

**WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager.** The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

- (1) Be twenty-one years of age or older;
- (2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:
  - (a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;
  - (b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;
  - (c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;
  - (d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;
  - (e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or
  - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.
- (3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112 WAC;
- (4) Have good moral and responsible character and reputation;
- (5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.
- (6) Assure that there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line.
- (7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:

- (a) Physician licensed under chapter 18.71 RCW;
  - (b) Osteopathic physician licensed under chapter 18.57 RCW;
  - (c) Osteopathic physician assistant licensed under chapter 18.57A RCW;
  - (d) Physician assistant licensed under chapter 18.71A RCW;
  - (e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW.
- (9) Have no disqualifying criminal convictions (~~(listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation)~~) or pending criminal charges under chapter 388-113 WAC;
- (10) Have none of the negative actions listed in WAC 388-76-10180;
- (11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and
- ~~((11))~~ (12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10135 Qualifications—Caregiver.** The adult family home must ensure each caregiver has the following minimum qualifications:

- (1) Be eighteen years of age or older;
- (2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;
- (3) Have basic communication skills to:
  - (a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;
  - (b) Understand and speak English well enough to:
    - (i) Respond appropriately to emergency situations; and
    - (ii) Read, understand and implement resident negotiated care plans.
- (4) Completion of the training requirements that were in effect on the date they were hired including requirements described in chapter 388-112 WAC;
- (5) Have no disqualifying criminal convictions (~~(listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation)~~) or pending criminal charges under chapter 388-113 WAC;
- (6) Have none of the negative actions listed in WAC 388-76-10180.
- (7) Have a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and
- ~~((7))~~ (8) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager.** The adult family home must ensure that a licensed nurse who is a provider, entity representative or resident manager has:

(1) ~~((No criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation))~~ Meets all of the minimum qualifications for providers, entity representatives or resident managers listed in WAC 388-76-10130; and

(2) ~~((A))~~ Has a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10150 Qualifications—Assessor.** (1) The adult family home must ensure that an assessor, except for an authorized department case manager, performing an assessment for any resident meets the following qualifications:

(a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or

(b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or

(c) Have a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience; or

(d) Is currently a licensed physician, including an osteopathic physician, in Washington state.

(2) The home must ensure that an assessor who meets the requirements of subsections (1)(a), (b), or (c) of this section does not have unsupervised access to any resident unless the assessor has:

(a) A current criminal history background check; and

(b) ~~Has ((not been convicted of any crime listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation))~~ no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC; and

(c) None of the negative actions listed in WAC 388-76-10180 are applicable to the assessor.

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

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10163 Background checks—Process—Background authorization form.** Before the adult family home employs, directly or by contract, a resident manager, entity representative, caregiver, or noncaregiving staff, or accepts as a caregiver any volunteer or student, or allows a

household member over the age of eleven unsupervised access to residents, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) ~~((Send the completed))~~ Submit form to the department's background check central unit, including any additional documentation and information requested by the department.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-101631 Background checks—Washington state name and date of birth background check.**

~~((After receiving the results of the Washington state name and date of birth background check, the adult family home must))~~ If the results of the Washington state name and date of birth background check indicate an individual has a disqualifying criminal conviction or a pending charge for a disqualifying crime under chapter 388-113 WAC, or a disqualifying negative action listed in WAC 388-76-10180 then:

(1) ~~((Not employ, directly or by contract,))~~ If the individual is a caregiver, entity representative or resident manager ((convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180-)), the adult family home must not employ the individual, either directly or by contract; and

(2) ~~((Not allow))~~ If the individual is a household member over the age of eleven, volunteer, student or noncaregiving staff then the adult family home must not allow the individual to have unsupervised access to residents ((if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180)).

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-101632 Background checks—National fingerprint background check.** (1) Individuals specified in WAC 388-76-10161(2) who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results letter of the national fingerprint background check the adult family home must not employ, directly or by contract, a caregiver, entity representative or resident manager who has been convicted of a disqualifying crime or who ~~((has))~~:

(i) Has a disqualifying ((finding)) conviction or pending charge under chapter 388-113 WAC ((388-76-10180)); or

(ii) Has a disqualifying negative action listed in WAC 388-76-10180.

(3) The provider may accept a copy of a national fingerprint background check result letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint background check through the background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10164 Background checks—Results—Duty to inform.** (1) After receiving the results of the Washington state name and date of birth background check, the adult family home must:

(a) Inform the person of the results of the background checks;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a disqualifying criminal conviction ((record)) or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-76-10180.

(2) After receiving a copy of the results letter of the national fingerprint background check, the adult family home must inform the person:

(a) ~~((Inform the person of))~~ Of the ((results of the)) background check result letter; and

(b) Inform the person that they may request a copy of the results of the national fingerprint background check result letter; and ~~((that))~~

~~(c) That~~ any additional information requested can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10166 Background checks—Household members, noncaregiving and unpaid staff—Unsupervised access.** (1) The adult family home must not allow individuals specified in WAC 388-76-10161(3) to have unsupervised access to residents until the home receives results of the Washington state name and date of birth background check from the department ~~((verifying that the person does not have convictions or findings described in WAC 388-76-10180)).~~

(2) If ~~((any))~~ the background check results show that ~~((the person))~~ an individual specified in WAC 388-76-10161 has a criminal conviction or ((finding)) pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC ((388-76-10180)), then the adult family home must:

(a) Determine whether or not the person has the character, competence and suitability to have unsupervised access to residents; and

(b) Document in writing the basis for making the decision.

(c) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

**WAC 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint-based background check may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, ~~((a boarding home))~~ an assisted living facility licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the person was last employed at a licensed health care facility and the date of the person's current employment application; and

(c) The background check is no more than two years old.

(d) The adult family home has no reason to believe the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action listed in WAC 388-76-10180.

(2) If background check information is shared, the health care facility employing the subject of the check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in WAC 388-76-10180 since the completion date of the most recent background check.

(3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying criminal conviction or ((finding as described in WAC 388-76-10180)) pending charge for a disqualifying crime under chapter 388-113 WAC, or negative action listed in WAC 388-76-10180, after the completion date of their most recent background check:

(a) Cannot rely on the applicant's previous employer's background check information; and

(b) Must request a new background check as required by this chapter.

(4) Health care facilities that share background check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(5) Health care facilities must send and receive the background check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.



AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.** An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

(1) Submits the Washington state name and date of birth background check no later than one business day after conditional employment;

(2) Requires the individual to sign a disclosure statement and the individual denies having ~~((been convicted of))~~ a disqualifying ~~((crime))~~ criminal conviction or pending charge for a disqualifying ((finding)) crime under chapter 388-113 WAC, or a negative action that is listed in WAC ((388-76-10180)) 388-76-10180;

(3) Does not allow the individual to have unsupervised access to any resident;

(4) Ensures direct supervision, as defined in WAC 388-76-10000, of the individual; and

(5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10180 Background checks—Employment—Disqualifying information. Disqualifying negative actions.** (1) The adult family home must not employ ~~((anyone)), directly or by contract, ((who is listed in WAC 388-76-10161(2)))~~ a caregiver, entity representative, or resident manager if ((the individual has any of the convictions, history, or findings, described below)):

~~((1))~~ Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(2) Has been convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime under subsections (3), (4), (5), (6), or (7), below;

(3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since conviction;

(4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years have passed since conviction;

(5) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs under one of the following laws:

(a) Violation of the Imitation Controlled Substance Act (VICSA);

(b) Violation of the Uniform Controlled Substances Act (VUCSA);

~~(c) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(d) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(7) Has been convicted of criminal mistreatment;~~

~~(8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;~~

~~(9) Has a finding of abuse or neglect of a child that is:~~

~~(a) Listed on the department's background check central unit report; or~~

~~(b) Disclosed by the individual, except for findings made before December, 1998.~~

~~(10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(a) Listed on any registry, including the department's registry;~~

~~(b) Listed on the department's background check central unit report; or~~

~~(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.~~

~~(11) Pending the results of the background checks, conditional or provisional hiring may be allowed under WAC 388-76-10175 and 388-76-10176.)~~

~~(a) The caregiver, entity representative or resident manager will have unsupervised access to vulnerable adults, as defined in RCW 43.43.830; and either:~~

~~(b) The caregiver, entity representative or resident manager has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC; or~~

~~(c) The caregiver, entity representative, or resident manager has one or more of the following negative actions:~~

~~(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;~~

~~(ii) The individual is a registered sex offender;~~

~~(iii) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;~~

~~(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;~~

~~(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;~~

~~(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;~~

(vii) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10181 Background checks—Employment—Nondisqualifying information.** (1) If any background check results show that an employee or prospective employee has a criminal conviction or ((finding)) pending charge for a crime that is not ((automatically)) disqualifying under chapter 388-113 WAC ((388-76-10180)), then the adult family home must:

(a) Determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care; and

(b) Document in writing the basis for making the decision, and make it available to the department upon request.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

**WAC 388-76-10955 Remedies—Department must impose remedies.** (1) The department must impose a remedy or remedies if the department substantiates a complaint involving harm to a resident and violation of an applicable law or rule.

(2) The department must impose a remedy or remedies if the department substantiates, after licensure, that it has been less than twenty years since the adult family home voluntarily surrendered or relinquished an adult family home license in lieu of department initiated denial, suspension, nonrenewal, or revocation of a license.

(3) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

~~(a) ((Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;~~

~~(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since conviction;~~

~~(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree and more than three years have~~

~~passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years have passed since conviction;~~

~~(d) Has been convicted of the manufacture or delivery of drugs or of possession with intent to manufacture or deliver drugs, under one of the following laws:~~

~~(i) Violation of the Imitation Controlled Substance Act (VICSA);~~

~~(ii) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(e) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(f) Has been convicted of criminal mistreatment;~~

~~(g) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.~~

~~(h) Has a finding of abuse or neglect of a child that is:~~

~~(i) Listed on the department's background check central unit report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998.~~

~~(i) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department's registry;~~

~~(ii) Listed on the department's background check central unit report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.~~

~~(j) Has been convicted of a crime in any federal or state court, and the department determines that the conviction is equivalent to a conviction under subsection (3)(b), (c), (d), (e) or (f), above.)~~ (a) A court has issued a permanent restraining order or order of protection either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(b) The individual is a registered sex offender;

(c) The individual is on a registry based upon a final finding of abuse, neglect or, financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(d) A founded finding of abuse or neglect of a child was made against the individual, unless the finding was made by child protective services prior to October 1, 1998;

(e) The individual has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(f) The individual has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

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

**WSR 14-14-029**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed June 24, 2014, 7:52 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider in home and community services, residential services, and developmental disabilities administration (DDA) contracted or licensed setting while also clarifying background check requirements. The amendments in this rule making include: Aligning disqualifying criminal history standards with the aging and long-term support administration (AL TSA); moving all DDA background check related rules from the background check central unit (BCCU) into DDA program WAC; and creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

Locating the disqualifying rules in a consolidated chapter provide better clarity and understanding for the public and contracted entities, reduce duplicative rules and consequently the volume of rules, and help preserve the health and safety of our clients.

DDA and AL TSA have coordinated these changes with the DSHS BCCU.

Other housekeeping changes such as WAC and RCW references, names of organizations, etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-335, 388-825-375, 388-825-380, 388-825-385, 388-829A-290, 388-829A-300, 388-829C-460, and 388-829C-470.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710.

Adopted under notice filed as WSR 14-05-070 on February 18, 2014.

A final cost-benefit analysis is available by contacting Alan McMullen, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, e-mail [mcmular@dshs.wa.gov](mailto:mcmular@dshs.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 27, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 27, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley  
Secretary

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency ((provider)) licensed by the department of health?**

(1) In order to be a long-term care worker employed by a home care agency ((provider)), a person must:

(a) ((complete)) Complete the ((department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint based background check if the home care agency provider has lived in the state of Washington less than three years)) required DSHS form authorizing a background check.

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.

(c) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. (Preliminary results may require a thumb print for identification purposes); and

(d) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and listed in WAC 388-71-0540; or

(b) Should or should not be employed based on his or her character, competence, and/or suitability.

(3) For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care services?** (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant (~~per WAC 388-478-0030~~);

(b) Is providing services under this chapter to ~~(their)~~ his or her natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of ~~(a)~~, or has a pending charge that is a disqualifying crime, under ~~(RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830)~~ chapter 388-113 WAC;

(d) Has ~~(abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;~~

~~(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations)~~ been subject to a negative action described in WAC 388-825-0640;

~~((f))~~ (e) Does not successfully complete the training requirements within the time limits required in chapter 388-71 WAC ~~(388-71-05665 through 388-71-05909)~~; or

~~((g))~~ (f) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(2) In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380 ~~(7)~~ and 388-825-385 ~~(and 388-825-390)~~.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-380 When ~~(can)~~ may the department reject the client's choice of an individual respite care, attendant care or personal care provider?** The department may reject a client's request to have a family member or other person serve as his or her individual respite care, attendant care or personal care provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

(1) Evidence of alcohol or drug abuse;

(2) Evidence of a conviction, pending charge, or negative action described in WAC 388-825-0640.

(3) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is automatically disqualifying under RCW 43.43.830 ~~(and)~~, 43.43.842 or chapter 388-113 WAC);

~~((3))~~ (4) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;

~~((4))~~ (5) Other employment or responsibilities that prevent or interfere with the provision of required services;

~~((5))~~ (6) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

**WAC 388-825-385 When ~~(can)~~ may the department terminate ~~(or summarily suspend)~~ an individual respite care, attendant care, or personal care provider's contract?** The department may take action to terminate an individual respite care, attendant care, or personal care provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. ~~(The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy.)~~ Examples of circumstances indicating jeopardy to the client could include, without limitation:

(1) ~~(Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult)~~ Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-0640;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or

(7) Failure to respond appropriately to emergencies.

(8) The department, AAA or department designee may also terminate an individual provider's contract for reasons described under WAC 388-71-0551.

### Developmental Disabilities Administration Background Check Requirements

#### NEW SECTION

**WAC 388-825-0600 What definitions apply to WAC 388-825-0600 through 388-825-0690 of this chapter?** The following definitions apply to WAC 388-825-0600 through 388-825-0690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"Authorized" or "authorization" means not disqualified by the department to have unsupervised access to chil-

dren and individuals with a developmental disability. This term applies to persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.

**"Background check central unit (BCCU)"** means the DSHS program responsible for conducting background checks for DSHS administrations.

**"Certification"** means department approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements.

**"Civil adjudication proceeding"** is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

**"Community residential service businesses"** include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children.

**"DDA"** means the developmental disabilities administration within the department of social and health services (DSHS).

**"Department"** means the department of social and health services (DSHS).

**"Disqualified"** means that the results of an individual's background check disqualifies him or her from a position which will or may involve unsupervised access to individuals with developmental disabilities.

**"Entity"** means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

**"Hire"** means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.

**"Individual provider"** has the same meaning as defined in RCW 74.39A.240.

**"Individuals with a developmental disability"** means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.

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

**"Permanent restraining order"** means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.

**"Qualified"** means an individual can be hired into a position that includes unsupervised access to individuals with developmental disabilities because the results of his or her background check are not disqualifying.

**"Temporary restraining order"** means restraining order/order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing."

**"Unsupervised"** means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the individual with a developmental disability to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

**"WSP"** refers to the Washington state patrol.

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

#### NEW SECTION

**WAC 388-825-0605 Why are background checks done?** The department requires background checks to be run to help safeguard the health, safety and well-being of individuals with a developmental disability and to comply with the law.

#### NEW SECTION

**WAC 388-825-0610 Who must have a Washington state and/or federal background check?** (1) DDA requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who needs to be qualified by DDA to have unsupervised access to individuals with developmental disabilities.

(2) Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks.

#### NEW SECTION

**WAC 388-825-0615 What is the process for obtaining a background check?** (1) Long-term care workers, including individual providers, undergoing a background check for initial hire or initial contract, after January 7, 2012, will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in WAC 388-825-0615 (1)(a) and (b). Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.

(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016, community residential service businesses as defined above will be screened as described in WAC 388-825-0615(1).

(2) For adult family homes refer to chapter 388-76 WAC, Adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, Assisted living licensing rules.

#### NEW SECTION

**WAC 388-825-0620 Who must have background check renewals?** DDA requires rechecks for all DDA contracted providers and their employees at least every three years or more frequently if required by program rule. Rechecks will be conducted as follows:

(1) Individuals who have continuously resided in Washington State for the past three consecutive years will be screened through a state name and date of birth background check.

(2) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.

#### NEW SECTION

**WAC 388-825-0625 What happens if I do not comply with the background check requirement?** The department will deny, suspend or revoke your license, contract, certification, or authorization to care for individuals with a developmental disability, if you or someone working within your program who has unsupervised access does not comply with the department's requirement for a background check.

#### NEW SECTION

**WAC 388-825-0630 What does the background check cover?** (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC 388-825-0615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

#### NEW SECTION

**WAC 388-825-0635 Who pays for the background check?** DDA pays for background checks, including fingerprint-based background checks, for individuals seeking authorization to provide services to clients of DDA.

#### NEW SECTION

**WAC 388-825-0640 What criminal convictions, pending crimes or negative actions will prohibit me from being contracted or authorized to work in a capacity that may involve unsupervised access to individuals with a developmental disability?** (1) Criminal convictions and pending charges that are disqualifying are listed in chapter 388-113 WAC.

(2) The following negative actions will automatically disqualify an individual from having unsupervised access to individuals with a developmental disability:

(a) A final finding of abuse, neglect, financial exploitation or abandonment of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003.

(b) A final finding of abuse or neglect by child protective services, unless the finding was made prior to October 1, 1998.

(c) A court ordered permanent restraining order/order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult.

(d) Registered sex offender status.

#### NEW SECTION

**WAC 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when his or her background check reveals a conviction, pending charge or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC 388-825-0640?** An individual with convictions, pending charges or negative actions that are not disqualifying per chapter 388-113 WAC or WAC 388-825-0640 may work in an unsupervised capacity with individuals with developmental disabilities only after a character, competence and suitability review has been conducted as required by WAC 388-825-065.

#### NEW SECTION

**WAC 388-825-0650 What does a character, competence and suitability review include?** The contractor, entity, or hiring authority must review an individual's background to determine character, competence and suitability to have unsupervised access to individuals with a developmental disability. In this review, the contractor, entity or hiring authority must consider the following factors:

(1) The amount of time that has passed since you were convicted or were subject to a negative action;

(2) The seriousness of the crime or action that led to the conviction or finding;

(3) The number and types of other convictions in your background;

(4) Your age at the time of conviction;

(5) Documentation indicating you have successfully completed all court-ordered programs and restitution;

(6) Your behavior since the conviction; and

(7) The vulnerability of those that would be under your care.

#### NEW SECTION

**WAC 388-825-0655 How will I know if I have been disqualified by the background check?** (1) The department will notify you, and the care provider, the employer, or the licensor if you have been disqualified by the background check. The notice will be in writing and will include any laws and rules that require disqualification.

(2) If the department sends you a notice of disqualification, you will not receive a license, contract, certification, or be authorized to have unsupervised access to individuals with a developmental disability.

#### NEW SECTION

**WAC 388-825-0660 May I appeal the department's decision to deny me a contract or authorization based on the results of the background check?** (1) No, prospective volunteers, interns, contractors, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to individuals with a developmental disability.

(2) The employer or prospective employer cannot contest the department's decision on your behalf.

#### NEW SECTION

**WAC 388-825-0665 Is the background check information released to my employer or prospective employer?** (1) The department will release the source of the disqualifying crime or negative action and WSP rap sheet to authorized requesters as allowed by state law. The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.56 RCW) when releasing any information.

(2) National fingerprint-based rap sheets may not be released to third parties outside of DSHS and must be requested directly from BCCU by the applicant/employee.

#### NEW SECTION

**WAC 388-825-0670 May I receive a copy of my criminal background check results?** (1) The department will provide you a copy of your criminal background check results if you:

(a) Make the request in writing to the department; and

(b) Offer proof of identity, such as picture identification.

(2) A copy of your WSP criminal background check results may also be obtained from the Washington state patrol (chapter 10.97 RCW).

#### NEW SECTION

**WAC 388-825-0675 What is the purpose of the one hundred twenty-day provisional hire?** The one hundred twenty-day provisional hire allows an employee or contractor to have unsupervised access to individuals with a developmental disability on a provisional basis pending the results of his or her national fingerprint based background check.

#### NEW SECTION

**WAC 388-825-0680 Who is responsible for approving the one hundred twenty-day provisional hire?** The agency, entity or hiring individual is responsible for approving individuals for the one hundred twenty-day provisional hire.

#### NEW SECTION

**WAC 388-825-0685 When are individuals eligible for the one hundred twenty-day provisional hire?** All DDA service providers working in an unsupervised capacity, including long-term care workers as defined in chapter 74.39A RCW, are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as the worker is not disqualified as a result of the initial name and date of birth background check.

#### NEW SECTION

**WAC 388-825-0690 When does the one hundred twenty-day provisional hire begin?** The one hundred twenty-day provisional hire may begin from either:

(1) The date of hire of an individual; or

(2) After completion of a state background check on an individual.

The agency, entity, or hiring individual makes this decision.

AMENDATORY SECTION (Amending WSR 07-16-101, filed 7/31/07, effective 9/1/07)

**WAC 388-829A-290 When may ~~((DDD))~~ DDA ~~((not))~~ decline to authorize payment or terminate a contract for alternative living services? ~~((DDD))~~ DDA may not authorize payment or may terminate a contract for the services of an alternative living provider, when that provider:**

(1) Is no longer the client's ~~((choice of))~~ provider ~~((of choice-));~~

(2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. ~~((DDD))~~ DDA may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy~~((:));~~

(3) Is unable to clear a background check required by RCW 43.20A.710~~((:));~~

(4) Has been convicted of ~~((a))~~, or has a pending charge for a crime that is disqualifying ~~((crime-))~~ under ~~((RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830-))~~ chapter 388-113 WAC:

(5) Has ~~((abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW.))~~ been subject to a negative action described in WAC 388-825-0640.

(6) ~~((Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations.))~~

~~((7))~~ Does not successfully complete the training requirements within the time limits required in this chapter~~((:))~~;

~~((8))~~ (7) Does not complete the corrective action within the agreed upon time frame~~((:))~~; or

~~((9))~~ (8) Fails to comply with the requirements of this chapter, or the ~~((DDD))~~ DDA alternative living contract.

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

AMENDATORY SECTION (Amending WSR 07-16-101, filed 7/31/07, effective 9/1/07)

**WAC 388-829A-300 When must ~~((DDD))~~ DDA deny the client's choice of an alternative living provider?** ~~((DDD))~~ DDA must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

(1) The person is the client's spouse, ~~((under))~~ as required by 42 C.F.R. 441.360(g)~~((:))~~;

(2) The person is the client's natural/step/adoptive parent~~((:))~~;

(3) The person is the client's court-appointed legal representative~~((:))~~; or

(4) ~~((DDD))~~ DDA has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:

(a) Evidence of alcohol or drug abuse;

(b) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under ~~((RCW 43.43.830 and 43.43.842))~~ chapter 388-113 WAC;

(c) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;

(d) Other employment or responsibilities that prevent or interfere with the provision of required services;

(e) A reported history of mismanagement of client funds or DSHS contract violations; or

(f) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's ISP.

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

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

**WAC 388-829C-460 When may ~~((DDD))~~ DDA stop the authorization for payment or terminate a contract for companion home services?** ~~((DDD))~~ DDA may stop the authorization for payment or terminate a contract for the services of a companion home provider, when that provider:

(1) Is no longer the client's choice of provider~~((:))~~;

(2) Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy~~((:))~~;

(3) Is unable to clear a background check or other individuals living in the companion home are unable to clear a background check required by RCW 43.20A.710~~((:))~~;

(4) Has been convicted of ~~((a))~~, or has a pending charge for a crime that is disqualifying ~~((crime,))~~ under ~~((RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830.))~~ chapter 388-113 WAC;

(5) Has ~~((abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW.))~~

~~((Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations.))~~ been subject to a negative action described in WAC 388-825-0640.

~~((7))~~ (6) Does not successfully complete the training requirements within the time limits required in this chapter~~((:))~~;

~~((8))~~ (7) Does not complete the corrective actions within the agreed upon time frame~~((:))~~; or

~~((9))~~ (8) Fails to comply with the requirements of this chapter or the companion home contract.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

**WAC 388-829C-470 When may ~~((DDD))~~ DDA deny the client's choice of a companion home provider?** ~~((DDD))~~ DDA must deny a client's request to have a certain provider and must not enter into a contract with the person when any of the following exist:

(1) The person is the client's spouse, ~~((under))~~ as required by 42 C.F.R. 441.360(g)~~((:))~~;

(2) The person is the client's natural/step/adoptive parent~~((:))~~;

(3) The person is the client's court-appointed legal representative, unless the provider was contracted and paid to provide companion home services before February 2005~~((:))~~; or

(4) ~~((DDD))~~ DDA has a reasonable, good faith belief that the provider will be unable to meet the client's needs. Examples of a provider's inability to meet the client's needs may include:

(a) Evidence of alcohol or drug abuse;

(b) Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-0640;

(c) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is dis-



qualifying under RCW 43.43.830 ~~((and))~~, 43.43.842, or chapter 388-113 WAC);

~~((e))~~ (d) A report from the client's health care provider or another knowledgeable person that the requested provider lacks the ability or willingness to provide adequate support;

~~((f))~~ (e) Other employment or responsibilities that prevent or interfere with the provision of required services; or

~~((g))~~ (f) A reported history of mismanagement of client funds or DSHS contract violations.

**WSR 14-15-006**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-157—Filed July 2, 2014, 3:26 p.m., effective August 2, 2014]

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

Purpose: This rule proposal makes changes to the Puget Sound commercial and recreational smelt rules. The proposal closes Sundays to commercial fishing, enacts a sixty thousand pound annual harvest quota on the commercial fishery, closes currently inactive commercial fishery gear types, and imposes a nighttime closure (10 p.m.-6 a.m.) on the commercial and recreational fisheries during open periods.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing on April 12, 2014. The proposed changes were adopted by the commission at the June 13, 2014, commission meeting. The changes will provide additional protection from harvest to smelt throughout Puget Sound, preserving this natural resource for use by other components of the ecosystem.

Citation of Existing Rules Affected by this Order: Amending WAC 220-49-005, 220-49-011, 220-49-012, 220-49-013, 220-49-056, 220-49-057, 220-56-107, and 220-56-270.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 14-06-110 on March 5, 2014.

Changes Other than Editing from Proposed to Adopted Version: The commission chose Option 2 as the preferred option, so Option 3 as filed in WSR 14-06-110 was not adopted and is therefore not part of this CR-103 filing. The proposed version did not include an explicit commercial harvest quota of sixty thousand pounds. This quota was added by the commission prior to adopting the changes and ensures harvest levels will remain consistent with conservative commission policy recommendations in the future.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

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

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

Date Adopted: June 13, 2014.

Miranda Wecker, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-49-005 Puget Sound forage fish**~~((Definitions))~~ **commercial fisheries—General provisions.** (1) It is unlawful to fish for or possess Puget Sound forage fish taken for commercial purposes except at the times, during the seasons and using the gear provided for in this chapter.

(2) It is unlawful to fish for or possess candlefish taken for commercial purposes. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) The total annual quota for the Puget Sound smelt commercial fishery may not exceed sixty thousand pounds.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-49-011 Puget Sound herring, anchovy and smelt**~~((fishing—Lawful gear))~~ **commercial fisheries—Drag seine.** (1) ~~((Lawful))~~ Gear requirements: It is unlawful to operate drag seine gear in the Puget Sound herring, anchovy and smelt commercial fisheries ~~((shall not))~~ that exceeds 350 feet in length or contains meshes less than 1/2 inch stretch measure. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(2) Licensing:

(a) A food fish drag seine fishery license is ~~((a license))~~ required to operate ~~((the))~~ drag seine gear ~~((provided for in this section))~~ in the Puget Sound smelt and anchovy commercial fisheries and allows the operator to retain smelt and anchovy.

(b) A herring drag seine fishery license is ~~((a license))~~ required to operate ~~((the))~~ drag seine gear ~~((provided for in this section))~~ in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating gear and retaining smelt, anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

**WAC 220-49-012 Puget Sound herring**~~((;))~~ **and anchovy** ~~((and smelt fishing))~~ **commercial fisheries—Purse seine.** (1) ~~((Lawful))~~ Gear requirements:

(a) It is unlawful to harvest smelt using purse seine gear in Puget Sound.

(b) It is unlawful to operate purse seine gear in the Puget Sound herring and anchovy fisheries (~~shall not~~) that exceeds 600 feet in length or contains meshes less than 1/2-inch stretch measure, unless otherwise authorized by permit from the director.

(2) (~~Lawful purse seine gear in the Puget Sound smelt fishery shall not exceed 350 feet in length nor contain meshes less than 1/2-inch stretch measure.~~) A violation of subsection (1) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) Licensing:

(a) A baitfish purse seine fishery license is (~~a license~~) required to operate (~~the~~) purse seine gear (~~provided for in this section~~) in the Puget Sound anchovy commercial fishery and allows the operator to retain (~~smelt and~~) anchovy.

(b) A herring purse seine fishery license is (~~a license~~) required to operate (~~the~~) purse seine gear (~~provided for in this section~~) in the Puget Sound herring fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating purse seine gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 02-08-026, filed 3/27/02, effective 4/27/02)

**WAC 220-49-013 Puget Sound herring(~~(s)~~) and anchovy (~~and smelt fishing~~) commercial fisheries—Dip bag net.** (1) (~~Lawful~~) Gear requirements:

(a) It is unlawful to harvest smelt using dip bag net gear in Puget Sound.

(b) It is unlawful to operate dip bag net gear in the Puget Sound herring and anchovy fisheries (~~shall not~~) that exceeds 18 square feet. (~~Lawful dip bag net gear in the Puget Sound smelt fishery shall not exceed 36 inches across the frame.~~)

(c) It is unlawful to operate a dip net from a vessel under power, and it is unlawful to operate more than one dip net at one time.

(2) A violation of subsection (1) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(3) Licensing:

(a) (~~A smelt~~) An anchovy dip bag net fishery license is (~~a license~~) required to operate (~~the~~) dip bag net gear (~~provided for in this section~~) in the Puget Sound anchovy commercial fishery and allows the operator to retain (~~smelt and~~) anchovy.

(b) A herring dip bag net fishery license is (~~a license~~) required to operate (~~the~~) dip bag net gear (~~provided for in this section~~) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating dip bag net gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-098, filed 8/17/04, effective 9/17/04)

**WAC 220-49-056 Puget Sound smelt (~~(fishing)~~) commercial fishery—Seasons.** It (~~shall be~~) is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound except during the following seasons:

(1) Areas 20A and 21A(~~(—)~~): Open July 1 (~~(to)~~) through April 15.

(2) Area 22B(~~(—)~~): Open November 1 (~~(to)~~) through April 15.

(3) Areas 24A, 24B, 24C, and 24D(~~(—)~~): Open July 1 (~~(to)~~) through April 15.

(4) Areas 25A and 25E(~~(—)~~): Open November 1 (~~(to)~~) through April 15.

(5) Areas 26B, 26C, 26D, 28B, and 28C(~~(—)~~): Open October 1 (~~(to)~~) through April 15, except:

(a) Those waters within 200 feet of the shore adjacent to department property at Ross Point in Area 26C are closed to commercial smelt harvest at all times(~~(s)~~); and

(b) Those waters of Sinclair Inlet west of a line due south from the ferry dock in Bremerton are open only (~~(8:04)~~) from 6:01 a.m. Wednesday through (~~(7:59 a.m. Friday)~~) 9:59 p.m. Thursday of each week during the open period.

(6) Areas 27A, 27B and 27C(~~(—)~~): Closed year-round.

(7) Areas 28A and 28D(~~(—)~~): Open September 1 (~~(to)~~) through April 15.

(8) All other areas not specified in this section are open (~~(the entire year)~~) year-round.

(9) A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending WSR 94-12-009, filed 5/19/94, effective 6/19/94)

**WAC 220-49-057 Puget Sound smelt (~~(fishing)~~) commercial fishery—Weekly periods.** It is unlawful to fish for smelt for commercial purposes in Puget Sound except from (~~(8:00 a.m. Sunday to 8:00 a.m. Friday and)~~) 6:00 a.m. to 10:00 p.m. each day Monday through Thursday during open seasons. It is unlawful to possess smelt taken for commercial purposes during (~~(such)~~) a closed (~~(period)~~) time. A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending WSR 06-13-023, filed 6/13/06, effective 7/14/06)

**WAC 220-56-107 Fishing hours.** (1) It is (~~lawful~~) permissible to fish for food fish, game fish, and unclassified fish twenty-four hours per day during any open period for the species, except as otherwise provided. Unless otherwise provided, fishing seasons open at 12:01 a.m. on the first day and end at 11:59 p.m. on the last day of any season.

(2) It is unlawful to fish for the following species during the (~~(time periods indicated)~~) following times and within the following areas:

(a) It is unlawful to fish for salmon at night in the Hood-sport Hatchery zone as provided (~~(for)~~) in WAC 220-56-124.

(b) It is unlawful to fish for any species during night closures as provided (~~for in WAC 220-56-126 and 232-28-619~~) in department rule.

(c) It is unlawful to fish for sturgeon in freshwater, except the Chehalis River, during the night closure provided (~~for~~) in WAC 220-56-282 (6)(k).

(d) It is unlawful to fish for smelt in Puget Sound from 10:00 p.m. to 6:00 a.m. unless the person fishes for smelt using forage fish jig gear.

AMENDATORY SECTION (Amending WSR 11-16-103, filed 8/3/11, effective 9/3/11)

**WAC 220-56-270 Smelt—Areas and seasons.** (1) It is unlawful to fish for or possess Columbia River smelt or eulachon (*Thaleichthys pacificus*).

(2) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is (~~permitted the entire year~~) permissible year-round on Pacific Ocean beaches and in all rivers concurrent with a salmon or gamefish opening, except (~~closed~~) it is unlawful to fish for smelt in the Columbia River and its tributaries.

(3) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is open in Puget Sound and the Strait of Juan de Fuca (~~the entire year~~) year-round except:

(a) Closed weekly from (~~8:00 a.m. Wednesday to 8:00~~) 10:00 p.m. Tuesday to 6:00 a.m. Friday for all (~~types of~~) gear types except forage fish (~~jigger~~) jig gear; and

(b) Closed year-round in Catch Record Card Area 12 for all gear types.

(c) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to possess smelt taken with gear in violation of the provisions of this section. Possession of smelt while using gear in violation of the provisions of this section is a rebuttable presumption that the smelt were taken with such gear. Possession of such smelt is punishable under RCW 77.15.380. Unlawful recreational fishing in the second degree—Penalty, unless the smelt are taken in (~~the~~) an amount(~~s~~) or manner to constitute a violation of RCW 77.15.370. Unlawful recreational fishing in the first degree—Penalty.

### WSR 14-15-008

#### PERMANENT RULES

#### PENINSULA COLLEGE

[Filed July 2, 2014, 3:55 p.m., effective August 2, 2014]

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

Purpose: Current student rights and responsibilities rule is out of date; last agency filing 2001. The new rule is needed to update misconduct and incorporate Title IX and Violence Against Women Act procedural elements. The new rule contains substantial reorganization of existing and new material. For clarity, it is easier to delete the old rule and create a new rule.

Citation of Existing Rules Affected by this Order: Repealing WAC 132A-120-006 through 132A-120-061.

Statutory Authority for Adoption: RCW 28B.50.140(3).

Adopted under notice filed as WSR 14-07-107 on March 19, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 0, Repealed 12.

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

Date Adopted: May 20, 2014.

P. A. Fischer  
Rules Coordinator

### Chapter 132A-125 WAC

#### CODE OF STUDENT RIGHTS AND RESPONSIBILITIES

##### NEW SECTION

**WAC 132A-125-005 Preamble.** Peninsula College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free from disruptive behavior. All members of the college community share in the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the rights, privileges, and property of the college community.

##### NEW SECTION

**WAC 132A-125-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president for student services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

##### NEW SECTION

**WAC 132A-125-015 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

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

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

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

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

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

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

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

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

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

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

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

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

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

dent conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

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

#### NEW SECTION

**WAC 132A-125-020 Statement of jurisdiction.** The Peninsula College code of student rights and responsibilities shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

#### NEW SECTION

**WAC 132A-125-025 Student rights.** The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy that are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

#### NEW SECTION

**WAC 132A-125-030 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct that harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that

person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties including, failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his or her designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

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

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

(c) **Drugs.** The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Tobacco, electronic cigarettes, and related products: The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct that is lewd or obscene.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual Misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 132A-125-035 Disciplinary sanctions—Terms—Conditions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

#### NEW SECTION

##### **WAC 132A-125-040 Initiation of disciplinary action.**

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

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

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

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132A-125-035.

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

#### NEW SECTION

##### **WAC 132A-125-045 Appeal of disciplinary action.**

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

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

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

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

(b) Dismissals; and

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

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings, and dismissals of disciplinary actions are final action and are not subject to appeal.

#### NEW SECTION

**WAC 132A-125-050 Brief adjudicative proceedings authorized.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Parking violations.<sup>1</sup>

(2) Outstanding debts owed by students or employees.

(3) Use of college facilities.

(4) Residency determinations.

(5) Use of library - Fines.

(6) Challenges to contents of education records.

(7) Loss of eligibility for participation in institution sponsored athletic events.

(8) Student conduct appeals involving the following disciplinary actions:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands;

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner, which will bring about a prompt fair resolution of the matter.

<sup>1</sup> Subsections (1) through (7) and (9) of this section are the types of issues that colleges typically use a brief adjudicative proceeding to resolve and are included here merely for illustrative purposes.

#### NEW SECTION

##### **WAC 132A-125-055 Brief adjudicative proceedings—Initial hearing.**

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

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

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

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

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

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

#### NEW SECTION

##### **WAC 132A-125-060 Brief adjudicative proceedings—Review of an initial decision.**

(1) An initial decision



is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

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

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

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

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

#### NEW SECTION

**WAC 132A-125-065 Brief adjudicative proceedings—Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

#### NEW SECTION

**WAC 132A-125-070 Student conduct committee proceedings.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One administrative staff member, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action

may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132A-125-075 Student conduct committee proceedings—Appeals.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

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

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

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

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

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

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

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and

any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

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

#### NEW SECTION

**WAC 132A-125-080 Student conduct committee proceedings—Hearings and presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision;  
or

(b) Serve a decision of default in accordance with RCW 34.05.440.

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

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.-449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

#### NEW SECTION

**WAC 132A-125-085 Student conduct committee proceedings—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The

initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

#### NEW SECTION

**WAC 132A-125-090 Student conduct committee proceedings—Appeal of initial decision** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

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

#### NEW SECTION

**WAC 132A-125-095 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges, for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

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

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

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

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

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

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

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

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

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

#### NEW SECTION

**WAC 132A-125-100 Supplemental sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132A-125-005 through 132A-125-095. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132A-125-105 Supplemental definitions.** The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

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

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

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

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

(c) Sexual harassment;

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

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

#### NEW SECTION

**WAC 132A-125-110 Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall media-

tion be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit, and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

##### **WAC 132A-125-115 Supplemental appeal rights.** (1)

The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132A-125-110(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;

- (b) Disciplinary warning;
- (c) Written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross-examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of his or her appeal rights.

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

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132A-120-006 Student rights.

WAC 132A-120-011 Student responsibilities.  
 WAC 132A-120-016 Hazing.  
 WAC 132A-120-021 Delegation of disciplinary authority.  
 WAC 132A-120-026 Disciplinary action.  
 WAC 132A-120-031 Initiation of discipline.  
 WAC 132A-120-036 Appeals.  
 WAC 132A-120-041 Hearing of appeals.  
 WAC 132A-120-046 Summary suspension and appeals.  
 WAC 132A-120-051 Student grievances.  
 WAC 132A-120-056 Informal grievance procedures.  
 WAC 132A-120-061 Formal grievance procedures.

**WSR 14-15-012**  
**PERMANENT RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2014-03—Filed July 3, 2014, 3:01 p.m., effective July 3, 2014]

Effective Date of Rule: July 3, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This effective date is necessary because of imminent peril to the public health, safety, or welfare of Washington residents, as permitted under RCW 34.05.380 (3)(c). Immediate implementation is necessary in order to avoid delays in review and processing of the 2015 plan filings; these were filed by early May and are already well into the review process.

Purpose: The purpose of this rule is to remove the waiting period for transplant services and treatment. This will bring the essential health benefit rule into compliance with federal law[s] and regulation relating to the treatment of pre-existing conditions and discrimination in providing health insurance coverage.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-878.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.715.

Adopted under notice filed as WSR 14-11-110 on May 21, 2014.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 3, 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 services 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.

### WSR 14-15-013

#### PERMANENT RULES

#### PUBLIC DISCLOSURE COMMISSION

[Filed July 3, 2014, 3:31 p.m., effective August 3, 2014]

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

Purpose: Amendment converts to rule interpretive statements adopted in 2002. The interpretative statements established protocols for the commission to follow when considering repetitive applications for modification of the personal financial disclosure requirements. Converting these long-standing interpretive statements to rule assists the commission in rendering consistent decisions for similar applications

for modification and better advises the public of the commission's opinions, approaches, and likely courses of action.

Citation of Existing Rules Affected by this Order: Amending WAC 390-28-100.

Statutory Authority for Adoption: RCW 42.17A.110 and 42.17A.120.

Adopted under notice filed as WSR 14-10-072 on May 6, 2014.

Changes Other than Editing from Proposed to Adopted Version: The word "when" was replaced with "if" in the new paragraph following WAC 390-28-100 (1)(d)(iii).

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

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

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

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

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

Date Adopted: June 26, 2014.

Lori Anderson  
Communications and  
Training Officer

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

**WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs.** (1) One or more of the following may be considered by the commission as possible qualifications for a reporting modification with respect to the statement of financial affairs, when it is in the public interest:

(a) **Banks, savings accounts, insurance policies - Financial interests.** (~~(A candidate or official)~~) An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1)(b) if:

(i) The financial institution or other entity in which the (~~(candidate or official)~~) applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by (~~(such candidate or official)~~) the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the (~~(candidate or official)~~) applicant; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** (~~(A candidate or official)~~) An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1)(f) and (g), if:

(i) Public disclosure would violate any legally recognized confidential relationship;

(ii) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the (~~(candidate or official)~~) applicant in whole or in part;

(iii) Such reporting would present a manifestly unreasonable hardship to the (~~(candidate or official)~~) applicant including but not limited to adversely affecting the competitive position of an entity in which the (~~(filer)~~) applicant had an interest of ten percent or more as described in RCW 42.17A.120; and

(iv) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** (~~(A candidate or official)~~) An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family (~~(of a candidate or official)~~), if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest (~~(does)~~) is not (~~(constitute)~~) a present or prospective source of income to (~~(such candidate or official)~~) the applicant or to any other person who is dependent upon (~~(such candidate or official)~~) the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1)(h) through (k):

(i) Under WAC 390-24-200, the filer shall list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description shall be followed by the name of the county in which the property is located.

(ii) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county.

(iii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider a modification, for example, when the filer or his or her immediate family member has received a threat, has a no contact order, or presents a similar personal safety (~~(situation)~~) concern.

A prospective modification to allow nondisclosure of a residential address may be granted if the applicant or an immediate family member has received a threat, been issued a no contact order or presents a similar personal safety concern.

(e) **Other.** (~~(A candidate or official)~~) An applicant may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential

conflict with the proper performance of the duties of the office sought or held. Examples of ~~((members of professions often seeking modifications, and examples of other frequent situations that may result in modification requests, are described in commission interpretive statements-))~~ other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, web site, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, when the applicant certifies he or she is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW 42.17A.710 (1)(g) and WAC 390-24-020 by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under

RCW 42.17A.710 (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.** When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner and of the entity of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

- (a) Prenuptial agreement;
- (b) Separate property contract under chapter 26.09 RCW;
- (c) Separate property court decree under chapter 26.09 RCW;
- (d) Domestic partnership agreement under chapter 26.60 RCW;
- (e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or
- (f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

## WSR 14-15-015

### PERMANENT RULES

### PUBLIC DISCLOSURE COMMISSION

[Filed July 3, 2014, 4:07 p.m., effective December 1, 2014]

Effective Date of Rule: December 1, 2014.

Purpose: Making inflationary adjustments to dollar thresholds applicable to lobbying expenditure disclosure. These adjustments are made at the request of stakeholders and are consistent with the commission's authority to consider making inflationary adjustments at least once every five years but not more often than every two years.

Citation of Existing Rules Affected by this Order: Amending 8.

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

Adopted under notice filed as WSR 14-11-004 on May 7, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 8, Repealed 0.

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

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


Date Adopted: June 26, 2014.

Lori Anderson  
Communications and  
Training Officer

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.

((

 <b>PUBLIC DISCLOSURE COMMISSION</b> <b>711 CAPITOL WAY RM 206</b> <b>PO BOX 40908</b> <b>OLYMPIA WA 98504-0908</b> <b>(360) 753-1111</b> <b>TOLL FREE 1-877-601-2929</b>		<b>LOBBYIST REGISTRATION</b>		<b>L1</b> (1/14)	THIS SPACE FOR OFFICE USE
1. Lobbyist Name					
Permanent Business Address			Business Telephone Numbers		
City State Zip			Permanent ( ) Temporary ( )		
2. Temporary Thurston County address during legislative session				Cell Phone ( ) or Pager	
3. Employer's name and address (person or group for which you lobby)				E-Mail Address	
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.)				Employer's occupation, business or description of purpose of organization	
5. What is your pay (compensation) for lobbying? \$ _____ per _____ (hour, day, month, year) Other: Explain:				Description of employment (check one or more boxes)	
6. Are you reimbursed for lobbying expenses? Explain which expenses. <input type="checkbox"/> Yes: \$ _____ per _____ <input type="checkbox"/> Yes: I am reimbursed for expenses. <input type="checkbox"/> No: I am not reimbursed for expenses.				<input type="checkbox"/> Full time employee <input type="checkbox"/> Part time or temporary employee <input type="checkbox"/> Contractor, retainer or similar agreement <input type="checkbox"/> Unsalariated officer or member of group <input type="checkbox"/> Sole duty is lobbying <input type="checkbox"/> Lobbying is only a part of other duties	
7. How long do you expect to lobby for this organization? <input type="checkbox"/> Permanent lobbyist <input type="checkbox"/> Only during legislative session <input type="checkbox"/> Other, Explain:				Does employer pay any of your lobbying expenses directly? If yes, explain which ones.	
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. <input type="checkbox"/> No <input type="checkbox"/> Yes. However, no member or funder has paid, pays, or is expected to pay over \$500. <input type="checkbox"/> 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. <input type="checkbox"/> No <input type="checkbox"/> 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:				Remarks:	
CODE SUBJECT 01 <input type="checkbox"/> Agriculture 02 <input type="checkbox"/> Business and consumer affairs 03 <input type="checkbox"/> Constitutions and elections 04 <input type="checkbox"/> Education 05 <input type="checkbox"/> Energy and utilities 06 <input type="checkbox"/> Environmental affairs - natural resources - parks 07 <input type="checkbox"/> Financial institutions and insurance 08 <input type="checkbox"/> Fiscal				CODE SUBJECT 09 <input type="checkbox"/> Health Care 10 <input type="checkbox"/> Higher education 11 <input type="checkbox"/> Human services 12 <input type="checkbox"/> Labor 13 <input type="checkbox"/> Law and justice 14 <input type="checkbox"/> Local government 15 <input type="checkbox"/> State government 16 <input type="checkbox"/> Technology 17 <input type="checkbox"/> Transportation 18 <input type="checkbox"/> Other - Specify:	
<b>CERTIFICATION:</b> I hereby certify that the above is a true, complete and correct statement.				<b>EMPLOYER'S AUTHORIZATION:</b> 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. 1/14)

NOT VALID UNLESS SIGNED BY BOTH

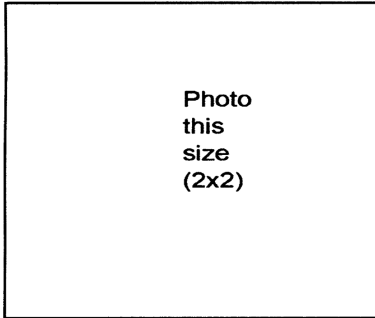
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 <p><b>PUBLIC DISCLOSURE COMMISSION</b>  <b>711 CAPITOL WAY RM 206</b>  <b>PO BOX 40908</b>  <b>OLYMPIA WA 98504-0908</b>  <b>(360) 753-1111</b>  <b>TOLL FREE 1-877-601-2929</b></p>	<h2 style="margin:0;">LOBBYIST REGISTRATION</h2>	<h1 style="margin:0;">L1</h1> <p>(12/14)</p>	<p>THIS SPACE FOR OFFICE USE</p>																						
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<table style="width:100%; border:none;"> <tr> <td style="width:50%;">CODE SUBJECT</td> <td style="width:50%;">CODE SUBJECT</td> </tr> <tr> <td>01 <input type="checkbox"/> Agriculture</td> <td>09 <input type="checkbox"/> Health Care</td> </tr> <tr> <td>02 <input type="checkbox"/> Business and consumer affairs</td> <td>10 <input type="checkbox"/> Higher education</td> </tr> <tr> <td>03 <input type="checkbox"/> Constitutions and elections</td> <td>11 <input type="checkbox"/> Human services</td> </tr> <tr> <td>04 <input type="checkbox"/> Education</td> <td>12 <input type="checkbox"/> Labor</td> </tr> <tr> <td>05 <input type="checkbox"/> Energy and utilities</td> <td>13 <input type="checkbox"/> Law and justice</td> </tr> <tr> <td>06 <input type="checkbox"/> Environmental affairs - natural resources - parks</td> <td>14 <input type="checkbox"/> Local government</td> </tr> <tr> <td>07 <input type="checkbox"/> Financial institutions and insurance</td> <td>15 <input type="checkbox"/> State government</td> </tr> <tr> <td>08 <input type="checkbox"/> Fiscal</td> <td>16 <input type="checkbox"/> Technology</td> </tr> <tr> <td></td> <td>17 <input type="checkbox"/> Transportation</td> </tr> <tr> <td></td> <td>18 <input type="checkbox"/> Other - Specify:</td> </tr> </table>		CODE SUBJECT	CODE SUBJECT	01 <input type="checkbox"/> Agriculture	09 <input type="checkbox"/> Health Care	02 <input type="checkbox"/> Business and consumer affairs	10 <input type="checkbox"/> Higher education	03 <input type="checkbox"/> Constitutions and elections	11 <input type="checkbox"/> Human services	04 <input type="checkbox"/> Education	12 <input type="checkbox"/> Labor	05 <input type="checkbox"/> Energy and utilities	13 <input type="checkbox"/> Law and justice	06 <input type="checkbox"/> Environmental affairs - natural resources - parks	14 <input type="checkbox"/> Local government	07 <input type="checkbox"/> Financial institutions and insurance	15 <input type="checkbox"/> State government	08 <input type="checkbox"/> Fiscal	16 <input type="checkbox"/> Technology		17 <input type="checkbox"/> Transportation		18 <input type="checkbox"/> Other - Specify:		
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12. LOBBYIST'S SIGNATURE		EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE																							
DATE		DATE																							

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

**NOT VALID UNLESS SIGNED BY BOTH**

**LOBBYIST IDENTIFICATION FORM**



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

PDC OFFICE USE

**L2**  
 1/14

### Lobbyist Monthly Expense Report

(as required by Chapter 397, 1995 Session Laws)

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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

))



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 ( ) - \_\_\_\_\_

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)					
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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

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 <i>mm/dd/year</i>	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment <i>Example: Sen Bow (\$32), Rep Arrow (\$28), and J. D. Lobbyist (\$36) tax &amp; gratuity (\$28.41)</i>	Description, Place, etc. <i>Dinner at Anthony's, Olympia</i>	Sponsoring Employer <i>XYZ Corporation</i>	Total Amount <i>\$121.41</i>
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 \$
<input type="checkbox"/> Continued on attached page.			

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.
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  - 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 mm/dd/year	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment Example: Sen Bow (\$32), Rep Arrow (\$28), and J. D. Lobbyist (\$36) tax & gratuity (\$25.41)	Description, Place, etc. Dinner at Anthony's, Olympia	Sponsoring Employer XYZ Corporation	Total Amount \$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 \$
<input type="checkbox"/> Continued on attached page.			

**INFORMATION CONTINUED**

**L2**

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

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Lobbyist Name \_\_\_\_\_

Reporting  
Period \_\_\_\_\_ (Month) \_\_\_\_\_ (Year)

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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.

<p><b>TO:</b> _____                  Recipient's Name*</p> <p><b>FROM:</b> _____                  Lobbyist's Name</p> <p>_____                   Mailing Address</p> <p>_____                   City State Zip + 4</p>	<p><b>PDC OFFICE USE</b></p>
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This report is for the period _____ (Month) (Year)	This report corrects or amends the report for _____ (Month) (Year)	Business Telephone ( ) -
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**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)
	\$			

**\*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.

\_\_\_\_\_  
 Lobbyist's Signature Date

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.



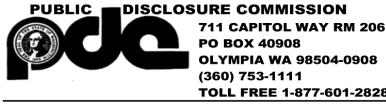
AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

**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](http://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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 <p><b>PUBLIC DISCLOSURE COMMISSION</b>                  711 CAPITOL WAY RM 206                  PO BOX 40908                  OLYMPIA WA 98504-0908                  (360) 753-1111                  TOLL FREE 1-877-601-2828</p>	<p><b>Employer of Lobbyist Monthly                  Political Contribution Report</b></p>	<p><b>L-3c</b>                  1/02</p>	<p>THIS SPACE FOR OFFICE USE</p>
<p>Employer's Name (Use complete company, association, union or entity name.)</p>			
<p>Mailing Address</p>			
<p>City State Zip</p>			
<p><b>Who Must File Report:</b> 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. <i>Employer contributions made through and reported by a registered lobbyist or an employer-affiliated PAC are not reportable on an L-3c</i></p>			
<p><b>What Must Be Reported:</b> 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.</p>			
<p><b>When Is The Report Filed:</b> 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.</p>			
<p><b>Itemize contributions that alone, or together with other contributions to the same recipient, total over \$100 during the calendar month specified above.</b> If space provided is insufficient, use additional L-3c forms or 8 1/2" x 11" white paper.</p>			
Date of Contribution	Name and Address of Recipient	Description of Contribution*	Amount or Value*
			\$
<p>*See next page for details.</p>			
<p><b>Certification:</b> I certify that the information contained herein is true and complete to the best of my knowledge.</p>			
<p>Name and title of person authorized to sign on employer's behalf</p>		<p>Signature</p>	<p>Date</p>

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**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.)

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Mailing Address

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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**

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**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**

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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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**Description of Contribution**


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**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.

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**Amount or Value of Contribution**


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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.

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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](http://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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PDC FORM <b>L-5</b> (Rev 1/12)	<b>LOBBYING BY STATE AND LOCAL GOVERNMENT AGENCIES</b>
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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
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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
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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
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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

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

<b>CERTIFICATION:</b> 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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**PUBLIC DISCLOSURE COMMISSION**  
  
 711 CAPITOL WAY RM 206  
 PO BOX 40908  
 OLYMPIA WA 98504-0908  
 (360) 753-1111  
 TOLL FREE 1-877-601-2828

PDC FORM <b style="font-size: 2em;">L-5</b> (Rev 12/14)	<b>LOBBYING BY STATE AND LOCAL                  GOVERNMENT AGENCIES</b>
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*Instructions Are Printed On Reverse*

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

<b>EXPENDITURES FOR LOBBYING THIS QUARTER</b>	
Report only the separately identifiable and measurable expenditures incurred for lobbying purposes	
<b>Salaries Of Persons Who Lobbied</b> (Include only portion of quarterly salary attributable to lobbying)	\$
<b>Travel</b> (Include food, lodging, per diem payments and cost of transportation used)	\$
<b>Brochures And Other Publications Whose Principal Purpose Is To Influence Legislation</b>	\$
<b>Consultants Or Other Contractual Services</b>	\$
<b>Total This Quarter</b>	\$
<b>Total To Date This Year</b>	\$

<b>CERTIFICATION:</b> 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.

**Public Disclosure Commission**  
**Send Reports To:** 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.**

**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 \$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.

**Public Disclosure Commission**  
**Send Reports To:**    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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<b>NON-PUBLIC FUNDS ATTACHMENT</b>			<b>L-5</b>
Agency or Governmental Entity Name		Report for calendar quarter ending	
		Month	Year
Expenditures over \$15 of non-public funds			
Name of Lobbyist:			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
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<b>Purpose:</b>			

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<b>NON-PUBLIC FUNDS ATTACHMENT</b>			<b>L-5</b>
Agency or Governmental Entity Name		Report for calendar quarter ending	
		Month	Year
Expenditures over \$25 of non-public funds			
Name of Lobbyist:			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
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<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			


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

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

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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 <p><b>PUBLIC DISCLOSURE COMMISSION</b>                  711 CAPITOL WAY RM 206                  PO BOX 40908                  OLYMPIA WA 98504-0908                  (360) 753-1111                  TOLL FREE 1-877-601-2828</p>	<p><b>GRASS ROOTS LOBBYING</b></p>	<p>PDC FORM  <b>L-6</b>                  (1/02)</p>	<p>THIS SPACE FOR OFFICE USE</p>
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: <input type="checkbox"/> Registration (Initial report) <input type="checkbox"/> Monthly report From _____ To _____ <input type="checkbox"/> 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.
2. This report covers:
Registration (Initial report)
Monthly report
Final report (Campaign is ended)

Table with columns: 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







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 14-15-049  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed July 11, 2014, 10:43 a.m., effective August 11, 2014]

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

Purpose: The 2014 session of the Washington state legislature passed HB 2137 which included changes concerning required stops by school buses at all railroad crossings. The effective date of those changes to RCW 46.61.350 was June 12, 2014.

Current language in WAC 392-145-070 provides an exemption for stopping at railroad crossings based on local school board decisions. That exemption was eliminated and failure to stop at those crossings would result in a disqualification of the school bus driver's commercial driver license and resulting revocation of their school bus driver authorization. This change will remove the language providing for the school board exemption process.

Citation of Existing Rules Affected by this Order: Amending WAC 392-145-070.

Statutory Authority for Adoption: RCW 46.61.380.

Adopted under notice filed as WSR 14-10-053 on May 1, 2014.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.  
 Date Adopted: July 11, 2014.

Randy Dorn  
 State Superintendent

**AMENDATORY SECTION** (Amending WSR 07-05-058, filed 2/20/07, effective 11/1/07)

**WAC 392-145-070 Rail grade crossings.** The following requirements apply to drivers of school buses during rail grade crossings:

- (1) All school buses shall stop at all rail grade crossings except:
  - (a) Where traffic is controlled by a police officer or ~~((duly authorized flagman))~~ flagger;
  - (b) Where ~~((an official))~~ a functioning traffic control ~~((device gives notice that the general stopping requirements do not apply))~~ signal is transmitting a green light;
  - (c) Where ~~((local regulations or school district policy expressly prohibit stopping))~~ the tracks are used exclusively for a streetcar or industrial switching purposes;
  - (d) Where the utilities and transportation commission has approved the installation of an "exempt" sign; or
  - (e) Where the crossing is abandoned and is marked with a sign indicating it is out-of-service.
- (2) In order to lessen the potential for collisions, school bus drivers shall use simultaneously flashing amber hazard lamps within two hundred feet prior to stopping for a rail grade crossing.
- (3) The school bus driver shall open the door and driver window to listen for approaching trains.
- (4) Drivers shall take reasonable action to insure that passengers are quiet and shall turn off all noise making devices such as fans and radios while listening for approaching trains.
- (5) Drivers shall not proceed until the door is closed, visibility is clear, and the school bus can safely proceed across and completely clear the rail grade.
- (6) Drivers shall not change gears of a school bus equipped with a manual transmission while the school bus is crossing a rail grade.

**WSR 14-15-052**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 14-173—Filed July 11, 2014, 3:35 p.m., effective August 11, 2014]

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

Purpose: Amends rules for commercial salmon fishing in Willapa Bay. These rules incorporate 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.

Citation of Existing Rules Affected by this Order: Amending WAC 220-40-021 and 220-40-027.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 14-11-105 on May 21, 2014.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule varies from the rule noticed in the CR-102. The following summary briefly describes any changes, other than editing changes, and the principal reasons for adopting those changes.

In general, the proposed season that would have resulted from the rule noticed in the CR-102 utilized selective fishing to the fullest extent, requiring the release of chum and wild chinook during the entire fishery. Except for an initial 3.5 day opening occurring in early August, fishers were required to use nets with a 6.5" maximum mesh size, short (forty-five minute) soak times and the use of recovery boxes for salmon required to be released. The rule also defined "lethargic" fish that had to be placed in recovery boxes and prescribed selective fishing requirements.

Changes to the proposed rule were made based on input received from the public and further evaluation of the rule-making record. The primary changes were a reduction in reliance of selective fisheries, allowing larger mesh nets during the chinook season, and allowing retention of chum. This resulted in adjustments to the number of fishing days, times and locations. Additional changes modified some of the prescriptions for the use of selective fishing techniques.

The following tables outline the fishing times and locations in the original rule as noticed in the CR-102 (**Table 1**) and as reflected in the final rule adopted (**Table 2**).

**Table 1. Proposed Willapa Bay Commercial Gillnet Season Filed May 21, 2014.**

Management Period	Hours/Opener	Catch Areas (days open in each area)				
		T	U	R	M	N
July 5-August 15;	24 hours/day	3.5	3.5	closed	closed	3.5
August 16-20;	12 hours/day	closed	1	closed	closed	1
August 21-25;	24 hours/day	closed	1.5	closed	closed	1.5
August 26-September 1;	12 hours/day	closed	3	closed	closed	3
September 2-8;	24 hours/day	closed	3	closed	closed	3
September 9-15;	24 hours/day	closed	3	closed	closed	3
September 16-22;	24 hours/day	5	4	5	5	5
September 23-30;	24 hours/day	6	5	6	6	6

Management Period	Hours/Opener	Catch Areas (days open in each area)				
		T	U	R	M	N
October 1-7;	24 hours/day	5	4	5	5	5
October 8-14;	24 hours/day	3	3	3	3	3
November 1-10 - late coho;	24 hours/day	5	5	5	5	5
November 11-19 - late coho;	24 hours/day	1	1	1	1	1
November 20-30 - late coho;	closed	closed	closed	closed	closed	closed

**Table 2. Final 2014 Willapa Bay Commercial Gillnet Season.**

Management Period	Hours/Opener	Catch Areas (days open in each area)				
		T	U	R	M	N
July 5-August 15;	24 hours/day	3.5	3.5	closed	closed	3.5
August 16-20;	closed	closed	closed	closed	closed	closed
August 21-25;	closed	closed	closed	closed	closed	closed
August 26-September 1;	12 hours/day	closed	1	closed	closed	1
September 2-8;	12 hours/day	closed	2	closed	closed	2
September 9-15;	12 hours/day	closed	4	closed	closed	4
September 16-22;	24 hours/day	4	3	4	4	4
September 23-30;	24 hours/day	6	5	6	6	6
October 1-7;	24 hours/day	6	5	6	6	6
October 8-14;	closed	closed	closed	closed	closed	closed
November 1-10 - late coho;	24 hours/day	7	7	7	7	7
November 11-19 - late coho;	24 hours/day	7	7	7	7	7
November 20-30 - late coho;	closed	closed	closed	closed	closed	closed

The following is a brief narrative summary of the changes made to the rule noticed in the CR-102 and the rationale.

1. Allows fishers to use 9" maximum mesh size during the chinook management period (prior to September 9), rather than a 6.5" maximum mesh size.

Reason: Commercial fishers identified significant logistical challenges, and a financial burden to comply with the 6.5" maximum size net requirement for the chinook season. This change was also made in connection with changes in the level of selective fishing advocated by other commenters and described below.

2. Reconfigures the reliance on selective fishing by allowing retention of natural-origin chinook during most of the fishing period both during the early portion of the season when hatchery chinook predominate and later when only small numbers of chinook are encountered. Retention of chum is allowed throughout the season. Selective fishing requiring release of natural-origin chinook would occur only between September 8 and 22, the period when increasing number of days fished per week while chinook presence remains relatively high could disproportionately impact this portion of the return timing. The department plans on allowing incidental retention of chum in recreational fisheries as well.

Reason: A 9" maximum mesh net is designed to capture chinook salmon around the gills versus tangling them around the mouth as occurs with the use of mesh sizes less than 6.5".

As a result, larger mesh also has a higher anticipated handling mortality rate when used as selective gear (e.g. when certain nontarget fish – here natural-origin chinook and chum - are specified for release and return to the water). As the mortality rate exceeds sixty percent (as it does with 9" mesh), the concern that fish are being wasted increases. In these circumstances, it is rational to simply retain chum or natural-origin chinook and reduce the number of fishing days during chinook management, provided that overall conservation objectives can be met. Because natural-origin chinook will be retained for the majority of the season, the number of days of chinook fishing allowed was reduced to stay within conservation objectives. In addition, many commenters suggested that the handling mortality on chum salmon was too high and wasteful for the number of coho retained. By allowing retention of chum salmon that are caught incidentally to chinook and coho fisheries, fishers receive value for the fish rather than forcing them to release these fish and waste is avoided. Because chum will be retained, the number of days of coho fishing was also reduced to meet chum conservation objectives. Realigning the fishery to a mix of both selective and retention fishing is also responsive to concerns from various commenters that enforcement and observer resources are insufficient to ensure full compliance with selective fishing techniques, and suggestions that full retention of chum reduces the concern that fishers will be overwhelmed by the task of recovering both chinook and chum in selective fisheries.

4. Moves the summer fishery opener a week later from the week of August 3 to the week of August 10.

Reason: In recent years this opener has occurred during the second week of August. Commercial fishers commented that the fishery was scheduled too early to provide a reasonable expectation of success in catching chinook. This shift in timing is associated with the elimination of openings during the early portion of the fall fishery to maintain separation for the recreational fishery when no commercial openings would occur.

5. Provides consecutive days each week without commercial fishing.

Reason: Commenters suggested that having nonconsecutive days without commercial fishing did not allow fish enough time to transit the entire bay thus negatively affecting recreational opportunity, and reduced the ability for certain target stocks to reach established conservation zones. Including the days closed to offset less selective fishing, the schedule was adjusted to provide consecutive days, or more consecutive days, without commercial fishing in weeks beginning August 31, September 7, 14, 21, and October 5. The week beginning November 2 has less consecutive days without commercial fishing.

6. Removes the definition of lethargic and requires fishers to place all wild chinook into the recovery box until they are not bleeding and they are not lethargic and before landing on shore or in port.

Reason: Commenters stated that the proposed definition of lethargic was insufficient to address their greater concern that fish needed to have their condition assessed and treated in the recovery box prior to release. Therefore, the definition of lethargic was removed and replaced with a requirement that all fish required to be released be placed into a recovery box and released once they are not lethargic and not bleeding, or before landing on shore or in port if the fish are dead. Secondly, as discussed above, concerns associated with placement of fish into a recovery box for treatment are significantly addressed by the reduction in the number of days where wild chinook are required to be released.

7. Finally, the eastern boundary line of the North River conservation area was adjusted to reduce overlap and constriction of the main Willapa River channel.

Reason: Recreational and commercial fishers alike commented that sufficient protection of North River origin chinook was offered by a line projected upriver along the Willapa River channel that did not encroach upon the channel itself and made landfall at a more prominent headland versus the navigation range marker in the channel.

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

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

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

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

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

Date Adopted: July 11, 2014.

Philip Anderson  
Director

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

AMENDATORY SECTION (Amending WSR 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))~~ chum salmon, and ~~((adipose fin clipped hatchery))~~ Chinook salmon:

**Time:**

6:00 a.m. August 12 through  
6:00 p.m. August 15~~((  
2013))~~.

**Areas:**

Area 2N, ~~((Area 2R,))~~ Area  
2T (except those waters  
north of a line from Toke  
Point channel marker 3 east-  
erly through Willapa Harbor  
channel marker 13 (green),  
then northeasterly to the  
power transmission pole  
located at 46°43.1907'N;  
123°50.83134'W), 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 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) All wild (unmarked) Chinook, chum, 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 or an operating recovery box when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2M, 2N, 2R, 2T, and 2U.

(d) 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.

(e) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

~~(4))~~ (3) 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))~~ (4) 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;))~~ chum salmon, and ~~((hatchery))~~ Chinook ~~((marked by a healed scar at the site of the adipose fin))~~ salmon, is prohibited.

~~((6))~~ (5) 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))~~ (6) 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))~~ (7) 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))~~ (8) 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))~~ chum salmon, and Chinook salmon:

Time:	Area:
<del>((6:00))</del> <u>7:00</u> p.m. August	<b>2N<del>((, 2R;))</del> and 2U</b>
<del>((19))</del> <u>25</u> through <del>((6:00 p.m.))</del> <u>7:00 a.m.</u> August	
<del>((20, 2013))</del> <u>26;</u>	
<del>((6:00))</del> <u>7:00</u> p.m. <del>((August 21))</del> <u>September 1</u> through	
<del>((6:00 p.m. August 22, 2013))</del> <u>7:00 a.m. September</u>	
<u>2;</u>	
<del>((6:00 p.m. August 26))</del> <u>7:00</u>	
<u>p.m. September 7</u> through	
<del>((6:00 a.m. August 27, 2013))</del> <u>7:00 a.m. September</u>	
<u>8;</u>	
<del>((AND</del>	

Time: 6:00) 7:00 p.m. (~~August 28~~) September 8 through ~~((6:00)) 7:00 a.m. ((August 29, 2013))~~ September 9;  
~~((6:00)) 7:00 p.m. September ((3)) 9~~ through ~~((6:00)) 7:00 a.m. ((September 4, 2013))~~ September 10;  
~~((6:00)) 7:00 p.m. September ((5)) 10~~ through ~~((6:00)) 7:00 a.m. September ((6, 2013))~~ 11;  
 AND  
~~((6:00)) 7:00 p.m. September ((9)) 14~~ through ~~((6:00 p.m.)) 7:00 a.m. September ((10, 2013))~~ 15;  
~~((AND 6:00 p.m. September 12 through 6:00 p.m. September 13, 2013;~~  
~~6:00 p.m. September 15 through 6:00 p.m. October 12, 2013;~~  
~~6:00 p.m. September 15 through 5:59 a.m. September 22, 2013;~~  
~~6:01 p.m. September 22 through 5:59 a.m. September 29, 2013;~~  
~~6:01 p.m. September 29 through 5:59 a.m. October 6, 2013;~~  
 AND  
~~6:01 p.m. October 6 through 6:00 p.m. October 12, 2013;))~~  
6:00 p.m. September 15 through 6:00 p.m. September 19;  
6:00 p.m. September 22 through 6:00 p.m. September 26;

Area: ~~((**2M, 2N, 2R, and 2U**))~~  
~~((**2N, 2R, and 2U**))~~  
~~((**2M, 2N, 2R, and 2U**))~~  
~~((**2M, 2N, 2R, and 2T**))~~  
~~**2U**~~  
~~**2M, 2N, 2R, 2T, and 2U**~~  
**2M, 2N, 2R, and 2T (except those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W)**

Time: ~~AND 6:00 p.m. September 28 through 6:00 p.m. September 30;~~  
~~6:00 p.m. September 15 through 6:00 p.m. September 18;~~  
~~6:00 p.m. September 22 through 6:00 p.m. September 25;~~  
 AND  
~~6:00 p.m. September 28 through 6:00 p.m. October 2;~~  
~~6:00 p.m. September 30 through 6:00 p.m. October 3;~~  
~~6:00 p.m. October 4 through 6:00 p.m. October 7;~~  
~~12:00 ((p.m.)) a.m. November ((6)) 2~~ through ~~((12:00)) 11:59 p.m. November ((20, 2013.))~~ 7;  
~~12:00 a.m. November 10 through 11:59 p.m. November 14;~~  
 AND  
~~12:00 a.m. November 17 through 11:59 p.m. November 19.~~

**2U**  
**2M, 2N, 2R, and 2T**  
**2M, 2N, 2R, 2T, and 2U**

**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 ((49)) 16 through ~~((September 13, 2013))~~ 12:00 p.m., September 8: Mesh size must not exceed ~~((nine 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.) nine inches stretched.~~

~~(c) From 12:01 p.m. September 8 through November 30: Mesh size must not exceed six and one-half inches stretched.~~

#### Other:

(3) Recovery boxes and soak time limits described in this section are required from 12:01 p.m. September 8 through 12:00 p.m. (noon) September 22:

(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 through October 12, 2013~~).

(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) From August 19 through October 12, 2013, all chum, nonlegal sturgeon, all steelhead, and 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.~~

(d) 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.

~~(e)) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection.~~

(c) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river/bay prior to landing or docking.

(d) 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 prohibitions:

(a) From August 16 through November 30, all green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) From August 16 through 12:00 p.m. September 8, retention of any species other than coho salmon, chum salmon, or Chinook is prohibited.

(c) From 12:01 p.m. September 8 through 12:00 p.m. (noon) September 22, 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), chum salmon, or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(d) From 6:00 p.m. September 22 through November 30, retention of any species other than coho salmon, chum salmon, and Chinook 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))~~ 12.

**WSR 14-15-059**  
**PERMANENT RULES**  
**SPOKANE REGIONAL**  
**CLEAN AIR AGENCY**

[Filed July 14, 2014, 12:35 p.m., effective September 2, 2014]

Effective Date of Rule: September 2, 2014.

Purpose: The rule making to amend SRCAA Regulation I, Article VIII, Solid Fuel Burning Device (SFBD) Standards aligns the procedure for issuing SFBD curtailments (Section 8.07) with RCW 70.94.473, which establishes the criteria for issuing Stage 1 and Stage 2 burn bans and the restrictions on the use of SFBDs that must be imposed. It also makes changes to the provisions defined under Section 8.08 for exemptions from SFBD burn bans. Changes to Section 8.08 have the following effects:

- Specify that an individual's qualification for the low income exemption (Section 8.08.A.1) must be verified by Spokane Neighborhood Action Programs (SNAP; Sections 8.08.A.1 and 8.08.B). The fee for a low income exemption will be waived (Section 8.08.C).
- There will be no provision for obtaining an exemption because a residence has no other adequate source of heat if the house was constructed or substantially remodeled on or after July 1, 1992, or was not originally constructed with an SFBD as a source of heat. Refines the criteria for assessing the adequacy of a heat source (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. This exemption is also available to commercial establishments (Section 8.08.A.3).
- Provide for a temporary state of emergency exemption (issued by the SRCAA director) if a state of emergency is declared by an authorized local, state or federal government official due to a storm, flooding or other disaster which is in effect during a burn ban (Section 8.08.A.4).
- Provide for a one-time, ten day temporary exemption, which is free of charge and can be requested by telephone (Section 8.08.D).
- Eliminate the automatic exemption for furnaces that was provided by the former Section 8.08.C.

- Clarify 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 revisions to Article VIII: Section 8.09, Procedure to Geographically Limit Solid Fuel Burning Devices, is updated to reflect that the former Spokane PM<sub>10</sub> nonattainment area is now a maintenance area. Fireplaces are no longer exempt from contingency measures in the event of a PM<sub>10</sub> NAAQS violation.

Section 8.10, Restrictions on Installation and Sales of Solid Fuel Burning Devices, more clearly states that any SFBD sold or installed within the SRCAA's jurisdiction must be a Washington-certified device. Under 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 former definition of "furnace" was removed and the definition of "wood stove" revised for improved consistency with state regulations.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Article VIII, Solid Fuel Burning Device Standards.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Other Authority: Rule implements 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.

Adopted under notice filed as WSR 14-11-036 on May 14, 2014.

Changes Other than Editing from Proposed to Adopted Version: The following nonsubstantive changes were made to SRCAA Regulation I, Article VIII:

- The definition of "commercial establishment" for the purposes of this rule was inserted as Section 8.03.C.
- The word "irrelevant" was replaced with the phrase "not a determining factor" in Sections 8.08.A.2 and 8.08.A.3 to improve the tone of the language.
- A sentence was added to Section 8.08.A.2 directing the reader to Section 8.08.A.1 for information about exemptions based on level of income.

A final cost-benefit analysis is available by contacting Mark E. Rowe, 3104 East Augusta Avenue, Spokane, WA 99207, phone (509) 477-4727, fax (509) 477-6828, e-mail mrowe@spokanecleanair.org. This is a local agency rule and RCW 34.05.328 does not apply pursuant to RCW 70.94.141(1).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.



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

Date Adopted: July 10, 2014.

Mark E. Rowe  
Air Quality Technician

## AMENDATORY SECTION

SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) REGULATION I, ARTICLE VIII – SOLID FUEL BURNING DEVICE STANDARDS

### **SECTION 8.01 PURPOSE**

This article establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to attain the National Ambient Air Quality Standards for fine particulate matter (PM<sub>2.5</sub>) and to further the policy of the Agency as stated in Article I, Section 1.01 of this Regulation.

### **SECTION 8.02 APPLICABILITY**

The provisions of this article apply to solid fuel burning devices in all areas of Spokane County.

### **SECTION 8.03 DEFINITIONS**

Unless a different meaning is clearly required by context, words and phrases used in this article shall have the following meaning:

~~((A. Adequate Source of Heat means a permanently installed furnace or heating system, connected or disconnected from its energy source, designed to heat utilizing oil, natural gas, electricity, or propane and to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a residence or commercial establishment.))~~

A. Agency means the Spokane Regional Clean Air Agency.

~~((B. Certified means a solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100.))~~

~~((C.))~~ B. Coal stove means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating or indoor cooking, which has ~~((substantially))~~ all the following characteristics:

1. An opening for loading coal which is located near the top or side of the appliance; and
2. An opening for emptying ash which is located near the bottom or the side of the appliance; and
3. A system which admits air primarily up and through the fuel bed; and
4. A grate or other similar device for shaking or disturbing the fuel bed; and
5. Listing by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes ~~((:))~~; and

6. Not configured or capable of burning cordwood.

C. A commercial establishment is defined to include an establishment possessing a valid business license issued by a governmental entity.

D. 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. Ecology means the Washington State Department of Ecology.

F. EPA means the United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency or his/her designated representative.

~~((F))~~ G. EPA Certified means a woodstove certified and labeled by EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters"

~~((G))~~ H. 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))~~ I. 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 (PM<sub>2.5</sub> and PM<sub>10</sub>).

~~((I))~~ J. ((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))~~ K. 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))~~ L. 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))~~ M. 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))~~ N. 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))~~ O. Seasoned Wood means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

~~((K))~~ P. 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))~~ Q. Smoke Control Zone means the ~~(geographic area, impacted by solid fuel combustion smoke, surrounding the)~~ Spokane/Spokane Valley Metropolitan area and ~~(the)~~ 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.

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

#### SECTION 8.04 EMISSION PERFORMANCE STANDARDS

The Agency adopts ~~(section WAC 173-433-100 "Emission Performance Standards" and)~~ Chapter 173-433 WAC by reference and Title 40, Part 60, Subpart AAA of the Code of Federal Regulations "Standards of Performance for New Residential Wood Heaters" by reference.

#### SECTION 8.05 OPACITY STANDARDS

##### A. Opacity Limit

A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

##### B. Test ((m))Method and ((p))Procedures((-))

EPA reference method 9 – Visual Determination of Opacity of Emissions from Stationary Sources – shall be used to determine compliance with Section 8.05.A.

##### C. Enforcement((-))

Smoke visible from a chimney, flue or exhaust duct in excess of the opacity (~~standard~~) limit shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

**Reviser's note:** The typographical 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 8.06 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 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 340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262—Woodstove Certification" Dated November 1999.))~~)

In Spokane County (~~until June 30, 2009~~) as allowed by RCW 70.94.473 ~~(1)(b)(i) ((§1(2)(Effective July 22, 2007)))~~ a first stage of impaired air quality is reached and curtailment may be declared when the Agency determines that ((particulates)) particulate matter with a nominal aerodynamic diameter of two and one half ((microns)) micrometers and smaller ((in diameter)) (PM2.5) ((measured at any location inside Spokane County at an ambient level of twenty micrograms per cubic meter of air by a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent)), measured as an ambient mass concentration at any location within Spokane County using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, and updated hourly as a twenty-four hour running average, is likely to exceed thirty-five micrograms per cubic meter of air within forty-eight hours based on forecasted meteorological conditions.

##### 3. Stage 2 Burn Ban

Whenever the Agency has declared curtailment under a second stage of impaired air quality for the Smoke Control Zone or other geographical area. In Spokane County (~~until June 30, 2009~~) as allowed by RCW 70.94.473 ~~(1)(c)(ii) ((§1(2)(Effective July 22, 2007)))~~ a second stage of impaired air quality is reached and curtailment may be declared whenever all of the following criteria are met:

##### a. Issuing a Stage 2 Burn Ban Following a Stage 1 Burn Ban

i. A first stage of impaired air quality has been in force for a period of twenty-four hours or longer and, in the Agency's judgment, has not reduced the PM2.5 ambient mass concentration, measured as a twenty-four hour running average, sufficiently to prevent it from exceeding thirty-five micrograms per cubic meter of air at any location inside Spokane County within twenty-four hours; and

ii. ((particulates two and one half microns and smaller in diameter (PM2.5) are)) A twenty-four hour running average PM2.5 ambient mass concentration equal to or greater than twenty-five micrograms per cubic meter of air is measured at any location inside Spokane County ((at an ambient level of thirty micrograms per cubic meter of air by)) using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent; and

iii. The Agency does not expect meteorological conditions to allow ambient mass concentrations of PM2.5 measured as a twenty-four hour running average to decline below twenty-five micrograms per cubic meter of air for a period of twenty-four hours or more from the time that it is measured at that concentration.

##### b. Issuing a Stage 2 Burn Ban Without First Declaring a Stage 1 Burn Ban

A second stage burn ban may be issued without an existing first stage burn ban as allowed by RCW 70.94.473 (1)(c)(ii) whenever all of the following criteria are met:

i. The ambient mass concentration of PM2.5 at any location inside Spokane County has reached or exceeded twenty-five micrograms per cubic meter, measured as a running

twenty-four hour average using a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent; and

ii. Meteorological conditions have caused PM2.5 ambient mass concentrations to rise rapidly; and

iii. The Agency predicts that meteorological conditions will cause PM2.5 ambient mass concentrations measured as a twenty-four hour running average to exceed thirty-five micrograms per cubic meter of air within twenty-four hours; and

iv. Meteorological conditions are highly likely to prevent smoke from dispersing sufficiently to allow PM2.5 ambient mass concentrations to decline below twenty-five micrograms per cubic meter of air within twenty-four hours.

Issuance of a second stage burn ban without an existing first stage burn ban shall require the Agency to comply with RCW 70.94.473(3).

4. The following matrix graphically illustrates the applicability of Sections 8.07.A.1-3 of this Regulation.

Burn Condition	Impaired Air Quality		Air Pollution Episode
	First Stage Burn Ban	Second Stage Burn Ban	
Type of Device			
EPA Certified Woodstove	Allowed	Prohibited	Prohibited
Oregon Certified Woodstove	Allowed	Prohibited	Prohibited
Pellet Stove (nonaffected)	Allowed	Prohibited	Prohibited
Washington Certified Device	Allowed	Prohibited	Prohibited
All Other Devices	Prohibited	Prohibited	Prohibited

~~((4. After July 1, 1995, if the limitation in RCW 70.94.477(2) is exercised, following the procedure in Section 8.09, and the Agency has declared curtailment under a single stage of impaired air quality for the Smoke Control Zone or other geographical area. A single stage of impaired air quality is reached and curtailment may be declared when particulates two and one half microns and smaller in diameter (PM2.5) are measured at any location inside Spokane County at an ambient level of twenty five micrograms per cubic meter of air by a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, or equivalent.))~~

5. After July 1, 1995, if the limitation in RCW 70.94.477 (2) is exercised, following the procedure in Section 8.09 (Procedure to Geographically Limit Solid Fuel Burning Devices), and the solid fuel burning device is not one of the following:

~~((a. A fireplace~~

~~b)) a. A nonaffected pellet stove; or~~

~~((e) b. Washington Certified Device ((A solid fuel burning device has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100)); or~~

~~((d) c. EPA Certified Woodstove ((A woodstove certified and labeled by EPA under "40 SFR 60 Subpart AAA- Standards of Performance for Residential Wood Heaters")); or~~

~~((e) d. Oregon Certified Woodstove ((A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsection (1) and (2) of Section 340-340-262-0110, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 262—Woodstove Certification" Dated November 1999.))~~

B. In consideration of declaring curtailment under a stage of impaired air quality, the Agency shall consider the anticipated beneficial effect on ambient ~~((levels of particulates two and one half microns and smaller in diameter (PM2.5)))~~ concentrations of PM2.5, taking into account meteorological factors, the contribution of emission sources other than solid fuel burning devices, and any other factors deemed to ~~((have an impact))~~ affect the PM2.5 mass concentration.

C. Any person responsible for a solid fuel burning device which is subject to curtailment and is already in operation at the time curtailment is declared under an episode or a stage of impaired air quality shall extinguish that device by withholding new solid fuel for the duration of the episode or impaired air quality. Smoke visible from a chimney, flue or exhaust duct after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.

D. The Agency, Ecology, Spokane County Health District, fire departments, fire districts, Spokane County Sheriff's Department, or local police having jurisdiction in the area may enforce compliance with solid fuel burning device 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:** 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.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**SECTION 8.08 EXEMPTIONS**

**A. Categories**

The provisions of Section 8.07 shall not apply to any person who possesses a valid written exemption for his/her residence, issued by the Agency. The Agency may issue written exemptions for residences if any one of the following is demonstrated to the satisfaction of the Agency:

**1. Low Income**

An economic need to burn solid fuel for residential space heating purposes by qualifying through Spokane Neighborhood Action Partners (SNAP) for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program (L.I.E.A.P.).

## 2. No Adequate Source of Heat

~~((That 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 not a determining factor in the approval or denial of an exemption under this provision. Exemptions based on income level are addressed in Section 8.08.A.1.

## 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 not a determining factor 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 14-15-070****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed July 15, 2014, 3:30 p.m., effective August 15, 2014]

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

Purpose: The department is amending WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food?, to clarify which households are considered categorically eligible based on the receipt of cash assistance benefits and ensure that policies fully comply with the federal regulation.

These rule 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.

Citation of Existing Rules Affected by this Order:  
Amending WAC 388-414-0001.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. 273.2(j).

Adopted under notice filed as WSR 14-11-093 on May 21, 2014.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 9, 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 14-15-071**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed July 15, 2014, 3:37 p.m., effective August 15, 2014]

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

Purpose: This rule making corrects an error made under WSR 14-02-094 in which there is a reference to WAC 388-110-020. The correct WAC is WAC 388-110-220.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0033.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 14-09-058 on April 16, 2014.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 9, 2014.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-02-094, filed 12/31/13, effective 2/1/14)

**WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?** (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC)," which is defined in WAC ((388-110-020)) 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in COPES, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

(i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;

(ii) Inappropriate toileting/menses activities;

(iii) Rummages/takes others belongings;

(iv) Up at night when others are sleeping and requires intervention(s);

(v) Wanders/exit seeking;

(vi) Wanders/not exit seeking;

(vii) Has left home and gotten lost;

(viii) Spitting;

(ix) Disrobes in public;

(x) Eats non-edible substances;

(xi) Sexual acting out;

(xii) Delusions;

(xiii) Hallucinations;

(xiv) Assaultive;

(xv) Breaks, throws items;

(xvi) Combative during personal care;

(xvii) Easily irritable/agitated;

(xviii) Obsessive regarding health/body functions;

(xix) Repetitive movement/pacing;

(xx) Unrealistic fears or suspicions;

(xxi) Repetitive complaints/questions;

(xxii) Resistive to care;

(xxiii) Verbally abusive;

(xxiv) Yelling/screaming;

(xxv) Inappropriate verbal noises; or

(xxvi) Accuses others of stealing.

**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 14-15-075

### PERMANENT RULES

### LIQUOR CONTROL BOARD

[Filed July 16, 2014, 10:50 a.m., effective August 16, 2014]

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

Purpose: The responsible vendor program (RVP) is currently only offered to spirits retail licensees. This program offers increased training to employees in the sale of alcohol resulting in more responsible alcohol sales. We currently offer the RVP only to spirits retailers. More than sixty-five percent of the spirits retailers have joined the program. Retailers participating in the program produced the highest compliance rates at 94.5 percent. During fiscal year 2013, off-premises beer and wine retailers produced the lowest compliance rates at seventy-nine percent. Extending the RVP to off-premises beer and wine retailers will increase public safety through responsible alcohol sales.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-108.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 14-12-031 on May 28, 2014.

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

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

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

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

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

Date Adopted: July 16, 2014.

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 12-11-008, filed 5/3/12, effective 6/3/12)

**WAC 314-02-108 Responsible vendor program.** (1) **What is the purpose of this chapter?** The purpose of this



section is to establish standards and procedures for a responsible vendor program for spirits retail and beer and wine retail licensees selling alcohol for off-premises consumption.

(2) **What is the responsible vendor program for spirits retail licensees?** This program is free, voluntary, and self-monitoring. Spirits retail licensees who hold a responsible vendor certificate and maintain all requirements are eligible for reduced sanctions on their first single violation within any period of twelve calendar months.

(3) **How ((do you)) does a spirits retail licensee become a responsible vendor?** Any spirits retail licensee who meets the program standards may participate. To apply for a responsible vendor certificate, the licensee must have no public safety violations within the last two years and must complete and submit a board-provided application form. Board staff will review the application for completeness, and will:

(a) Certify the completed application clearly indicates the licensee has all program standards in place and send a certificate to the licensee; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will notify the licensee of the reason(s) the application is being returned.

(4) **To qualify as a responsible vendor, a spirits retail licensee must:**

(a) Post their responsible vendor program certificate for public viewing at the main entrance of the premises;

(b) Train each employee supervising or selling alcohol in responsible liquor sales. Licensees may require employees to obtain a mandatory alcohol server training permit from a board certified provider or train employees themselves using the training criteria specified in subsection (5) of this section; and

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(i) A list of acceptable forms of identification which are accepted at the premises;

(ii) Directions for checking identification for customers; and

(iii) The consequences for selling spirits to a minor or apparently intoxicated person.

(d) In an area visible to patrons, post signs to deter illegal purchases of alcohol. Examples of information include, it is illegal to purchase alcohol under twenty-one years of age or while apparently intoxicated. Other information may include acceptable forms of identification at the premises;

(e) Have an on-going training plan for employees, to include annual training at a minimum. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, training must cover the topics listed in subsection (5) of this section; and

(f) Retain employee training records and signed house policies for three years and must be able to present employee training records upon request.

(5) **What are the program standards, program content, and other requirements for the responsible vendor**

**program?** All training must include, at a minimum, the following:

(a) Guidelines for recognizing minors and apparently intoxicated persons;

(b) Forms of identification for purchasing alcohol;

(c) How to check identification and how to recognize false or altered identification;

(d) A requirement to check identification in accordance with house policies;

(e) Recommended actions for refusing sales of alcohol to minors or apparently intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or apparently intoxicated persons;

(g) A review of house policies on alcohol sales. Each licensee must ensure that his/her employees receive training that covers the licensee's own house policies; and

(h) The standards and requirements for the mandatory alcohol server training stipulated in WAC 314-17-060 are deemed sufficient for employee's initial training for the responsible vendor training.

(6) **What are the sanctions when a licensee violates liquor laws or regulations?** For violations, as outlined in WAC 314-29-020 through 314-29-040, involving the sales of spirits, the prescribed penalty is doubled. If a licensee has a certified responsible vendor program having all program standards in place, the board will impose the standard penalty detailed in WAC 314-29-020 through 314-29-040 for that violation. Any subsequent violation involving spirits within any period of twelve calendar months will be double the standard penalties. Regardless of the type of alcohol sold; beer, wine, or spirits, WAC 314-29-020 through 314-29-040 are applicable.

#### NEW SECTION

**WAC 314-02-1081 What is the responsible vendor program for beer and wine retail licensees selling beer and wine for off-premises consumption?** (1) The program promotes retail licensees selling beer and wine for off-premises consumption taking positive steps to ensure alcohol is sold responsibly. The program is provided free and licensees may join the program voluntarily. Retail licensees selling beer and wine for off-premises consumption who hold a responsible vendor certificate and maintain all requirements are eligible for reduced penalties on their first public safety violation within any period of twenty-four calendar months.

(2) **How does a beer and wine retail licensee become a responsible vendor?** Any beer and wine retail licensee selling beer and wine for off-premises consumption who meets the program standards may participate. To apply for a responsible vendor certificate, the licensee must have no public safety violations within the last two years and must complete and submit a board-provided application form. Board staff will review the application for completeness, and will:

(a) Certify the completed application clearly indicates the licensee has all program standards in place and send a certificate to the licensee; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in

place. Staff will notify the licensee of the reason(s) the application is being returned.

**(3) To qualify as a responsible vendor, a beer and wine retail licensee selling beer and wine for off-premises consumption must:**

(a) Establish and enforce a house policy relating to the sale and service of alcohol products that includes at a minimum:

(i) Who needs responsible alcohol sales training and how often;

(ii) A list of acceptable forms of ID at the premises;

(iii) When and how to check ID;

(iv) When and how to refuse sales;

(v) When to notify the supervisor and/or law enforcement for problems; and

(vi) The consequences for failing to check ID and/or making illegal alcohol sales.

(b) Train employees prior to engaging in the sale of alcohol and provide refresher course annually at a minimum. The minimum training component must include:

(i) Information on the misuse and risks of underage use of alcohol;

(ii) Washington state liquor laws and regulations;

(iii) House policy (see house policy above for components);

(iv) How to identify the signs of intoxication; and

(v) How to get additional resources/training.

(c) Maintain a responsible alcohol management policy which may include:

(i) Delegate a supervisor level employee to oversee and enforce store policies;

(ii) Participate and cooperate with local community organizations and/or efforts promoting public safety;

(iii) Monitor employee conduct and reinforce training;

(iv) Program point of sale system to recognize age restricted products and prompt cashiers to check ID and stop the transaction until the date of birth is entered and the age is calculated;

(v) Provide "birth date eligible to purchase alcohol" daily;

(vi) Provide appropriate ID checking tools such as current ID checking guide (shows valid ID formats from all states and U.S. territories), and "black lights" to check the authenticity of an ID;

(vii) No advertising targeting youth;

(viii) Displaying alcohol products in such a way to enable unobstructed monitoring, away from youth-oriented products; and

(ix) Use of theft deterrent devices.

(d) In an area visible to patrons, post signs to deter illegal purchased of alcohol. Examples include; it is illegal to purchase alcohol under twenty-one years of age or while apparently intoxicated. Other information may include acceptable forms of identification at the premises;

(e) Post the responsible vendor program certificate for public view in a conspicuous area at the front of the premises; and

(f) Retain employee training records and signed house policies for three years and be able to present employee training records upon request.

**(4) What are the employee training standards and other requirements for the responsible vendor program?**

(a) The training courses shall have the standards and requirements as stipulated in (a) and (b) of this subsection at a minimum;

(b) Training must require employee to demonstrate reasonable mastery of the topics;

(c) Training may be presented in-class, online course or other methods not compromising the training requirement;

(d) The training course content must be up-to-date with the latest laws and rules and must be provided in its entirety as certified by the board;

(e) The standards and requirements for the mandatory alcohol server training stipulated in WAC 314-17-060 are deemed sufficient for employee's initial training for the responsible vendor training; and

(f) The training course provided by the board is deemed sufficient for employee's initial and follow-up training for the responsible vendor training.

**(5) How does a retailer maintain the certification?**

(a) The licensee must maintain all program requirements at all times and have no more than three public safety violations within a two-year period.

(b) When a public safety violation occurs, licensee must submit an action plan to the board's licensing staff illustrating ways to prevent further violations within ten days from the date of violation.

(c) Update training materials and inform employees within thirty days from the board's notification regarding new legislation and/or regulations.

(d) Present the employee training records upon request by the board's staff.

**(6) What must a licensee do when a second public safety violation occurs within a two-year period?**

(a) The licensee must submit an action plan to prevent further violations to the board's licensing staff within ten calendar days of violation.

(b) The board may decertify the responsible vendor certification if the licensee fails to submit an action plan and/or demonstrate poor commitment to the program including having three or more public safety violations within a two-year period.

**(7) How long does a licensee have to wait before rejoining the program?** Once decertified from the program, licensee may reapply for the program after two years. Any public safety violation during this time may prohibit the licensee from joining the program.

**(8) What are the sanctions when a licensee violates liquor laws or regulations?** If a beer and wine retail licensee has a certified responsible vendor program having all program standards in place and has a public safety violation, the board will impose a deferral for a two-year period. If there are no further public safety violations within that two-year period, the violation is dismissed. If another violation occurs within that two-year period, the board will end the deferment and process both the first and the second violation based on the standard penalties described in WAC 314-29-020 through 314-29-040.

**WSR 14-15-076**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 13-10—Filed July 16, 2014, 11:29 a.m., effective August 16, 2014]

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

Purpose: This rule making amends chapter 173-182 WAC, Oil spill contingency planning, and updates the definition of plan holder to include all persons listed in RCW 88.46.060 and update the definition of "umbrella plan" to ensure the term is used only when referring to nonprofit corporations. It will also ensure that owner/operators, if operating under a plan that covers multiple parties, are not required to comply with provisions of the rule that apply specifically to "plan holders."

Citation of Existing Rules Affected by this Order: Amending chapter 173-182 WAC.

Statutory Authority for Adoption: RCW 88.46.060, 90.46.050.

Adopted under notice filed as WSR 14-08-098 on April 2, 2014.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 0.

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

Date Adopted: July 16, 2014.

Maia D. Bellon  
 Director

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-015 Applicability.** (1) This chapter applies to owners and operators of onshore ~~((and))~~ facilities, offshore facilities, and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to ~~((nonprofit corporations, their enrolled members, and agents that submit and implement plans on behalf of onshore and offshore facilities and covered vessels))~~ any person submitting a contingency plan on behalf of a covered vessel, multiple covered vessels, onshore facilities and offshore facilities, or any combination thereof.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response

vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-030 Definitions.** (1) "Aerial oil spill spotter" (spotter) means personnel trained to:

- (a) Direct vessels to the heaviest concentrations of oil;
- (b) Direct dispersant resources;
- (c) Direct in situ burn resources; and
- (d) Observe document and report the effectiveness of response operations.

(2) "Aerial observer" means a trained observer that monitors, records and reports the spill characteristics including the shoreline impacts, area oiled, color, and thickness of the oil. Observers also provide data to the command post through the development of detailed maps of the area oiled and the resources in the field as well as other photographs, videos, or documents developed to support planning.

(3) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. Ecology's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

- (a) The additional protection provided by the measures;
- (b) The technological achievability of the measures; and
- (c) The cost of the measures.

(4) "Best achievable technology" means the technology that provides the greatest degree of protection. Ecology's determination of best achievable technology will take into consideration:

(a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development;

(b) Processes that are currently in use; and

(c) In determining what is best achievable technology, ecology shall consider the effectiveness, engineering feasibility, and the commercial availability of the technology.

(5) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(7) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(8) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(9) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or other provider or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that: Identifies personnel, equipment and services capable of being provided by the primary response contractor or other provider within stipulated planning standard times; acknowledges that the primary response contractor or other provider commits the identified resources in the event of an oil spill.

(10) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

(11) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(12) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(13) "Director" means the director of the state of Washington department of ecology.

(14) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(15) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(16) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(17) "Ecology" means the state of Washington department of ecology.

(18) "Emergency response towing vessel" means a towing vessel stationed at Neah Bay that is available to respond to vessel emergencies upon call out under the contingency plan. The emergency response towing vessel shall be available to the owner or operator of the covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, Vancouver Island, Canada.

(19) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(20) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(21) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(22) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(23) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(24) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(25) "Lower Columbia River" means the Columbia River waters west of Bonneville Dam.

(26) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(27) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(28) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(29) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(30) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

(31) "Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

(32) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(33) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(34) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and pressure and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(35) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(36) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(37) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(38) "Operational period" means the period of time scheduled for execution of a given set of operational actions as specified in the incident action plan. The operational period coincides with the completion of one planning cycle.

(39) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(40) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(41) "Passive recovery" means a tactic that uses absorbent material to mitigate impacts to shorelines.

(42) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further clas-

sified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(43) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(44) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(45) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(46) "Plan holder" means ~~((all covered facility owner/operators required to submit contingency plans, all covered vessel owner/operators required to submit contingency plans or enroll under a vessel umbrella plan and the umbrella plan holders that submit contingency plans on behalf of multiple covered vessels owner/operators or facility owner/operators))~~ a person who submits and implements a contingency plan consistent with RCW 88.46.060 and 90.56.210 on the person's own behalf or on behalf of one or more persons. Where a plan is submitted on behalf of multiple persons, those covered under that plan are not considered plan holders for purposes of this chapter.

(47) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(48) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(49) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States gov-

ernment, or a government of a foreign country, and is not engaged in commercial service.

(50) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(51) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessel of opportunity response system to respond when needed and available.

(52) "Resident" means the spill response resources are staged at a location within the described planning area.

(53) "Responsible party" means a person liable under RCW 90.56.370.

(54) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(55) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(56) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(57) "Systems approach" means the infrastructure and support resources necessary to mobilize, transport, deploy, sustain, and support the equipment to meet the planning standards, including mobilization time, trained personnel, personnel call out mechanisms, vehicles, trailers, response vessels, cranes, boom, pumps, storage devices, etc.

(58) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(59) "Technical manual" means a manual intended to be used as a planning document to support the evaluation of best achievable protection systems for potential response capability of plan holder owned and PRC dedicated and nondedicated equipment.

(60) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(61) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(62) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(63) "Umbrella plan" means a single plan submitted on behalf of multiple covered vessels that is prepared by a ~~((plan holder to cover multiple vessels))~~ nonprofit corporation.

(64) "Vessels of opportunity response system" means nondedicated vessels and operating personnel, including fishing and other vessels, available to assist in spill response when necessary. The vessels of opportunity are under contract with and equipped by contingency plan holders to assist

with oil spill response activities including, but not limited to, on-water oil recovery in the near shore environment, the placement of oil spill containment booms to protect sensitive habitats, and providing support of logistical or other tactical actions.

(65) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(66) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(67) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(68) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-110 Authority to submit contingency plan.** (1) For tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the tank vessel; or

(b) The owner or operator of the facilities at which the tank vessel will be unloading its cargo; or

(c) A nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the tank vessel owner or operator is a member; or

(d) A ~~((PRC contractually obligated to provide containment and cleanup services to the tank vessel company))~~ person who has contracted with the tank vessel to provide con-

tainment and clean-up services and who has been approved by ecology.

(2) For covered vessels other than tank vessels, a plan may be submitted by any of the following:

- (a) The owner or operator of the ~~((covered))~~ vessel; or
- (b) The agent for the ~~((covered))~~ vessel provided that the agent resides in this state; or
- (c) A nonprofit corporation established for the purpose of oil spill response and contingency plan coverage ~~((and))~~ of which the covered vessel owner or operator is a member; or
- (d) A ~~((PRC contractually obligated to provide containment and cleanup services to the covered vessel company))~~ person who has contracted with the vessel to provide containment and clean-up services and who has been approved by ecology.

(3) For facilities, a plan may be submitted by any of the following:

- (a) The owner or operator of the facility; or
- (b) A ~~((PRC contractually obligated to provide containment and cleanup services to the facility))~~ person who has contracted with the facility to provide containment and clean-up services and who has been approved by ecology.

~~((4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each covered vessel or facility.))~~

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-130 Phase in language.** (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications. Each update must contain all necessary content and meet the requirements of this chapter.

(2) For existing approved facility plan holders within six months after the effective date of this chapter, all facility plan holders must update their plans to comply with the following sections as applicable to the facility:

- (a) Binding agreement (WAC 173-182-220).
- (b) Contingency plan general content (WAC 173-182-230~~((7))~~ (8)), claims procedures.
- (c) Contingency plan general content (WAC 173-182-230 (4)(c)(i) through (v)), products handled.
- (d) Facility spills to ground notifications (WAC 173-182-264).
- (e) Planning standards for dispersants (WAC 173-182-325).
- (f) Planning standard for Group 5 Oils (WAC 173-182-324).
- (g) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(3) For existing approved tank vessel plan holders and vessel umbrella plan holders, the following is required, as applicable to the plan holder:

- (a) Within six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan

holders must update their plans to comply with the following sections:

- (i) Binding agreement (WAC 173-182-220).
- (ii) Contingency plan general content (WAC 173-182-230 (3)(b)(ii)).
- (iii) Contingency plan general content (WAC 173-182-230 (5)(f) and (g)).
- (iv) Contingency plan general content (WAC 173-182-230 (6)(a)(i) through (vii) and (7)).
- (v) Contingency plan general content (WAC 173-182-230~~((7))~~ (8)), claims procedures.
- (vi) Aerial surveillance planning standard (WAC 173-182-321(2)), Additional surveillance assets.
- (vii) Planning standard for dispersants (WAC 173-182-325).
- (viii) Planning standard for Group 5 Oils (WAC 173-182-324).
- (ix) Requirements for vessel umbrella plan holders maintaining additional agreements for supplemental resources (WAC 173-182-232).
- (x) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.
- (b) Within eighteen months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:
  - (i) Vessels of opportunity planning standard (WAC 173-182-317), Region 1 - Cape Flattery/Strait of Juan De Fuca.
  - (ii) Aerial surveillance planning standard (WAC 173-182-321(1)), Helicopter/fixed wing.
  - (iii) Dedicated on-water storage (WAC 173-182-335), at least twenty-five percent of the total worst case discharge requirement.
  - (iv) San Juan County planning standard (WAC 173-182-370), four hour planning standard.
  - (v) Neah Bay staging area (WAC 173-182-395), four hour planning standard.
  - (vi) Covered vessel planning standard for shoreline cleanup (WAC 173-182-522).
  - (vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.
- (c) Within thirty-six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:
  - (i) Vessels of opportunity planning standard (WAC 173-182-317), Region 2 - San Juan Islands/North Puget Sound.
  - (ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 4 - Lower Columbia River.
  - (iii) Provide proposal for ecology review of the aerial surveillance planning standard (WAC 173-182-321(3)), Helicopter/fixed wing with forward looking infrared. Plan holder shall have an additional twelve months to have this asset staged and all plan updates finalized as applicable.
  - (iv) Covered vessel plan holder's technical manual requirement (WAC 173-182-349).
  - (v) Commencement Bay Quartermaster Harbor planning standard (WAC 173-182-380), four hour planning standard.

(vi) Cathlamet staging area (WAC 173-182-415), four hour planning standard.

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(d) Within forty-eight months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 6 - Grays Harbor.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 3 - South Puget Sound and Central Puget Sound.

(iii) Vessels of opportunity planning standard (WAC 173-182-317), Region 5 - Admiralty Inlet, Hood Canal and North Puget Sound.

(iv) Grays Harbor planning standard (WAC 173-182-450), four hour planning standard.

(v) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(4) Within eighteen months after the effective date of this chapter, all primary response contractors must update their applications to comply with the following section: Primary response contractor application content, submittal and review (WAC 173-182-810).

(5) Each plan update will be given a thirty day public review and comment period. Ecology will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-145 Plan implementation procedures.**

Every plan holder, including each person (~~whose vessel enrolls~~) enrolled in (~~coverage under an umbrella~~) a plan covering multiple persons, is required to implement the Washington approved plan in any response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-220 Binding agreement.** (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by each of the following: (a) The plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the (~~facility~~) facilities or vessels covered by the plan. (~~In the case of an umbrella plan, the umbrella plan holder that submitted the umbrella plan on behalf of enrolled vessels must sign the binding agreement.~~) The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability (~~of the plan holder~~) to make necessary and appropriate expenditures in order to implement plan provisions; and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-230 Contingency plan general content.** (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the state-wide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.

(ii) For vessel umbrella plans that enroll both tank vessels and nontank covered vessels and that rely on supplemental resources for approval, specify the worst case discharge volume and product type for both tank and nontank covered vessels for each port covered by the contingency plan.

(iii) For multiple facilities using a single (~~umbrella~~) plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.



(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan;

(i) List the oil handling operations that occur at the facility location.

(ii) Inventory all tanks and list the tank capacity(ies).

(iii) All oil(s) or product(s) handled by name and include; density, gravity, API, oil group number, and sulfur content (sweet/sour).

(iv) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(v) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel plan content. Except as provided in subsections (6) and (7) of this section, vessel plans shall also include:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) List all oil(s) or product(s) by name and include; density, gravity, API, oil group number, sulfur content (sweet/sour) and general ship capacity for amounts carried as cargo or fuel;

(g) Description of the operations covered by the plan; and

(h) A diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) (~~Special exemptions for vessel umbrella~~) Plans covering multiple vessels with different owners shall (~~at a minimum,~~) also include the following:

(a) In lieu of providing vessels names, call signs and country of registry, (~~vessel umbrella~~) plan holders shall maintain accurate enrollment or member lists with vessel

specific information provided by covered vessels and shall provide ecology twenty-four hour access to the enrolled vessels list via the internet in a format acceptable to ecology. The list shall be updated daily, or at a minimum every three days. The list must at a minimum include the following:

(i) Vessel name;

(ii) Vessel type;

(iii) Worst case discharge oil type and quantity;

(iv) The name and API gravity of the densest oil being handled on the enrolled vessels;

(v) Qualified individual/spill management team;

(vi) Agent; and

(vii) (~~PRC/supplemental resources provider; and~~

~~(viii))~~) Protection and indemnity (P&I) club.

(b) (~~Umbrella~~) Plans (~~for~~) covering multiple vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

(7) Umbrella plans shall list the name of the entities that provide supplemental equipment.

(8) Plans shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-240 Field document.** (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that (~~vessel umbrella~~) plan holders covering multiple persons shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

(~~Umbrella vessel~~) Plans covering multiple persons shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260 and 173-182-262 or 173-182-264 as applicable; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-262 Vessel notification requirements for a discharge or substantial threat of a discharge.** (1)

The owner or operator of a covered vessel must notify the state through the Washington emergency management division of a discharge or substantial threat of a discharge. Notification must be made within one hour of the discharge or substantial threat of a discharge, or as soon as is feasible without further endangering the vessel or personnel.

(2) Vessel discharge notifications are in addition and made subsequent to notifications that the owner or operator of a covered vessel must provide to the United States Coast Guard. Vessels enrolled in ~~((umbrella))~~ plans covering multiple vessels must notify the ~~((umbrella))~~ plan holder in addition to the state, unless the state has already been notified by the ~~((umbrella))~~ plan holder on behalf of the vessel owner or operator.

(3) Notification of the discharge or substantial threat of a discharge initiates activation of the plan. Upon notification the vessel owner/operator will coordinate as appropriate with:

(a) The state of Washington and the United States Coast Guard to take any necessary actions to protect the public health, welfare, and natural resources of the state; and

(b) The ~~((umbrella))~~ plan holder for plan implementation as described in the plan.

(4) Notification procedures must be included in the plan.

(5) The substantial threat of a discharge may be determined or affected by the following conditions:

(a) Ship location and proximity to land or other navigational hazards;

(b) Weather;

(c) Tidal currents;

(d) Sea state;

(e) Traffic density;

(f) Condition of vessel; and

(g) Timing or likelihood of vessel repairs.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-280 Spill management teams.** (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, this list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must agree in writing to staff the positions. The capacity

and depth of spill management teams will be evaluated in drills and spills.

(c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) ~~((Covered vessel))~~ The plan ~~((holders))~~ shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include estimated time frames for arrival of the remainder of the spill management team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) ~~((Covered vessel umbrella))~~ Plans covering multiple vessels must maintain a list of the spill management team(s) for each vessel enrolled under the plan, and must describe the transition process from ~~((umbrella))~~ plan personnel to the incoming vessel owner or operator's team. The plan must include checklists and documentation to facilitate an effective transition.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-630 Process for plan approval.** (1)

Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment.

Ecology will accept comments on the plan no later than thirty days after the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination that

the plan is disapproved, approved, or conditionally approved. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the plan holder receives a certificate of plan approval and plan expiration dates. Approved plans shall be valid for five years.

(b) If a plan is conditionally approved, ecology may require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. In the conditional approval ecology will describe:

(i) Each specific restriction and the duration for which they apply;

(ii) Each required item to bring the plan into compliance; and

(iii) The schedule for plan holders to submit required updates, including a reference to the regulatory standard in question.

(iv) Restrictions may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to

daylight hours. Restrictions may also include additional requirements to ensure availability of response equipment.

(v) Conditional approval expires no later than eighteen months from date of issue before the plan holder must request an extension which is subject to public review.

(vi) Ecology shall revoke its conditional approval prior to the expiration date of a plan holder who fails to meet the terms of the conditional approval. The revocation will be in the form of an appealable order.

(c) If plan approval is disapproved, the plan holder shall receive an explanation of the factors.

(3) The owner or operator or plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved or conditionally approved plan. ~~((Umbrella))~~ Plan holders shall not enroll any ~~((vessels))~~ persons in a plan that has not been approved or conditionally approved, by ecology.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(5) Public notice will be given of any plan approval, conditional approval, or disapproval of a plan.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

**WAC 173-182-710 Type and frequency of drills.** The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Done two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance. Except the tank vessel multiplan holder deployment drill which must be scheduled at least 60 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
ERTV Deployment Drill for covered vessels transiting the Strait of Juan de Fuca	1 - One in each three year cycle, this is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.	This drill may involve notifications and tug call out, communications safety, tug demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel and holding position within one hundred feet of another vessel.	Scheduled at least 30 days in advance.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill.	This drill will be a deployment of wildlife equipment and wildlife handlers.	Scheduled at least 30 days in advance.
Tank vessel multiplan holder deployment drill	1 - One in each three year cycle.	This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, and the verification of operational readiness over multiple operational periods.	Scheduled at least 60 days in advance.

(1) Tabletop drills: ~~((a))~~ Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the incident command system (ICS). Role playing shall be required in this drill. During all required tabletop drills plan holders must provide a master list of equipment and personnel identified to fill both command post and field operations roles. The master resources list must include:

~~((b))~~ (a) Western regional response list identification numbers for all response resources; and

~~((c))~~ (b) Personnel names, affiliation, home base and command post or field role.

(2) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(3) ~~((Umbrella))~~ Plan holders covering multiple vessels and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230 (6)(a) in tabletop and deployment drills as a best practice to demonstrate the preparedness of enrolled vessel members. These drills will be scheduled by the plan holder or unannounced to be conducted by ecology, at the discretion of ecology. These drills may test any plan components but at a minimum will include notification to the enrolled vessel qualified individual, coordination of supplemental resources under WAC 173-182-232 and the transition from the ~~((umbrella))~~ plan holder spill management team to the enrolled vessel company spill management team.

(4) Equipment deployment drills: Plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of plan holder owned assets, contracted PRC assets, nondedicated assets, and vessels of opportunity.

(b) Plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a geographic response plan (GRP) strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the prebooming of an oil transfer provided the transfer is scheduled as a deployment on the drill calendar. Such credit may only be requested once per triennial cycle.

(5) Plan holders may receive credit for deployment drills conducted by PRCs if:

- (a) The PRC is listed in the plan; and
- (b) The plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(6) Additional large-scale multiple tank vessel plan holder equipment deployment drill requirement. Once every three years all tank vessel plan holders, including ~~((vessel umbrella))~~ plan holders that enroll multiple tank vessels, must participate in a multiple plan holder deployment exercise. At least one plan holder shall be the drill planning lead, participate in all the planning meetings and observe the drill. This deployment may include the following objectives:

- (a) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;
- (b) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;
- (c) Demonstration of multiple simultaneous tactics including:
  - (i) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;
  - (ii) Protection task forces which deploy multiple GRPs;
  - (iii) Vessel and personnel decontamination and disposal;

(iv) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations; and

(v) Personnel and equipment identified for night operations.

(d) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

(7) Additional deployment requirement for vessel plan holders with contracted access to the ERTV. Once every three years plan holders with contracted access to the ERTV must cosponsor a drill that includes deployment of the ERTV, unless ERTV drill credit has already been received under WAC 173-182-242 (1)(e). This drill must be scheduled on the area exercise calendar. The drill shall include at a minimum:

(a) Notifications and tug call out;

(b) Safety and environmental assessment;

(c) Demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel;

(d) Demonstration of the capability to hold position within one hundred feet of another vessel; and

(e) Communications.

(8) Additional deployment requirement for all plan holders. Once every three years plan holders must deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan. This is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.

(9) For all plan holders, ecology may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

## WSR 14-15-091

### PERMANENT RULES DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 18, 2014, 8:39 a.m., effective August 18, 2014]

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

Purpose: The department is repealing WAC 388-106-0745 through 388-106-0765, specifically the Washington medicaid integration partnership (WMIP) section, as this Snohomish County program ended on June 30, 2014. The health care authority (HCA) holds the contract with the managed care organization that implements WMIP services in Snohomish County. The contract, and therefore the program, expired on June 30, 2014. The aging and long-term support administration is coordinating with HCA regarding the termination of this program.

Citation of Existing Rules Affected by this Order: Repealing 388-106-0745, 388-106-0750, 388-106-0755, 388-106-0760, and 388-106-0765.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 14-12-077 on June 3, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 5; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 14, 2014.

Katherine I. Vasquez  
Rules Coordinator

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-106-0745 What services may I receive under WMIP?

WAC 388-106-0750 Am I eligible to enroll in WMIP?

WAC 388-106-0755 How do I pay for WMIP services?

WAC 388-106-0760 How do I disenroll from WMIP?

WAC 388-106-0765 What is the fair hearing process for enrollee appeals of managed care organization actions?

**WSR 14-15-092****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed July 18, 2014, 8:46 a.m., effective August 18, 2014]

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

Purpose: This rule change establishes a new residential support waiver for adult family homes to provide specific behavior support services under contract with the department, as negotiated in collective bargaining. This rule identifies the scope of services, eligibility criteria, and payment requirements. In addition, this rule makes some minor changes to regulatory and statutory references, program titles, and terminology.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0015, 388-106-0030, 388-106-0040, 388-106-0070, 388-106-0110, 388-106-0120, 388-106-0200, 388-106-0225, 388-106-0305, 388-106-0805, 388-106-0900, and 388-106-0955

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.520.

Adopted under notice filed as WSR 14-11-091 on May 21, 2014.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-106-0015(16), the following words have been deleted from the description of residential support, "licensed and contracted enhanced services facility or in a." The department will offer residential services in enhanced services facilities through a new 1915i state plan option, not through the residential support waiver. Within this rule, all other references to "enhanced services facilities" remain unchanged.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 12, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 12, Repealed 0.

Date Adopted: July 14, 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 14-16 issue of the Register.

**WSR 14-15-119****PERMANENT RULES****WHATCOM COMMUNITY COLLEGE**

[Filed July 22, 2014, 12:09 p.m., effective September 1, 2014]

Effective Date of Rule: September 1, 2014.

Purpose: The existing chapter 132U-120 WAC, Student rights and responsibilities, has out-of-date definitions, jurisdiction, and procedures that must be updated and revised based upon the AAG model policies and procedures and a statewide review of best practices among community colleges. We are requesting this action in order to repeal chapter 132U-120 WAC and install chapter 132U-125 WAC in its place.

Citation of Existing Rules Affected by this Order: Repealing chapter 132U-120 WAC.

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

Adopted under notice filed as WSR 14-08-019 on March 21, 2014, and WSR 14-11-043 on May 15, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 26, Amended 0, Repealed 20; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 22, 2014.

David Klaffke  
Director for  
Financial Aid

**Chapter 132U-125 WAC****STUDENT RIGHTS AND RESPONSIBILITIES  
POLICY****STUDENT CONDUCT CODE**NEW SECTION

**WAC 132U-125-001 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

**WAC 132U-125-003 Purpose.** Whatcom Community College, as a state supported institution of higher education, has a primary mission to contribute to the vitality of its communities by providing quality education and preparing students for active citizenship in a global society. Students and college personnel share the responsibility of contributing to a learning environment that promotes academic integrity, social justice, civility, and nonviolence within a safe and supportive college community.

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

NEW SECTION

**WAC 132U-125-005 Statement of jurisdiction.** The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, study abroad, or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

NEW SECTION

**WAC 132U-125-010 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

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

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

(3) "Conduct review officer" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving, and for reviewing or

referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter, as may be reasonably necessary.

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

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

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

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

(b) Sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

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

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

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

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

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

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

(11) "Student conduct officer" is a college administrator designated by the president or vice-president of student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter, as may be reasonably necessary.

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

NEW SECTION

**WAC 132U-125-015 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

**(1) Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

**(2) Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

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

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

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

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

NEW SECTION

**WAC 132U-125-020 Student responsibilities and prohibited conduct.** As members of the Whatcom Community College community, students have an obligation to

demonstrate academic and personal honesty and integrity. Students are expected to respect individual rights, recognize their impact on others, and take responsibility for their actions.

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

The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

**(1) Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication:

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

**(2) Other dishonesty.** Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

**(3) Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, services, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property or under college jurisdiction, whether or not actually conducted or sponsored by the college.

**(4) Assault or intimidation.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:



(a) Bullying is physical or verbal abuse, repeated over time, and involves a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the stalker lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization; or

(c) Any other person or organization, or possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons. No person or group may use or enter onto Whatcom Community College grounds or facilities, owned or leased, while having in their possession firearms or other dangerous weapons, even if licensed to do so. An exception shall be made for commissioned police officers and other law enforcement officers as permitted by law.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The appearance of being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling or delivering any alcoholic beverage on college premises, with the exception of sanctioned events, approved by the president or designee, and in compliance with state law.

(b) **Marijuana.** The appearance of being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, on college premises. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or the appearance of being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

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

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, electronic communication, social media, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of

giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; age (40+); religion; genetic information; gender, including pregnancy, marital status; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Abuse or misuse of college policies or procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

- (a) Failure to obey a verbal or written directive from a college official;

- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence, or attempting to intimidate, or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(19) **Safety violation.** Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community including, tampering with fire safety equipment and triggering false alarms or other emergency response systems. A safety violation may include the operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

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

(21) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

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

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

NEW SECTION

**WAC 132U-125-030 Trespass.** The vice-president or designee(s) shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain in any college property or facility. Such power and authority may be exercised to halt any event which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the movement of persons from facilities owned and/or operated by the college. Any person who disobeys a lawful order given by the vice-president or designee(s), shall be subject to disciplinary action and/or charges of criminal trespass.

NEW SECTION

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

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of mone-

etary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation: Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) **Not in good standing.** A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

NEW SECTION**WAC 132U-125-040 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer or designee. If that officer is the subject of a complaint initiated by the respondent, the vice-president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by contacting the respondent by telephone, e-mail, or in person to schedule a conduct hearing.

(3) If the respondent is unable to be reached by phone, e-mail, or in person, a written notice will be sent by certified mail to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting.

(4) At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(5) After considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall notify the student in writing within ten business days of the decision, the specific student conduct code provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an

explanation of the consequences of failing to file a timely appeal.

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132U-125-035.

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

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

#### NEW SECTION

**WAC 132U-125-045 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten business days of hand delivery and/or postmark of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The individuals involved in an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

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

(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten business days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

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

- (a) The imposition of disciplinary suspensions in excess of ten business days;
- (b) Dismissals; and
- (c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, the president or designee.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

#### NEW SECTION

**WAC 132U-125-050 Brief adjudicative proceedings authorized.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (1) Parking violations.
- (2) Outstanding debts owed by students or employees.
- (3) Use of college facilities.
- (4) Residency determinations.
- (5) Use of library—Fines.
- (6) Challenges to contents of education records.
- (7) Loss of eligibility for participation in institution sponsored athletic events.

(8) Student conduct appeals involving the following disciplinary actions:

- (a) Suspensions of ten business days or less;
- (b) Disciplinary probation;
- (c) Written reprimands;
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

#### NEW SECTION

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

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

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

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

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

days of service of the initial decision, the initial decision shall be deemed the final decision.

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

#### NEW SECTION

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

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

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

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

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

#### NEW SECTION

**WAC 132U-125-065 Brief adjudicative proceedings—College record.** The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceeding.

#### NEW SECTION

**WAC 132U-125-070 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president or designee;

(c) One administrative staff member (other than an administrator serving as a student conduct or conduct review

officer) appointed by the president or designee at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132U-125-075 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

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

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

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

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

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

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

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

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

#### NEW SECTION

**WAC 132U-125-080 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

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

(3) The chair shall cause the hearing to be recorded by a method that they select in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

#### NEW SECTION

**WAC 132U-125-085 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the stu-

dent conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty business days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president or designee.

#### NEW SECTION

**WAC 132U-125-090 Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president or designee by filing a notice of appeal with the president's office within ten business days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president or designee's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president or designee shall provide a written decision to all parties within forty-five business days after receipt of the notice of appeal. The president's or designee's decision shall be final.

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

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

NEW SECTION

**WAC 132U-125-095 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

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

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

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

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

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

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

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

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall

include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

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

## DISCIPLINE PROCEDURES FOR CASES INVOLVING

### ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

**WAC 132U-125-100 Supplemental sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132U-125-005 through 132U-125-095. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

**WAC 132U-125-105 Supplemental definitions.** The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

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

(2) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(3) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature including, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, electronic communication, social media, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(4) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(5) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a

person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

#### NEW SECTION

**WAC 132U-125-110 Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of the complainant's appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

**WAC 132U-125-115 Supplemental appeal rights.** (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within ten business days of service of the notice of the discipline decision provided for in WAC 132U-125-110(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) Exoneration and dismissal of the proceedings;

(b) A disciplinary warning;

(c) A written reprimand;

(d) Disciplinary probation;

(e) Suspensions of ten business days or less; and/or

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten business days or an expulsion shall be reviewed by the student conduct board.

(7) In proceedings before the student conduct committee, respondent, and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at the complainant's own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, they file a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, the complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless the respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the



complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of the complainant's appeal rights.

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

(12) The president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

## STUDENT COMPLAINTS

### NEW SECTION

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

### REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132U-120-010 Title.
- WAC 132U-120-015 Purpose.
- WAC 132U-120-020 Definitions.
- WAC 132U-120-030 Jurisdiction.
- WAC 132U-120-040 Student rights.
- WAC 132U-120-050 Student responsibilities.
- WAC 132U-120-060 Trespass.
- WAC 132U-120-065 Judicial authority.
- WAC 132U-120-075 Conduct proceedings.
- WAC 132U-120-080 Disciplinary sanctions.
- WAC 132U-120-095 Summary suspension.
- WAC 132U-120-100 Appeals—Overview.
- WAC 132U-120-110 Structure of the student rights and responsibilities committee.
- WAC 132U-120-120 Hearing procedures before the student rights and responsibilities committee.

WAC 132U-120-140 Decision by the student rights and responsibilities committee.

WAC 132U-120-150 Final appeal.

WAC 132U-120-160 Effective date of the rules of conduct.

WAC 132U-120-170 Prior rules.

WAC 132U-120-180 Severability.

WAC 132U-120-260 Purpose.

## WSR 14-15-130

### PERMANENT RULES

### GAMBLING COMMISSION

[Order 701—Filed July 22, 2014, 3:26 p.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: Clarifies which businesses are required to get a manufacturer's license and which would qualify for a manufacturer's special sales permit. Language was added to answer questions received from applicants about this permit, including:

- Who can apply for this permit;
- How long the permit is good for;
- The activity allowed with this permit; and
- The rules that the permit holder must follow.

A new rule outlining recordkeeping requirements for permit holders was also adopted.

Citation of Existing Rules Affected by this Order: Amending WAC 230-03-025.

Statutory Authority for Adoption: RCW 9.46.070(4).

Adopted under notice filed as WSR 14-09-039 filed on April 11, 2014.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: July 23, 2014.

Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

**WAC 230-03-025 Applying for a manufacturer's special sales permit.** (1) You may apply for a one-time manufacturer's special sales permit if ~~((you))~~:

(a) You want to sell authorized gambling equipment as set forth in WAC 230-03-200; and

(b) ~~((Demonstrate that the anticipated profits from your sales will be below the cost of obtaining a manufacturer license.~~

~~(2) Otherwise, you must apply for a manufacturer license.))~~ Gross sales from authorized gambling equipment will be less than twenty-five thousand dollars during your permit year; and

(c) You will not have an ongoing vendor/customer relationship after the sale or installation of the gambling equipment.

(2) You may be assessed additional fees after an estimate of the permit investigation costs have been established.

(3) The manufacturer's special sales permit will be issued for one year and is not renewable.

(4) Manufacturer's special sales permittees must comply with all rules, including those for manufacturers in chapter 230-16 WAC.

(5) You will need a manufacturer's license if you:

(a) Fail to meet the requirements of a special sales permit; or

(b) Want a renewable, annual license.

#### NEW SECTION

**WAC 230-16-187 Accounting records for manufacturer's special sales permit holders.** Holders of a manufacturer's special sales permit must keep and maintain a complete set of records for their permitted activity. They must, at least:

(1) Keep a:

(a) **Cash disbursements book (check register)** - Permit holders must document all expenses, both gambling and non-gambling related, with invoices or other appropriate supporting documents. They must enter information monthly and include, at least:

(i) The date the check was issued or payment made; and

(ii) The number of the check; and

(iii) The name of the payee; and

(iv) Type of expense; and

(b) **Cash receipts** - Permit holders must keep a record of cash sales and cash received from all sources. They must enter information for each payment received monthly and include, at least, the:

(i) Date; and

(ii) Name of the person paying; and

(iii) Amount; and

(c) **Copies of all financial data** - Permit holders must keep copies of all financial data that supports tax reports to governmental agencies.

(2) Maintain copies of all agreements regarding sales or leasing of gambling equipment and supplies that fully disclose all terms.

(3) Comply with the recordkeeping requirements outlined in chapter 230-16 WAC, except for WAC 230-16-185, 230-16-200, and 230-16-215.

#### WSR 14-15-149

#### PERMANENT RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-25—Filed July 23, 2014, 10:18 a.m., effective August 23, 2014]

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

Purpose: These rules amend the rules regarding the filing of financial and related filings by Washington domestic insurance companies, health care service contractors, health maintenance organizations, and self-funded multiple employer welfare arrangements to require that their financial and related statements only be filed electronically with the NAIC and for those related filings that the NAIC does not accept, these entities must file the statements electronically with the commissioner. When the filings have been [been] made with the NAIC, the commissioner will deem the statements to have been filed with the commissioner.

Citation of Existing Rules Affected by this Order: Amending WAC 284-07-050, 284-07-060, 284-07-070, 284-07-100, 284-07-190, and 284-07-217.

Statutory Authority for Adoption: RCW 48.02.060, 48.05.250, 48.44.050, 48.46.095, 48.46.200, and 48.125.090.

Other Authority: RCW 48.05.073, 48.05.383, 48.44.095, and 48.46.080.

Adopted under notice filed as WSR 14-13-106 on June 17, 2014.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rules coordinator@oic.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: July 23, 2014.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 07-14-104, filed 7/2/07, effective 8/2/07)

**WAC 284-07-050 Financial statement instructions.**

(1) For the purpose of this section, the following definitions shall apply:

(a) "Insurer" shall have the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW (~~and~~), health maintenance organizations registered under chapter 48.46 RCW, (~~and~~) fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

(b) "Insurance" shall have the same meaning as set forth in RCW 48.01.040. It also includes prepayment of health care services as set forth in RCW 48.44.010(3) (~~and~~), prepayment of comprehensive health care services as set forth in RCW 48.46.020(1), and health care services under RCW 48.125.010(1).

(2) Each authorized insurer (~~is required to~~) must file with the ((~~commissioner~~) National Association of Insurance Commissioners (NAIC) an annual statement for the previous calendar year in the general form and context as ((~~promulgated~~) adopted by the ((National Association of Insurance Commissioners-)) NAIC((~~))~~)) for the kinds of insurance to be reported upon(~~, and shall also file a copy thereof with the NAIC~~)). The filing with the NAIC will be deemed to be a filing with the commissioner. To effectuate RCW 48.05.250, 48.05.400, 48.36A.260, 48.44.095 and 48.46.080 and to enhance consistency in the accounting treatment accorded various kinds of insurance transactions, the valuation of assets, and related matters, insurers (~~shall~~) must adhere to the appropriate Annual Statement Instructions and the Accounting Practices and Procedures Manuals (~~(promulgated)~~) adopted by the NAIC.

(3) This section does not relieve an insurer from its obligation to comply with specific requirements of (~~the insurer- code or rules~~) Titles 48 RCW and 284 WAC.

(4) Annual statements:

(a) Annual statements for all domestic insurers must be filed electronically with the (~~commissioner. Insurers must electronically transmit the annual statement, as described in subsection (2) of this section, in PDF or other format as noted on the commissioner's web site. The commissioner has the discretion to allow an insurer to file annual statements on paper. The insurer must demonstrate that filing in electronic form will create an undue financial hardship for the insurer. Applications for permission to file on paper must be received by the commissioner at least ninety days before the annual statement is due~~) NAIC. The filing with the NAIC will be deemed to be a filing with the commissioner. The commissioner has the discretion to allow an insurer to file electronically with the commissioner. The insurer must demonstrate that filing with the NAIC will create an undue financial hardship for the insurer. Applications for permission to not file with the NAIC must be received by the commissioner at least ninety days before the annual statement is due. If the NAIC does not collect or accept any annual statement supplement, schedule, form, or other document, then the domestic insurer must file the supplement, schedule, form, or other document electronically with the commissioner.

(b) To comply with statutory requirements that annual statements must be verified by the oaths of at least two of the insurer's officers, insurers may:

(i) Use a method of electronic signature verification that has been approved by the commissioner for use by the insurer; or

(ii) (~~File a paper copy of the~~) Include in the electronic filing an image of the original signatures ((and jurat page of the annual statement at the time of the electronic filing of the annual statement)) in PDF format as noted on the commissioner's web site. This ((paper copy)) electronically filed document must contain ((the original)) a legally binding signature of the company officers and the notary administering the oath.

(c) Both the electronic annual statement and the verification of that statement by the oaths of two officers must be received by the NAIC and the commissioner, if applicable, to complete an annual statement filing. The date of receipt of the later of the electronic annual statement or verification is considered the receipt date of the annual statement.

(5)(a) Each domestic insurer (~~shall~~) must file quarterly statements of its financial condition with the (~~commissioner and with the~~) NAIC. The filing with the NAIC will be deemed to be a filing with the commissioner. The commissioner has the discretion to allow an insurer to file electronically with the commissioner. The insurer must demonstrate that filing with the NAIC will create an undue financial hardship for the insurer. Applications for permission to not file with the NAIC must be received by the commissioner at least ninety days before the quarterly statement is due. If the NAIC does not collect or accept any quarterly statement supplement, schedule, form, or other document, then the domestic insurer must file the supplement, schedule, form, or other document electronically with the commissioner. Each foreign insurer (~~shall~~) must file quarterly statements of its financial condition with the NAIC. (~~The commissioner may require a foreign insurer to file quarterly statements with the commissioner whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the foreign insurer.~~) The statements (~~shall~~) must be filed (~~in the commissioner's office~~) with the NAIC or the commissioner, if applicable, not later than the forty-fifth day or the fifteenth day of the second month after the end of the insurer's calendar quarters, whichever is later. The quarterly statements (~~shall~~) must be in the form and content as (~~promulgated~~) adopted by the NAIC for quarterly reporting by insurers, (~~shall~~) must be prepared according to appropriate Annual and Quarterly Statement Instructions and the Accounting Practices and Procedures Manuals (~~(promulgated)~~) adopted by the NAIC and (~~shall~~) must be supplemented with additional information required by this title and by the commissioner. Quarterly statements for the fourth quarter are not required.

(b) Quarterly statements must be filed with the (~~commissioner~~) NAIC by electronically transmitting the quarterly statement as described in this subsection(~~, in PDF or other format as noted on the commissioner's web site~~).

(c) To comply with statutory requirements that quarterly statements must be verified by the oaths of at least two of the insurer's officers, insurers may:

(i) Use a method of electronic signature verification that has been approved by the commissioner for use by the insurer; or

(ii) Include in the electronic filing an image of the original signatures in PDF format as noted on the commissioner's web site. This electronically filed document must contain a legally binding signature of the company officers and the notary administering the oath.

(6) As a part of any investigation by the commissioner, the commissioner may require an insurer to file monthly financial statements whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the insurer. Monthly financial statements ~~((shall))~~ must be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial statement is being filed. ~~((Such))~~ Insurers must electronically transmit the monthly financial statements, as described in this subsection, in PDF or other format as noted on the commissioner's web site. The monthly financial statements ~~((shall))~~ must be the internal financial statements of the company. In addition, the commissioner may require these internal financial statements to be accompanied by a schedule converting the financial statements to reflect financial position according to statutory accounting practices and submitted in a form using the same format and designation as the ~~((insurer's))~~ quarterly financial statements of insurers. "Financial statements" as used in this subsection includes:

- (a) Statement of assets;
- (b) Liabilities, capital and surplus;
- (c) Statements of revenue and expenses; and
- (d) Statements of cash flows.

(7) Health care service contractors shall use the Health Statement Form ~~((promulgated))~~ adopted by the NAIC for their statutory filings.

(8) Each health care service contractor's ~~((and)),~~ health maintenance organization's, and self-funded multiple employer welfare arrangement's annual statement ~~((shall))~~ must be accompanied by an additional data statement form (IC-13A-HC/IC-14-HMO).

(9) The commissioner may allow a reasonable extension of the time for filing the financial statements. A request for an extension must be in writing. The request must be received prior to the due date of the filing and must state good cause for the extension. An extension can only be granted in writing; paper, fax, or e-mail is considered "writing" for purposes of this subsection.

AMENDATORY SECTION (Amending WSR 02-21-120, filed 10/23/02, effective 11/23/02)

**WAC 284-07-060 Statement of actuarial opinion.** (1) For purposes of this section "insurer" has the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, ~~((and))~~ fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

(2)(a) Each insurer ~~((shall))~~ must include with its annual statement, a statement from a qualified actuary, as defined in WAC 284-05-060, or as defined in subsection (4) of this section for domestic property and casualty insurers, or as defined in subsection (5) of this section for health care service contractors ~~((and)),~~ health maintenance organizations, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW entitled "Statement of Actuarial Opinion," setting forth the actuary's opinion relating to the insurer's reserves and other actuarial items, prepared in accordance with the appropriate *Annual Statement Instructions* and *Accounting Practices and Procedures Manuals* ~~((promulgated))~~ adopted by the National Association of Insurance Commissioners. If an exemption is allowed by the *Annual Statement Instructions* and is approved by the domiciliary commissioner, an insurer shall be exempt from this requirement (unless the commissioner of Washington makes a specific finding, by order, bulletin, letter, or otherwise, that for a specific insurer, or one or more insurers, company compliance is necessary to carry out the commissioner's statutory responsibilities). A certified copy of the approved exemption must be filed with the annual statement in all jurisdictions in which the company is authorized.

(b) After December 31, ~~((2002))~~ 2014, statements of actuarial opinion for all domestic and foreign insurers must be filed electronically with the ~~((commissioner))~~ NAIC. The filing with the NAIC will be deemed to be a filing with the commissioner. This includes the statement of actuarial opinion for the year ended December 31, ~~((2002))~~ 2014. Insurers must electronically transmit the statement of actuarial opinion, as described in (a) of this subsection, in PDF or other format as noted on the commissioner's web site. The commissioner has the discretion to allow an insurer to file a statement of actuarial opinion ~~((on paper))~~ electronically with the commissioner. The insurer must demonstrate that filing ~~((in electronic form))~~ with the NAIC will create an undue financial hardship for the insurer. Applications for permission to not file ((a paper copy)) with the NAIC must be received by the commissioner at least ninety days before the statement of actuarial opinion is due.

(c) To comply with requirements that statements of actuarial opinion must be signed by the actuary, an insurer may:

(i) Use a method of electronic signature verification that has been approved by the commissioner for use by the insurer; or

(ii) ~~((File a paper copy of the signature page of the statement of actuarial opinion at the time of the electronic filing of the statement of actuarial opinion. The paper copy must contain the original signature of the actuary.))~~ Include in the electronic filing an image of the original signature in PDF format as noted on the commissioner's web site. This electronically filed document must contain a legally binding signature of the actuary and any person providing supporting documentation.

(3) This section does not relieve an insurer from its obligation to comply with other requirements of ~~((the insurance code or rules thereunder))~~ Titles 48 RCW and 284 WAC.

(4) With respect to statements of actuarial opinion for property and casualty insurers domiciled in this state, a person can demonstrate competency in loss reserve evaluation,

and thus be considered to be a qualified actuary, only by being:

(a) A member in good standing of the Casualty Actuarial Society; or

(b) A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries; or

(c) A person with documented experience, skill, and knowledge substantially equivalent to that required for either (a) or (b) of this subsection, acceptable to the commissioner. A person qualifying under this alternative (c) must be approved in advance by the commissioner, as prescribed by the *Annual Statement Instructions*.

(5) With respect to statements of actuarial opinion for health care service contractors ~~((and))~~, health maintenance organizations, and self-funded multiple employer welfare arrangements the qualified actuary must be:

(a) A member in good standing of the American Academy of Actuaries;

(b) A person recognized by the American Academy of Actuaries as qualified for such actuarial evaluation; or

(c) A person with documented experience, skill, and knowledge substantially equivalent to that required for either (a) or (b) of this subsection, acceptable to the commissioner. A person qualifying under this alternative (c) must be approved in advance by the commissioner. In such a case, the health care service contractor or health maintenance organization must request approval at least ninety days prior to the filing of its annual statement.

AMENDATORY SECTION (Amending WSR 02-21-120, filed 10/23/02, effective 11/23/02)

**WAC 284-07-070 Statements to be filed in electronic form.** (1) For the purpose of this section, the following definition shall apply: "Insurer" shall have the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, ~~((and))~~ fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

(2) Annual statements, quarterly statements, and other financial reports filed by an insurer with the commissioner or the National Association of Insurance Commissioners ~~((shall))~~ must be filed in electronic form ~~((as well as on paper through December 31, 2002. All annual, quarterly, and other financial statements filed by an insurer after December 31, 2002, shall be filed with the commissioner in electronic form only))~~ after September 1, 2014, according to WAC 284-07-050.

(3) Until the commissioner otherwise directs by letter, bulletin, or otherwise, generally or as to one or more companies, "electronic form" means ~~((, on a diskette,))~~ internet filing ~~((, or File Transfer Protocol (FTP) filing, for all filings made prior to January 1, 2003. For all filings required to be made on or after January 1, 2003, "electronic form" will exclude diskette.~~

~~((4))~~ An insurer who on December 31, 1996, was not subject to this rule or has not previously filed in electronic form to the commissioner or the NAIC, shall comply with this rule for the year ending December 31, 1996, and each year thereafter. To enhance the intrastate and interstate surveillance of the insurer's financial condition earlier filing is permitted.

~~((5))~~ The requirement under this section applies to the extent that the NAIC has issued a diskette submission directive or has otherwise approved or prescribed an applicable diskette format for the particular class of insurer).

~~((6))~~ (4) The commissioner may allow a reasonable extension of the time for filing the financial statements. A request for an extension must be in writing. The request must be received prior to the due date of the filing and must state good cause for the extension. An extension can only be granted in writing; paper, fax, or e-mail is considered "writing" for purposes of this subsection.

AMENDATORY SECTION (Amending WSR 09-20-069, filed 10/5/09, effective 11/5/09)

**WAC 284-07-100 Purpose and scope.** (1) The purpose of WAC 284-07-100 through 284-07-230 is to improve the Washington state insurance commissioner's surveillance of the financial condition of insurers by requiring:

(a) An annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

(b) *Communications of Internal Control Related Matters Noted in an Audit*; and

(c) Management's report of internal control over financial reporting.

(2) Every insurer, as defined in WAC 284-07-110, ~~((shall be))~~ is subject to WAC 284-07-100 through 284-07-230. Insurers having direct premiums written of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of direct written policies nation-wide at the end of the calendar year ~~((shall be))~~ are exempt from WAC 284-07-100 through 284-07-230 for the year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums ~~((pursuant to))~~ under either contracts ~~((and/or))~~ or treaties, or both of reinsurance of one million dollars or more will not be ~~((so))~~ exempt.

(3) Foreign or alien insurers filing the audited financial report in another state, ~~((pursuant to))~~ under that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from WAC 284-07-120 through 284-07-210 if:

(a) A copy of the audited financial report, *Communication of Internal Control Related Matters Noted in an Audit*, and the Accountants' Letter of Qualifications that are filed with the other state are filed with the NAIC in accordance with the filing dates specified in WAC 284-07-120, 284-07-190 and 284-07-200, respectively (Canadian insurers may submit accountant's reports as filed with the Office of the Superintendent of Financial Institutions, Canada); and

(b) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the NAIC within the time specified in WAC 284-07-180.

(4) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

(5) WAC 284-07-100 through 284-07-230 shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under the rules, regulations, practices, and procedures of the insurance commissioner.

(6) All reports and filings required by WAC 284-07-100 through 284-07-230 must be filed electronically with the ~~((commissioner))~~ NAIC. The filing with the NAIC will be deemed to be a filing with the commissioner. If the NAIC does not collect or accept any of these reports and filings, then the domestic insurer must file the report and other filings electronically with the commissioner. Insurers must electronically transmit the report or filing in PDF or other format as noted on the commissioner's web site. The commissioner has the discretion to allow an insurer to file ~~((paper copies of))~~ electronically with the commissioner any reports and filings required by WAC 284-07-100 through 284-07-230. The insurer must demonstrate that filing ~~((in electronic form))~~ with the NAIC will create an undue financial hardship for the insurer. Applications for permission to not file ~~((in hard copy))~~ with the NAIC must be received by the commissioner at least ninety days before the ~~((statement of annual statement))~~ report or filing is due.

(7) To comply with statutory or other requirements that reports or filings be signed or verified, insurers and accountants may:

(a) Use a method of electronic signature verification that has been approved by the commissioner; or

(b) ~~((File a paper copy of the signature or verification at the time of the electronic transmission of the report or filing.~~

~~((8) The report or filing and the appropriate signatures and/or verifications must both be received to complete a filing. The date of receipt of the later of the two parts of the filing is considered the receipt date of the report or filing.))~~ Include in the electronic filing an image of the signature in PDF format as noted on the commissioner's web site. This electronically filed document must contain a legally binding signature of the insurer or independent certified public accountant.

**AMENDATORY SECTION** (Amending WSR 09-20-069, filed 10/5/09, effective 11/5/09)

**WAC 284-07-190 Communication of internal control related matters noted in an audit.** (1) In addition to the annual audited financial report, each insurer ~~((shall))~~ must furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal controls over financial reporting noted during the audit. Such communication ~~((shall))~~ must be prepared by the accountant within sixty days after the filing of the annual audited financial

report, and ~~((shall))~~ must contain a description of any unremediated material weakness (as the term material weakness is defined by SAS No. 60, *Communication of Internal Control Related Matters Noted in an Audit*, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in WAC 284-07-120(1)) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer ~~((is required to))~~ must provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if such actions are not described in the accountant's communication.

(3) Insurers must electronically file the written communication as to any unremediated material weakness in its internal controls over financial reporting noted during an audit, as described in subsection (1) of this section, in PDF or other format as noted on the commissioner's web site.

**AMENDATORY SECTION** (Amending WSR 09-20-069, filed 10/5/09, effective 11/5/09)

**WAC 284-07-217 Management's report of internal control over financial reporting.** (1) Every insurer required to file an audited financial report ~~((pursuant to))~~ under WAC 284-07-100 through 284-07-230 that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and federal flood program, of five hundred million dollars or more ~~((shall))~~ must prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in WAC 284-07-110. The report ~~((shall))~~ must be filed with the commissioner along with the *Communications of Internal Control Related Matters Noted in an Audit* described under WAC 284-07-190. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-310.

(3) An insurer or group of insurers that is:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but is a SOX compliant entity; or

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in WAC 284-07-130 (2)(b) through (g)) were included in the scope of the Section 404

Report. The addendum (~~shall~~) must be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in WAC 284-07-130 (2)(b) through (g)) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file:

(i) A WAC 284-07-217 report; or

(ii) The Section 404 Report and a WAC 284-07-217 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's report of internal control over financial reporting (~~shall~~) must include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of the internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weakness in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Insurers must electronically file management's report of internal control over financial reporting, as described in subsection (1) of this section, in PDF or other format as noted on the commissioner's web site.

(6) Management (~~shall~~) must document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and

extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's report on internal control over financial reporting, required by subsection (1) of this section, and any documentation provided in support thereof during the course of a financial condition examination, (~~shall~~) must, to the extent provided by law, be kept confidential by the commissioner.

**WSR 14-15-153**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 23, 2014, 11:14 a.m., effective August 23, 2014]

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

Purpose: With the passage of ESSB 5946, changes in agency rules regarding suspensions, expulsions, and discipline due process were mandated by changes to RCW 28A.600.015, 28A.600.020, and the addition of RCW 28A.600.022. It became clear through the revision process that several WACs in chapter 392-400 WAC required updating and clarification. The rules shown below reflect the agencies [agency's] effort to clean up, consolidate, and bring clarity to pupil discipline and due process.

Citation of Existing Rules Affected by this Order: Amending WAC 392-400-200, 392-400-205, 392-400-210, 392-400-215, 392-400-220, 392-400-225, 392-400-235, 392-400-245, 392-400-250, 392-400-260, 392-400-265, 392-400-270, 392-400-275, 392-400-280, 392-400-285, 392-400-290, 392-400-295, 392-400-300, 392-400-305, 392-400-310, 392-400-315, 392-400-317, 392-400-320, 392-400-400, and 392-400-420.

Statutory Authority for Adoption: RCW 28A.600.015.

Adopted under notice filed as WSR 14-07-029 on March 10, 2014.

Changes Other than Editing from Proposed to Adopted Version: Language and processes were clarified for readability and to assist with consistent implementation. Some language was added after public comment to clarify responsibilities under state and federal civil rights laws. Some sections were rearranged, and a new section was added to reposition and consolidate language that was repetitive throughout multiple sections (WAC 392-400-233).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 7, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 16, Repealed 0.

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

Date Adopted: May 7, 2014.

Randy Dorn  
State Superintendent  
of Public Instruction

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

**WAC 392-400-200 Purpose and application.** The purpose of this chapter is to implement RCW 28A.600.015 by prescribing the substantive and procedural due process rights of students served by any program or activity conducted by, or ~~((#))~~ on behalf of, a common school district: Provided ~~((;))~~ that the enforcement of rules ~~((promulgated))~~ adopted by the Washington interscholastic activity association and like organizations that govern the participation of students in interschool activities, and appeals in connection therewith, shall be governed by rules of the organization that have been adopted pursuant to RCW 28A.600.200. The procedures and standards set forth in this chapter, and those adopted by a school district in conformance with this chapter, shall govern the imposition of corrective action ~~((or punishment))~~ (i.e., discipline, suspension, and expulsion) upon any student by a school district and its agents.

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

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

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

**WAC 392-400-205 Definitions.** As used in this chapter the term:

(1) "Discipline" shall mean all forms of corrective action ~~((or punishment))~~ other than emergency removal from a class, subject, or activity, suspension ~~((and))~~, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided ~~((;))~~ that the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or ~~((#))~~ on behalf of a school district.

(2) "Suspension" shall mean a denial of attendance (other than for the balance of the immediate class period for

"discipline" purposes) ~~((#))~~ for any single subject or class, or ~~((#))~~ for any full schedule of subjects or classes for a stated period of time. A suspension also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.

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

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

~~((;))~~ that:

(a) Exceeds ten school days;

(b) Cannot be imposed in such a manner that causes the student to lose academic grades or credit in excess of one semester or trimester during the same school year; and

(c) Cannot be imposed beyond the school year in which the alleged misbehavior occurs.

(5) "Emergency expulsion" shall mean an emergency removal from school for up to, and not exceeding, ten consecutive school days from the student's current school placement by a school district superintendent or a designee of the superintendent. The superintendent or designee must have good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to other students or school staff or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school.

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

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

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

(9) "Reengagement meeting" shall mean a meeting held between the school district and the student and parent and/or guardian to discuss how to return a long-term suspended or expelled student to an education setting as soon as possible.

(10) "Reengagement plan" shall mean a written plan developed between a school district and a student and his/her parent or guardian designed to aid the student in taking the



necessary steps to remedy the situation that led to the student's suspension or expulsion and return the student to the educational setting as soon as possible.

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

**WAC 392-400-210 Student responsibilities and duties.** The mission of the common school system is to provide learning experience which will assist all students to develop skills, competencies, and attitudes that are fundamental to an individual's achievement as a responsible, contributing citizen. In order to maintain and advance this mission, it shall be the responsibility and duty of each student to pursue his/her course of studies, comply with written rules of a common school district which are adopted pursuant to and in compliance with WAC 392-400-225 and RCW 28A.600-010, and submit to reasonable corrective action (~~((or punishment))~~) imposed by a school district and its agents for violation(s) of such rules. The provisions of this chapter do not lessen the foregoing responsibilities and duties of each student. This chapter is intended to assure that corrective action (~~((or punishment))~~) is imposed for just cause and in a fair and just manner.

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

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

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

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

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

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

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

The foregoing enumeration of rights shall not be construed to deny or disparage other rights set forth in the consti-

tution and the laws of the state of Washington or the rights retained by the people.

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

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

NEW SECTION

**WAC 392-400-233 Unexcused absences and tardiness.** (1) Students with one or more unexcused absences and subject to compulsory attendance pursuant to chapter 28A.225 RCW may be subject to corrective action reasonably calculated to modify the student's conduct. If a school district imposes corrective action on a student for one or more unexcused absences, the school district must:

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

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

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

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

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

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

(c) The circumstances pertaining to the student's inability to attend school have been taken into consideration, including whether the tardiness or absences are directly related to the student's disability under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, or the Individuals with Disabilities Education Act.

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

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

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

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

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

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

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

Corporal punishment does not include:

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

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

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

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

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

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

**WAC 392-400-245 Short-term suspension—Conditions and limitations.** A short-term suspension may be imposed upon a student for violation of school district rules

adopted pursuant to WAC 392-400-225, subject to the following limitations or conditions, the prior informal conference procedures set forth in WAC 392-400-250, and the grievance procedures set forth in WAC 392-400-255:

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

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

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

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

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

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

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

~~((5) Grade five and above program--))~~ (4) No student in the grade five and above program shall be subjected to short-term suspensions for more than a total of fifteen school days during any single semester or ten school days during any single trimester, as the case may be.

~~((6))~~ (5) Any student subject to a short-term suspension shall be provided the opportunity upon his or her return to make up assignments and tests missed by reason of the short-term suspension if:

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

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

~~((7))~~ (6) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

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

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

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

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

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

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

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

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

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

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

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

(2) As a general rule, no student shall be suspended for a long term unless another form of corrective action ~~((or punishment))~~ reasonably calculated to modify his or her conduct has previously been imposed upon the student as a consequence of misconduct of the same nature. A school district may, however, elect to adopt rules providing for the immediate resort to long-term suspension in cases involving exceptional misconduct as long as disciplinarians and hearing officers are allowed to grant exceptions in cases involving extenuating ~~((and/or))~~ or exceptional circumstances, notwithstanding the fact prior alternative corrective action ~~((or punishment))~~ has not been imposed upon the student(s)

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

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

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

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

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

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

~~((5) Grade five and above program--))~~ (4) No single long-term suspension shall be imposed upon a student in the grade five and above program in a manner which causes the student to lose academic grades or credit for in excess of one

semester or trimester, as the case may be, during the same school year.

~~((6))~~ (5) Any student who has been suspended shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

~~((7))~~ (6) All long-term suspensions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the suspension.

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

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

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, ~~((to the extent feasible;))~~ in accordance with Title VI of the Civil Rights Act of 1964;

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

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

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

(e) Set forth the facts that:

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

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

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

(3) If a request for a hearing is not received within the required three school business day period, the school district may deem the student and his or her parent(s) or guardian(s)

to have waived the right to a hearing and the proposed long-term suspension may be imposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WAC 392-400-275 Expulsion—Conditions and limitations.** A student may be expelled for violation of school district rules adopted pursuant to WAC 392-400-225, subject

to the following limitations or conditions, the notice requirements set forth in WAC 392-400-280, and the hearing requirements set forth in WAC 392-400-285:

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

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

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

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

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

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

~~((4))~~ An expulsion may not be for an indefinite period of time. An expulsion may not exceed one calendar year from the date of the corrective action unless:

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

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

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

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

~~((5))~~ (6) Any student who has been expelled shall be allowed to make application for readmission at any time. Each school district board of directors shall adopt written rules which provide for such an application for readmission and set forth the procedures to be followed.

~~((6))~~ (7) All expulsions and the reasons therefor shall be reported in writing to the superintendent of the school district or his or her designee within twenty-four hours after the imposition of the expulsion.

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

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

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, ~~((to the extent feasible,))~~ in accordance with Title VI of the Civil Rights Act of 1964;

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

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

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

(e) Set forth the facts that:

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

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

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

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

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

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

hearing to commence within three school business days after the date upon which the request for a hearing was received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The principal or designated school authority acts to impose ~~((discipline, impose a short-term suspension, initiate a long-term suspension or an expulsion, or impose an emergency expulsion, pursuant to this chapter))~~ corrective action.

(2) The principal or school authority shall meet with the student as soon as reasonably possible following the student's removal and take or initiate appropriate corrective action ~~((or punishment))~~. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the ~~((next))~~ school day following the student's emergency removal from a class, subject, or activity. Prior to or at the time any such student is returned to the class(es), subject(s), or activity(ies), the principal or school authority shall notify the teacher or administrator who removed the student therefrom of the action which has been taken or initiated.

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

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

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

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

or her parent(s) or guardian(s) by telephone or in person as soon as reasonably possible. Such written and oral notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, ~~((to the extent feasible;))~~ in accordance with Title VI of the Civil Rights Act of 1964;

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

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

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

(e) Set forth the facts that:

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

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

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

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

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

**WAC 392-400-305 Emergency expulsion—Prehearing and hearing process.** (1) If a request for a hearing within the required ~~((ten))~~ three school business days is received pursuant to WAC 392-400-300, the school district shall

immediately schedule and give notice of a hearing to commence as soon as reasonably possible and in no case later than the ~~((third))~~ second school business day after receipt of the request for hearing.

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

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

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

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

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

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

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

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

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

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

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

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

~~((7) An emergency expulsion may be continued following the hearing on the basis that the emergency situation con-~~

~~tinues and/or as corrective action or punishment for the action(s) giving rise to the emergency expulsion in the first instance)).~~

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

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

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

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

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

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

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

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

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

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



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

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

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

#### NEW SECTION

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

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

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

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

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

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

(e) The proposed extended length of the expulsion;

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

(g) A proposed date for the reengagement meeting.

(2) Designated staff shall submit the petition at any time after final imposition of a one-year expulsion and prior to the end of that expulsion.

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

(4) The petition shall be provided in the predominant language of the student and/or parent(s)/guardian(s) who speak a language, other than English, in accordance with Title VI of the Civil Rights Act of 1964.

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

(6) Within eleven school business days, but no later than twenty school business days of the date of the petition's recorded delivery to the student/parent(s)/guardian(s), the district superintendent shall issue a written decision indicat-

ing whether the petition is granted or denied. The written decision shall also include a description of all rights and procedures for appeal.

(7) If the petition is granted, within ten school business days of the receipt of the decision, the student and/or parent(s)/guardian(s) may appeal the decision to the district's school board in accordance with WAC 392-400-310 and 392-400-315.

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

#### NEW SECTION

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

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

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

#### **WSR 14-15-156**

#### **PERMANENT RULES**

#### **GRAYS HARBOR COLLEGE**

[Filed July 23, 2014, 12:00 p.m., effective August 23, 2014]

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

Purpose: Represents changes that were needed to be in compliance with the Violence Against Women's [Women] Act and to update regulations within the institution to comply with both institutional and societal changes.

Citation of Existing Rules Affected by this Order: Amending WAC 132B-120-010, 132B-120-030, 132B-120-040, 132B-120-065, 132B-120-120, 132B-120-130, 132B-120-135, 132B-120-155, 132B-120-170, 132B-120-180, and 132B-120-190.

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

Adopted under notice filed as WSR 14-13-042 on June 10, 2014.

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

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

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

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

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

Date Adopted: July 22, 2014.

Arlene Torgerson  
Vice-President  
for Student Services

**AMENDATORY SECTION** (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-010 Definitions.** As used in this document the following words and phrases shall mean:

(1) "Board" shall mean the board of trustees of Community College District No. 2, state of Washington.

(2) "College" shall mean Grays Harbor College or any additional community college hereafter established within Community College District No. 2, state of Washington.

(3) "College facilities" shall mean and include any or all real property owned, rented, leased, controlled or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto. College facilities extend to affiliated web sites, distance learning classroom environments and agencies or institutions that have educational agreements with Grays Harbor College.

(4) "President" (~~shall mean the chief executive officer~~) is the president of the college appointed by the board of trustees. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

(5) "Vice-president" (~~shall mean the vice-president for student services or in his/her absence, the vice-president for instruction~~) for student services" is the administrator responsible for implementing and enforcing the student conduct code. The vice-president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

(6) "Faculty" shall mean any person employed on a full or part-time basis as a teacher, instructor, counselor, coach or librarian for the college or an affiliated institution. Includes faculty of other colleges (whether or not employed by GHC) that provide instruction to GHC students through distance education.

(7) "Student" shall mean and include any person who is enrolled in courses at or through the college (~~or is in the process of applying for admission to 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."

(8) "Employee" shall mean any classified, faculty, administrator, exempt, student worker or volunteer person of the college or an affiliated institution.

(9) "College community" shall mean all employees and students of the college.

(10) "College official" shall mean any person employed by the college performing assigned duties.

(11) "Disciplinary action" (~~shall mean any of the sanctions listed in WAC 132B-120-130.~~

(12) "Sexual harassment" shall mean unwelcome verbal or physical conduct of a sexual nature, unwelcome or unsolicited sexual advances or requests for sexual favors when:

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

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

(c) ~~Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment.~~

~~Examples of behaviors that may constitute harassment include but are not limited to: Repeated, offensive and unwelcome insults and/or jokes; pressure for dates or sex, if unwelcome or repeated; repeated, unwelcome comments about an individual's body or clothing; persistent, unwelcome flirtation, advances and/or propositions of a sexual nature; deliberate and unwelcome touching, such as patting, hugging, pinching or repeated brushing against a person's body.~~

(13) "Hazing" shall mean any method of initiation into a student organization or association or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or post-secondary institution. Hazing does not include customary athletic events or other similar contests or competitions.

(14) "Trespass" shall be defined in accordance with chapter 9A.52 RCW.

(15) ~~is the process by which discipline is imposed against a student for a violation of the student conduct code by the vice-president for student services.~~

(12) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the vice-president for student services. Disciplinary appeals from a suspension in excess of ten instructional days or a dismissal/expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(13) "Respondent" is the student against whom disciplinary action is being taken.

(14) "Service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, 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 into the mail.

(15) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review or a president officer. Unless expressly specified otherwise, filing shall be accomplished by:

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

(b) By sending the document by e-mail and first class mail to the recipient's college e-mail and office address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified official or presiding officer.

(16) "Business day" means a week day, excluding weekends and college holidays.

(17) "Assembly" shall mean any 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 group of persons.

((+6)) (18) "RCW" shall mean the Revised Code of Washington.

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

WAC 132B-120-030 Jurisdiction. ((All rules herein adopted concerning student conduct and discipline shall apply to every student whenever said student is engaged in or present at any college-related activity whether occurring on or off of college facilities.)) The conduct code adopted herein applies to student conduct that occurs on college premises, at college-sponsored activities, and to off-campus student conduct that adversely affects the well-being of the college community and/or the pursuit of its objectives. Jurisdiction includes, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The vice-president for student services has sole discretion, on a case-by-case basis, to determine whether the code of student conduct will be applied to conduct occurring off campus.

The college may carry out disciplinary proceedings prior to, simultaneous with, or following civil or criminal proceedings in a court. The college cooperates 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 the conditions do not conflict with college rules or sanctions. ((The college is not a policing agent for students when they are not in college facilities but does reserve the right to take action if a student's behavior is determined to threaten the health, safety, and/or property of the college and the college community. The college has the sole discretion to determine what conduct occurring off campus adversely impacts the college and/or the pursuit of its objectives.))

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

WAC 132B-120-040 ((Prohibited conduct.)) Authority. ((Disciplinary action may be taken for a violation of any provision of this student code or for a violation of other college rules and regulations which may from time to time be properly enacted or for specific prohibited conduct including but not limited to the following:

(1) Smoking and use of tobacco products anywhere other than designated smoking areas.

(2) Using, possessing, consuming, or being under the influence of, or distributing any liquor as defined in RCW 66.04.010, as now or hereafter amended, when present at or engaged in any college-sponsored activity with the exception of sanctioned events approved by the president or designee and in compliance with state law.

(3) Using, possessing, distributing or being under the influence of any narcotic drug or controlled substance as defined in RCW 69.50.101, as now or hereafter amended, in a college facility or while participating in a college-related program.

(4) Engaging in lewd, indecent, or obscene behavior.

(5) Sexual misconduct of any kind including rape, indecent liberties, assault of a sexual nature, voyeurism or unwanted sexual contact;

(6) Where the student presents an imminent danger or causes unreasonable risk of harm to college property or to himself/herself or to others or to the education process of the college.

(7) Interference by force or violence with, or intimidation by threat of force or violence, of another student, employee or visitor who is in the peaceful discharge or conduct of his/her duties or studies (RCW 28B.10.570 through 28B.10.572).

(8) Disorderly or abusive behavior either physical or verbal which interferes with the rights of others or that obstructs or disrupts teaching, learning, research, services, activities or administrative functions.

(9)) The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president for student affairs or designee. The vice-president

for student services shall serve as the principal investigator and administrator for alleged violations of this code.

Prohibited conduct. Prohibited student conduct for which the college may impose sanctions includes, but is not limited to, any of the following:

(1) Tobacco, electronic cigarettes and related products. The use of tobacco, electronic cigarettes and related products in any building owned, leased or operated by the college or in any location where such use is prohibited. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco and snuff.

(2) Alcohol. The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law or at sanctioned events approved by the president or designee and in compliance with state law.

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

(4) Being observably under the influence of any legend drug, narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, as now or hereafter amended, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional.

(5) Conduct which is disorderly, lewd, indecent, or obscene.

(6) 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, but not limited to, rape, sexual assault, sexual batter, sexual exploitation, gender- or sex-based stalking, and sexual coercion, regardless of the relationship between the perpetrator and the victim. 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.

(7) Sexual harassment. Conduct includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, non-verbal, electronic or social media communication, or physical touching that would substantially interfere with a reasonable person's work or educational performance, or to create an intimidating, hostile or offensive educational environment.

(8) Other 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. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(9) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated harassment or following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent.

(10) Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity and nonconsensual distribution of a recording of sexual activity.

(11) Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of a member of the college community, or leads or incites another person to engage in such an activity.

(12) Obstruction or disruption of:

(a) Any instruction, learning environment, service, research, administration, disciplinary proceeding, or college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(13) Classroom conduct that seriously interferes with either the instructor's ability to conduct the class or the ability of other students to profit from the instructional program.

(a) Faculty have the authority to take appropriate action to maintain proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

(b) A faculty member may remove a student for the single class session in which disruptive conduct occurs. The instructor will report any such exclusion from the class to the vice-president for student services or designee who may ini-

tiating further conduct proceedings as provided in this procedure.

(c) The vice-president for student services or designee may set conditions for the student to meet upon return to the classroom or may enforce a continued removal from class pending an investigation. The student may appeal the disciplinary sanction according to appeal procedures.

~~((10))~~ (14) Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(15) Breach of the peace.

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

(17) Any person, thing or object brought into college facilities, without prior approval of an appropriate college official, that causes a disruption to the classroom or campus environment or causes a safety hazard.

~~((11))~~ (18) Conducting or participating in an assembly ((which) that violates the guidelines ((of assembly as defined in Section H-E)) and procedures established in Administrative Procedure 516.03.

~~((12))~~ (19) All forms of student academic dishonesty((s)) including, but not limited to, cheating, falsification, plagiarism or facilitating, aiding and abetting academic dishonesty or engaging in any conduct specifically prohibited by a faculty member in the course syllabus or class discussion.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) This section shall not be construed as preventing an instructor from taking immediate disciplinary action as provided herein where the instructor is required to act upon such breach of academic dishonesty in order to preserve order and prevent disruptive conduct in the classroom.

~~((13))~~ (e) This section shall also not be construed as preventing an instructor from adjusting the student's grade on a particular project, paper, test, or class grade for academic dishonesty.

~~((13))~~ Forgery of or unauthorized alteration of or access to any college document, record, funds or instrument of identification, including electronic hardware, software and records.

(14) Providing false information to the college or the intentional making of false statements and/or filing of false

~~charges against the college and/or members of the college community.~~

~~(15) Theft from college premises and/or property; theft of property of a member of the college community on college premises; or possession of property stolen from college premises and/or a member of the college community while on college premises.~~

~~(16) Causing or attempting 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.~~

~~(17) Failure to comply with the direction of college employees acting in the legitimate performance of their duties.~~

~~(18) Refusal to provide positive identification and evidence of student enrollment to any college employee in the lawful discharge of said employee's duties.~~

~~(19) Possession, transportation or storage of any firearm(s), explosives, dangerous chemicals or other weapons, devices or substances which can be used to inflict bodily harm or to damage real or personal property. Weapons may include, but are not limited to, all firearms, pellet guns, slingshots, martial arts devices, switchblade knives and clubs. This does not apply to commissioned police officers as prescribed by law.)~~

~~(20) Any other acts of dishonesty, such as, but not limited to:~~

~~(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record or instrument of identification;~~

~~(b) Tampering with an election conducted by or for college students; or~~

~~(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.~~

~~(21) Attempted or actual damage to, or theft or misuse of, real or personal property or money of the college or state; any student or college officer, employee or organization; any other person or organization; or possession of such property or money after it has been stolen.~~

~~(22) Failure to comply with the direction of college employees acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.~~

~~(23) Possession, holding, wearing, transporting, storage or presence of any firearm, explosive, dangerous chemical or other weapon, device or substance apparently capable of producing bodily harm or damage real or personal property, subject to the following exceptions:~~

~~(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or~~

~~(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or~~

~~(c) The president may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose.~~

(24) 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.

~~((21) Computer violations which include, but are not limited to:~~

~~(a) Gaining access, without authorization, to a computer system or network, or electronic data owned, used by, or affiliated with Grays Harbor College;~~

~~(b) Unauthorized use of another individual's account, identification or password;~~

~~(c) Use of computer facilities to interfere with the work of another student, faculty member, college employee or computer network operations;~~

~~(d) Use of computer facilities and/or resources to send or solicit obscene, abusive, bothersome, threatening or harassing messages;~~

~~(e) Use of college e-mail accounts to intentionally disseminate viruses, destructive, malicious or invasive programs;~~

~~(f) Use of college computers or systems for other than educational purposes;~~

~~(g) Use of college computer equipment to participate in illegal or unauthorized activities;~~

~~(h) Use of computing facilities and resources in violation of copyright laws;~~

~~(i) Violating any of the computer use policies in effect on campus.~~

~~(22) Sexual harassment as defined in Section 1B12 of another student or employee.~~

~~(23) Any repeated intentional conduct directed at another student or employee that has the purpose or effect of creating a hostile, intimidating or disruptive learning or working environment. (This may include intentional, repeated, unwelcome attempts to contact a student or employee.)~~

~~(24) Hazing in any form as described in RCW 28B.10.900.)~~

~~(25) Unauthorized possession, duplication, or other use of a key, keycard, code or other restricted means of access to college property, or unauthorized entry onto or into college property.~~

~~(26) Theft or misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:~~

~~(a) Unauthorized use of such resources or opening of a file, message or other item;~~

~~(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message or other item;~~

~~(c) Unauthorized use or distribution of someone else's password or other identification;~~

~~(d) Use of such time or resources to interfere with someone else's work;~~

~~(e) Use of such time or resources to send, display, or print an obscene, abusive, threatening, or harassing message, text, or image;~~

~~(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;~~

~~(g) Use of such time or resources in violation of applicable copyright or other law;~~

~~(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;~~

~~(i) Use of college electronic resources to intentionally disseminate viruses, destructive, malicious or invasive programs;~~

~~(j) Failure to comply with the college's electronic use policy; or~~

~~(k) Illegal peer-to-peer file sharing or distribution of copyrighted works using campus resources. In addition to code of conduct sanctions, students may be subject to criminal and civil penalties if they engage in such unauthorized activity.~~

~~(27) Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.~~

~~(28) The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular trade, skill, craft or profession for which the student is taking courses or is pursuing as their educational goal or major.~~

~~((26) Harassment that involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical or sensory disability.~~

~~(27) Harassment, (including physical, verbal, graphic, written or electronic conduct) that is sufficiently severe, persistent or pervasive so as to threaten or limit the ability of a reasonable individual to work, study or participate in the activities of the college.~~

~~((28)) (29) Entering or remaining in any closed college facility or entering after closing time of the college facility without permission of a college official.~~

~~((29)) (30) Unauthorized use of college equipment, facilities or supplies. Use of college equipment, facilities, supplies, or computer systems for personal gain without proper authority.~~

~~((30)) (31) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.~~

~~(32) Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:~~

~~(a) Failure to obey a subpoena;~~

~~(b) Falsification or misrepresentation of information;~~

~~(c) Disruption or interference with the orderly conduct of a proceeding;~~

~~(d) Interfering with someone else's proper participation in a proceeding;~~

~~(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;~~

~~(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;~~

~~(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code; or~~

(h) Retaliating against witnesses or accusers of prohibited conduct.

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

(34) Intentionally encouraging, compelling, attempting, aiding, abetting, conspiring, hiring or being an accessory to ((any act prohibited by this code may be considered to be same as completed violations.

(31) Retaliating against witnesses or accusers of prohibited conduct.

(32)) commit any of the foregoing acts of misconduct.

(35) Students who participate in any college sponsored or sanctioned international study program shall observe the following:

(a) The laws of the host country;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program in another county;

(d) The GHC standards of conduct for students.

((33)) (36) Violation of federal, state or local law in college facilities or at college-sponsored or supervised activities.

((34) Violation of other published college policies, rules or regulations:))

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-065 Student rights.** The following rights are endorsed by the college for each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed rights of free inquiry, expression and peaceful assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b), available space in the class, and meeting any required prerequisites.

(c) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate or disrespectful conduct, and all harassment, including sexual harassment.

(d) Students are protected from academic evaluation which is arbitrary, prejudiced or capricious. Students are responsible for meeting the standards of academic performance established by each of their instructors.

(2) Nondiscrimination. Students have the right not to be discriminated against on the basis of age, color, creed, disability, gender, marital status, national origin or ancestry, race, religion, sexual orientation, or veteran status.

(3) Due process. Students have the right of due process. No disciplinary action may be imposed without notice to the accused of the nature of the charges. A student accused of

violating the code of conduct is entitled to procedural due process as set forth in the code.

(4) Campus speakers/invited guests. Recognized student organizations shall have the right to invite outside speakers and guests to campus subject to the availability of campus facilities, funding and compliance with college procedures. Student organizations are responsible for the conduct of their invited guests on or in college facilities and at functions sponsored by the college or recognized student organization.

(5) Right to assembly. Students shall have the right of assembly upon college facilities that are generally available to the public provided such assemblies((-

~~(a) Are conducted in an orderly manner;~~

~~(b) Do not unreasonably interfere with vehicular or pedestrian traffic;~~

~~(c) Do not unreasonably interfere with classes, scheduled meetings or ceremonies or regular functions of the college;~~

~~(d) Do not cause destruction or damage to college property;~~

~~(e) Are in compliance with procedures established in Administrative Procedure 516.03)) are in compliance with procedures established in Administrative Procedure 516.03 and other behavioral expectations outlined in the code of conduct.~~

(6) Distribution of materials. Handbills, leaflets, newspapers and similarly related materials may be distributed free of charge by any student or students, or by members of recognized student organizations, or by college employees on or in college facilities at locations specifically designated by the vice-president for student services; and are in compliance with procedures established in Administrative Procedure 516.03 provided such distribution does not interfere with the ingress or egress of persons or interfere with the free flow of vehicular or pedestrian traffic.

Such handbills, leaflets, newspaper and related matter must bear identification as to the publishing agency and distributing organization or individual.

All nonstudents shall register with the vice-president for student services prior to the distribution of any handbill, leaflet, newspaper or related matter. Such distribution must not interfere with the free flow of vehicular or pedestrian traffic.

Any person or persons who violate any provisions of this rule relating to the distribution of materials will be subject to disciplinary action.

(7) Commercial activities. College facilities may not be used for commercial solicitation, advertising or promotional activities except when such activities clearly serve educational objectives, including but not limited to display of books of interest to the academic community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives and are conducted under the sponsorship or at the request of the college, or the student government (ASGHC); provided that such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic.

(8) Fund-raising. Students and student organizations have the right to engage in fund-raising activities subject to the approval of the vice-president for student services.

(9) Grievances. Students have the right to express and resolve misunderstandings, complaints and grievances according to the stated grievance procedures.

AMENDATORY SECTION (Amending WSR 04-01-100, filed 12/16/03, effective 1/16/04)

**WAC 132B-120-120 Disciplinary process.** (1) **Judicial authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president for student services or designee. The vice-president for student services ~~(or)~~ or designee, ~~((or in his/her absence, the vice-president for instruction of the college))~~ is responsible for initiating disciplinary proceedings for infractions of rules and regulations as outlined in the procedures. The vice-president for student services, or in his/her absence, the vice-president for instruction, may delegate this responsibility to members of their staff and they may also establish committees or other hearing bodies to advise or act for them in disciplinary matters.

(2) **Initiating the process.** ~~((Any infractions of college rules and regulations may be referred by any student or employee to the vice-president for student services, designee or in his/her absence the vice-president for instruction.))~~ Sexual harassment complaints or concerns may be directed to the vice-president for student services or human resources office.

(3) **Initiating disciplinary ~~(process)~~ action** (except summary suspension).

~~((a) The vice-president for student services and/or the vice-president for instruction or his/her designated representative will initiate disciplinary proceedings.~~

~~(b) Any student accused of violating any provision of the rules of conduct shall be called for an initial meeting and in order that any informality in disciplinary proceedings not mislead the student as to the seriousness of the matter under consideration, will be informed of what provision(s) of the rules of conduct he/she is charged with violating, and what appears to be the range of penalties, if any, which might result from disciplinary proceedings.~~

~~(c) After considering the evidence in a case and interviewing the student or students involved, the vice-president for student services or, in his/her absence, the vice-president for instruction or designee may take any of the following actions:~~

~~(i) Terminate the proceeding, exonerating the student or students.~~

~~(ii) Dismiss the case after providing whatever counseling and advice may be appropriate.~~

~~(iii) Impose verbal warning or reprimand not subject to student's right of appeal.~~

~~(iv) Impose additional disciplinary sanctions, subject to the student's right of appeal as described in this procedure. The student shall be notified in writing of the action taken, the reason for the decision and information about the appeals process.~~

~~(v) Refer the matter to the student conduct committee for appropriate action. The student shall be notified in writing that the matter has been referred to the committee.~~

~~(d) If the student fails to appear at the scheduled meeting without prior notification or evidence of extenuating circumstances, the vice-president may impose any sanctions authorized by this code.~~

~~(e) The written decision of the vice-president shall become final unless appealed.~~

~~(f) If a referral or an appeal is made to the student conduct committee, the committee shall hold a hearing, reach conclusions and may impose sanctions.))~~ (a) All disciplinary actions will be initiated by the vice-president for student services or designee. If that person 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 complaint.

(b) The vice-president for student services shall initiate disciplinary action by notifying the respondent to attend a disciplinary meeting. At the meeting, the student will be presented with the allegations, the provisions of the conduct code the respondent is alleged to have violated, and the range of possible sanctions for the alleged violation. This information will be provided in writing, either at the meeting or within three business days of the meeting. 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.

(c) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the vice-president for student services 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.

(d) The vice-president may take any of the following disciplinary actions:

(i) Exonerate the respondent and terminate the proceedings;

(ii) Impose a disciplinary sanction(s), as described in WAC 132-120-130;

(iii) 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.

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-130 Sanctions.** ~~((Sanctions for violations of college regulations or conduct may be imposed independent of any action taken by civil authorities.))~~ In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution. In the case



of minors, misconduct may be referred to parents or legal guardians.

More than one sanction may be imposed for any single violation as appropriate. Sanctions may include, but are not limited to:

(1) Disciplinary warning. ~~((Constitutes oral or written notice of violation of college rules and regulations.~~

~~(2)) A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.~~

~~(2) Written reprimand. Notice in writing that the student has violated one or more terms of the code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.~~

~~(3) Disciplinary probation. Formal action placing conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Notice will be made in writing, specifying the period of probation and the conditions of the probation. ((As a condition of probation, the college may specify that it will impose more severe disciplinary sanctions against the student if the student is found to have violated any standards of conduct for students during the probationary period.~~

~~(3)) Probation may be for a limited period of time, or may be for the duration of the student's attendance at the college. A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:~~

~~(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.~~

~~(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college.~~

~~(4) Restitution. ((Compensation for loss, damage, or injury to the appropriate party in the form of service, money, or material replacement.~~

~~(4)) Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.~~

~~(5) Disciplinary suspension. Dismissal from the college and termination from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. Access may be denied to all or part of college facilities.~~

~~(6) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation (at the student's expense) by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional~~

credentials as defined by the college. The student will sign all necessary releases to allow college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

~~(7) Discretionary sanctions. These may include but are not limited to: Work assignments, service to college or community, class/workshop attendance or other discretionary assignments such as educational interventions intended as learning experiences.~~

~~((5) Assessment. The student may be required to have an assessment (at the student's expense), such as alcohol/drug or anger management by a certified professional, which includes a recommended treatment and assessment of ability to successfully participate in college.~~

~~(6) Education. The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's conduct such as anger management or counseling.~~

~~(7)) (8) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval for a student organization. Support may be withdrawn for use of information technology resources, funding, college facility use and rental and involvement in organizational activities.~~

~~((8)) (9) Loss of privileges. Loss of specific college privileges for a specified period of time. These may include but are not limited to student activities, athletic events, drama or music performances, or club participation.~~

~~((9)) (10) No contact. Restriction from entering specific college areas and/or all forms of contact with certain person(s).~~

~~((10)) (11) No trespass. A student may be prohibited from entering upon or remaining upon college facilities and premises.~~

~~((11)) (12) Revocation of admission or degree. Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation or for other serious violations committed by a student.~~

~~((12) Summary suspension:~~

~~(a) Temporary dismissal from the college for a period of time during which an investigation and/or formal disciplinary procedures are pending. Summary suspension is predicated upon a reasonable belief that the student presents an imminent danger to college property, to other students, to employees of the college or is of significant disruption to the educational process.~~

~~(b) During the period of summary suspension, the student may enter the college premises only to meet with the vice-president for student services or a designee; to deliver a written appeal; to attend a hearing; or otherwise with special permission from the vice-president for student services.~~

~~(c) At the end of the summary suspension period, the student shall be reinstated to prior status subject to any other dis-~~

iplinary sanctions that may have been imposed. (See WAC 132B-120-130.)

(13) Suspension. Temporary dismissal from the college and termination of student status. A student suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied access to all or any part of college facilities.

(14) Expulsion. Permanent termination of student status from college.

Refund of fees for the quarter in which disciplinary action is taken shall be in accord with the college's refund policy. Fees paid in advance for subsequent quarters will be refunded.) (13) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-135 Summary suspension ((~~procedures~~)).** ((1) Suspension may be imposed, if the vice-president for student services or his/her designee(s) has cause to believe that any student:

(a) Has committed a felony or violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the GHC community; or

(c) If the student poses an ongoing threat of disruption of, or interference with, the operations of the college, that student may be summarily suspended.

(2) Notice. Any student who has been summarily suspended shall be served with written notice or verbal notice of the summary suspension. If such notice is made in writing, it shall be provided by certified mail and first-class mail delivered to the student's last known address.

(3) The oral or written notice to the student shall include the reasons for summary suspension, duration of the summary suspension, and any possible additional disciplinary or corrective action that may be taken. The notification shall indicate that the student must appear before the vice-president of student services for a summary suspension hearing at a time specified in the notice. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice-president for student services shall set a date for informal hearing of the summary suspension as soon as practicable.

(4) The student shall be given the opportunity to present written and/or oral evidence. The issue before the vice-president for student services shall be whether reasonable cause exists to support and to continue the summary suspension.

(5) The vice-president for student services shall issue a written decision within two days of the informal hearing.

(6) If a student who has been summarily suspended fails to appear for a summary suspension hearing, the vice-president for student services may order the suspension to remain in place pending the final disposition of the disciplinary process as provided in this section.

(7) The student may request a de novo review of the informal hearing decision before the student conduct committee. Either party may request the review to be consolidated with any other disciplinary proceeding arising from the same matter.

(8) Nothing herein shall prevent faculty members from taking summary action as may be reasonably necessary to maintain order in the classroom and/or prevent substantial disruption to the educational process. Such summary action in the form of removal from the classroom may not exceed one day per episode. Any such summary action may be appealed to the vice-president for student services for an informal hearing.) (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 vice-president for student services 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 vice-president for student services 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 vice-president for student services 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 vice-president for student services 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 vice-president for student services 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 vice-president for student services shall provide a copy of the decision to all persons or offices that may be bound or protected by it.

#### NEW SECTION

**WAC 132B-120-143 Brief adjudicative proceedings—Review of an initial decision.** (1) Brief adjudicative proceedings shall be conducted by the vice-president for student services. The vice-president for student services 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 vice-president for student services shall conduct an informal hearing and provide each party:

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

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

(3) The vice-president for student services shall serve an initial decision within seven business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the vice-president for student services 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 132B-120-145 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 vice-president for student services within twenty-one calendar 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 ten business days which ever 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 ten business 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.

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-155 Appeal(s of initial) from disciplinary action.** ~~((Any disciplinary action other than warning or reprimand may be appealed. All appeals must be made in writing and addressed to the vice president for student services within seven calendar days of the college's giving notice of the disciplinary action.~~

~~Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice president for student services, or in his/her absence, the vice president for instruction or designee.~~

~~Disciplinary action by the vice president for student services may be appealed to, and shall be reviewed by, the student conduct committee.~~

~~Disciplinary action by the student conduct committee may be appealed to and shall be reviewed by the college president or his/her designee.)~~ (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the vice-president for student services within twenty-one calendar days of service of the vice-president for student services' decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the vice-president for student services.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

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

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

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

(b) Dismissals; and

(c) Discipline cases referred to the committee by the vice-president for student services, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-170 Student conduct committee.**

~~((The student conduct committee, convened for that purpose, will hear, (de novo means that the matter will be considered anew as if it had not been heard before and as if no decision had been previously rendered), and make recommendations on all disciplinary cases referred to it by the appropriate authority or appealed to it by student(s). The committee will be composed of the following persons:~~

~~(1) A member appointed by the president of the college who shall serve as chair;~~

~~(2) Two members of the faculty, appointed by the president of the faculty association;~~

~~(3) Two representatives from the student body, appointed by the student government (ASGHC) president.~~

~~None of the above-named persons shall sit on any case in which he/she has a complaint or witness, in which he/she has a direct or personal interest, or in which he/she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the disciplinary committee as a whole.~~

~~In hearings before the committee, an assistant attorney general may be requested to assist the 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; and~~

~~(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 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).~~

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-180 Student conduct committee procedures.** ~~((The student has a right to a fair and impartial hearing before the committee on any charge of misconduct resulting in disciplinary action other than warning or reprimand.~~

~~The committee chair shall establish general rules of procedures for conducting hearings. All proceedings of the committee will be conducted with reasonable dispatch and terminated as soon as fairness to all parties involved permits.~~

~~(1) The committee shall issue written notice of the date, time and place of the hearing, and the charges against the student consistent with RCW 34.05.434. This notice of hearing shall be provided no later than seven days prior to the date of the hearing. The notice may be amended at any time prior to the hearing, but if such amendment is prejudicial to the student's case, the hearing shall be rescheduled to a later date if so requested in writing by the student.~~

~~(2) The vice-president for student services shall present evidence to the committee supporting the charges against the student. The vice-president for student services and the student (at his/her own expenses) have the right to be assisted by an advisor of their choice. The vice-president for student services and the student are responsible for presenting their own information. Advisors are not permitted to address the board or participate directly in the hearing. An advisor may communicate only with the person he or she is advising. The board chair may call recesses to facilitate this communication. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.~~

~~(3) If the student elects to choose and pay a duly licensed attorney admitted to practice in the state of Washington as the student's advisor, notice thereof must be tendered by the student to the vice-president for student services at least five calendar days prior to the hearing.~~

~~(4) The vice-president for student services, the student and the committee chair may arrange for witnesses to present pertinent information to the committee. Witnesses may provide written statements in lieu of their attendance at the hearing. The student is responsible for informing his/her witnesses of the time and place of the hearing. Witnesses provide information to, and answer questions from, the committee. To preserve the educational tone of the hearing~~

and to avoid an adversarial environment, students may be required to direct questions to the chair, rather than to the witness directly. Questions concerning whether potential information may be received are resolved by the chair.

(5) Formal rules of process, procedure and technical rules of evidence, such as are applied in criminal or civil court, are not used in board proceedings. The student or his/her representative shall be entitled to hear and examine the evidence against him/her and be informed of the identity of its sources; the student shall be entitled to present evidence in his/her own behalf and to question witnesses testifying against him/her as to factual matters subject to the conditions outlined above. The committee shall request the administration to provide the student a list of witnesses who will appear, and a description of any documentary or other physical evidence that will be presented at the hearing. The student shall have all authority which is possessed by the college to obtain information subject to FERPA regulations or to request the presence of witnesses or the production of other evidence relevant to the issues at the hearing.

(6) Only those matters presented at the hearing, in the presence of the student involved, will be considered in determining whether the student is guilty of the misconduct charged but the student's past record of conduct may be taken into account in formulating the committee's recommendation.

(7) Hearings are conducted in private. Admission of any persons other than the vice-president for student services, the student, and their respective advisors is at the discretion of the committee chair.

(8) Questions related to the order of the proceedings are determined by the committee chair.

(9) The chairperson shall admit matters into evidence that reasonable persons would accept as having value in the conduct of their affairs. Unduly repetitive or irrelevant evidence may be excluded.

(10) Failure on the part of the student(s) to appear or cooperate in the proceedings may result in default in accordance with RCW 34.05.440. The information in support of the complaint is presented and considered in the absence of the accused student. Failure of the student to cooperate may be taken into consideration by the committee in recommending penalties.

(11) The committee chair may accommodate concerns for the personal safety, well-being, or fears of confrontation during the hearing by providing separate facilities or by permitting participation by telephone, audio tape, written statement or other means.

(12) The committee may decide to uphold or modify sanctions in accordance with WAC 132B-120-130.

(13) There shall be a single verbatim record, such as a tape recording or transcript, of the information gathering portion of student conduct board hearings. Committee deliberations are not recorded. The record is the property of the college. Following the conclusion of the conduct proceeding, access to records of the case and hearing file will be kept in the office of the vice-president for student services and limited to those designated by the college president. The accused student may make arrangements with the vice-president to purchase a copy of the record.

(14) The burden of proof that guides the committee's decision is the preponderance of evidence, i.e., whether it is more likely than not that the accused student violated the standards of conduct for students.

(15) The student will be provided with a copy of the findings of fact and with the conclusions of the committee within ten calendar days from the final hearing date. If the college is not in session, this period may be extended for a reasonable period of time.)) (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 business days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third business day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

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

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

(9) Each party may be accompanied at the hearing by a nonattorney assistant of 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 vice-president for student services. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the vice-president for student services may also be represented by a second appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132B-120-181 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 recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The vice-president for student services (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 132B-120-185 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty business days following the 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 vice-president for student services, 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 vice-president for student services 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.

AMENDATORY SECTION (Amending WSR 10-17-031, filed 8/9/10, effective 9/9/10)

**WAC 132B-120-190 Appeal ~~((of the))~~ from student conduct committee's initial decision.** ~~((The student will be advised of his/her right to present within seven calendar days, a written statement of appeal to the president of the college before action is taken on the decision of the committee. In the case of a student under eighteen years of age, written notice of any action involving dismissal or disciplinary probation may be sent to the parents or guardian of the student.~~

~~If the student concludes that the action of the disciplinary committee is inappropriate, the student may appeal the matter to the president of the college. The president of the college or his/her designated representative, after reviewing the case, including the report of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the official who initiated the proceedings, the student and the committee chair. The decision of the president is final.))~~ (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 calendar 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.

~~(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 calendar 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 twenty business 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.

### **DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT**

#### NEW SECTION

**WAC 132B-120-300 Supplemental sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132B-120-005 through 132B-120-060. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132B-120-305 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 132B-120-310 Supplemental complaint process (sexual misconduct).** 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 used to conduct any disciplinary proceeding conducted in accordance with this chapter.

(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 vice-president for student services, 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 imposed upon the respondent for the complainant's protection is given.

#### NEW SECTION

**WAC 132B-120-315 Supplemental appeal rights.** (1) The following actions by the vice-president for student services 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 vice-president for student services within twenty-one days of service of the notice of the discipline. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten 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. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross-examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

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

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the

respondent for the complainant's protection, including suspension or dismissal of the respondent.