

WSR 15-23-002
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed November 4, 2015, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-074.

Title of Rule and Other Identifying Information: The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on December 22, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 23, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 22, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by December 8, 2015, phone

(360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-105-0005 to update the CARE table to comply with the current budget.

Reasons Supporting Proposal: This update is necessary to ensure the CARE table contained in WAC 388-105-0005 is consistent with the current budget.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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

Name of Proponent: Department of social and health services, aging and long-term support administration, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98504, (360) 725-2447; Implementation and Enforcement: Ken Callaghan, 4450 10th Avenue S.E., Lacey, WA 98504, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule change is adjusting rates pursuant to legislative standards. Exemption: RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. The rule change is adjusting rates pursuant to legislative standards. Exemption: RCW 34.05.328 (5)(b)(vi).

November 3, 2015
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-03-113, filed 1/21/14, effective 2/21/14)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
CARE CLASSIFICATION	KING COUNTY				
	AL Without Capital		AL With Capital		AFH
	Add-on	Add-on	ARC	EARC	
A Low	65.58 67.22	71.00 72.64	46.51 47.67	46.51 47.67	47.59 49.97
A Med	70.97 72.74	76.39 78.16	52.71 54.03	52.71 54.03	53.84 56.53
A High	79.58 81.57	85.00 86.99	57.85 59.30	57.85 59.30	60.10 63.11
B Low	65.58 67.22	71.00 72.64	46.51 47.67	46.51 47.67	47.82 50.21
B Med	73.13 74.96	78.55 80.39	58.92 60.39	58.92 60.39	60.39 63.41
B Med-High	82.76 84.83	88.18 90.25	62.62 64.19	62.62 64.19	64.62 67.85

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
B High	\$((87.10)) <u>89.28</u>	\$((92.52)) <u>94.70</u>	\$((71.52)) <u>73.31</u>	\$((71.52)) <u>73.31</u>	\$((73.71)) <u>77.40</u>
C Low	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
C Med	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((66.05)) <u>67.70</u>	\$((66.05)) <u>67.70</u>	\$((68.42)) <u>71.84</u>
C Med-High	\$((98.96)) <u>101.43</u>	\$((104.38)) <u>106.85</u>	\$((87.89)) <u>90.09</u>	\$((87.89)) <u>90.09</u>	\$((89.26)) <u>93.72</u>
C High	\$((99.94)) <u>102.44</u>	\$((105.36)) <u>107.86</u>	\$((88.73)) <u>90.95</u>	\$((88.73)) <u>90.95</u>	\$((90.49)) <u>95.01</u>
D Low	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.38</u>	\$((71.09)) <u>72.87</u>	\$((71.09)) <u>72.87</u>	\$((69.72)) <u>73.21</u>
D Med	\$((81.20)) <u>83.23</u>	\$((86.62)) <u>88.65</u>	\$((82.29)) <u>84.35</u>	\$((82.29)) <u>84.35</u>	\$((85.07)) <u>89.32</u>
D Med-High	\$((104.87)) <u>107.49</u>	\$((110.29)) <u>112.91</u>	\$((104.52)) <u>107.13</u>	\$((104.52)) <u>107.13</u>	\$((102.12)) <u>107.23</u>
D High	\$((112.97)) <u>115.79</u>	\$((118.39)) <u>121.21</u>	\$((112.97)) <u>115.79</u>	\$((112.97)) <u>115.79</u>	\$((116.10)) <u>121.91</u>
E Med	\$((136.43)) <u>139.84</u>	\$((141.85)) <u>145.26</u>	\$((136.43)) <u>139.84</u>	\$((136.43)) <u>139.84</u>	\$((140.04)) <u>147.04</u>
E High	\$((159.89)) <u>163.89</u>	\$((165.31)) <u>169.31</u>	\$((159.89)) <u>163.89</u>	\$((159.89)) <u>163.89</u>	\$((163.99)) <u>172.19</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>
A Med	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.64)) <u>51.91</u>	\$((50.64)) <u>51.91</u>	\$((51.75)) <u>54.34</u>
A High	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((55.18)) <u>56.56</u>	\$((55.18)) <u>56.56</u>	\$((56.96)) <u>59.81</u>
B Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((55.82)) <u>57.22</u>	\$((55.82)) <u>57.22</u>	\$((57.24)) <u>60.10</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((82.80)) <u>84.75</u>	\$((59.33)) <u>60.81</u>	\$((59.33)) <u>60.81</u>	\$((61.30)) <u>64.37</u>
B High	\$((84.95)) <u>87.07</u>	\$((89.87)) <u>91.99</u>	\$((69.51)) <u>71.25</u>	\$((69.51)) <u>71.25</u>	\$((71.66)) <u>75.24</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
C Low	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.85)) <u>52.12</u>	\$((50.85)) <u>52.12</u>	\$((52.13)) <u>54.74</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((65.21)) <u>66.84</u>	\$((65.21)) <u>66.84</u>	\$((66.78)) <u>70.12</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.63)) <u>103.02</u>	\$((81.69)) <u>83.73</u>	\$((81.69)) <u>83.73</u>	\$((83.02)) <u>87.17</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.59)) <u>104.01</u>	\$((86.87)) <u>89.04</u>	\$((86.87)) <u>89.04</u>	\$((88.01)) <u>92.41</u>
D Low	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((70.12)) <u>71.87</u>	\$((70.12)) <u>71.87</u>	\$((68.21)) <u>71.62</u>
D Med	\$((79.00)) <u>80.98</u>	\$((83.92)) <u>85.90</u>	\$((80.65)) <u>82.67</u>	\$((80.65)) <u>82.67</u>	\$((82.81)) <u>86.95</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.36)) <u>108.90</u>	\$((101.95)) <u>104.50</u>	\$((101.95)) <u>104.50</u>	\$((99.04)) <u>103.99</u>
D High	\$((109.88)) <u>112.63</u>	\$((114.80)) <u>117.55</u>	\$((109.88)) <u>112.63</u>	\$((109.88)) <u>112.63</u>	\$((112.36)) <u>117.98</u>
E Med	\$((132.21)) <u>135.52</u>	\$((137.13)) <u>140.44</u>	\$((132.21)) <u>135.52</u>	\$((132.21)) <u>135.52</u>	\$((135.15)) <u>141.91</u>
E High	\$((154.54)) <u>158.40</u>	\$((159.46)) <u>163.32</u>	\$((154.54)) <u>158.40</u>	\$((154.54)) <u>158.40</u>	\$((157.94)) <u>165.84</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>
A Med	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>
A High	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((54.30)) <u>55.66</u>	\$((54.30)) <u>55.66</u>	\$((55.93)) <u>58.73</u>
B Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((54.79)) <u>56.16</u>	\$((54.79)) <u>56.16</u>	\$((56.20)) <u>59.01</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((83.12)) <u>85.07</u>	\$((58.22)) <u>59.68</u>	\$((58.22)) <u>59.68</u>	\$((60.12)) <u>63.13</u>
B High	\$((84.95)) <u>87.07</u>	\$((90.19)) <u>92.31</u>	\$((65.77)) <u>67.41</u>	\$((65.77)) <u>67.41</u>	\$((67.84)) <u>71.23</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
C Low	\$((63.43))	\$((68.67))	\$((49.62))	\$((49.62))	\$((50.72))
	<u>65.02</u>	<u>70.26</u>	<u>50.86</u>	<u>50.86</u>	<u>53.26</u>
C Med	\$((77.43))	\$((82.67))	\$((61.66))	\$((61.66))	\$((64.27))
	<u>79.37</u>	<u>84.61</u>	<u>63.20</u>	<u>63.20</u>	<u>67.48</u>
C Med-High	\$((95.71))	\$((100.95))	\$((78.58))	\$((78.58))	\$((79.90))
	<u>98.10</u>	<u>103.34</u>	<u>80.54</u>	<u>80.54</u>	<u>83.90</u>
C High	\$((96.67))	\$((101.91))	\$((82.13))	\$((82.13))	\$((83.30))
	<u>99.09</u>	<u>104.33</u>	<u>84.18</u>	<u>84.18</u>	<u>87.47</u>
D Low	\$((68.80))	\$((74.04))	\$((66.30))	\$((66.30))	\$((64.57))
	<u>70.52</u>	<u>75.76</u>	<u>67.96</u>	<u>67.96</u>	<u>67.80</u>
D Med	\$((79.00))	\$((84.24))	\$((76.26))	\$((76.26))	\$((78.37))
	<u>80.98</u>	<u>86.22</u>	<u>78.17</u>	<u>78.17</u>	<u>82.29</u>
D Med-High	\$((101.44))	\$((106.68))	\$((96.38))	\$((96.38))	\$((93.72))
	<u>103.98</u>	<u>109.22</u>	<u>98.79</u>	<u>98.79</u>	<u>98.41</u>
D High	\$((103.88))	\$((109.12))	\$((103.88))	\$((103.88))	\$((106.30))
	<u>106.48</u>	<u>111.72</u>	<u>106.48</u>	<u>106.48</u>	<u>111.62</u>
E Med	\$((124.99))	\$((130.23))	\$((124.99))	\$((124.99))	\$((127.84))
	<u>128.11</u>	<u>133.35</u>	<u>128.11</u>	<u>128.11</u>	<u>134.23</u>
E High	\$((146.10))	\$((151.34))	\$((146.10))	\$((146.10))	\$((149.39))
	<u>149.75</u>	<u>154.99</u>	<u>149.75</u>	<u>149.75</u>	<u>156.86</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

**WSR 15-23-016
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed November 6, 2015, 12:38 p.m.]

Continuance of WSR 15-18-007.

Preproposal statement of inquiry was filed as WSR 08-11-076.

Title of Rule and Other Identifying Information: Amends WAC 181-82-130 in response to new standards for Braille for educators teaching the blind.

Hearing Location(s): Radisson Hotel - SeaTac, 18118 International Boulevard, Seattle, WA 98188, on January 21, 2016, at 8:30.

Date of Intended Adoption: January 21, 2016.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by January 14, 2016.

Assistance for Persons with Disabilities: Contact David Brenna by January 14, 2016, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New standards for Braille need to be incorporated into requirements for instructors of the blind.

Reasons Supporting Proposal: Meets new standards.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

November 6, 2015
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82-130 Assignment of persons providing instruction of Braille to students. (1) No certificated school district employee shall be assigned to provide instruction of Braille to students who has not demonstrated competency with the ~~((grade two standard literary))~~ standards for Unified English Braille code by:

(a) Successful completion of the National Literary Braille Competency Test; or

(b) Successful completion of the Braille competency test developed at ~~((Portland State University))~~ Washington State School for the Blind; or

(c) Successful completion of any other test approved for use by the professional educator standards board.

(2) No classified school district employee working under the supervision of a certificated school district employee, which certificated employee meets the requirement of subsection (1) of this section, may produce Braille material or provide instruction in the Braille code unless the employee has demonstrated competency with the ~~((grade two standard literary))~~ standards for Unified English Braille code as provided under subsection (1) of this section.

(3)(a) Each school district is responsible for monitoring the appropriate assignment of personnel under subsections (1) and (2) of this section.

(b) Any person under subsections (1) and (2) of this section shall have one year from the date of ~~((request))~~ application to successfully pass the testing requirement under subsection (1) of this section.

(c) The Washington ~~((Instructional))~~ Ogden Resource Center ~~((for the Visually Impaired))~~ shall forward to the professional educator standards board the names of individuals who have passed the testing requirement under subsection (1) of this section and the date of passage. The center also shall forward to the professional educator standards board the names of individuals who have not passed the testing requirement within one year and the name of the employing school district of the individual.

(4) The professional educator standards board shall establish a test review committee which shall be responsible for developing criteria to evaluate a test under subsection (1)(c) of this section. No test shall be considered for approval by the professional educator standards board under subsection (1)(c) of this section unless it has been evaluated by the test review committee and a recommendation for approval or disapproval has been submitted to the board. At a minimum, the membership of the committee shall include persons representing:

(a) National Federation of the Blind of Washington;

(b) Washington council of the blind;

(c) Association of education and rehabilitation of the blind and visually impaired of Washington;

(d) Washington instructional resource center for the visually impaired;

(e) Washington state school for the blind; and

(f) Office of the superintendent of public instruction.

(5) A person who has met the requirement of subsection (1) of this section shall maintain their facility with the ~~((grade two standard literary))~~ current Unified English Braille code by:

~~(a) ((Completing ten hours every five years of continuing education; or~~

~~(b) Successful completion every five years of one of the tests under subsection (1) of this section.~~

~~(6)(a) For the purpose of subsection (5)(a) of this section, the continuing education option may be satisfied by:~~

~~(i) Completing the equivalent of ten clock hours through completion of college credits as provided under WAC 181-85-030 (1) and (2); or~~

~~(ii) Completing ten clock hours of continuing education as provided under WAC 181-85-030 (3) and (4); or~~

~~(iii) Completing the equivalent of ten clock hours through completion of continuing education units through a college or university. One continuing education unit shall equal not fewer than ten clock hours of attendance.~~

~~(b) For the purpose of subsection (5)(a) of this section, "continuing education" shall mean one or more of the following:~~

~~(i) Instructional methodology in Braille;~~

~~(ii) Improving Braille code skills; or~~

~~(iii) Maintaining or refreshing Braille code skills, not including technology or software. "Braille code skills" means literary, music, and the Nemeth code of mathematics and scientific notation.~~

~~(c) For the purpose of subsection (5)(a) of this section, an approved provider of continuing education may include:~~

~~(i) The National Braille Association;~~

~~(ii) The Library of Congress;~~

~~(iii) The Braille Authority of North America;~~

~~(iv) A regionally accredited institution of higher education under WAC 181-78A-010(6);~~

~~(v) An educational service district;~~

~~(vi) The American Foundation for the Blind;~~

~~(vii) The Association of Education and Rehabilitation of the Blind and Visually Impaired of Washington;~~

~~(viii) The American Foundation for the Blind annual American Braille literacy conference; or~~

~~(ix) Any other entity approved by the professional educator standards board based upon a recommendation to approve from the test review committee established under subsection (4) of this section.~~

~~(d) For the purpose of subsection (1) of this section, a person who holds a Library of Congress transcriber's certificate is exempt only from the testing requirement under subsection (1) of this section. If an individual earns the Library of Congress transcriber's certificate, they shall be deemed to have met the continuing education option under subsection (5)(a) of this section.~~

~~(e)) Passing a recertification exam of completing learning modules every five years;~~

~~(b) Individuals who seek through subsection (5)(a) of this section to remain eligible to work with visually impaired students are responsible for documenting completion of continuing education. Such individuals are strongly encouraged~~

to provide a copy of their documentation to their employing school district. The documentation shall not be collected by the professional educator standards board. However, the documentation could be audited for purposes of compliance with basic education appropriation requirements under WAC 180-16-195.

WSR 15-23-020
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed November 7, 2015, 6:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-128.

Title of Rule and Other Identifying Information: WAC 390-17-400 Time limit to solicit or accept contributions.

Hearing Location(s): Evergreen Plaza Building, 711 Capitol Way, Room 206, Olympia, WA 98504-0908, on January 28, 2016, at 9:30 a.m.

Date of Intended Adoption: January 28, 2016.

Submit Written Comments to: Lori Anderson, P.O. Box 40908, Olympia, WA 98504, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by January 20, 2016.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov, (360) 753-1985.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal clarifies the conditions under which an elected official subject to the provisions of RCW 42.17A.560 (session freeze) may participate in fund raising events benefitting a bona fide political party or a candidate who is not subject to the session freeze.

Reasons Supporting Proposal: Proposal converts to rule an interpretation that was first adopted in 1996. The public and regulated community are better served by having the interpretation incorporated in the commission's rules where it [it] will be more easily found.

Statutory Authority for Adoption: RCW 42.17A.110.

Statute Being Implemented: RCW 42.17A.560.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No fiscal impact is expected to result from these amendments.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Evelyn Lopez, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

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

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(1)(i) of RCW 34.05.328. Further, the PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

November 7, 2015

Lori Anderson
Communications and
Training Officer

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

WAC 390-17-400 Time limit to solicit or accept contributions. The purpose of this rule is to clarify and implement RCW 42.17A.560.

(1) **"Campaign debt,"** as used in RCW 42.17A.560 and this rule, means any debt incurred by a candidate seeking election to a nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) **"Known candidates"** means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) **"Legislative session freeze period"** means the period of time in RCW 42.17A.560 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends at 11:59 p.m. on the day the special session adjourns.

(c) If a special session is held other than within thirty days before a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17A.560 until sworn into office.

(5) A state official must comply with RCW 42.17A.560 until he or she no longer holds state office.

(6) (~~"Person employed by or acting on behalf of a state official" includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.~~

~~(7) State officials may do the following:))~~ **Activities allowed during a freeze period.** During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist his or her own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund-raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Attending a fund-raiser held by a candidate who is not subject to RCW 42.17A.560, provided the state official does not solicit or accept any contributions in connection with the fund-raiser.

(i) The state official's planned attendance may be included in publicity for the fund-raiser.

(ii) The state official may receive complimentary admission from the candidate so long as the official attends to show support for the candidate and the attendance does not assist the official's own campaign.

(e) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17A.005, to their own campaign account, so long as the funds are properly reported;

~~((e))~~ (f) Soliciting or accepting contributions on behalf of a nonprofit charity; or

~~((f))~~ (g) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

~~((g))~~ **State officials may not do the following:** (7) **Activities not allowed during a freeze period.** During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

- (a) Go to an incumbent state official or known candidate;
- (b) Go to a public office fund;
- (c) Are used to pay a nonreimbursed public office related expense;
- (d) Are used to retire a campaign debt;
- (e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

~~((h))~~ **Caucus political committees.** During a legislative session freeze period, a caucus political committee

~~(a) May solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17A.005;~~

~~(b) May not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.~~

~~((i))~~ (8) **"Person(s) employed by or acting on behalf of a state official(s)"** includes a caucus political

committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

~~((j))~~ (a) During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection ~~((8))~~ (7) of this section.

~~((k))~~ (b) During a legislative session freeze period, a caucus political committee may solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17A.005.

(c) During a legislative session freeze period, a caucus political committee may not solicit or accept contributions for any of the purposes specified in subsection (7) of this rule.

(9) Bona fide political parties. During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund-raising purposes.

~~((l))~~ **(10) Segregating session freeze funds.** During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW 42.17A.560, unless the contributions are
- Deposited into a separate bank account and
- Not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsection ~~((8) or (9)(b))~~ (7) or (8)(c) of this section.

~~((m))~~ **(11) Session freeze solicitations.** If a person is solicited for a contribution during the legislative session freeze period

- By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and
- The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and

- The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject to RCW 42.17A.560 and subsection (12) of this section.

~~((14))~~ **(12) Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections ~~((7)(f), (8)(e) and (f), and (12))~~ (6)(g), (7)(e) and (f), and (10) of this section, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes.

(a) Contributions to incumbent state officials or known candidates.

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period.

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates.

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference,
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek that elective office,
- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held,

- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote, and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

WSR 15-23-022

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed November 7, 2015, 6:20 p.m.]

Continuance of WSR 15-17-134.

Preproposal statement of inquiry was filed as WSR 13-03-082.

Title of Rule and Other Identifying Information: WAC 390-12-200 Public disclosure commission—Executive director.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA, on January 28, 2016, at 9:30 a.m.

Date of Intended Adoption: January 28, 2016.

Submit Written Comments to: Lori Anderson, P.O. Box 40908, Olympia, WA 98504-0908 (mail), 711 Capitol Way, Room 206, Olympia, WA (physical), e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by January 20, 2016.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Better clarify the duties delegated to the executive director by the commission. Also authorizes the director to determine when a complaint may be disposed of through an alternative resolution rather than the adjudicative process (see WSR 15-17-133 and 15-21-088).

Reasons Supporting Proposal: The existing rule does not clearly state the duties of the executive director. The proposed amendment better informs the public what the executive director's duties are. Furthermore, authorizing the executive director to determine when a complaint may be resolved through an alternative response instead of enforcement procedures contained in the Administrative Procedure Act is a more efficient use of commission resources and is intended to expedite resolution of the complaints filed with the commission.

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

Statute Being Implemented: RCW 42.17A.110(2).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No increased costs to the agency are expected.

Name of Agency Personnel Responsible for Drafting: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; Implementation: Chair, Public Disclosure Commission (PDC), 711 Capitol Way, Room 206,

Olympia, WA 98504, (360) 664-2737; and Enforcement: Chair, PDC, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) [(360)] 586-1042.

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

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

November 7, 2015

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 85-15-020, filed 7/9/85)

WAC 390-12-200 Public disclosure commission—Role of the executive director. ~~((The commission shall employ and fix the compensation of an executive director who shall perform the following duties under the general authority and supervision of the commission:~~

~~(1) Act as records officer and administrative arm of the commission.~~

~~(2) Coordinate the policies of the commission and the activities of all commission employees and other persons who perform ministerial functions for the commission.~~

~~(3)) The executive director acts as the commission's chief administrative officer and is accountable to the commission for agency administration. In addition, the executive director will:~~

~~(1) Act as the appointing authority for agency staff, including the authority to hire, set salaries, promote, assign work, evaluate, take corrective action and, where appropriate, terminate staff.~~

~~(2) Exercise such other management oversight, decision-making and administrative action to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with and equitable enforcement of Washington's disclosure and campaign finance laws.~~

~~(3) Determine when appropriate and authorize enforcement alternatives set out in chapter 390-37 WAC to resolve complaints filed with the commission.~~

~~(4) Act as liaison between the commission and other public agencies.~~

~~(5) Research, develop, and draft policy positions, administrative rules, interpretations and advisory options for presentation to the commission.~~

~~(6) Enter into contracts and agreements on behalf of the commission.~~

(7) The executive director may delegate authority to subordinates to act for him or her as needed and appropriate.

WSR 15-23-024

PROPOSED RULES

SECRETARY OF STATE

[Filed November 9, 2015, 3:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-120.

Title of Rule and Other Identifying Information: Trademarks, amending WAC 434-12-025.

Hearing Location(s): Corporations and Charities Division, 801 Capitol Way South, Olympia, WA, (360) 725-0378, on December 22, 2015, at 9:00 a.m.

Date of Intended Adoption: December 23, 2015.

Submit Written Comments to: Pam Floyd, Director, Corporations Division, Office of the Secretary of State, P.O. Box 40234, Olympia, WA 98504, e-mail pam.floyd@sos.wa.gov, fax (360) 586-4989, by December 22, 2015.

Assistance for Persons with Disabilities: Contact Pam Floyd by December 21, 2015, (360) 725-0378.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify the administrative code section on trademark filings.

Chapter 434-12 WAC, Trademarks, changes include allowing the comparison of classifications to be used in determining differences between trademarks proposed to be filed and those already on file. Updating the procedure will be more like the federal trademark comparison procedure and cause less confusion for customers.

Statutory Authority for Adoption: RCW 19.77.115.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Pam Floyd, P.O. Box 40234, Olympia, WA 98504-0234, (360) 725-0378.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 9, 2015

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-12-025 Document and specimen standards for trademark filing. (1) ~~((In addition to the requirements of WAC 434-112-040, the following rules apply to trademark filings:~~

~~(a)) Specimens submitted in support of a trademark filing must:~~

~~((+))~~ (a) Be of sufficient quality, size and clarity to allow the ~~((corporations))~~ division to create and maintain an accurate digital image of the specimen; and

~~((+))~~ (b) Demonstrate that the trademark is in use in commerce; preliminary design artwork is not acceptable.

~~((+))~~ (c) Be in pdf (portable document format), if filing online.

(2) Specimens submitted in support of a trademark reservation:

~~((+))~~ (a) Must be of sufficient quality, size and clarity to allow the ~~((corporations))~~ division to create and maintain an accurate digital image of the specimen; and

~~((+))~~ (b) May be in the form of preliminary design artwork so long as the design clearly describes the trademark to be reserved(~~(-~~

~~(-))~~; and

(c) Must be in pdf format, if filing online.

(3) Corporations division staff may reject submissions ~~((that do not meet these requirements))~~ based on the following criteria:

(a) Application is incomplete;

(b) Application is in pencil or unable to be scanned as a readable image;

(c) Trademark is not distinguishable from another on file in the secretary's office by comparing:

(i) Similarity or dissimilarity of marks in their entireties to appearance; or

(ii) Similarity or dissimilarity of goods and services classifications.

WSR 15-23-052

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Services Administration)

[Filed November 12, 2015, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-20-116.

Title of Rule and Other Identifying Information: The department is adding new sections and amending chapter 388-106 WAC, Long-term care services, for the inclusion of the community first choice (CFC) state plan program. Emergency WAC was previously filed for the implementation of this program.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on January 5, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 6, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 5, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by December 22, 2015, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed WAC is to add the CFC program to the array of programs and services offered by the department. New WAC 388-106-0270 through 388-106-0295 define CFC services, including the scope, limitations, qualified providers, and eligibility.

In addition, WAC 388-106-0047 clarifies the department's ability to terminate services if the plan of care is not approved in writing, and WAC 388-106-0050 amends and clarifies the department's assessment and home visit requirements.

Reasons Supporting Proposal: ESHB 2746 required the department to establish a 1915(k) CFC program. DSHS has developed a state plan amendment that has been federally approved to provide the new CFC state plan. These WAC changes are for the addition and implementation of the CFC program.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

Rule is necessary because of federal law, 42 C.F.R. § 441.500-590.

Name of Proponent: Department of social and health services, aging and long-term support administration, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tracey Rollins, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3216.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

November 5, 2015
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 15-24 issue of the Register.

WSR 15-23-060

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed November 13, 2015, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-046.

Title of Rule and Other Identifying Information: WAC 182-550-4690 Authorization requirements and utilization review for hospitals eligible for CPE payments.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on December 22, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 23, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by December 22, 2015.

Assistance for Persons with Disabilities: Contact Amber Loughheed by e-mail amber.loughheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is striking WAC 182-550-4690 (3)(b), which states the agency performs utilization reviews on seven-day readmissions for claims that qualified for diagnosis related group payment before July 1, 2005.

The agency is also striking subsection (5)(c), which refers to WAC 182-550-3000 for inpatient hospital claims that involve a client's seven-day readmission.

This amendment aligns with amendments proposed under WSR 15-19-159, which will implement a population-based, data-driven approach to reduce hospital readmission rates and related costs.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Gail Kreiger, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing does not create a disproportionate impact on small businesses.

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

November 13, 2015

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-4690 Authorization requirements and utilization review for hospitals eligible for CPE payments. This section does not apply to psychiatric certified public

expenditure (CPE) inpatient hospital admissions. See WAC 182-550-2600.

(1) CPE inpatient hospital claims submitted to the medicaid agency must meet all authorization and program requirements in WAC and current agency-published issuances.

(2) The agency performs utilization reviews of inpatient hospital:

(a) Admissions under the requirements of 42 C.F.R. 456, subparts A through C; and

(b) Claims for compliance with medical necessity, appropriate level of care and the agency's (or an agency designee's) established length of stay (LOS) standards.

(3) For CPE inpatient admissions before August 1, 2007, the agency performs utilization reviews((:

~~(a)) using the professional activity study (PAS) length of stay (LOS) standard in WAC 182-550-4300 on claims that qualified for ratio of costs-to-charges (RCC) payment before July 1, 2005.~~

~~((b) On seven-day readmissions according to the diagnosis related group (DRG) payment method described in WAC 182-550-3000 for claims that qualified for DRG payment before July 1, 2005.))~~

(4) For claims identified in this subsection, the agency may request a copy of the client's hospital medical records and itemized billing statements. The agency sends written notification to the hospital detailing the agency's findings. Any day of a client's hospital stay that exceeds the LOS standard:

(a) Is paid under a non-DRG payment method if the agency determines it to be medically necessary for the client at the acute level of care;

(b) Is paid as an administrative day (see WAC 182-550-1050 and 182-550-4500(8)) if the agency determines it to be medically necessary for the client at the subacute level of care; and

(c) Is not eligible for payment if the agency determines it was not medically necessary.

(5) For CPE inpatient admissions after July 31, 2007, CPE hospital claims are subject to the same utilization review rules as non-CPE hospital claims.

(a) LOS reviews may be performed under WAC 182-550-4300.

(b) All claims are subject to the agency's medical necessity review under WAC 182-550-1700(2).

~~((e) For inpatient hospital claims that involve a client's seven-day readmission, see WAC 182-550-3000.))~~

WSR 15-23-071

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed November 16, 2015, 12:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-016.

Title of Rule and Other Identifying Information: Hospice—Provider requirements, WAC 182-551-1300; Hospice—Notification requirements, WAC 182-551-1400; Hospice—Rates and payment, WAC 182-551-1500, 182-551-1510, 182-551-1530 and 182-551-1850; and home health services, WAC 182-551-2000, 182-551-2010, 182-551-2030, 182-551-2100, 182-551-2120, 182-551-2125, 182-551-2130, 182-551-2200, 182-551-2210, and 182-551-2220.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf, or directions can be obtained by calling (360) 725-1000), on December 22, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 23, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by December 22, 2015.

Assistance for Persons with Disabilities: Contact Amber Lougheed by December 14, 2015, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 182-551-1500 (4)(b) clarifies that "brief period" means "six additional days of care in a thirty day period." All other proposed amendments are housekeeping changes to update program names, agency names, and fix cross references.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 2716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Nancy Hite, P.O. Box 5506, Olympia, WA 98504-5506, (360) 725-1611.

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

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

November 16, 2015
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1300 Requirements for a medicaid-approved hospice agency. (1) To become a medicaid-approved hospice agency, the medicaid agency requires a hospice agency to provide documentation that it is medicare, Title XVIII-certified by the department of health (DOH) as a hospice agency.

(2) A medicaid-approved hospice agency must at all times meet the requirements in chapter 182-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII medicare program.

(3) To ensure quality of care for ~~((medical assistance))~~ Washington apple health clients, the medicaid agency's clinical staff may conduct hospice agency site visits.

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1400 Notification requirements for hospice agencies. (1) To be reimbursed for providing hospice services, the hospice agency must complete a medicaid hospice notification form (HCA 13-746) and forward the form to the medicaid agency's hospice program manager within five working days from when a ~~((medical assistance))~~ Washington apple health client begins the first day of hospice care, or has a change in hospice status. The hospice agency must notify the medicaid hospice program of:

- (a) The name and address of the hospice agency;
 - (b) The date of the client's first day of hospice care;
 - (c) A change in the client's primary physician;
 - (d) A client's revocation of the hospice benefit (home or institutional);
 - (e) The date a client leaves hospice without notice;
 - (f) A client's discharge from hospice care;
 - (g) A client who admits to a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care);
 - (h) A client who discharges from a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care((-));
 - (i) A client who is eligible for or becomes eligible for medicare or third-party liability (TPL) insurance;
 - (j) A client who dies; or
 - (k) A client who transfers to another hospice agency.
- Both the former hospice agency and current hospice agency must provide the medicaid agency with:

- (i) The client's name, the name of the former hospice agency servicing the client, and the effective date of the client's discharge; and
- (ii) The name of the current hospice agency serving the client, the hospice agency's provider number, and the effective date of the client's admission.

(2) The medicaid agency does not require a hospice agency to notify the hospice program manager when a hospice client is admitted to a hospital for palliative care.

(3) When a hospice agency does not notify the medicaid agency's hospice program within five working days of the date of the client's first day of hospice care as required in subsection (1)(c) of this section, the medicaid agency authorizes

the hospice daily rate reimbursement effective the fifth working day (~~(prior to)~~) before the date of notification.

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1500 Hospice daily rate—Four levels of hospice care. All services, supplies and equipment related to the client's terminal illness and related conditions are included in the hospice daily rate. The medicaid agency pays for only one of the following four levels of hospice care per day (see WAC (~~(388-551-1510)~~) 182-551-1510 for payment methods):

(1) **Routine home care.** Routine home care includes daily care administered to the client at the client's residence. The services are not restricted in length or frequency of visits, are dependent on the client's needs, and are provided to achieve palliation or management of acute symptoms.

(2) **Continuous home care.** Continuous home care includes acute skilled care provided to an unstable client during a brief period of medical crisis (~~(in order)~~) to maintain the client in the client's residence and is limited to:

(a) A minimum of eight hours of acute care provided during a twenty-four-hour day;

(b) Nursing care that must be provided by a registered or licensed practical nurse for more than half the period of care;

(c) Homemaker, hospice aide, and attendant services that may be provided as supplements to the nursing care; and

(d) In home care only (not care in a nursing facility or a hospice care center).

(3) **Inpatient respite care.** Inpatient respite care includes room and board services provided to a client in a medicaid-approved hospice care center, nursing facility, or hospital. Respite care is intended to provide relief to the client's primary caregiver and is limited to:

(a) No more than six consecutive days; and

(b) A client not currently residing in a hospice care center, nursing facility, or hospital.

(4) **General inpatient hospice care.** General inpatient hospice care includes services administered to a client for pain control or management of acute symptoms. In addition:

(a) The services must conform to the client's written plan of care (POC).

(b) This benefit is limited to (~~(brief periods)~~) six additional days of care in a thirty-day period in medicaid agency-approved:

(i) Hospitals;

(ii) Nursing facilities; or

(iii) Hospice care centers.

(c) There must be documentation in the client's medical record to support the need for general inpatient level of hospice care.

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1510 Rates methodology and payment method for hospice agencies. This section describes rates methodology and payment methods for hospice care provided to hospice clients.

(1) The medicaid agency uses the same rates methodology as medicare uses for the four levels of hospice care identified in WAC (~~(388-551-1500)~~) 182-551-1500.

(2) Each of the four levels of hospice care has the following three rate components:

(a) Wage component;

(b) Wage index; and

(c) Unweighted amount.

(3) To allow hospice payment rates to be adjusted for regional differences in wages, the (~~(department)~~) medicaid agency bases payment rates on the metropolitan statistical area (MSA) county location. MSAs are identified in the (~~(department's current published billing instructions)~~) medicaid agency's provider guides.

(4) Payment rates for:

(a) Routine and continuous home care services are based on the county location of the client's residence.

(b) Inpatient respite and general inpatient care services are based on the MSA county location of the providing hospice agency.

(5) The medicaid agency pays hospice agencies for services (not room and board) at a daily rate calculated as follows:

(a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence; or

(b) Payments for respite and general inpatient care are based on the county location of the providing hospice agency.

(6) The medicaid agency:

(a) Pays for routine hospice care, continuous home care, respite care, or general inpatient care for the day of death;

(b) Does not pay room and board for the day of death; and

(c) Does not pay hospice agencies for the client's last day of hospice care when the last day is for the client's discharge, revocation, or transfer.

(7) Hospice agencies must bill the medicaid agency for their services using hospice-specific revenue codes.

(8) For hospice clients in a nursing facility:

(a) The medicaid agency pays nursing facility room and board payments at a daily rate directly to the hospice agency at ninety-five percent of the nursing facility's current medicaid daily rate in effect on the date the services were provided; and

(b) The hospice agency pays the nursing facility at a daily rate no (~~(greater)~~) more than the nursing facility's current medicaid daily rate.

(9) The medicaid agency:

(a) Pays a hospice care center a daily rate for room and board based on the average room and board rate for all nursing facilities in effect on the date the services were provided.

(b) Does not pay hospice agencies or hospice care centers a nursing facility room and board payment for:

(i) A client's last day of hospice care (e.g., client's discharge, revocation, or transfer); or

(ii) The day of death.

(10) The daily rate for authorized out-of-state hospice services is the same as for in-state non-MSA hospice services.

(11) The client's notice of action (award) letter states the amount of participation the client is responsible to pay each month towards the total cost of hospice care. The hospice agency receives a copy of the award letter and:

(a) Is responsible to collect the correct amount of the client's participation if the client has any; and

(b) Must show the client's monthly participation on the hospice claim. (Hospice providers may refer to the medicaid agency's ~~((current published billing instructions))~~ provider guides for how to bill a hospice claim.) If a client has a participation amount that is not reflected on the claim and the medicaid agency reimburses the amount to the hospice agency, the amount is subject to recoupment by the medicaid agency.

AMENDATORY SECTION (Amending WSR 12-09-079, filed 4/17/12, effective 5/18/12)

WAC 182-551-1530 Payment method for medicaid-medicare dual eligible clients. (1) The medicaid agency will not pay the portion of hospice care for a client that is covered under medicare part A. Nursing home room and board charges described in WAC 182-551-1510 that are not covered under medicare part A may be covered by the medicaid agency.

(2) The medicaid agency may pay for hospice care provided to a client:

- (a) Covered by medicaid part B (medical insurance); and
- (b) Not covered by medicare part A.

(3) For hospice care provided to a medicaid-medicare dual eligible client, hospice agencies are responsible to bill:

- (a) Medicare before billing the medicaid agency;
- (b) The medicaid agency for hospice nursing facility room and board;
- (c) The medicaid agency for hospice care center room and board; and
- (d) Medicare for general inpatient care or inpatient respite care.

(4) All the limitations and requirements related to hospice care described in ~~((this))~~ subchapter I apply to the payments described in this section.

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

WAC 182-551-1850 Pediatric palliative care (PPC) case management/coordination services—Rates methodology. (1) The ~~((department))~~ medicaid agency determines the reimbursement rate for a pediatric palliative care (PPC) contact described in WAC ~~((388-551-1820))~~ 182-551-1820 using the average of statewide metropolitan statistical area (MSA) home health care rates for skilled nursing, physical therapy, speech-language therapy and occupational therapy.

(2) The ~~((department))~~ medicaid agency makes adjustments to the reimbursement rate for PPC contacts when the legislature grants a ~~((vendor))~~ vendor rate change. New rates become effective as directed by the legislature and are effective until the next rate change.

(3) The reimbursement rate for authorized out-of-state PPC services is the same as the in-state non-MSA rate.

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

WAC 182-551-2000 Home health services—General. The purpose of the ~~((department's))~~ medicaid agency's home health program is to reduce the costs of health care services by providing equally effective, less restrictive quality care to the client in the client's residence, subject to the restrictions and limitations in ~~((this))~~ subchapter II.

Home health skilled services are provided for acute, intermittent, short-term, and intensive courses of treatment. See chapters ~~((388-515))~~ 182-514 and 388-71 WAC for programs administered to clients who need chronic, long-term maintenance care.

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

WAC 182-551-2010 Home health services—Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC ~~((388-500-0005))~~ apply to ~~((this))~~ subchapter II:

"Acute care" means care provided by a home health agency for clients who are not medically stable or have not attained a satisfactory level of rehabilitation. These clients require frequent intervention by a registered nurse or licensed therapist.

"Brief skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs only one of the following activities during a visit to a client:

- ~~((1))~~ (a) An injection;
- ~~((2))~~ (b) Blood draw; or
- ~~((3))~~ (c) Placement of medications in containers.

"Chronic care" means long-term care for medically stable clients.

"Full skilled nursing visit" means a registered nurse, or a licensed practical nurse under the supervision of a registered nurse, performs one or more of the following activities during a visit to a client:

- ~~((1))~~ (a) Observation;
- ~~((2))~~ (b) Assessment;
- ~~((3))~~ (c) Treatment;
- ~~((4))~~ (d) Teaching;
- ~~((5))~~ (e) Training;
- ~~((6))~~ (f) Management; and
- ~~((7))~~ (g) Evaluation.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on an intermittent or part-time basis to a patient in the patient's place of residence.

"Home health aide" means ~~((an individual))~~ a person registered or certified as a nursing assistant under chapter 18.88 RCW who, under the direction and supervision of a registered nurse or licensed therapist, assists in the delivery of nursing or therapy related activities, or both.

"Home health aide services" means services provided by a home health aide only when a client has an acute, intermittent, short-term need for the services of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract with a home health

agency. ~~((Such))~~ These services are provided under the supervision of the previously identified authorized practitioners and include, but are not limited to, ambulation and exercise, assistance with self-administered medications, reporting changes in a client's condition and needs, and completing appropriate records.

"Home health skilled services" means skilled health care (nursing, specialized therapy, and home health aide) services provided in the client's residence on an intermittent or part-time basis by a medicare-certified home health agency with a current provider number. See also WAC ~~((388-551-2000))~~ 182-551-2000.

"Long-term care" is a generic term referring to various programs and services, including services provided in home and community settings, administered directly or through contract by the ~~((department's))~~ department of social and health services' (DSHS) division of developmental disabilities (DDD) or aging and ((disability services)) long-term support administration ((ADSA)) (ALISA) through home and community services (HCS) ~~((or the division of developmental disabilities (DDD)))~~.

"Plan of care (POC)" (also known as **"plan of treatment (POT)"**) means a written plan of care that is established and periodically reviewed and signed by both an ordering licensed practitioner and a home health agency provider. The plan describes the home health care to be provided at the client's residence. See WAC ~~((388-551-2210))~~ 182-551-2210.

"Residence" means a client's home or place of living. (See WAC ~~((388-551-2030))~~ 182-551-2030 (2)(g)(ii) for clients in residential facilities whose home health services are not covered through ~~((department's))~~ the medicaid agency's home health program.)

"Review period" means the three-month period the ~~((department))~~ medicaid agency assigns to a home health agency, based on the address of the agency's main office, during which the ~~((department))~~ medicaid agency reviews all claims submitted by that home health agency.

"Specialized therapy" means skilled therapy services provided to clients that include:

- ~~((1))~~ (a) Physical;
- ~~((2))~~ (b) Occupational; or
- ~~((3))~~ (c) Speech/audiology services.

(See WAC ~~((388-551-2110))~~ 182-551-2110.)

"Telemedicine" - For the purposes of WAC ~~((388-551-2000 through 388-551-2220))~~ 182-551-2000 through 182-551-2220, means the use of telemonitoring to enhance the delivery of certain home health skilled nursing services through:

~~((1))~~ (a) The collection and transmission of clinical data ~~((and the transmission of such data))~~ between a patient at a distant location and the home health provider through electronic processing technologies. Objective clinical data that may be transmitted includes, but is not limited to, weight, blood pressure, pulse, respirations, blood glucose, and pulse oximetry; or

~~((2))~~ (b) The provision of certain education related to health care services using audio, video, or data communication instead of a face-to-face visit.

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

WAC 182-551-2030 Home health skilled services—Requirements. (1) The ~~((department))~~ medicaid agency reimburses for covered home health skilled services provided to eligible clients, subject to the restrictions or limitations in this section and other applicable published WAC.

(2) Home health skilled services provided to eligible clients must:

(a) Meet the definition of "acute care" in WAC ~~((388-551-2010))~~ 182-551-2010.

(b) Provide for the treatment of an illness, injury, or disability.

(c) Be medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

(d) Be reasonable, based on the community standard of care, in amount, duration, and frequency.

(e) Be provided under a plan of care (POC), as defined in WAC ~~((388-551-2010))~~ 182-551-2010 and described in WAC ~~((388-551-2210))~~ 182-551-2210. Any statement in the POC must be supported by documentation in the client's medical records.

(f) Be used to prevent placement in a more restrictive setting. In addition, the client's medical records must justify the medical reason(s) that the services should be provided in the client's residence instead of an ordering licensed practitioner's office, clinic, or other outpatient setting. This includes justification for services for a client's medical condition that requires teaching that would be most effectively accomplished in the client's home on a short-term basis.

(g) Be provided in the client's residence.

(i) The ~~((department))~~ medicaid agency does not reimburse for services if provided at the workplace, school, child day care, adult day care, skilled nursing facility, or any other place that is not the client's place of residence.

(ii) Clients in residential facilities contracted with the state and paid by other programs such as home and community programs to provide limited skilled nursing services, are not eligible for ~~((department))~~ medicaid agency-funded limited skilled nursing services unless the services are prior authorized under ~~((the provisions of))~~ WAC ~~((388-501-0165))~~ 182-501-0165.

(h) Be provided by:

(i) A home health agency that is Title XVIII (medicare)-certified;

(ii) A registered nurse (RN) prior authorized by the ~~((department))~~ medicaid agency when no home health agency exists in the area a client resides; or

(iii) An RN authorized by the ~~((department))~~ medicaid agency when the RN ~~((is unable to))~~ cannot contract with a medicare-certified home health agency.

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

WAC 182-551-2100 Home health services—Covered skilled nursing services. (1) The ~~((department))~~ medicaid agency covers home health acute care skilled nursing services listed in this section when furnished by a qualified provider. The ~~((department))~~ medicaid agency evaluates a

request for covered services that are subject to limitations or restrictions, and approves ~~((such))~~ the services beyond those limitations or restrictions when medically necessary, under the standard for covered services in WAC ~~((388-501-0165))~~ 182-501-0165.

(2) The ~~((department))~~ medicaid agency covers the following home health acute care skilled nursing services, subject to the limitations in this section:

(a) Full skilled nursing services that require the skills of a registered nurse or a licensed practical nurse under the supervision of a registered nurse, if the services involve one or more of the following:

- (i) Observation;
- (ii) Assessment;
- (iii) Treatment;
- (iv) Teaching;
- (v) Training;
- (vi) Management; and
- (vii) Evaluation.

(b) A brief skilled nursing visit if only one of the following activities is performed during the visit:

- (i) An injection;
- (ii) Blood draw; or
- (iii) Placement of medications in containers (e.g., envelopes, cups, medisets).

(c) Home infusion therapy only if the client:

- (i) Is willing and capable of learning and managing the client's infusion care; or
- (ii) Has a volunteer caregiver willing and capable of learning and managing the client's infusion care.

(d) Infant phototherapy for an infant diagnosed with hyperbilirubinemia:

- (i) When provided by a ~~((department))~~ medicaid agency-approved infant phototherapy agency; and
- (ii) For up to five skilled nursing visits per infant.

(e) Limited high-risk obstetrical services:

(i) For a medical diagnosis that complicates pregnancy and may result in a poor outcome for the mother, unborn, or newborn;

(ii) For up to three home health visits per pregnancy if:

(A) Enrollment in or referral to the following providers of first steps has been verified:

- (I) Maternity support services (MSS); or
- (II) Maternity case management (MCM); and

(B) The visits are provided by a registered nurse who has either:

- (I) National perinatal certification; or
- (II) A minimum of one year of labor, delivery, and postpartum experience at a hospital within the last five years.

(3) The ~~((department))~~ medicaid agency limits skilled nursing visits provided to eligible clients to two per day.

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

WAC 182-551-2120 Home health services—Covered aide services. (1) The ~~((department))~~ medicaid agency pays for one home health aide visit, per client per day.

(2) The ~~((department))~~ medicaid agency reimburses for home health aide services, as defined in WAC ~~((388-551-~~

~~2010))~~ 182-551-2010, only when the services are provided under the supervision of, and in conjunction with, practitioners who provide:

- (a) Skilled nursing services; or
- (b) Specialized therapy services.

(3) The ~~((department))~~ medicaid agency covers home health aide services only when a registered nurse or licensed therapist visits the client's residence at least once every fourteen days to monitor or supervise home health aide services, with or without the presence of the home health aide.

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

WAC 182-551-2125 Home health services—Delivered through telemedicine. (1) The ~~((department))~~ medicaid agency covers the delivery of home health services through telemedicine for clients who have been diagnosed with an unstable condition who may be at risk for hospitalization or a more costly level of care. The client must have a diagnosis(es) where there is a high risk of sudden change in clinical status which could compromise health outcomes.

(2) The ~~((department))~~ medicaid agency pays for one telemedicine interaction, per eligible client, per day based on the ordering licensed practitioner's home health plan of care.

(3) To receive payment for the delivery of home health services through telemedicine, the services must involve:

(a) An assessment, problem identification, and evaluation which includes:

(i) Assessment and monitoring of clinical data including, but not limited to, vital signs, pain levels and other biometric measures specified in the plan of care. Also includes assessment of response to previous changes in the plan of care; and

(ii) Detection of condition changes based on the telemedicine encounter that may indicate the need for a change in the plan of care; and

(b) Implementation of a management plan through one or more of the following:

(i) Teaching regarding medication management as appropriate based on the telemedicine findings for that encounter;

(ii) Teaching regarding other interventions as appropriate to both the patient and the caregiver;

(iii) Management and evaluation of the plan of care including changes in visit frequency or addition of other skilled services;

(iv) Coordination of care with the ordering licensed practitioner regarding telemedicine findings;

(v) Coordination and referral to other medical providers as needed; and

(vi) Referral to the emergency room as needed.

(4) The ~~((department))~~ medicaid agency does not require prior authorization for the delivery of home health services through telemedicine.

(5) The ~~((department))~~ medicaid agency does not pay for the purchase, rental, or repair of telemedicine equipment.

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

WAC 182-551-2130 Home health services—Noncovered services. (1) The ~~((department))~~ medicaid agency does not cover the following home health services under the home health program, unless otherwise specified:

(a) Chronic long-term care skilled nursing visits or specialized therapy visits for a medically stable client when a long-term care skilled nursing plan or specialized therapy plan is in place through the department of social and health services' aging and disability services administration (ADSA).

(i) The ~~((department))~~ medicaid agency considers requests for interim chronic long-term care skilled nursing services or specialized therapy services for a client while the client is waiting for ADSA to implement a long-term care skilled nursing plan or specialized therapy plan; and

(ii) On a case-by-case basis, the ~~((department))~~ medicaid agency may authorize long-term care skilled nursing visits or specialized therapy visits for a client for a limited time until a long-term care skilled nursing plan or specialized therapy plan is in place. Any services authorized are subject to the restrictions and limitations in this section and other applicable published WAC(s).

(b) Social work services.

(c) Psychiatric skilled nursing services.

(d) Pre- and postnatal skilled nursing services, except as listed under WAC ~~((388-551-2100))~~ 182-551-2100 (2)(e).

(e) Well-baby follow-up care.

(f) Services performed in hospitals, correctional facilities, skilled nursing facilities, or a residential facility with skilled nursing services available.

(g) Home health aide services that are not provided in conjunction with skilled nursing or specialized therapy services.

(h) Health care for a medically stable client (e.g., one who does not have an acute episode, a disease exacerbation, or treatment change).

(i) Home health specialized therapies and home health aide visits for clients in the following programs:

(i) CNP - Emergency medical only; and

(ii) LCP-MNP - Emergency medical only.

(j) Skilled nursing visits for a client when a home health agency cannot safely meet the medical needs of that client within home health services program limitations (e.g., for a client to receive infusion therapy services, the caregiver must be willing and capable of managing the client's care).

(k) More than one of the same type of specialized therapy and/or home health aide visit per day.

(l) ~~((HRSA))~~ The medicaid agency does not reimburse for duplicate services for any specialized therapy for the same client when both providers are performing the same or similar procedure(s).

(m) Home health visits made without a written licensed practitioner's order, unless the verbal order is:

(i) Documented ~~((prior to))~~ before the visit; and

(ii) The document is signed by the ordering licensed practitioner within forty-five days of the order being given.

(2) ~~((HRSA))~~ The medicaid agency does not cover additional administrative costs billed above the visit rate (these

costs are included in the visit rate and will not be paid separately).

(3) ~~((HRSA))~~ The medicaid agency evaluates a request for any service that is listed as noncovered under ~~((the provisions of))~~ WAC ~~((388-501-0160))~~ 182-501-0160.

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

WAC 182-551-2200 Home health services—Eligible providers. The following may contract with the ~~((department))~~ medicaid agency to provide home health services through the home health program, subject to the restrictions or limitations in this section and other applicable published WAC:

(1) A home health agency that:

(a) Is Title XVIII (medicare)-certified;

(b) Is department of health (DOH) licensed as a home health agency;

(c) Submits a completed, signed core provider agreement to the ~~((department))~~ medicaid agency; and

(d) Is assigned a provider number.

(2) A registered nurse (RN) who:

(a) Is prior authorized by the ~~((department))~~ medicaid agency to provide intermittent nursing services when no home health agency exists in the area a client resides;

(b) ~~((Is unable to))~~ Cannot contract with a medicare-certified home health agency;

(c) Submits a completed, signed core provider agreement to the ~~((department))~~ medicaid agency; and

(d) Is assigned a provider number.

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

WAC 182-551-2210 Home health services—Provider requirements. For any delivered home health service to be payable, the ~~((department))~~ medicaid agency requires home health providers to develop and implement an individualized plan of care (POC) for the client.

(1) The POC must:

(a) Be documented in writing and be located in the client's home health medical record;

(b) Be developed, supervised, and signed by a licensed registered nurse or licensed therapist;

(c) Reflect the ordering licensed practitioner's orders and client's current health status;

(d) Contain specific goals and treatment plans;

(e) Be reviewed and revised by an ordering licensed practitioner at least every sixty calendar days, signed by the ordering licensed practitioner within forty-five days of the verbal order, and returned to the home health agency's file; and

(f) Be available to ~~((department))~~ medicaid agency staff or its designated contractor(s) on request.

(2) The provider must include all the following in the POC ~~((all of the following))~~:

(a) The client's name, date of birth, and address (to include name of residential care facility, if applicable);

(b) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for home health ser-

vices) or the diagnosis that is the reason for the visit frequency;

(c) All secondary medical diagnoses, including date(s) of onset or exacerbation;

(d) The prognosis;

(e) The type(s) of equipment required, including telemedicine as appropriate;

(f) A description of each planned service and goals related to the services provided;

(g) Specific procedures and modalities;

(h) A description of the client's mental status;

(i) A description of the client's rehabilitation potential;

(j) A list of permitted activities;

(k) A list of safety measures taken on behalf of the client;

and

(l) A list of medications which indicates:

(i) Any new prescription; and

(ii) Which medications are changed for dosage or route of administration.

(3) The provider must include in or attach to the POC:

(a) A description of the client's functional limits and the effects;

(b) Documentation that justifies why the medical services should be provided in the client's residence instead of an ordering licensed practitioner's office, clinic, or other outpatient setting;

(c) Significant clinical findings;

(d) Dates of recent hospitalization;

(e) Notification to the department of social and health services (DSHS) case manager of admittance;

(f) A discharge plan, including notification to the DSHS case manager of the planned discharge date and client disposition at time of discharge; and

(g) Order for the delivery of home health services through telemedicine, as appropriate.

(4) The individual client medical record must comply with community standards of practice, and must include documentation of:

(a) Visit notes for every billed visit;

(b) Supervisory visits for home health aide services as described in WAC ~~((388-551-2120))~~ 182-551-2120(3);

(c) All medications administered and treatments provided;

(d) All licensed practitioner's orders, new orders, and change orders, with notation that the order was received ~~((prior to))~~ before treatment;

(e) Signed licensed practitioner's new orders and change orders;

(f) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;

(g) Interdisciplinary and multidisciplinary team communications;

(h) Inter-agency and intra-agency referrals;

(i) Medical tests and results;

(j) Pertinent medical history; and

(k) Notations and charting with signature and title of writer.

(5) The provider must document at least the following in the client's medical record:

(a) Skilled interventions per the POC;

(b) Client response to the POC~~((:))~~;

(c) Any clinical change in client status;

(d) Follow-up interventions specific to a change in status with significant clinical findings;

(e) Any communications with the attending ordering licensed practitioner; and

(f) Telemedicine findings, as appropriate.

(6) The provider must include the following documentation in the client's visit notes when appropriate:

(a) Any teaching, assessment, management, evaluation, client compliance, and client response;

(b) Weekly documentation of wound care, size (dimensions), drainage, color, odor, and identification of potential complications and interventions provided;

(c) If a client's wound is not healing, the client's ordering licensed practitioner has been notified, the client's wound management program has been appropriately altered and, if possible, the client has been referred to a wound care specialist; and

(d) The client's physical system assessment as identified in the POC.

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

WAC 182-551-2220 Home health services—Provider payments. (1) ~~((In order))~~ To be reimbursed, the home health provider must bill the ~~((department))~~ medicaid agency according to the conditions of payment under WAC ~~((388-502-0150))~~ 182-502-0150 and other issuances.

(2) Payment to home health providers is:

(a) A set rate per visit for each discipline provided to a client;

(b) Based on the county location of the providing home health agency; and

(c) Updated by general vendor rate changes.

(3) For clients eligible for both medicaid and medicare, the ~~((department))~~ medicaid agency may pay for services described in this chapter only when medicare does not cover those services. The maximum payment for each service is medicaid's maximum payment.

(4) Providers must submit documentation to the ~~((department))~~ medicaid agency during the home health agency's review period. Documentation includes, but is not limited to, the requirements listed in WAC ~~((388-551-2210))~~ 182-551-2210.

(5) After the ~~((department))~~ medicaid agency receives the documentation, the ~~((department's))~~ medicaid agency's medical director or designee reviews the client's medical records for program compliance and quality of care.

(6) The ~~((department))~~ medicaid agency may take back or deny payment for any insufficiently documented home health care service when the department's medical director or designee determines that:

(a) The service did not meet the conditions described in WAC ~~((388-550-2030))~~ 182-550-2030; or

(b) The service was not in compliance with program policy.

(7) Covered home health services for clients enrolled in a Healthy Options managed care plan are paid for by that plan.

WSR 15-23-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 16, 2015, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-051.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0015 What types of income are not used by the department to figure out my benefits?, 388-470-0045 How do my resources count toward the resource limits for cash assistance?, and 388-470-0055 How do my resources count toward the resource limit for Basic Food?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on December 22, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 23, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 22, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by December 8, 2015, TTY (360) 664-6178, (360) 664-6094, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments propose to implement income and asset exclusions for ABLE (achieving a better life experience) tax-deferred accounts and associated distributions. The ABLE accounts are a new tax-deferred account for 2015 created under the Achieving a Better Life Experience Act of 2014. These accounts are dedicated to provide for tax-deferred savings (nondeductible contributions) of up to \$14,000 per year for individuals who became blind or disabled before age twenty-six. Tax-free distributions from the ABLE account can be used to pay for housing, transportation, education, job training, and the like. The assets in an ABLE account are not counted toward an individual's eligibility to qualify for medicaid, supplemental security income and other federal mean-tested benefits such as TANF and SNAP benefits. They are not mentioned in current program rules and must be added.

Reasons Supporting Proposal: See statement above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.-120.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects households served by DSHS who apply for or receive benefits under Basic Food, WASH-CAP or the state-funded food assistance program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

November 12, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? This section applies to cash assistance and Basic Food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA,

aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) Qualified distributions from an Achieving a Better Life Experience (ABLE) tax-deferred account;

(p) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance? (1) We count the following resources toward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts;

(vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic Food benefits;

(c) Income tax refunds for twelve months from the date of receipt;

(d) Earned income tax credit (EITC) in the month received and for up to twelve months;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 388-450-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(n) Adoption support payments;

(o) All funds deposited into an eligible Achieving a Better Life Experience (ABLE) tax-deferred account.

(p) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; and

~~((p))~~ (q) Resources specifically excluded by federal law.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 12-08-002, filed 3/21/12, effective 4/21/12)

WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food? (1) For Basic Food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(v) Available trusts or trust accounts; or

(vi) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned income tax credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets SSI, TANF/SFA, ABD assistance, or PWA benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under section 529 or 530 of the Internal Revenue Code;

(s) All funds deposited into an eligible Achieving a Better Life Experience (ABLE) tax-deferred account.

(t) Resources specifically excluded by federal law; and

((+)) (u) Federal income tax refunds for twelve months whether or not you were receiving Basic Food assistance at the time you got the refund.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. **Exception:** Federal tax refunds are not counted for twelve months even when mixed with countable resources.

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

WSR 15-23-073

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 16, 2015, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-134.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-400-0010 Who is eligible for state family assistance?

Hearing Location(s): Office Building 2, DSHS Headquarters 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on December 22, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 23, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 22, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments would allow state family assistance to be issued in certain situations to two-parent families that are otherwise eligible for temporary assistance for needy families (TANF). This change would not impact services or benefits to clients.

Reasons Supporting Proposal: The proposed changes would help to improve the state's work participation rate and would reduce, or eliminate, the penalty imposed on the state for not meeting the federal participation rate. The proposed changes are necessary to help meet federal TANF work participation targets set by the Administration for Children and Families.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.283, 74.08.090, and 74.04.057.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bev Kelly, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4556.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

November 12, 2015

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-046, filed 4/30/14, effective 6/1/14)

WAC 388-400-0010 Who is eligible for state family assistance? (1) To be eligible for state family assistance (SFA), aliens must meet Washington state residency requirements as listed in WAC 388-468-0005 and immigrant eligibility requirements as listed in WAC 388-424-0015.

(2) You are eligible for SFA if you are not eligible for temporary assistance for needy families (TANF) for the following reasons:

(a) You are a qualified alien and have been in the United States for less than five years as described in WAC 388-424-0006;

(b) You are a nonqualified alien as defined in WAC 388-424-0001, who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(c) You are a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005;

(d) You are a caretaker relative of a nineteen or twenty-year-old student that meets the education requirements of WAC 388-404-0005; or

(e) You are a pregnant woman who has been convicted of misrepresenting their residence in order to receive benefits from two or more states at the same time.

(3) You and the other TANF eligible members of your assistance unit may receive, at the department's discretion, SFA rather than TANF if:

- (a) You are otherwise eligible for TANF as a parent; and
- (b) Another parent in your assistance unit is eligible for TANF or SFA; and
- (c) One of the following conditions exists:
 - (i) You or the other parent in your assistance unit is pregnant; or
 - (ii) Your assistance unit includes a child under twelve months of age.
- (4) If you apply for SFA, have not received SFA within the past thirty days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

WSR 15-23-087
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (By the Code Reviser's Office)
 [Filed November 17, 2015, 1:20 p.m.]

WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0052, 388-845-0055, 388-845-0060, 388-845-0100, 388-845-0105, 388-845-0110, 388-845-0200, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0415, 388-845-0420, 388-845-0425, 388-845-0505, 388-845-0510, 388-845-0650, 388-845-0655, 388-845-0660, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1015, 388-845-1040, 388-845-1110, 388-845-1150, 388-845-1160, 388-845-1170, 388-845-1180, 388-845-1190, 388-845-1191, 388-845-1192, 388-845-1195, 388-845-1196, 388-845-1197, 388-845-1310, 388-845-1410, 388-845-1600, 388-845-1605, 388-845-1607, 388-845-1620, 388-845-1660, 388-845-1700, 388-845-1710, 388-845-1800, 388-845-1810, 388-845-1840, 388-845-1845, 388-845-1850, 388-845-1855, 388-845-1860, 388-845-1865, 388-845-1910, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2130, 388-845-2135, 388-845-2140, 388-845-2160, 388-845-2170, 388-845-2210, 388-845-2260, 388-845-2270, 388-845-3000, 388-845-3055, 388-845-3056, 388-845-3060, 388-845-3061, 388-845-3062, 388-845-3063, 388-845-3065, 388-845-3070, 388-845-3075 and 388-845-3085, proposed by the department of social and health services in WSR 15-09-024, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-088
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING
 (By the Code Reviser's Office)
 [Filed November 17, 2015, 1:21 p.m.]

WAC 196-29-105, proposed by the department of licensing in WSR 15-10-032, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-089
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF REVENUE
 (By the Code Reviser's Office)
 [Filed November 17, 2015, 1:21 p.m.]

WAC 458-20-196, proposed by the department of revenue in WSR 15-10-057, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-090
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (By the Code Reviser's Office)
 [Filed November 17, 2015, 1:23 p.m.]

WAC 388-76-10463, 388-76-10655, 388-76-10660, 388-76-10685, 388-76-11000, 388-76-11004, 388-76-11005, 388-76-11010, 388-76-11015, 388-76-11020, 388-76-11025, 388-76-11030, 388-76-11035 and 388-76-11040, proposed by the department of social and health services in WSR 15-10-092, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-091
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed November 17, 2015, 1:23 p.m.]

WAC 388-107-1450, 388-107-1460, 388-107-1470, 388-107-1480, 388-107-1490, 388-107-1500, 388-107-1510, 388-107-1520, 388-107-1530, 388-107-1540 and 388-107-1550, proposed by the department of social and health services in WSR 15-10-093, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-092
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed November 17, 2015, 1:24 p.m.]

WAC 388-78A-3390, 388-78A-3400, 388-78A-3410, 388-78A-3420, 388-78A-3430, 388-78A-3440, 388-78A-3450, 388-78A-3460, 388-78A-3470 and 388-78A-3480, proposed by the department of social and health services in WSR 15-10-094, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-093
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed November 17, 2015, 1:24 p.m.]

WAC 388-111-0040, 388-111-0050, 388-111-0060, 388-111-0070, 388-111-0080, 388-111-0090, 388-111-0100, 388-111-0110 and 388-111-0120, proposed by the department of social and health services in WSR 15-10-095, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-094
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed November 17, 2015, 1:25 p.m.]

WAC 388-110-222 and 388-110-242, proposed by the department of social and health services in WSR 15-10-105, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-095
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

(By the Code Reviser's Office)

[Filed November 17, 2015, 1:25 p.m.]

WAC 232-36-340, proposed by the department of fish and wildlife in WSR 15-10-107, appearing in issue 15-10 of the Washington State Register, which was distributed on May 20, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 15-23-097
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 17, 2015, 1:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-169.

Title of Rule and Other Identifying Information: The DSHS division of child support (DCS) is amending WAC 388-14A-4200 in order to implement SB 5793 (chapter 124, Laws of 2015), which took effect on July 24, 2015, but is not yet codified. SB 5793 amended RCW 26.18.190 to add a new subsection (3) providing as follows: "(3) When the veterans' administration apportions a veteran's benefits to pay child

support on behalf of or on account of the child or children of the veteran, the amount paid for the child or children shall be treated for all purposes as if the veteran paid the benefits toward the satisfaction of that person's child support obligation for that period for which benefits are paid."

In order to implement SB 5793, DCS must amend WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children?, to include credit for these benefits paid by the United States Department of Veterans Affairs (the new name of the agency formerly known as the veterans' administration).

In addition to the regular rule-making process, DCS filed an emergency rule effective July 24, 2015, under WSR 15-16-004; that emergency rule expires on November 20, 2015. DCS is filing a second emergency rule, which is necessary to maintain the status quo because the final rule cannot be made effective within the time of one emergency rule.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on December 22, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 23, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 22, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by December 8, 2015, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to implement SB 5793, DCS is amending WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children?, to include credit for these benefits paid by the United States Department of Veterans Affairs (the new name of the agency formerly known as the veterans' administration).

Reasons Supporting Proposal: Required by change in state law.

Statutory Authority for Adoption: Implementation of SB 5793 (chapter 124, Laws of 2015), which takes effect on July 24, 2015, is authorized under RCW 26.23.030(3), 34.05.220(1)(a), 34.05.322, and 74.08.090.

Statute Being Implemented: SB 5793 (chapter 124, Laws of 2015), which has not yet been codified, amends RCW 26.18.190.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on any business. WAC 388-14A-4200 deals with allowing credit to a noncustodial parent's child support obligation based on the receipt of dependent benefits or apportioned benefits. New subsection (3) of RCW 26.18.190 provides as follows: "(3) When the veterans' administration apportions a veteran's benefits to pay child support on behalf of or on account of the child or children of the veteran, the amount paid for the child or children shall be treated for all purposes as if the veteran paid the benefits toward the satisfaction of that person's child support obligation for that period for which benefits are paid."

A cost-benefit analysis is not required under RCW 34.05.328. Although this rule meets the definition of a significant legislative rule under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because this rule adopts a state statute (RCW 34.05.328 (5)(b)(iii)) and the content of the rule is "explicitly and specifically dictated by statute" (RCW 34.05.328 (5)(b)(v)).

November 13, 2015

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-065, filed 6/30/11, effective 7/31/11)

WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children? (1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of a noncustodial parent (NCP), the division of child support (DCS) treats the amount of compensation the department or self-insurer pays on behalf of the child or children as if the NCP paid the compensation toward the NCP's child support obligations.

(2) When the Social Security administration pays Social Security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of an NCP who is a disabled person, a retired person, or a deceased person, DCS treats the amount of benefits paid for the child or children as if the NCP paid the benefits toward the NCP's child support obligation for the period for which benefits are paid.

(3) When the veterans' administration (now known as the U.S. Department of Veterans Affairs) apportions a veteran's benefits to pay child support on behalf of or on account of the child or children of the veteran, DCS treats the amount of benefits paid for the child or children for all purposes as if the veteran paid the benefits toward the satisfaction of that person's child support obligation for the period for which benefits are paid.

(4) Under no circumstances does the NCP have a right to reimbursement of any compensation paid under subsection (1), ~~((2))~~ (2), or (3) of this section.

WSR 15-23-099
PROPOSED RULES
CLOVER PARK
TECHNICAL COLLEGE
 [Filed November 17, 2015, 4:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-142.

Title of Rule and Other Identifying Information: Chapters 495C-121, 495C-300, and 495C-310 WAC.

Reviser's note: Chapter 495C-310 WAC is referred to in the agency's notice; however, the proposed text of the section was not included with the filing by the agency. cf. RCW 34.08.020 (1)(a).

Hearing Location(s): Clover Park Technical College, Building 3, Rotunda, 4500 Steilacoom Boulevard S.W., Lakewood, WA 98499, on January 13, 2016, at 4:00 p.m.

Date of Intended Adoption: February 21, 2016.

Submit Written Comments to: Lisa Beach, 4500 Steilacoom Boulevard S.W., Lakewood, WA 98499, e-mail lisa.beach@cptc.edu, fax (253) 589-5784, by January 8, 2016.

Assistance for Persons with Disabilities: Contact Lisa Beach by January 6, 2016, (253) 589-5603.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revisions are necessary to bring the code into alignment with federal and state laws and guidance regarding sexual misconduct and sexual discrimination in federal-funded institutions of higher education.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, 20 U.S.C. §§ 1681 *et seq.*

Name of Proponent: Clover Park Technical College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Broussard and Shelby Fritz, Building 17, 4500 Steilacoom Boulevard S.W., Lakewood, WA 98499, (253) 589-5546.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Such a statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.228 [34.05.328] does not apply to these college rules.

November 17, 2015

Lisa R. Beach
 Director of Security
 and Compliance

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-020 Authority. The board of trustees, acting pursuant to RCW 28B.10.528 and 28B.50.140(14), delegates to the president the authority to administer student disciplinary actions and appeals. ~~((Through enactment of this chapter,))~~ The president ~~((subdelegates))~~ may delegate and/or

further ~~((assigns))~~ assign responsibilities related to student discipline to other college officials and positions.

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-040 Student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The 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 ~~((rules, and college policies))~~ 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, papers, and effects against unreasonable college searches and seizures are guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of ~~((misconduct that is subject to discipline))~~ violating this code of conduct is entitled, upon request, to the procedural due process set forth in this chapter.

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-050 Prohibited student conduct. The college may ~~((initiate))~~ impose disciplinary ~~((action))~~ sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit ~~((any of the following act(s) of misconduct))~~ any act of misconduct, which includes, but is not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty, including cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment or requirement.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment or requirement.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment or requirement, or providing false or deceptive information to an instructor concerning the completion of an assignment or requirement, including submitting for credit without authorization academic work also submitted for credit in another course.

(2) **Other dishonesty.** Any other act of dishonesty, including:

(a) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct or complete information, in response to the request or requirement of a college official or employee.

(3) **Obstruction or disruption.** Conduct which significantly obstructs or disrupts any operation of the college, any college meeting, any college class or other activity, any activity authorized to occur at a college facility, or any college-sponsored activity, including obstructing the free flow of pedestrian or vehicular movement or blocking access to or from any college facility or college-sponsored event.

(4) **Assault, abuse, intimidation, etc.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, reckless conduct, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property or which unreasonably disrupts the educational environment. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving an apparent power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(c) Reckless conduct means acts performed with a heightened degree of carelessness or indifference so as to create a significant risk of physical, mental, or emotional harm to another person.

(5) **Cyber misconduct, Cyberstalking, cyberbullying or online harassment.** Use of electronic communications(☺) including, but not limited to, electronic mail, instant messaging, texting, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health, safety, or well-being of another person. Prohibited activities include, but are not limited to, unau-

thorized monitoring of another's electronic communications directly or through spyware, sending threatening messages, disrupting electronic communications, sending a computer virus or malware, sending false messages to third parties using another's identity, nonconsensual recording of sexual activity, or nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state, including college facilities;

(b) Any college student, official, employee, or organization; or

(c) Any other member of the college community or a college organization.

Property violation also includes possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Holding, wearing, transporting, storing, or otherwise possessing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon or device which is apparently capable of producing bodily harm, on or in any college facility, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) College-owned knives, tools, etc., that are being used for a legitimate educational purpose as part of a college instructional program;

(c) A student with a valid concealed pistol license may store a pistol in his or her vehicle parked on campus in accordance with RCW 9A.1050 (2) or (3), provided the vehicle is locked and the pistol is concealed from view; (~~and~~)

(d) The president may grant permission to bring such a weapon or device on or into a college facility when he/she determines that it is reasonably related to a legitimate pedagogical purpose, provided that such permission shall be in writing and shall be subject to all terms and conditions incorporated in that writing; and

(e) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(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, physical harm, or serious mental or emotional harm to any student, regardless of whether the victim has consented.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** Use, possession, delivery, sale, or being observably under the influence of marijuana, the psychoactive compounds found in marijuana, or any product containing marijuana or such compounds that is intended for human

consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college facilities or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed health care practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Use of tobacco, electronic cigarettes or smoking devices, and/or related products on or in any college facility is prohibited, except that such use in a ~~((smoking shelter))~~ designated ~~((by the college))~~ smoking area or in a closed private vehicle is permitted when consistent with applicable law and rules. "Related products" include cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

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

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

(13) **Sexual misconduct.** Any act of sexual misconduct, including sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for campus community members.

(b) Sexual intimidation ~~((is a type))~~. The term "sexual intimidation" incorporates the definition of "sexual harassment" ~~((that involves))~~ and means threatening or emotionally distressing conduct based on sex~~(s)~~ including, but not limited to, nonconsensual recording of sexual activity or distribution of such a recording.

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

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or 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.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(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 harass-

ment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic.

(15) **Retaliation.** Taking adverse action against any individual for reporting, providing information, or otherwise participating in a process for addressing alleged violations of federal, state, or local law, or college policies, including allegations of discrimination or harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college, which includes:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's policies or procedures governing the use of such time or resources.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college ~~((facilities))~~ property, or unauthorized entry onto or into college ~~((facilities))~~ property.

(18) **Safety violations.** Any nonaccidental conduct that violates, interferes with, or otherwise compromises any law, rule, policy, procedure, or equipment relating to the safety and security of college facilities or the college community, including tampering with fire safety equipment or triggering false alarms or other emergency response systems.

(19) **Motor vehicle operation.** Operation of any motor vehicle in an unsafe manner or contrary to posted signs or college procedures.

(20) **Violation of laws or policies.** Violation of any federal, state, or local law or regulation, or college rule, policy, or procedure, which regulates the behavior of the college's students, including a parking rule.

(21) **Student procedures violations.** Misuse of or failure to follow any of the procedures relating to student complaints or misconduct, including:

(a) Falsification or misrepresentation of information;

(b) Failure to obey a subpoena;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(e) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member or other disciplinary official; or

(f) Failure to comply with any disciplinary action, term, or condition imposed under this chapter.

(22) **Ethical violation.** Ethical violations include, but are not limited to, breach of a generally recognized and published code of ethics or standard of professional practice that governs the conduct of a particular profession, which the student has been specifically informed about and is required to adhere to as a condition of enrolling in a course or participating in an educational program.

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.

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-060 Disciplinary sanctions and conditions. (1) **Disciplinary sanctions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) Disciplinary warning. An oral statement to a student that there is a violation and that any further violation may be cause for further disciplinary action. Although verbal, the student conduct officer should make a record of the warning. The respondent cannot appeal a disciplinary warning.

(b) Written disciplinary reprimand. A written notice informing a student that he/she has violated one or more terms of the code of conduct and that future misconduct involving the same or similar behavior may result in the imposition of a more severe disciplinary sanction.

(c) Disciplinary probation. A written notice placing specific term(s) and condition(s) upon the student's continued attendance at the college. Disciplinary probation may be for a limited period of time or for the duration of the student's attendance at the college.

(d) Disciplinary suspension. Temporary revocation of enrollment and termination of student status, for a stated period of time. The student may be prohibited from coming onto any college facility and may be subject to law enforcement action for criminal trespass for violating that prohibition. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) Dismissal. Revocation of enrollment and of all rights and privileges of membership in the college community, and exclusion from college facilities, without any time limitation. There will be no refund of tuition or fees for the quarter in which the action is taken. The student may be subject to law enforcement action for criminal trespass for violating that exclusion. A dismissal may be ~~((subsequently ended))~~ rescinded only by a written decision of the president, for documented good cause.

(2) **Disciplinary conditions.** Disciplinary conditions that may be imposed alone or in conjunction with the imposi-

tion of a disciplinary sanction under subsection (1) of this section include:

(a) Restitution. Reimbursement for (i) damage to, or theft or misuse of, real or personal property or money, or (ii) injury to persons. This reimbursement may take the form of money, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation, at the student's expense, by an appropriately certified or licensed professional. The student may choose the professional within the scope of practice and with the professional credentials as specified by the college. The student must sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in the evaluation. If the student has been suspended, the student may remain suspended until the most recent evaluation finds that the student is capable of reentering the college and complying with the college's expectations for conduct.

(c) Restrictions on activities. A student may be subjected to the following restrictions:

(i) Ineligible to hold any college office or position or any office in any student organization;

(ii) Ineligible to participate in any college activity(ies); and/or

(iii) Ineligible to represent the college outside the college community, including at any event or in any form of competition.

(d) Required activities. Assignment of appropriate tasks or responsibilities, or required attendance at an appropriate program, instructional course, or other educational activity, which may be at the student's expense.

(e) Protective or no contact order. An order directing a student to have limited or no contact with any specified student(s), college employee(s), member(s) of the college community, or college facility.

(f) Loss of state funding. A student found to have committed hazing shall forfeit any entitlement to state-funded grants, scholarships, or awards, pursuant to RCW 28B.10.902.

Chapter 495C-300 WAC

GRIEVANCE RULES—((TITLE IX)) DISCRIMINATION AND HARASSMENT

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

WAC 495C-300-010 Preamble. ~~Clover Park Technical College ((is covered by Title IX of the Civil Rights Act of 1964 prohibiting sex discrimination in education. Applicants for admission, enrolled students, applicants for employment, or employees of Clover Park Technical College who believe they have been discriminated against on the basis of sex may lodge an institutional grievance by following the procedures below))~~ recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental

disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Clover Park Technical College has enacted policies prohibiting discrimination against and harassment of members of these protected classes.

Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment to the college's Title IX coordinator or via the form provided on the college's web site.

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

WAC 495C-300-030 ((Formal)) Investigation procedure. ~~((Step one: Employees and students must make a written complaint concerning discriminatory behavior to the affirmative action officer or designee.~~

~~(1) Complaints may be held in confidence. Formal action against the person accused may not be taken on behalf of the complainant unless the complainant consents to be identified to the one accused in connection with the investigation.~~

~~(2) The complainant may bring a person of his or her choice to the initial or subsequent complaint meetings.~~

~~(3) The affirmative action officer or designee shall give a copy of these regulations and any applicable board policy to the person making the formal complaint and to the accused.~~

~~(4) The result of that consultation and any investigation made may be communicated to the complainant before any further action is taken.~~

~~(5) An informal hearing may be substituted for investigation if the complainant and the accused agree. The affirmative action officer or designee will be responsible for investigating the complaint and discussing the complaint with the accused. The affirmative action officer will make a written recommendation to the president within a reasonable time following the close of the investigation or hearing.~~

~~(6) Appropriate corrective measures will be decided by the president of the college upon consultation with the affirmative action officer and the appropriate administrators or supervisors involved. If an accused employee or student disagrees with the determination or appropriateness of the corrective measures, that individual may contest those measures through the appropriate staff grievance procedures, if they are covered by an agreement, or the student disciplinary code.~~

~~(7) Information will be entered in the personnel or student file only to the extent that a formal reprimand or other disciplinary action has been taken. If no disciplinary action is taken, the affirmative action officer will keep a record of the investigation accessible to the president, the complainant and~~

the accused for a period of three years and then that record will be destroyed. If a formal complaint is filed with an outside state or federal agency, files will be maintained until the complaint is resolved. When such files are used, written notice will be placed in the file indicating the person using the file and the date used.)) Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/equal educational opportunity (EEO) coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator shall inform the complainant and respondent(s) shall be notified of the appointment of the investigator.

Interim measures. The Title IX/EEO coordinator may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no-contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

Investigation. Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator. The Title IX/EEO coordinator shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

Written notice of decision. The Title IX/EEO coordinator will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally

that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

Informal dispute resolution. Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination 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.

Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the Title IX/EEO coordinator shall respond within fourteen days. The Title IX/EEO coordinator shall either deny the request or, if the Title IX/EEO coordinator determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

WAC 495C-300-040 Other remedies. ((These procedures outlined in WAC 495C-300-010 through 495C-300-030, are internal college procedures and, as such, serve to resolve complaints within the college's administrative framework. These procedures do not replace an individual's timely complaint with an external agency such as the Office of Civil Rights, Equal Employment Opportunity Commission, or the Washington state human rights commission.))

ADDITIONAL COMPLAINT OPTIONS

Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

- Lakewood Police Department, 253-830-5000
- Pierce County Sheriff, 253-798-4721 (select option 1)

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

OTHER DISCRIMINATION COMPLAINT OPTIONS

Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission
<http://www.hum.wa.gov/index.html>
 U.S. Department of Education Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>
[Equal Employment Opportunity Commission](http://www.eeoc.gov/)
<http://www.eeoc.gov/>

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495C-300-020 Informal procedure.

WSR 15-23-102
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket U-144155—Filed November 18, 2015, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-121.

Title of Rule and Other Identifying Information: WAC 480-90-178, Gas companies—Operations—Billing requirements and payment date and WAC 480-100-178, Electric companies—Operations—Billing requirements and payment date.

Modify existing rules in chapter 480-90 WAC (gas companies) and chapter 480-100 WAC (electric companies) to address corrected billing issues resulting from billing errors, inaccurate energy usage metering, or unidentified energy usage, which results in corrected billing of electric and natural gas customers. The proposed rules address key concerns of both the companies and commission staff regarding reducing the length of corrected bills while recognizing: (1) Equipment breaks; (2) some customers do not notify the company immediately upon moving in; and (3) companies may not have complete control over how quickly these issues can be identified without significantly increasing costs that would ultimately be borne by all ratepayers.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on January 21, 2016, at 1:30 p.m.

Date of Intended Adoption: January 21, 2016.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by December 21, 2015. Please include: "Docket U-144155" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by January 7, 2016, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to limit the period of time for which a regulated utility may issue a corrected bill. Large retroactive bills have a significant impact on customers, but large retroactive bills could present a particular hardship for low-income and fixed income customers.

The commission is responsible for protecting consumers by ensuring that investor-owned utility services are fairly priced, available, and accurate. Consumers should receive timely and accurate bills each month. It is reasonable to expect utilities to identify and correct bills for billing errors, stopped and slowed meters, as well as unidentified energy usage within a reasonable time frame. Initial data provided by the utilities indicate that customers are continuing to receive corrected bills for periods in excess of six months, and in some cases, more than twelve and twenty-four months.

Responses to the commission's preproposal inquiry indicate that the revised rules would be beneficial and in the public interest because they would establish common standards for all regulated energy utilities. The proposed rules also provide guidance on a utility's responsibilities to develop and maintain procedures for identifying and repairing or replacing meters that are not functioning correctly and identifying meter usage from unidentified usage meters. Finally, the proposed rules provide guidance to regulated energy utilities about the information they must communicate to customers to explain the reason for the corrected bill.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Roger Kouchi, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1101; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules require investor-owned utilities, none of which qualify as a small business, to correct billing errors within a reasonable time frame. Because the proposed rules will not increase costs to small businesses, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

November 18, 2015
 Steven V. King
 Executive Director
 and Secretary

AMENDATORY SECTION (Amending WSR 11-06-032, filed 2/25/11, effective 3/28/11)

WAC 480-90-178 Billing requirements and payment date. (1) Customer bills must:

- (a) Be issued at intervals not to exceed two one-month billing cycles, unless the utility can show good cause for delaying the issuance of the bill. The utility must be able to show good cause if requested by the commission;
- (b) Show the total amount due and payable;
- (c) Show the date the bill becomes delinquent if not paid;

(d) Show the utility's business address, business hours, and toll-free telephone number and emergency telephone number by which a customer may contact the utility;

(e) Show the current and previous meter readings, the current read date, and the total amount of therms used;

(f) Show the amount of therms used for each billing rate, the applicable billing rates per therm, the basic charge or minimum bill;

(g) Show the amount of any municipal tax surcharges or their respective percentage rates;

(h) Clearly identify when a bill has been prorated. A prorated bill must be issued when service is provided for a fraction of the billing period. Unless otherwise specified in the utility's tariff, the charge must be prorated in the following manner:

(i) Flat-rate service must be prorated on the basis of the proportionate part of the period that service was rendered;

(ii) Metered service must be billed for the amount metered. The basic or minimum charge must be billed in full;

(i) Clearly identify when a bill is based on an estimation.

(i) A utility must detail its method(s) for estimating customer bills in its tariff;

(ii) The utility may not estimate for more than four consecutive months unless the cause of the estimation is inclement weather, terrain, or a previous arrangement with the customer; and

(j) Clearly identify determination of maximum demand. A utility providing service to any customer on a demand basis must detail in its filed tariff the method of applying charges and of ascertaining the demand.

(2) The minimum time allowed for payment after the bill's mailing date must be fifteen days, if mailed from within the states of Washington, Oregon, or Idaho, or eighteen days if mailed from outside the states of Washington, Oregon, and Idaho.

(3) The utility must allow a customer to change a designated payment-due date when the customer has a satisfactory reason for the change. A satisfactory reason may include, but is not limited to, adjustment of a designated payment-due date to parallel receipt of income. The preferred payment date must be prior to the next billing date.

(4) With the consent of the customer, a utility may provide billings in electronic form if the bill meets all the requirements for the use of electronic information in this chapter. The utility must maintain a record of the consent as a part of the customer's account record, and the customer may change from electronic to printed billing upon request, as provided in this chapter. The utility must complete the change within two billing cycles of the request.

(5) Corrected bills:

(a) Upon discovery of an underbilling or overbilling resulting from a meter failure, meter malfunction, meter with unassigned energy usage, or any other billing error, a utility must issue the customer a corrected bill to recover or refund billed amounts. The utility must use the rate schedule in effect at the time of each affected billing period covered by the corrected bill. The utility must issue the corrected bill within sixty days from the date the utility discovered the underbilling or overbilling. However, except as provided for in subsection (7) of this section, when a utility discovers that

it has underbilled a customer, it may not seek to collect for any period greater than six months from the date the error occurred.

(b) For the purposes of this subsection:

(i) A meter failure or malfunction is defined as: A mechanical malfunction or failure that prevents the meter or any ancillary data collection or transmission device from registering or transmitting the actual amount of energy used. A meter failure or malfunction includes, but is not limited to, a stopped meter, a meter that is faster or slower than the metering tolerance specified in WAC 480-90-338, or an erratic meter.

(ii) For the purpose of this rule, unassigned energy usage meter is defined as a meter that is installed at a valid service address and accurately records energy usage during a period of time where there was no active gas service account at that premises.

(iii) For the purpose of this rule, a billing error is defined as any error which results in incorrect charges.

(c) A utility must develop and maintain procedures to identify and repair or replace meters not functioning correctly and identify meter usage from unassigned usage meters. These procedures shall address steps taken to prevent corrected bills for underbilling errors that exceed six months in duration. The initial plan delineating the procedures must be filed with the commission by May 1, 2016. If the utility makes subsequent changes to the plan, the modified plan must be filed with the commission within thirty days of any changes. The plan must include, at a minimum:

(i) Procedures to prevent billing errors resulting from, but not limited to, billing errors due to incorrect prorated bills, mislabeled meter bases, incorrectly installed meters, incorrect billing rate schedules, or incorrect billing multipliers.

(ii) Procedures for investigating meter errors including, but not limited to, those created by stopped, slowed, and erratic usage meters.

(iii) Procedures for investigating meter usage from unidentified usage meters.

(6) For the purpose of this rule, a corrected bill may take the form of a newly issued bill or may be reflected as a line item adjustment on a subsequent monthly bill. When a corrected bill is issued, the utility must provide the following information on the corrected bill, in a bill insert, letter, or any combination of methods that clearly explains all the information required to be sent to the customer:

(a) The reason for the bill correction;

(b) A breakdown of the bill correction for each month included in the corrected bill;

(c) The total amount of the bill correction that is due and payable;

(d) The time period covered by the bill correction;

(e) The actions taken to resolve the cause of the bill correction; and

(f) When issuing a corrected bill for underbilling, an explanation of the availability of payment arrangements in accordance with WAC 480-90-138(1) Payment arrangements.

(7) Corrected bills issued for the following purposes are exempt from the provisions of subsection (5)(a) of this section:

(a) Meter failure or malfunction or billing error related to customer tampering with the utility's property, use of the utility's service through an illegal connection, or the customer fraudulently obtaining service.

(b) An estimated meter read made in accordance with subsection (1)(i) of this section is not considered a meter failure or malfunction or a billing error. A bill true-up based on an actual meter reading after one or more estimated bills is not considered a corrected bill for purposes of subsection (5)(a) of this section.

AMENDATORY SECTION (Amending WSR 11-06-032, filed 2/25/11, effective 3/28/11)

WAC 480-100-178 Billing requirements and payment date. (1) Customer bills must:

(a) Be issued at intervals not to exceed two one-month billing cycles, unless the utility can show good cause for delaying the issuance of the bill. The utility must be able to show good cause if requested by the commission;

(b) Show the total amount due and payable;

(c) Show the date the bill becomes delinquent if not paid;

(d) Show the utility's business address, business hours, and a toll-free telephone number and an emergency telephone number by which a customer may contact the utility;

(e) Show the current and previous meter readings, the current read date, and the total amount of kilowatt hours used;

(f) Show the amount of kilowatt hours used for each billing rate, the applicable billing rates per kilowatt hour, the basic charge or minimum bill;

(g) Show the amount of any municipal tax surcharges or their respective percentage rates;

(h) Clearly identify when a bill has been prorated. A prorated bill must be issued when service is provided for a fraction of the billing period. Unless otherwise specified in the utility's tariff, the charge must be prorated in the following manner:

(i) Flat-rate service must be prorated on the basis of the proportionate part of the period the service was rendered;

(ii) Metered service must be billed for the amount metered. The basic or minimum charge must be billed in full.

(i) Clearly identify when a bill is based on an estimation.

(i) The utility must detail its method(s) for estimating customer bills in its tariff;

(ii) The utility may not estimate for more than four consecutive months, unless the cause of the estimation is inclement weather, terrain, or a previous arrangement with the customer;

(j) Clearly identify determination of maximum demand. A utility providing service to any customer on a demand basis must detail in its filed tariff the method of applying charges and of ascertaining the demand.

(2) The minimum time allowed for payment after the bill's mailing date must be fifteen days, if mailed from within the states of Washington, Oregon, or Idaho, or eighteen days

if mailed from outside the states of Washington, Oregon, and Idaho.

(3) The utility must allow a customer to change a designated payment-due date when the customer has a satisfactory reason for the change. A satisfactory reason may include, but is not limited to, adjustment of a designated payment-due date to parallel receipt of income. The preferred payment date must be prior to the next billing date.

(4) With the consent of the customer, a utility may provide billings in electronic form if the bill meets all the requirements for the use of electronic information in this chapter. The utility must maintain a record of the consent as a part of the customer's account record, and the customer may change from electronic to printed billing upon request, as provided in this chapter. The utility must complete the change within two billing cycles of the request.

(5) Corrected bills:

(a) Upon discovery of an underbilling or overbilling resulting from a meter failure, meter malfunction, meter with unassigned energy usage, or any other billing error, a utility must issue the customer a corrected bill to recover or refund billed amounts. The utility must use the rate schedule in effect at the time of each affected billing period covered by the corrected bill. The utility must issue the corrected bill within sixty days from the date the utility discovered the underbilling or overbilling. However, except as provided for in subsection (7) of this section, when a utility discovers that it has underbilled a customer, it may not seek to collect for any period greater than six months from the date the error occurred.

(b) For the purposes of this subsection:

(i) A meter failure or malfunction is defined as: A mechanical malfunction or failure that prevents the meter or any ancillary data collection or transmission device from registering or transmitting the actual amount of energy used. A meter failure or malfunction includes, but is not limited to, a stopped meter, a meter that is faster or slower than the metering tolerance specified in WAC 480-100-338, or an erratic meter.

(ii) For the purpose of this rule, unassigned energy usage meter is defined as a meter that is installed at a valid service address and accurately records energy usage during a period of time where there was no active electric service account at that premises.

(iii) For the purpose of this rule, a billing error is defined as any error which results in incorrect charges.

(c) A utility must develop and maintain procedures to identify and repair or replace meters not functioning correctly and identify meter usage from unassigned usage meters. These procedures shall address steps taken to prevent corrected bills for underbilling errors that exceed six months in duration. The initial plan delineating the procedures must be filed with the commission by May 1, 2016. If the utility makes subsequent changes to the plan, the modified plan must be filed with the commission within thirty days of any changes. The plan must include, at a minimum:

(i) Procedures to prevent billing errors resulting from, but not limited to, billing errors due to incorrect prorated bills, mislabeled meter bases, incorrectly installed meters,

incorrect billing rate schedules, or incorrect billing multipliers.

(ii) Procedures for investigating meter errors including, but not limited to, those created by stopped, slowed, and erratic usage meters.

(iii) Procedures for investigating meter usage from unidentified usage meters.

(6) For the purpose of this rule, a corrected bill may take the form of a newly issued bill or may be reflected as a line item adjustment on a subsequent monthly bill. When a corrected bill is issued, the utility must provide the following information on the corrected bill, in a bill insert, letter, or any combination of methods that clearly explains all the information required to be sent to the customer:

(a) The reason for the bill correction;

(b) A breakdown of the bill correction for each month included in the corrected bill;

(c) The total amount of the bill correction that is due and payable;

(d) The time period covered by the bill correction;

(e) The actions taken to resolve the cause of the bill correction; and

(f) When issuing a corrected bill for underbilling, an explanation of the availability of payment arrangements in accordance with WAC 480-100-138(1) Payment arrangements.

(7) Corrected bills issued for the following purposes are exempt from the provisions of subsection (5)(a) of this section:

(a) Meter failure or malfunction or billing error related to customer tampering with the utility's property, use of the utility's service through an illegal connection, or the customer fraudulently obtaining service.

(b) An estimated meter read made in accordance with subsection (1)(i) of this section is not considered a meter failure or malfunction or a billing error. A bill true-up based on an actual meter reading after one or more estimated bills is not considered a corrected bill for purposes of subsection (5)(a) of this section.

WSR 15-23-111

PROPOSED RULES

DEPARTMENT OF

ENTERPRISE SERVICES

[Filed November 18, 2015, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-162.

Title of Rule and Other Identifying Information: Operating unmanned aircraft on the state capitol grounds.

Hearing Location(s): First Floor Presentation Room, 1500 Jefferson, Olympia, WA 98504, on December 22, 2015, at 6 p.m. to 8 p.m.

Date of Intended Adoption: January 6, 2016.

Submit Written Comments to: Online <https://www.surveymonkey.com/s/DESRulemaking> or e-mail rules@des.wa.gov.

[wa.gov](https://www.wa.gov), comments will be accepted through December 28, 2015, 5:00 p.m. PST.

Assistance for Persons with Disabilities: Contact Brooke Hansen, by December 8, 2015, (360) 407-9209 or brooke.hansen@des.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: These rules are necessary for the health, safety, and security of those using the state capitol campus.

Anticipated Effects: The unauthorized operation of unmanned aircraft on the state capitol campus will cease.

Changes in Existing Rules: No change in existing rules.

Reasons Supporting Proposal:

- Potential public safety risks for people below or in an unmanned aircraft flight path;
- Risk of interfering with emergency response activities on the state capitol campus;
- Potential disruption of state business by unmanned aircraft activity.

Statutory Authority for Adoption: RCW 43.19.125.

Statute Being Implemented: RCW 43.19.125.

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

Name of Proponent: Department of enterprise services (DES), governmental.

Name of Agency Personnel Responsible for Drafting: Jack Zeigler, 1500 Jefferson, Olympia, WA 98504, (360) 407-9209; Implementation: Bonnie Scheel, 1500 Jefferson, Olympia, WA 98504, (360) 407-9320; and Enforcement: Bob Covington, 1500 Jefferson, Olympia, WA 98504, (360) 407-9203.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required. These rules do not impact small business.

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, DES does not voluntarily make section 201 applicable to this rule adoption nor to date, nor has the joint administrative rules review committee made section 201 applicable to this rule adoption.

November 18, 2015

Jack Zeigler

Policy and Rules Manager

Chapter 200-250 WAC

Operating unmanned aircraft on the state capitol campus

NEW SECTION

WAC 200-250-010 Purpose. The purpose of these rules is to make sure the use of unmanned aircraft on the state capitol campus is managed in a safe and secure manner by the department of enterprise services. Because of this, the state capitol campus is closed to launching, landing, or operating unmanned aircraft, subject to the conditions and exceptions described below.

NEW SECTION

WAC 200-250-020 Definitions. (1) "Department" means the department of enterprise services.

(2) "Director" means the director of the department of enterprise services or his or her designee.

(3) "National airspace system" means is the airspace, navigation facilities and airports of the United States.

(4) "State capitol campus" means those grounds owned by the state and otherwise designated as the state capitol campus by the state capitol committee.

(5) "Unmanned aircraft" means a system or device that is used or intended to be used for flight in the air without the possibility of direct human intervention from within or on the device, and the associated operational elements and components that are required for the pilot or system operator in command to operate or control the device (such as cameras, sensors, communication links).

This term includes all types of systems or devices that meet this definition that are used for any purpose or activity, including but not limited to governmental, private, recreational, or commercial uses. Some examples of unmanned aircraft are model airplanes, quadcopters, and drones.

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 200-250-030 Use of unmanned aircraft is prohibited. Launching, landing, or operating an unmanned aircraft from or on lands and waters within the boundaries of the state capitol campus is prohibited except for the exclusions listed under WAC 200-250-040.

NEW SECTION

WAC 200-250-040 Exclusions. The prohibition on launching, landing, or operating unmanned aircraft on the state capitol campus under WAC 200-250-030 does not apply to:

(1) Emergency law enforcement and fire response operations;

(2) Other operations designed to support responses to health and human safety emergencies such as search and rescue, health and environmental incidents;

(3) National defense activities;

(4) Activities necessary for the care and custody of the state capitol campus when those activities have prior written approval by the director.

NEW SECTION

WAC 200-250-050 Requirements for obtaining advance approval of director under WAC 200-250-040(4). (1) Use of unmanned aircraft must be approved in advance and in writing by the director.

(2) When considering approval, the director shall consider the criteria for the exception and whether the activity will:

(a) Present a clear and present danger to public health and safety;

(b) Cause injury or damage to state resources;

(c) Be contrary to the purposes for which the state capitol campus was established, or unacceptably impact the atmosphere of peace and tranquility maintained in natural, historic, or commemorative locations within the state capitol campus;

(d) Unreasonably interfere with the interpretive center, visitor services, other program activities, or with the administrative activities of enterprise services;

(e) Substantially impair the operations of enterprise services concessioners or contractors;

(f) Result in significant conflict with other existing uses.

(3) The director may condition any approval with appropriate time, place, and manner restrictions, which the requestor must follow.

(4) An approval issued by the director does not exempt the operator from obtaining the appropriate authorization from the federal aviation administration.

(5) Requirements put in place by the federal aviation administration on the use or operation of unmanned aircraft in the national airspace system must be followed. Nothing in this rule or enterprise services policies is intended to modify any requirement put in place by the federal aviation administration on the use or operation of unmanned aircraft in the national airspace system.

(6) Enterprise services will coordinate with the federal aviation administration regarding the use of unmanned aircraft on the state capitol campus as may be required.

(7) Applicable policies and rules put in place by the department must be followed, including but not limited to chapters 200-200 through 200-220 WAC.

(8) Applicable state requirements must be followed.