

**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](mailto: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](mailto: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

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

**WAC 388-106-0015 What long-term care services does the department provide?** The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home, adult family home, or in ~~((a))~~ an adult residential care facility, as defined in WAC 388-110-020.

(2) **Community options program entry system (COPEs)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) Community first choice (CFC) is a medicaid state plan program authorized under RCW 74.39A.400. Clients eligible for this program may receive services in their own home or in a residential setting, as defined in WAC 388-110-020.

(4) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

~~((4))~~ (5) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

~~((5))~~ (6) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

~~((6))~~ (7) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

~~((7))~~ (8) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

~~((8))~~ (9) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for

this program may receive personal care services in an adult family home or an adult residential care facility.

~~((9))~~ **(10) Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

~~((10))~~ **(11) Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

~~((11))~~ **(12) Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

~~((12))~~ **(13) Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

~~((13))~~ **(14) Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-850 WAC.

~~((14))~~ **(15) Nursing facility.**

~~((15))~~ **(16) New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

~~((16))~~ **(17) Residential support** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

**WAC 388-106-0020 Under the MPC, CFC, COPES, and chore programs, what services are not covered?** The following types of services are not covered under MPC, CFC, COPES, and chore:

- (1) Child care.
- (2) Individual providers must not provide:
  - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
  - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.
- (3) Agency providers must not provide:
  - (a) Sterile procedures;
  - (b) Self-directed care;
  - (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
- (4) Services provided over the telephone.
- (5) Services to assist other household members not eligible for services.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.

(9) Assistance with managing finances.

(10) Respite.

(11) Yard care.

AMENDATORY SECTION (Amending WSR 14-15-071, filed 7/15/14, effective 8/15/14)

**WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services?** (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in ~~((COPES))~~ CFC, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

(i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;

(ii) Inappropriate toileting/menses activities;

(iii) Rummages/takes others belongings;

(iv) Up at night when others are sleeping and requires intervention(s);

(v) Wanders/exit seeking;

(vi) Wanders/not exit seeking;

(vii) Has left home and gotten lost;

(viii) Spitting;

(ix) Disrobes in public;

(x) Eats non-edible substances;

(xi) Sexual acting out;

(xii) Delusions;

(xiii) Hallucinations;

(xiv) Assaultive;

(xv) Breaks, throws items;

(xvi) Combative during personal care;

(xvii) Easily irritable/agitated;

(xviii) Obsessive regarding health/body functions;

(xix) Repetitive movement/pacing;

(xx) Unrealistic fears or suspicions;

(xxi) Repetitive complaints/questions;

(xxii) Resistive to care;

(xxiii) Verbally abusive;

(xxiv) Yelling/screaming;

(xxv) Inappropriate verbal noises; or

(xxvi) Accuses others of stealing.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0045 When will the department authorize my long-term care services?** The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given written consent for services and approved your plan of care; and
- (4) Have chosen a provider(s), qualified for payment.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

**WAC 388-106-0047 When can the department terminate or deny long-term care services to me?** (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (e.g., dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate long-term care services if you do not sign and return your service summary document within two months of your assessment completion date.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

**WAC 388-106-0050 What is an assessment?** (1) An assessment is an in-person interview in your home, ~~((or your place of))~~ current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least ~~((annually))~~ every twelve months, or

more often when there are significant changes ~~((to your ability to care for yourself))~~ necessitating revisions to your CARE plan, or at your request. In order to continue receiving services, if the assessment is not completed in the residence where your services will be provided, a visit to that residence must be made to evaluate your living situation and environment.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-0055 What is the purpose of an assessment?** The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities;
- (5) Determine availability of informal supports, shared benefits, and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.

(11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

**WAC 388-106-0070 Will I be assessed in CARE?** You will be assessed in CARE if you are applying for or receiving DDA services, CFC, COPES, MPC, chore, respite, adult day health, medical care services, PACE, private duty nursing, residential support, and new freedom.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

**WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility?** The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For CFC, COPES, MPC, medical care services, RCL, and new freedom programs, the department assigns payment rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

### Community First Choice

#### NEW SECTION

**WAC 388-106-0270 What services are available under community first choice (CFC)?** The services you may receive under the community first choice program include:

(1) Personal care services, as defined in WAC 388-106-0010.

(2) Relief care, which provides personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is defined as training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are defined as specific tasks related to the needs of an individual, which under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), a basic electronic device that enables you to secure help in an emergency when:

(a) You live alone in your own home; or

(b) You are alone, in your own home, for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, can secure help in an emergency.

(5) Assistive technology, items which increase your independence or substitute for human assistance specifically with ADL, IADL, or health related tasks, including but not limited to:

(a) Additions to the standard PERS unit, such as fall detection, GPS, or medication delivery and/or reminder sys-

tems. For cost allocation purposes, any amount above the cost of the standard PERS unit will be considered assistive technology; or

(b) Department approved devices, which include but are not limited to: visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance(, and

~~(e) Computing devices)).~~

(6) Nurse delegation services, as defined in WAC 246-840-910 through 246-840-970:

(a) You are receiving personal care services from a certified home care aide or a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(7) Nursing services, when you are not already receiving this type of service from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. Skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and

(f) Evaluation of health-related care needs affecting service plan and delivery.

(8) Community transition services, non-recurring, set-up items or services to assist you with being discharged from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home. Items and services may include:

(a) Security deposits that are required to obtain a lease on an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) Set-up fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for the participant's health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure needed resources.

(9) Caregiver management training on how to select, manage and dismiss personal care providers. Training is provided in written, DVD, and web-based formats.

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

#### NEW SECTION

**WAC 388-106-0271 Are there limits to the skills acquisition training I may receive?** Skills acquisition training:

- (1) Does not replace any training or therapy otherwise provided under medicaid, medicare, or any private insurance;
- (2) Does not include therapy or nursing services that must be performed by a licensed therapist or nurse, but may be used to complement therapy or nursing goals coordinated through the care plan;
- (3) For children, must be related to the child's disability and will not be provided for tasks that are determined to be age appropriate as described in WAC 388-106-0130(7); and
- (4) In combination with assistive technology purchases, is limited to a yearly amount determined by the department per fiscal year.

#### NEW SECTION

**WAC 388-106-0272 Who are qualified providers for skills acquisition training?** (1) Long term care workers, who must only provide skills acquisition training on IADLs and the following ADL tasks: dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of make-up, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area; and

- (2) Contracted home health agencies, which may provide skills acquisition training on ADLs, IADLs or health related tasks that are within the profession's scope of practice.

#### NEW SECTION

**WAC 388-106-0273 May I receive additional personal emergency response services?** Under the assistive technology benefit, you may be eligible to receive:

- (1) A fall detection system, if:
  - (a) You are eligible for a standard PERS unit; and
  - (b) You have a recent documented history of falls.
- (2) A global positioning system (GPS) tracking device with locator capabilities if:
  - (a) You have a recent documented history of short-term memory loss; and a recent documented history of wandering with exit seeking behavior; or
  - (b) A recent documented history of getting lost in a familiar surrounding and being unaware of the need or unable to ask for assistance; and
  - (c) In addition, if you are under the age of 12, there must be information presented at your assessment that due to your disability the support you are provided for memory or decision making is greater than is typical for a person of your age.
  - (d) A medication reminder if:
    - (i) You are eligible for a standard PERS unit;

- (ii) You do not have a caregiver available to provide the service; and
- (iii) You are able to use the reminder to take your medications.

#### NEW SECTION

**WAC 388-106-0274 Are there limits to the assistive technology I may receive?** (1) Assistive technology excludes:

- (a) Any purchase that is solely for recreational purposes;
- (b) Applications for devices that are sold separately from the device, subscriptions, and data plan charges, or items that require a monthly recurring fee;
- (c) Medical supplies and medical equipment;
- (d) Home modifications; and
- (e) Any item that would otherwise be covered under any other payment source, including but not limited to, medicare, medicaid, and private insurance.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize this service, the department may require a treating professional's written recommendation regarding the need for the assistive technology evaluation. The treating professional making this recommendation must:

- (a) Have personal knowledge of or experience with the requested assistive technology; and
- (b) Have examined you, reviewed your medical records, and have knowledge of your level of functioning, and ability to use the technology.
- (c) Your choice of services is limited to the most cost effective option that meets your health and welfare needs.

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

#### NEW SECTION

**WAC 388-106-0275 Are there limits to the community transition services I may receive?** Community transition services:

- (1) Do not include recreational or diverting items, such as a television, cable or VCR;
- (2) Do not include room and board; and
- (3) May not exceed eight hundred fifty dollars per discharge.

#### NEW SECTION

**WAC 388-106-0276 Where can I receive CFC services?** You may receive CFC services;

- (1) In your own home; or
- (2) In a residential facility, which include licensed and contracted:
  - (a) Adult family homes, as defined in RCW 70.128.010;
  - (b) Assisted living facilities as defined in RCW 18.20.-020.

(3) As applicable, while you are out of the home accessing the community or working.

#### NEW SECTION

##### **WAC 388-106-0277 Am I eligible for CFC services?**

You are eligible for CFC-funded services if you meet all of the following criteria:

(1) Your CARE assessment shows you need the level of care provided in a hospital, nursing facility, an intermediate care facility for the intellectually disabled (ICF/ID), an institution providing psychiatric services for individuals under age twenty-one, or an institution for mental diseases for individuals age sixty-five or over (or will likely need the level of care within thirty days unless CFC services are provided); and

(2) You are eligible for a categorically needy (CN) or the alternative benefit plan (ABP) Washington apple health program. Financial eligibility rules for CFC are described in WAC 182-513-1210 through WAC 182-513-1220.

(3) If you are not financially eligible for a non-institutional CN or ABP program, but are financially eligible for a home and community based waiver, you are eligible for CFC as long as you continue to receive at least one monthly waiver service.

#### NEW SECTION

##### **WAC 388-106-0280 When do CFC services begin?**

Your services begin on the date the department authorizes services.

#### NEW SECTION

**WAC 388-106-0283 How do I remain eligible for CFC services?** (1) In order to remain eligible for CFC, you must remain financially eligible and be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be completed at least annually or more often when there are significant changes in your functional or financial circumstances; or

(2) If you receive services through DDA, you must remain financially eligible and eligible for ICF/ID or nursing facility level of care as described in WAC 388-828-4400, 388-828-3080 and 388-106-0355.

(3) When your eligibility is dependent on your eligibility for a home and community based waiver, you must receive at least one waiver service every month. If you do not receive a waiver service for more than thirty calendar days, you will no longer be eligible for CFC and the department will terminate your CFC services.

(4) If eligibility laws, regulations, or rules for CFC change, and if you do not meet the changed eligibility requirements, the department will terminate your CFC services, even if your functional or financial circumstances have not changed.

#### NEW SECTION

**WAC 388-106-0285 What do I pay for if I receive CFC services?** (1) If you are receiving services through CFC

only, you may be required to pay toward the cost of your care as outlined in WAC 182-513-1215. If you are receiving services in:

(a) Your own home, you will not have to pay toward the cost of your care.

(b) A residential facility, you must use your income to pay for your room and board. You are allowed to keep some of your income for personal needs allowance (PNA). Depending on your financial eligibility group and income, you may also be responsible to pay an additional amount towards the cost of your care.

(2) If you are receiving services through CFC and a home and community based waiver, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. If you are receiving services in:

(a) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(b) If you are living in a residential facility, you must use your income to pay for your room and board and may have to pay an additional amount towards the cost of services. You are allowed to keep some of your income for PNA.

#### NEW SECTION

**WAC 388-106-0290 What does the department pay towards the cost of care when you are receiving CFC services and live in a residential facility?** When you receive CFC services and live in a residential facility, the department pays the facility the difference between what you are required to pay the facility and the department-set rate for the facility. The department pays the residential facility from the first day of service through the:

(1) The day before your discharge date; or

(2) The last day of service if you die while living at the facility.

#### NEW SECTION

**WAC 388-106-0295 May I be employed and receive CFC services?** You may be employed and continue to receive CFC services as long as you remain medicaid eligible under the categorically needy (CN) or alternative benefit plan (ABP) program.

### **WSR 15-24-010**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

[Filed November 18, 2015, 5:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-087.

Title of Rule and Other Identifying Information: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.

Hearing Location(s): Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98513, on January 5, 2016, at 11:00 a.m.

Date of Intended Adoption: January 29, 2016.

Submit Written Comments to: Michelle K. Austin, Rules Coordinator, Department of Health, Office of Radiation Protection, P.O. Box 47827, Tumwater, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by January 5, 2016.

November 18, 2015  
Maryanne Guichard  
Assistant Secretary

Assistance for Persons with Disabilities: Contact Michelle K. Austin by December 29, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to update the federal rules (40 C.F.R. 61) adopted by reference in WAC 246-247-035. As the radiation control agency for Washington state under RCW 70.98.050, the department of health (department) must implement and enforce the national emission standards for hazardous air pollutants when an air emissions license is part of an air operating permit issued by the department of ecology. To retain oversight and gain full delegation for regulation of radionuclide air emissions from the United States Environmental Protection Agency (EPA), the department rules must be at least as stringent as the federal rules. The department does this by adopting the most current federal rules by reference.

Reasons Supporting Proposal: The intent of RCW 70.98.050 is to safely regulate the possession and use of radioactive material within the state of Washington. The intent of RCW 70.98.080(5) is to reduce redundant licensing requirements. The rule meets the intent of these statutes by adopting requirements as stringent as the federal requirements in order for the department to have full delegation authority from EPA.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080(5).

Statute Being Implemented: RCW 70.98.050 and 70.98.080(5).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, (509) 946-3798.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

AMENDATORY SECTION (Amending WSR 12-01-071, filed 12/19/11, effective 1/19/12)

**WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.** (1) The following federal standards, as in effect on July 1, (~~2011~~) 2015, are adopted by reference except as provided in subsections (2) and (3) of this section.

These standards apply in addition to other requirements of this chapter.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licenses and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

(3) Any change or alternative to standards, emission monitoring and test procedures, compliance and reporting requirements, or recordkeeping requirements must be approved by EPA.

**WSR 15-24-015**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)  
[Filed November 19, 2015, 9:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-025.

Title of Rule and Other Identifying Information: WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy).

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](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 5, 2016, at 10:00 a.m.

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

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m., January 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by December 29, 2015, e-mail [amber.lougheed@hca.wa.gov](mailto: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 agency is amending this WAC to add optometrists and podiatrists to the list of providers who can order certain outpatient rehabilitative services for a Washington apple health client.

Reasons Supporting Proposal: The agency is amending the rule to comply with SHB 1010, chapter 10, Laws of 2015, 64th legislature.

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: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Jean Gowen, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-2005.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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

November 19, 2015

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

**WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy).**

(1) The following health professionals may enroll with the agency, as defined in WAC 182-500-0010, to provide outpatient rehabilitation (which includes occupational therapy,

physical therapy, and speech therapy) within their scope of practice to eligible persons:

- (a) A physiatrist;
- (b) A licensed occupational therapist;
- (c) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (d) A licensed physical therapist;
- (e) A physical therapist assistant supervised by a licensed physical therapist;
- (f) A speech-language pathologist who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; ~~((and))~~

(g) A speech-language pathologist who has completed the equivalent educational and work experience necessary for such a certificate; and

(h) A licensed optometrist to provide vision occupational therapy only.

(2) Persons covered by one of the Washington apple health programs listed in the table in WAC 182-501-0060 or receiving home health care services as described in chapter 182-551 WAC (subchapter II) are eligible to receive outpatient rehabilitation as described in this chapter.

(3) Persons who are enrolled in an agency-contracted managed care organization (MCO) must arrange for outpatient rehabilitation directly through his or her agency-contracted MCO.

(4) The agency pays for outpatient rehabilitation when the services are:

- (a) Covered;
- (b) Medically necessary;
- (c) Within the scope of the eligible person's medical care program;
- (d) Ordered by:
  - (i) A physician, ((physician's)) physician assistant (PA), or an advanced registered nurse practitioner (ARNP);
  - (ii) An optometrist, if the ordered services are for occupational therapy only; or
  - (iii) A podiatrist, if the ordered services are for physical therapy only.

(e) Within currently accepted standards of evidence-based medical practice;

(f) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices;

(g) Begun within thirty calendar days of the date ordered;

(h) Provided by one of the health professionals listed in subsection (1) of this section;

(i) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions and provider notices; and

- (j) Provided as part of an outpatient treatment program:
  - (i) In an office or outpatient hospital setting;
  - (ii) In the home, by a home health agency as described in chapter 182-551 WAC;
  - (iii) In a neurodevelopmental center, as described in WAC 182-545-900; or
  - (iv) For children with disabilities, age two or younger, in natural environments including the home and community set-



ting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(5) For eligible persons, twenty years of age and younger, the agency covers unlimited outpatient rehabilitation.

(6) For persons twenty-one years of age and older, the agency covers a limited outpatient rehabilitation benefit.

(7) Outpatient rehabilitation services for persons twenty-one years of age and older must:

(a) Restore, improve, or maintain the person's level of function that has been lost due to medically documented injury or illness; and

(b) Include an on-going management plan for the person and/or the person's caregiver to support timely discharge and continued progress.

(8) For eligible adults, twenty-one years of age and older, the agency limits coverage of outpatient rehabilitation as follows:

(a) Occupational therapy, per person, per year:

(i) Without authorization:

(A) One occupational therapy evaluation;

(B) One occupational therapy reevaluation at time of discharge; and

(C) Twenty-four units of occupational therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment initiated under the original twenty-four units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Brain injury, which occurred within the past twenty-four months, with residual cognitive and/or functional deficits;

(III) Burns - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past twenty-four months, with residual cognitive and/or functional deficits;

(V) Lymphedema;

(VI) Major joint surgery - Partial or total replacement only;

(VII) Muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(VIII) Neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(IX) Reflex sympathetic dystrophy;

(X) Swallowing deficits due to injury or surgery to face, head, or neck;

(XI) Spinal cord injury which occurred within the past twenty-four months, resulting in paraplegia or quadriplegia; or

(XII) As part of a botulinum toxin injection protocol when botulinum toxin has been prior authorized by the agency.

(b) Physical therapy, per person, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of physical therapy may be available to continue treatment initiated under the original twenty-four units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Acute, open, or chronic nonhealing wounds;

(II) Brain injury, which occurred within the past twenty-four months, with residual functional deficits;

(III) Burns - Second and/or third degree only;

(IV) Cerebral vascular accident, which occurred within the past twenty-four months, with residual functional deficits;

(V) Lymphedema;

(VI) Major joint surgery - Partial or total replacement only;

(VII) Muscular-skeletal disorders such as complex fractures which required surgical intervention or surgeries involving spine or extremities (e.g., arm, hand, shoulder, leg, foot, knee, or hip);

(VIII) Neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infective polyneuritis (Guillain-Barre));

(IX) Reflex sympathetic dystrophy;

(X) Spinal cord injury, which occurred within the past twenty-four months, resulting in paraplegia or quadriplegia; or

(XI) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the agency.

(c) Speech therapy, per person, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to six additional units of speech therapy may be available to continue treatment initiated under the original six units when the criteria below is met:

(A) To continue treatment of the original qualifying condition; and

(B) The person's diagnosis is any of the following:

(I) Brain injury, which occurred within the past twenty-four months, with residual cognitive and/or functional deficits;

(II) Burns of internal organs such as nasal oral mucosa or upper airway;

(III) Burns of the face, head, and neck - Second or third degree only;

(IV) Cerebral vascular accident, which occurred within the past twenty-four months, with residual functional deficits;

(V) Muscular-skeletal disorders such as complex fractures which require surgical intervention or surgery involving the vault, base of the skull, face, cervical column, larynx, or trachea;

(VI) Neuromuscular disorders which are affecting function (e.g., amyotrophic lateral sclerosis (ALS), active infection polyneuritis (Guillain-Barre));

(VII) Speech deficit due to injury or surgery to face, head, or neck;

(VIII) Speech deficit which requires a speech generating device;

(IX) Swallowing deficit due to injury or surgery to face, head, or neck; or

(X) As part of a botulinum toxin injection protocol when botulinum toxin has been prior approved by the agency.

(d) Durable medical equipment (DME) needs assessments, two per person, per year.

(e) Orthotics management and training of upper and/or lower extremities, two program units, per person, per day.

(f) Orthotic/prosthetic use, two program units, per person, per year.

(g) Muscle testing, one procedure, per person, per day. Muscle testing procedures cannot be billed in combination with each other. These procedures can be billed alone or with other physical and occupational therapy procedures.

(h) Wheelchair needs assessment, one per person, per year.

(9) For the purposes of this chapter:

(a) Each fifteen minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(10) For expedited prior authorization (EPA):

(a) A provider must establish that:

(i) The person's condition meets the clinically appropriate EPA criteria outlined in this section; and

(ii) The services are expected to result in a reasonable improvement in the person's condition and achieve the person's therapeutic individual goal within sixty calendar days of initial treatment;

(b) The appropriate EPA number must be used when the provider bills the agency;

(c) Upon request, a provider must provide documentation to the agency showing how the person's condition met the criteria for EPA; and

(d) A provider may request expedited prior authorization once per year, per person, per each therapy type.

(11) The agency evaluates a request for outpatient rehabilitation that is in excess of the limitations or restrictions, according to WAC 182-501-0169. Prior authorization may be requested for additional units when:

(a) The criteria for an expedited prior authorization does not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits;

(c) A new qualifying condition arises after the initial six visits are used.

(12) Duplicate services for outpatient rehabilitation are not allowed for the same person when both providers are performing the same or similar procedure(s).

(13) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

(14) The agency does not reimburse a health care professional for outpatient rehabilitation performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

#### WSR 15-24-035

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed November 20, 2015, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-02-038.

Title of Rule and Other Identifying Information: Chapter 182-554 WAC, Enteral nutrition program.

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](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 5, 2016, at 10:00 a.m.

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

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by January 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Loughheed by December 28, 2015, e-mail [amber.loughheed@hca.wa.gov](mailto: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 proposed amendment to WAC 182-554-500: Adds authorization requirements for the prescription of thickeners; adds periodic evaluation requirements by client age; transfers documentation responsibilities from WIC to the provider under proposed subsection (3)(b); and transfers prior authorization instructions from WAC 182-554-500 to 182-554-700. The proposed amendment to WAC 182-554-400 adds valid prescription and proof of delivery requirements.

All of the sections in this chapter have been amended to update outdated references to Title 388 WAC, MAA, etc., and have been simplified for easier reading.

Reasons Supporting Proposal: Adding authorization requirements to WAC 182-554-500 is necessary to protect clients under one year of age who are receiving thickeners. The Food and Drug Administration has issued a warning not

to give babies thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics.

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: Jean Gowen, P.O. Box 5506, Olympia, WA 98504-5506, (360) 725-2005.

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 20, 2015  
Wendy Barcus  
Rules Coordinator

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

**WAC 182-554-100 Enteral nutrition—General.** (1) The ~~((department))~~ agency covers the enteral nutrition products, equipment, and related supplies listed in this chapter, according to ~~((department))~~ medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The ~~((department))~~ agency pays for covered enteral nutrition products, equipment and related supplies ~~((when))~~ if they are:

(a) ~~((Covered;~~  
~~((b)))~~ Within the scope of the eligible client's medical care program;

~~((c))~~ (b) Medically necessary ~~((as defined))~~ under WAC ~~((388-500-0005))~~ 182-500-0070; and

~~((d))~~ (c) Authorized and billed, as required within this chapter, chapters ~~((388-501 and 388-502))~~ 182-501 and 182-502 WAC, and the ~~((department's))~~ agency's published billing instructions ~~((and numbered memoranda; and~~

~~((e))~~ Billed according to this chapter, chapters ~~388-501 and 388-502~~, and the department's published billing instructions and numbered memoranda).

(3) The ~~((department))~~ agency requires prior authorization (PA) for covered enteral nutrition products, equipment and related supplies when the clinical criteria ~~((set forth))~~ described in this chapter are not met, including the criteria associated with the expedited prior authorization process. The ~~((department))~~ agency evaluates requests requiring ~~((prior authorization))~~ PA on a case-by-case basis to determine whether they are medically necessary ~~((according to~~

~~the process found in WAC 388-501-0165))~~ under WAC 182-501-0165.

(4) The ~~((department))~~ agency evaluates a request for a covered service that is ~~((in a covered category, but has been determined to be))~~ experimental or investigational ~~((per WAC 388-531-0550, under the provisions of WAC 388-501-0165))~~ under WAC 182-531-0550 and 182-501-0165.

(5) The ~~((department))~~ agency may terminate~~((s))~~ a provider's ~~((participation with the department according to chapter 388-502 WAC))~~ core provider agreement under chapter 182-502 WAC.

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

**WAC 182-554-200 Enteral nutrition—Definitions.** The following terms and definitions and those found in chapter 182-500 WAC ~~((388-500-0005))~~ apply to this chapter:

"BMI" see "body mass index."

"Body mass index (BMI)" - Means a number that shows body weight relative to height, and is calculated using inches and pounds or meters and kilograms.

~~(("Department"—The department of social and health services (DSHS).))~~ "Dietitian" - Means a dietitian who is registered with the American Academy of Dietitians and who is certified by the Washington state department of health (DOH).

"Enteral nutrition" - Means the use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral ~~((nutritional solutions can be given))~~ nutrition may be provided orally or via feeding tube~~((s))~~.

"Enteral nutrition equipment" - Means durable medical feeding pumps and intravenous (IV) poles used in conjunction with nutrition supplies to dispense formula to a client.

"Enteral nutrition product" - ~~((Enteral nutrition formulas and/or products))~~ Means formulas or solutions that help a person meet nutritional requirements.

"Enteral nutrition supplies" - Means the supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

"Growth chart" - Means a series of percentile curves that illustrate the distribution of select body measurements (i.e., length, height, weight, and age) in children published by the World Health Organization (WHO), and Centers for Disease Control and Prevention (CDC), National Center for Health Statistics ~~((—CDC growth charts: United States. http://www.cdc.gov/growthcharts/~~

"Nonfunctioning digestive tract" - Caused by a condition that affects the body's alimentary organs and their ability to break down, digest, and absorb nutrients).

"Orally administered enteral nutrition products" - ~~((Enteral nutrition))~~ Means formulas or solutions ~~((and products))~~ that a ~~((client))~~ person consumes orally for nutritional support.

"Tube~~((delivery))~~ delivered enteral nutrition products" - ~~((The provision of))~~ Means the nutritional ~~((require-~~

ments)) support that a person receives through a tube into ~~(the)~~ a person's stomach or small intestine.

**"Women, infants, and children (WIC) program"** (Also known as WIC program) - ~~(A special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five and low-income pregnant and breastfeeding women who are at nutritional risk, by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.)~~ See WAC 246-790-001.

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

**WAC 182-554-300 Enteral nutrition—Client eligibility.** (1) To receive oral or tube-delivered enteral nutrition products, equipment, and related supplies, a person must be eligible for one of the Washington apple health programs ~~(listed in the table in)~~ under WAC 182-501-0060 or be eligible for the alien emergency medical (AEM) program ~~(see)~~ under WAC 182-507-0110~~(+)~~.

(2) For persons who reside in a nursing facility, adult family home, assisted living facility, boarding home, or any other residence where the provision of food is included in the daily rate, oral enteral nutrition products are the responsibility of the facility ~~(to provide in accordance with)~~ under chapters 388-76, 388-97 and 388-78A WAC.

(3) For persons who reside in a state-owned facility (i.e., state school, developmental disabilities ~~((DD))~~ facility, mental health facility, Western State Hospital, and Eastern State Hospital) enteral nutrition products, equipment, and related supplies are the responsibility of the state-owned facility to provide.

(4) ~~(Persons who have elected and are eligible)~~ A person who has elected to receive the ~~(department's)~~ agency's hospice benefit must arrange for enteral nutrition products, equipment and related supplies directly through the hospice benefit.

(5) ~~(Children who qualify)~~ A child who qualifies for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition directly from that program ~~(unless the person meets the limited circumstances in WAC 182-554-500(1)(d))~~. The child may be eligible to receive enteral products from the agency if:

(a) The child's need for a product exceeds WIC's allowed amount; or

(b) The product is not available through the WIC program.

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

**WAC 182-554-400 Enteral nutrition—Provider requirements.** (1) The following providers are eligible to enroll~~(+)~~ or contract with the ~~(department)~~ medicaid agency to provide orally administered ~~((enteral nutrition products))~~ and tube-delivered enteral nutrition products, equipment, and related supplies:

(a) A pharmacy provider; or

(b) A durable medical equipment ~~((DME))~~ provider.

(2) To receive payment for orally administered ~~((enteral nutrition products and))~~ or tube-delivered enteral nutrition products, equipment and related supplies, a provider must:

(a) Meet the requirements ~~((#))~~ under chapters ~~((388-501 and 388-502 WAC;))~~ 182-501 and 182-502 WAC.

(b) Provide only those services that are within the scope of the provider's license~~(;)~~.

(c) Obtain prior authorization from the ~~((department))~~ agency, if required, before delivery to the client and before billing the ~~((department;))~~ agency.

(d) Deliver enteral nutritional products in quantities sufficient to meet the client's authorized needs, not to exceed a one-month supply~~(;)~~.

(e) Confirm with the client or the client's caregiver that the next month's delivery of authorized orally administered enteral nutrition products is necessary and document the confirmation in the client's file. The ~~((department))~~ agency does not pay for automatic periodic delivery of products~~(;)~~.

(f) Furnish clients with new or used equipment that includes full manufacturer and dealer warranties for at least one year~~(; and)~~.

(g) Notify the client's ~~((physician))~~ primary care provider if the client has indicated the enteral nutrition product is not being used as prescribed and document the notification in the client's file.

(h) Have a valid prescription. To be valid, a prescription must be:

(i) Written, dated and signed (including the prescriber's credentials) by the prescriber on or before the date of delivery of the product, equipment or related supplies;

(ii) No older than one year from the date the prescriber signed the prescription; and

(iii) State the specific item or service requested, the client's diagnosis and estimated length of need, quantity and units of measure, frequency and directions for use.

(i) Have proof of delivery.

(i) When a client or the client's authorized representative receives the product directly from the provider, the provider must furnish the proof of delivery upon agency request. The proof of delivery must:

(A) Be signed and dated by the client or the client's authorized representative. The date of the signature must be the date the item was received by the client; and

(B) Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name.

(ii) When a provider uses a shipping service to deliver items, the provider must furnish proof of delivery upon agency request. The proof of delivery must include:

(A) The client's name or other client identifier;

(B) The delivery service package identification number;

(C) The delivery address; and

(D) The quantity, a detailed description, and brand name of the item being shipped.

(j) Bill the agency with the following dates of service:

(i) If the provider used a shipping service, the provider must use the shipping date as the date of service; or

(ii) If the client or the client's authorized representative received the product directly from the provider, the provider must use the date of receipt as the date of service.

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

**WAC 182-554-500 Covered enteral nutrition products, equipment and related supplies—Orally administered—Clients age twenty ((years of age)) and younger only.** (1) The ~~((department))~~ medicaid agency covers orally administered enteral nutrition products for a client~~((s))~~ age twenty ((years of age)) and younger only~~((, as follows))~~ if the client:

(a) ~~((The client's))~~ Has a nutritional need~~((s))~~ that cannot be met using traditional foods, ((baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;

~~(b) The client))~~ baby foods, and other grocery products that can be pulverized or blenderized, which is supported by an evaluation by an agency-contracted dietitian that recommends an order for oral enteral nutrition products or formulas;

~~(b) Is evaluated by an RD within thirty days of beginning oral enteral nutrition products and periodically while receiving enteral nutrition products. Periodic reevaluations must be performed at least:~~

~~(i) Every four months for a client age three or younger; and~~

~~(ii) Every six months for a client older than age three;~~

~~(c) Is able to manage ((their)) feedings in one of the following ways:~~

~~(i) Independently; or~~

~~(ii) With a ((caregiver who can manage the feedings; and~~

~~(e) The client)) caregiver's assistance; and~~

~~(d) Has a medical condition under subsection (2) of this section, or meets one of the following clinical criteria:~~

~~(i) Once a stable growth pattern has been established, a decrease across at least two percentile lines on the Centers for Disease Control and Prevention's growth charts or the World Health Organization's growth standards;~~

~~(ii) Failure to gain weight on two successive measurements, despite dietary interventions; or~~

~~(iii) Documented specific, clinical factors that place the client at risk for a compromised nutrition status.~~

~~(2) **Medical conditions.** The client must meet the criteria for one of the following medical conditions:~~

~~(a) Acquired immune deficiency syndrome (AIDS). ((Providers must obtain prior authorization to receive payment.)) The client must~~~~((:~~

~~(A) Be in a wasting state;~~

~~(B) Have a weight for length less than or equal to the fifth percentile if the client is three years of age or younger; or~~

~~(C) Have a body mass index (BMI) of:~~

~~(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or~~

~~(H) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or~~

~~(D) Have a BMI of:~~

~~(I) Less than or equal to twenty-five; and~~

~~(H) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.~~

~~((ii)) be in a wasting state and have a body mass index (BMI) less than the tenth percentile for the client's age, or an unintentional or unexplained weight loss.~~

~~(b) Amino acid, fatty acid, and carbohydrate metabolic disorders. The client must require a specialized nutritional product.~~

~~((A) The client must require a specialized nutrition product; and~~

~~(B) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~((iii)) (c) Cancer~~~~((s)).~~

~~((A)) (i) The client must be receiving chemotherapy~~~~((and/or)), radiation therapy, or post-therapy treatment;~~

~~((B) The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and~~

~~(C) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~((iv)) and~~

~~(ii) The agency pays for orally administered enteral nutritional products for up to three months following the completion of chemotherapy or radiation therapy.~~

~~(d) Chronic renal failure. The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars.~~

~~((A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and~~

~~(B) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~((v)) (e) Decubitus pressure ulcers. The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below.~~

~~((A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and~~

~~(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.~~

~~((vi)) (f) Failure to thrive ((or)), malnutrition~~~~((t)), or malabsorption as a result of a stated primary diagnosed disease. The client must have a disease or medical condition that is not due to cognitive, emotional, or psychological impairment. The client must meet one of the following:~~

~~(i) If the client is age two or younger, have a weight-for-length less than or equal to the fifth percentile;~~

~~(ii) If the client is age three through twenty, have a BMI less than or equal to twenty-five and an unintentional or unexplained weight loss of five percent in one month, seven and one-half percent in three months, or ten percent in six months;~~

~~(iii) If the client is age three through seventeen, have a BMI less than or equal to the fifth percentile; or~~

~~(iv) If the client is age eighteen through twenty, have a BMI less than or equal to eighteen and one-half, and an albumin level of three and one-half or below.~~

~~((A) The provider must obtain prior authorization to receive payment; and~~

~~(B) The client must have:~~

~~(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and~~

(H) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii)) (g) A medical condition((s-(e.g.)) (for example, dysphagia) requiring a thickener.

((A) The client must:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(H)) If prescribing a thickener to:

(i) A client age one or older, the provider must follow the agency's expedited prior authorization (EPA) process to receive payment, and the client must:

(A) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(B) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(ii) A client younger than age one, the provider must obtain prior authorization (PA). The provider's request for PA must include:

(A) Clinical documentation that supports the medical necessity of the request; and

(B) The report recommending a thickener from a speech therapist or occupational therapist specializing in dysphagia.

**(3) Women, infants, and children (WIC) program.**

(a) If the client is age four or younger, the client must have a notice signed and dated by the WIC program to receive oral enteral nutrition products. The notice must verify:

(i) The client is not eligible for the ((women, infants, and children-))WIC((H)) program; ((or

(H)) (ii) The client is eligible for the WIC program, but the client's need for ((the)) an oral enteral nutrition product or formula exceeds WIC's allowed amount; or

((H) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific,

detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight for length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) ~~The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;~~

(ix) ~~Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;~~

(x) ~~The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and~~

(xi) ~~The client's likely expected outcome if enteral nutritional support is not provided.~~

~~(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and~~

~~(c) Be submitted within three months from the date the prescriber signs the prescription.~~

~~(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.)~~

~~(iii) The client is eligible for the WIC program, but the product or formula is not available through the WIC program.~~

~~(b) If the client is unable to receive necessary oral enteral nutrition products from WIC, the provider must keep the following information in the client's file:~~

~~(i) Documentation that the requested oral enteral nutrition product or formula is not available through the WIC program; or~~

~~(ii) Reasons why a similar WIC product does not meet the client's needs.~~

~~(4) **Authorization.** To receive payment for covered oral enteral nutrition products, a provider must:~~

~~(a) Request PA for a client who does not meet the criteria for a medical condition under subsection (2)(a) or (f) of this section;~~

~~(b) Request EPA for a client who meets the criteria for a medical condition under subsection (2)(b) through (e) of this section; or~~

~~(c) Request authorization for a client with a medical condition that requires a thickener, according to the client's age and as required under subsection (2)(g) of this section.~~

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

**WAC 182-554-600 Covered enteral nutrition products, equipment and related supplies—Tube-delivered.**

(1) ~~((The department))~~ **General.** The agency covers tube-delivered enteral nutrition products, equipment, and related supplies, ~~((without prior authorization, for eligible clients))~~ regardless of age, ~~((as follows:~~

~~(a) When the client meets the following clinical criteria:~~

~~(i) The client)) if the client:~~

~~(a) Has a valid prescription under WAC 182-554-400, which must be submitted within three months of the date the prescriber signed the prescription;~~

~~((A) To be valid, a prescription must:~~

~~(I) Be written by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PA-C);~~

~~(II) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;~~

~~(III) Be submitted within three months from the date the prescriber signs the prescription; and~~

~~(IV) State the specific product requested, diagnosis, estimated length of need (months), and quantity.~~

~~(ii) The client is able to)) (b) Can manage ((his or her)) tube feedings ((in one of the following ways)):~~

~~((A)) (i) Independently; or~~

~~((B)) (ii) With a ((caregiver who can manage the feedings)) caregiver's assistance; and~~

~~((iii) The client)) (c) Has at least one of the following medical conditions:~~

~~((A) A nonfunction or)) (i) A disease or ((clinical)) condition that impairs the client's ability to ingest sufficient calories and nutrients ~~((from products orally or does not permit sufficient))~~ or restricts calories and nutrients from ~~((food to reach the))~~ reaching the client's gastrointestinal tract; or~~

~~((B)) (ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.~~

~~((b) With the following limitations:~~

~~(i)) (2) **Limitations.** The following limitations apply to the agency's payment for covered tube-delivered enteral nutrition products, equipment and related supplies. The agency pays for:~~

~~(a) One purchased pump, per client, in a five-year period; ~~(and~~~~

~~(ii)) (b) One purchased nondisposable intravenous pole required for enteral nutrition product delivery, per client, per lifetime((-~~

~~(c) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~(2) The department pays for up to twelve months of rental payments for tube-delivered enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.~~

~~(3) The department pays for replacement parts for tube-delivered enteral nutrition equipment, with prior authorization, when:~~

~~(a)); and~~

~~(c) No more than twelve months of equipment rental. After twelve months the agency considers the equipment purchased and it becomes the client's property.~~

~~(3) **Women, infants, and children (WIC) program.**~~

~~(a) If the client is age four or younger, the client must have a signed and dated written notification from the WIC program to receive tube delivered enteral nutrition products. The notice must verify:~~

~~(i) The client is not eligible for the WIC program; or~~

(ii) The client is eligible for the WIC program, but the client's need for a tube delivered enteral nutrition product exceeds WIC's allowed amount.

(b) If the client is age four or younger and is unable to receive a necessary tube delivered enteral nutrition product from WIC, the provider must keep the following information in the client's file:

(i) Documentation that the requested tube delivered product is not available through the WIC program; or

(ii) Reasons why a similar WIC product does not meet the client's needs.

**(4) Authorization.**

(a) If the client meets the criteria in subsection (1) of this section, the provider must follow the agency's expedited prior authorization (EPA) process to receive payment.

(b) If the client does not meet the criteria in subsection (1) of this section, the provider must submit a request for prior authorization (PA). The PA request must meet the requirements under WAC 182-554-700(3).

(c) The agency pays for enteral equipment replacement parts with PA if the equipment is:

(i) Owned by the client;

((b)) (ii) Less than five years old; and

((c)) (iii) No longer under warranty.

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

**WAC 182-554-700 Enteral nutrition products, equipment and related supplies—Authorization.** ~~((1) The department requires providers to obtain authorization for covered orally administered enteral nutrition products, and tube-delivered enteral equipment and related supplies as required in this chapter and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.~~

~~(a) For prior authorization (PA), a provider must submit a written request to the department as specified in WAC 388-554-500(2).~~

~~(b) For expedited prior authorization (EPA), a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the department's published enteral nutrition billing instructions. The appropriate EPA number must be used when the provider bills the department.~~

~~(c) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for PA or EPA.~~

~~(2) Authorization requirements in this chapter are not a denial of service for the client.~~

~~(3) When an oral enteral nutrition product or tube-delivered enteral nutrition equipment or related supply requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.~~

~~(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.~~

~~(5) The department's authorization does not necessarily guarantee payment.~~

~~(6) The department evaluates requests for authorization for covered enteral nutrition products, equipment, and related supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 388-501-0169.~~

~~(7) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(e).~~

~~((8)) **(1) General.**~~

~~(a) Providers must obtain authorization for all covered orally administered or tube-delivered enteral nutrition products, equipment and related supplies as required in this chapter, the agency's published billing instructions, and when the clinical criteria in this chapter are not met.~~

~~(b) Authorization does not guarantee payment.~~

~~(c) Authorization requirements are not a denial of service.~~

~~(d) The agency may reject an incomplete authorization request and return it to the provider for further action. A returned request is not a denial of service.~~

~~(e) If a request for authorization exceeds limitations in this chapter, the agency evaluates the request under WAC 182-501-0169.~~

~~(f) If the agency determines that a service was wrongfully authorized or did not meet the expedited prior authorization (EPA) criteria, the agency may recoup payment from the provider under chapters 182-502 and 182-502A WAC.~~

~~(g) Upon request, a provider must furnish documentation to the agency that shows how the client's condition met the criteria for prior authorization (PA) or EPA.~~

~~**(2) Prior authorization.** PA is required for:~~

~~(a) Orally administered enteral nutrition products under WAC 182-554-500(4); and~~

~~(b) Tube-delivered enteral equipment, replacement parts and related supplies under WAC 182-554-600(3).~~

~~**(3) Prior authorization request form.** The provider must submit a request for PA on the Oral Enteral Nutrition Worksheet Prior Authorization Request form. This form is available online at <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>. This form must be:~~

~~(a) Complete, with all fields full;~~

~~(b) Completed by the prescribing physician, advanced registered nurse practitioner, or physician assistant;~~

~~(c) Written, dated, and signed (including the prescriber's credentials) by the prescriber on the same day, and before the date of delivery. This form must not be backdated; and~~

~~(d) Submitted within three months of the date the prescriber signed the prescription.~~

~~**(4) Expedited prior authorization.** For EPA, a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the agency's published billing instructions. The provider must use the appropriate EPA number when billing the agency.~~

~~(5) If a fee-for-service client enrolls ((in a department-contracted MCO before the department completes)) with an agency-contracted managed care organization (MCO) before the purchase or rental of ((prescribed enteral nutrition products, necessary equipment and supplies:~~



~~(a) The department rescinds the authorization of the purchase or rental;~~

~~(b) The department)) authorized equipment is complete:~~

~~(a) The agency stops paying for ((any)) the equipment on the last day of the month ((preceding)) before the month in which the client ((becomes enrolled)) enrolls in the managed care plan; and~~

~~((e) The department contracted MCO determines the client's continuing need for the equipment and is then responsible for the client.~~

~~(9) The department rescinds any)) (b) The MCO may reevaluate the client's need for the equipment.~~

~~(6) The agency may rescind authorization for ((prescribed)) enteral equipment if ((the equipment was not delivered to the client before)) the client:~~

~~(a) ((Loses medical eligibility;)) Enrolls in, or becomes eligible for, an MCO;~~

~~(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);~~

~~(c) ((Becomes eligible for a department contracted managed care plan;)) Loses eligibility; or~~

~~(d) Dies.~~

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

**WAC 182-554-800 Noncovered—Enteral nutrition products, equipment, and related supplies.** (1) The ~~((department))~~ medicaid agency does not cover the following:

(a) Nonmedical equipment, supplies, and related services~~((including but not limited to, back packs))~~ (for example, backpacks, pouches, bags, baskets, or other carrying containers); and

(b) Orally administered enteral nutrition products for any client~~(s)~~ age twenty-one ~~((years of age))~~ and older.

(2) A provider may request an exception to rule ((ETR), as described in WAC 388-501-0160, may be requested) under WAC 182-501-0160 for a noncovered service.

(3) When early and periodic screening, diagnosis, and treatment (EPSDT) applies, the ((department)) agency evaluates a request for a noncovered service, equipment, or ((supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100)) related supplies under WAC 182-501-0165. See WAC 182-534-0100 for EPSDT rules((h)).

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

**WAC 182-554-900 Reimbursement—Enteral nutrition products, equipment, and related supplies.** (1) The ~~((department))~~ medicaid agency:

(a) Determines reimbursement for enteral nutrition products, equipment, and related-supplies according to a set fee schedule;

(b) Considers medicare's current fee schedule when determining maximum allowable fees;

(c) Considers vendor rate increases or decreases as directed by the legislature; ~~((and))~~

(d) Evaluates and updates the maximum allowable fees for enteral nutrition products, equipment, and related supplies at least once per year.

(2) The ~~((department's payment))~~ agency pays for covered enteral nutrition products, equipment and related supplies according to a set fee schedule. The agency's payment includes all of the following:

(a) Any adjustment~~((s))~~ or modification~~((s))~~ to the equipment ~~((required))~~ within three months of the date of delivery~~((This does not apply to adjustments required because of changes))~~ as long as the adjustment is not caused by a change in the client's medical condition;

(b) Instructions to the client ~~((and/))~~ or caregiver on the safe and proper use of equipment provided;

(c) Full service warranty;

(d) Delivery and pick-up; and

(e) Fitting and adjustments.

(3) If changes in circumstance occur during the rental period, such as death or ineligibility, the ~~((department))~~ agency discontinues payment effective on the date of the change in circumstance.

(4) The ~~((department))~~ agency does not pay for simultaneous rental and ~~((a))~~ purchase of any item.

(5) The ~~((department))~~ agency does not reimburse ~~((providers))~~ for equipment ~~((that is supplied to them))~~ a provider receives at no cost ~~((through suppliers/manufacturers)).~~

(6) The provider who furnishes enteral nutrition equipment to a client is responsible for any costs incurred to have another provider repair equipment if all of the following apply:

(a) Any equipment that the ~~((department))~~ agency considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The client still needs the equipment.

(7) If the rental equipment must be replaced during the warranty period, the ~~((department))~~ agency recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The client still needs the equipment.

#### WSR 15-24-037

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 20, 2015, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-10-041.

Title of Rule and Other Identifying Information: The department is creating WAC 388-107-0945 Resident suicide

and self-harm prevention; repealing WAC 388-107-0930 Nursing and nutrition station; and amending WAC 388-107-0001 Definitions, 388-107-0020 Department authority, 388-107-0080 Ongoing comprehensive assessments, 388-107-0100 Enhanced services facility team, 388-107-0110 Initial individual treatment plan, 388-107-0120 Comprehensive individual treatment plan, 388-107-0130 Ongoing comprehensive individual treatment plan, 388-107-0140 Implementation of the individual treatment plan, 388-107-0150 Comprehensive individual treatment plan sent to the state, 388-107-0160 Behavioral support plan, 388-107-0180 Self-determination and participation, 388-107-0190 Rights of residents, 388-107-0200 Quality of care, 388-107-0210 Care and services, 388-107-0240 Staffing ratios, 388-107-0280 Transfer and discharge, 388-107-0370 Treatment services, 388-107-0390 Use of routine psychopharmacologic medications, 388-107-0400 Use of as needed psychopharmacologic medications, 388-107-0410 Management of escalating behaviors, 388-107-0420 Physical restraints for medical purposes only, 388-107-0430 Food services, 388-107-0560 Resident records—Clinical records, 388-107-0770 Environment of care, 388-107-0810 Resident room, 388-107-0830 Resident bathing facilities, 388-107-0890 Outdoor recreation space and walkways, 388-107-0940 Resident safety and suicide prevention, 388-107-0960 Plumbing—Water supply, 388-107-1000 Mechanical—Ventilation systems, and 388-107-1190 Administrator responsibilities.

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 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 27, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., January 26, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by January 12, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections of chapter 388-107 WAC in order to address concerns of the Center for Medicare/Medicaid Services (CMS) Home and Community Based Services (HCBS) and stakeholders with operationalization of the requirements stated therein.

Reasons Supporting Proposal: In order to qualify for federal matching funds, the enhanced services facilities (ESF) program must conform to federal CMS HCBS requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, we support the proposed rule amendments.

Statutory Authority for Adoption: RCW 70.97.230.

Rule is necessary because of federal law, HCBS Final Rule 42 C.F.R.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Comments from operations review-statutory language. Comments were incorporated into the rule.

Name of Proponent: Department of social and health services, Penelope Rarick, policy program manager, AL TSA/RCS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Penelope Rarick, Olympia, (360) 725-3210; and Enforcement: Bett Schlemmer, Olympia, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impact small businesses or small nonprofits.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Penelope Rarick, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-3210, fax (360) 438-7903, e-mail [rariicpp@dshs.wa.gov](mailto:rariicpp@dshs.wa.gov).

November 12, 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 16-01 issue of the Register.

**WSR 15-24-061**  
**PROPOSED RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**  
[Filed November 24, 2015, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-116.

Title of Rule and Other Identifying Information: Amendments to chapter 391-25 WAC to allow for online and electronic voting.

Hearing Location(s): 112 Henry Street, Suite 300, Olympia, WA 98504-0919, on January 11, 2016, at 10:00 a.m.

Date of Intended Adoption: February 9, 2016.

Submit Written Comments to: Michael Sellars, Executive Director, 112 Henry Street, Suite 300, Olympia, WA 98504-0919, e-mail [Mike.Sellars@perc.wa.gov](mailto:Mike.Sellars@perc.wa.gov), fax (360) 570-5328, by January 6, 2016.

Assistance for Persons with Disabilities: Contact Diane Tucker by January 6, 2016, (360) 570-7335.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments to WAC 391-25-150 and 391-25-450 are needed to clarify the limitations on when a labor organization may withdraw a representation petition or disclaim an existing bargaining unit.

The amendment to WAC 391-25-430 clarifies the posting period for a notice of election when the agency conducts a mail ballot, on-site, or electronic election.

The proposed WAC 391-25-480 consolidates the existing rules for mail ballot, WAC 391-25-470, and on-site elec-

tions, WAC 391-25-490, and also provides for the use of electronic voting processes.

The proposed WAC 391-25-486 consolidates two existing special election rules that apply only to state civil service employees, WAC 391-25-476 and 391-25-496, so that those rules are consistent with the agency's sequence and numbering rule, WAC 391-25-002.

WAC 391-25-470, 391-25-490, 391-25-476, and 391-25-496 would each be repealed.

Reasons Supporting Proposal: To streamline agency practices and procedures, including updating rules to reflect changes to agency election processes.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Agency staff is proposing that these rules be adopted to allow for more efficient use of staff resources when conducting representation elections.

Name of Agency Personnel Responsible for Drafting and Implementation: Dario de la Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504-0919, (360) 570-7328; and Enforcement: Michael Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504-0919, (360) 570-7306.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Agency rules obligate public employers, public employees, and unions representing public employees, and do not impose costs on profit-making businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Agency rules are excepted by RCW 34.05.328 (5)(a)(i).

November 24, 2015

Dario de la Rosa

Representation Case Administrator

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

**WAC 391-25-150 Amendment and withdrawal.** A petition may be amended or withdrawn by the petitioner at any time prior to the issuance of a notice of election (~~and the mailing of the ballots;~~) or under such conditions as the executive director or the commission may impose.

AMENDATORY SECTION (Amending WSR 08-04-059, filed 1/31/08, effective 4/1/08)

**WAC 391-25-430 Notice of election.** When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:

(1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.

(2) The deadline for return of mail ballots or the date(s), hours and polling place(s) for an on-site election, or the voting period for an electronic election.

(3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election, including that the eligible employees are limited to those who continue to be employed within the bargaining unit when they cast a ballot in an on-site election (~~(or)~~), at the deadline for return of mail ballots, or at the closing of polls in an electronic election.

(4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.

Notices of the election shall be posted for at least (~~seven days, and shall remain posted until a tally of ballots has been issued. The day of posting shall be counted, but the day on which the polls are opened for an on-site election shall not be counted~~) five business days prior to the date on which the polls are opened for an on-site election or electronic election or five business days prior to the date on which ballots are mailed in a mail ballot election. Notices of the election shall remain posted until a tally of ballots has been issued.

AMENDATORY SECTION (Amending WSR 10-20-172, filed 10/6/10, effective 11/6/10)

**WAC 391-25-450 Disclaimers.** Prior to the issuance of a notice of election (~~and the mailing of the ballots~~), an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. The organization filing a disclaimer shall not seek to be certified in the bargaining unit, or subdivision thereof, for a period of at least six months.

NEW SECTION

**WAC 391-25-480 Elections—Electioneering—Objectionable conduct.** (1) The executive director shall have discretion to conduct elections electronically, by mail, or on-site. The procedures for each means of election shall be designed to preserve the secrecy of employee voting. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots.

(2) Following the close of an electronic or telephonic election, the agency shall transmit the results to the parties of record.

(3) Following the close of an election by mail, each party may be represented by observers of its own choosing at the tally of any ballots. Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.

(4) For an on-site election, each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe. During the hours of voting, no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer. Any lists of those who have voted or who have abstained from voting shall be surrendered to the agency at the conclusion of the tally.

(5) The following prohibitions apply to assure appropriate conditions for employees to cast their ballots:

(a) The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice in an election is prohibited.

(b) The use of deceptive campaign practices improperly involving the commission and its processes is prohibited.

(c) The use of forged documents is prohibited.

(d) Coercion or intimidation of eligible voters, or any threat of reprisal or force or promise of benefit to eligible voters, is prohibited.

(e) Conduct in violation of WAC 391-25-140 is prohibited.

(f) Misrepresentations of fact or law are prohibited. To set aside an election, a misrepresentation must:

(i) Be a substantial misrepresentation of fact or law regarding a salient issue;

(ii) Be made by a person having intimate knowledge of the subject matter, so that employees may be expected to attach added significance to the assertion;

(iii) Occur at a time which prevents others from effectively responding; and

(iv) Be reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not.

(g) Election speeches on the employer's time to massed assemblies of employees are prohibited during the period that the polls are open in an on-site or electronic election or during the period beginning on the scheduled date for a mail ballot election and continuing through the deadline for mail ballots. Other electioneering not prohibited by (a) through (f) of this subsection is permitted during that period.

(6) Violations of this rule shall be grounds for setting aside an election upon objections properly filed.

#### NEW SECTION

**WAC 391-25-486 Special provision—State civil service employees.** (1) The requirement in WAC 391-25-480 (3) and (4) that lists of voters be surrendered shall not apply to elections concerning state civil service employees covered by chapter 41.06 RCW. Upon request, the agency shall provide the parties involved in the election with the names of employees who voted in a mail ballot election.

(2) If the executive director conducts an election involving state civil service employees by on-site balloting procedures, absentee ballots shall be allowed as prescribed in this subsection.

(a) Upon the request of an individual employee, the agency shall provide a notice and absentee ballot to the individual employee.

(b) To be counted, the absentee ballot must be received at the Olympia office of the commission:

(i) Directly from the employee or from the employee via the U.S. Postal Service; and

(ii) Prior to the close of business on the last day the polls are open for the on-site election.

(c) Whenever absentee ballots are issued, the tally of ballots shall be delayed for one or more days after the last day on which the polls are open for the on-site election and shall then be conducted in the commission's Olympia office in a manner which preserves the secrecy of the absentee ballots.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 391-25-470 Mail ballot election procedures—Electioneering—Objectionable conduct.

WAC 391-25-476 Special provision—State civil service employees.

WAC 391-25-490 On-site election procedures—Electioneering—Objectionable conduct.

WAC 391-25-496 Special provision—State civil service employees.

#### **WSR 15-24-062**

#### **PROPOSED RULES**

#### **PUBLIC EMPLOYMENT RELATIONS COMMISSION**

[Filed November 24, 2015, 12:48 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-018.

Title of Rule and Other Identifying Information: Amendments to WAC 391-08-120 to streamline the agency's filing process by eliminating the need for parties to file hard copies of documents when filing electronically.

Hearing Location(s): 112 Henry Street, Suite 300, Olympia, WA 98504-0919, on January 11, 2016, at 10:00 a.m.

Date of Intended Adoption: February 9, 2016.

Submit Written Comments to: Michael Sellars, Executive Director, 112 Henry Street, Suite 300, Olympia, WA 98504-0919, e-mail Mike.Sellars@perc.wa.gov, fax (360) 570-5328, by January 6, 2016.

Assistance for Persons with Disabilities: Contact Diane Tucker by January 6, 2016, (360) 570-7335.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments to WAC 391-08-120 eliminate the need for a party to "perfect" their electronic filing with the agency and other parties by mailing a paper copy of the same document on the same day that the electronic filing was made.

The amendment also clarifies that a filing by United States Mail is complete when the individual places the document in the mail. The current standard makes filing complete when the agency actually receives the document.

Reasons Supporting Proposal: To streamline agency practices and procedures for the filing of documents by eliminating the wasteful requirement for parties to send duplicate paper copies to the agency and other parties.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Agency staff is proposing that these rules be adopted to allow for more efficient use of staff and clientele

resources when filing and serving documents on the agency and other parties.

Name of Agency Personnel Responsible for Drafting and Implementation: Dario de la Rosa, 112 Henry Street, Suite 300, Olympia, WA 98504-0919, (360) 570-7328; and Enforcement: Michael Sellars, 112 Henry Street, Suite 300, Olympia, WA 98504-0919, (360) 570-7306.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Agency rules obligate public employers, public employees, and unions representing public employees, and do not impose costs on profit-making businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Agency rules are excepted by RCW 34.05.328 (5)(a)(i).

November 24, 2015

Dario de la Rosa  
Representation Case Administrator

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

**WAC 391-08-120 Filing and service of papers.**

~~((FILING OF PAPERS WITH THE AGENCY~~

~~(1) Papers to be filed with the agency shall be filed at the commission's Olympia office. The executive director shall post, and from time to time revise as appropriate, a list containing the street and mailing addresses for filing by actual delivery of papers, the telephone number for filing by electronic telefacsimile transmission (fax), and the electronic mail (e-mail) address and software supported by the agency for filing by e-mail attachment.~~

~~(2) Papers may be filed by any of the following methods:~~

~~(a) FILING BY ACTUAL DELIVERY of papers to the agency (including filings delivered by United States mail) shall be subject to the following limitations:~~

~~(i) Only the original paper(s) shall be filed. No additional copies of papers are required.~~

~~(ii) The case number(s) shall be indicated on the front page of each document filed, except for petitions and complaints being filed to initiate proceedings before the agency.~~

~~(iii) Filing shall occur only upon actual receipt of the original paper by the agency during office hours.~~

~~(iv) Papers delivered to or left at the agency office after the close of business will be deemed to be filed on the next business day the office is open.~~

~~(b) FILING BY FAX shall be subject to the following limitations:~~

~~(i) Parties shall only transmit one copy of the paper, accompanied by a cover sheet or form identifying the party filing the paper, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax.~~

~~(ii) The original paper filed by fax shall be mailed to the commission's Olympia office on the same day the fax is transmitted.~~

~~(iii) The case number(s) shall be indicated on the front page of each document filed by fax, except for petitions and~~

~~complaints being filed to initiate proceedings before the agency.~~

~~(iv) Filing by fax shall occur only when a complete legible copy of the paper is received by the agency. If a fax is not received in legible form, it will be treated as if it had never been filed. A party attempting to file a paper by fax bears the risk that the paper will not be timely or legibly received, regardless of the cause.~~

~~(v) If receipt of a fax transmission commences after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(vi) Fax shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.~~

~~(e) FILING BY E-MAIL ATTACHMENT shall be subject to the following limitations:~~

~~(i) Parties shall only transmit one copy of the paper, as an attachment to an e-mail message identifying the party filing the paper, the total number of pages in the attachment, the software used to prepare the attachment, and the name, address, telephone number and e-mail address of the person sending the e-mail message.~~

~~(ii) The original paper filed by e-mail attachment shall be mailed to the commission's Olympia office on the same day the e-mail message and attachment are transmitted.~~

~~(iii) The case number(s) shall be indicated on the front page of each document filed by e-mail attachment, except for petitions and complaints being filed to initiate proceedings before the agency.~~

~~(iv) Filing by e-mail attachment shall occur only when a complete legible copy of the paper is received by the agency. If an e-mail attachment is not received in legible form, or cannot be opened with software on the list promulgated by the executive director under this section, it will be treated as if it had never been filed. A party attempting to file a paper by e-mail attachment bears the risk that the paper will not be timely or legibly received, regardless of the cause.~~

~~(v) If an e-mail transmission is received by the agency after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(vi) E-mail shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.~~

~~SERVICE ON OTHER PARTIES-~~

~~(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:~~

~~(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;~~

~~(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.~~

~~(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery~~

to the parcel delivery company, properly addressed with charges prepaid.

(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

#### PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.)

(1) Documents filed with the agency shall be filed at the Olympia office. The agency will post on its web site information containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the e-mail address or other method to be used for electronic filing.

(2) Documents may be filed with the agency by one of the following methods:

(a) In person.

(b) By first class, registered, or certified mail.

(c) By commercial parcel delivery company.

(d) Electronically by e-mail, fax transmission, or other method posted by the agency.

(3) Documents filed with the agency shall be served upon all parties on the same day the documents are filed. Service shall be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.

(4) Unless otherwise ordered by the agency in a particular proceeding, filing and service is complete upon one of the following:

(a) Hand delivery.

(b) Depositing the documents, properly addressed and postage paid, in the U.S. mail.

(c) Acceptance of the documents for delivery by a parcel delivery company.

(d) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after office hours, the paper will be deemed filed on the next business day the office is open.

(e) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the e-mail or electronic filing constitutes the time of service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.

(5) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4)(a) of this section; or

(b) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Personally delivering a copy under subsection (4)(a) of this section; or

(ii) Mailing a copy under subsection (4)(b) of this section; or

(iii) Depositing a copy under subsection (4)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iv) Electronically transmitting the documents under subsection (4)(d) or (e) of this section.

(6) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (5)(a) of this section or a certificate of service made under subsection (5)(b) of this section shall constitute proof of service.

**WSR 15-24-065**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed November 24, 2015, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-019.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-264 to reduce the hours in the school day for the internship requirements for principal certification.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 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: Clarifies the number of hours for the principal internship within the academic year, half of the four hundred forty hours to be during school days with staff and students present.

Reasons Supporting Proposal: Reduces confusion in the existing language.

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 24, 2015  
David Brenna  
Senior Policy Analyst

**AMENDATORY SECTION** (Amending WSR 14-23-068, filed 11/18/14, effective 12/19/14)

**WAC 181-78A-264 Approval standard—Program design.** (1) Conceptual framework.

(a) The conceptual framework establishes the shared vision for the unit's efforts in preparing educators to work effectively in P-12 schools.

(b) The conceptual framework:

(i) Provides coherence among curriculum, instruction, field experiences, clinical practice, candidate assessment, and program evaluation;

(ii) Establishes the philosophy, purpose, goals, and standards of the program or unit;

(iii) Reflects renewing commitment to current research and best practices; and

(iv) Supports the state's goals for P-12 student learning and program approval Standard V.

(2) Transition elements.

(a) Programs recruit, admit, retain, and transition candidates to the field who meet program goals and state standards.

(b) Learner expectations for program requirements, progression, and completion are identified, published, and accessible.

(c) Faculty regularly review recruitment and retention data for effectiveness of program.

(i) Programs create, implement and communicate a recruitment and retention plan in response to data.

(ii) Programs annually report the data, the plan, and proposed modifications to the professional educator advisory

board and other stakeholder groups supporting the program's efforts.

(ii) Program completers meet the state and partner districts' goals for increasing underrepresented populations in the workplace.

(iv) Program completers hold endorsements in shortage content areas identified by workforce data of the state and region.

(3) Field experiences and clinical practice.

(a) The program(s) and its school partners design, implement, and evaluate field experiences and clinical practices.

(b) Field experiences are integrated throughout the preparation program.

(i) Field experiences provide opportunity to plan, practice and reflect on methods of instruction and differentiation;

(ii) Field experiences provide opportunities to work with diverse communities and populations, e.g., racial and ethnic, low socioeconomic, and English language learners;

(iii) Faculty supervision, including on-site visits, will be provided on an on-going basis.

(c) Mentors are instructional leaders identified collaboratively with the partner school of district.

(i) Mentors and principals are provided with a set of internship expectations;

(ii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iii) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising;

(iv) Effectiveness of mentor preparation and communication are reviewed annually by faculty.

(d) All Washington educator preparation programs operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(e) Entry and exit criteria and a process for mitigating concerns during clinical practice are provided for candidates and the mentor.

(f) Requirements for specific educator preparation programs.

(i) Teacher programs.

(A) Programs shall administer the teacher performance assessment adopted by the professional educator standards board to all candidates in a residency certificate program.

(B) Clinical practice (defined as supervised planning, instruction, and reflection) for teacher candidates should consist of no less than four hundred fifty hours in classroom settings.

(ii) School counselor programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of four hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic counseling skills and integrate professional knowledge).

(iii) School psychology programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of one thousand two hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic school psychology skills and integrate professional knowledge).

(iv) Administrator programs.

(A) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(B) Components of the required internship shall include demonstration by the candidate that he or she has the appropriate, specific relevant skills pursuant to WAC 181-78A-270.

(C) An approved preparation program for superintendents shall require an internship of at least three hundred sixty hours.

(D) An approved preparation program for principals shall require for those persons beginning their internship August 1, 2009, and after, an internship which requires practice as an intern (~~during the~~) for five hundred forty hours of which at least one-half shall be during school hours, when students and/or staff are present, and for the duration of a full school year. A "full school year" shall mean (~~five hundred forty hours of which at least one-half shall be during school hours, when students and/or staff are present~~) at least the academic year. Provided further, That an approved preparation program for principals shall require an internship that shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-270(2) and meets, at minimum, the standards-based benchmarks approved and published by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval.

(4) Collaboration.

(a) Faculty within the program and unit collaborate for continuous program improvement.

(b) Faculty collaborate with content area specialists.

(c) Programs collaborate with P-12 schools to assess and respond to work force, student learning, and professional development needs.

(d) Faculty collaborate with members of the broader professional community.

(e) Faculty collaborate with members of under-represented populations for program improvement.

(5) Diversity in learning experiences.

(a) Candidates have significant interaction with diverse populations including colleagues, faculty, P-12 practitioners, and P-12 students and families.

(i) Candidates reflect on interactions with diverse populations in order to integrate professional growth in cultural competency as a habit of practice.

(ii) Candidates integrate their cultural and linguistic backgrounds into classroom activities in order to build the multicultural capacity of the preparation program cohort.

(b) Faculty model equity pedagogy through:

(i) Interaction with diverse populations;

(ii) Reflective practice on their own professional growth in cultural competency;

(iii) Culturally relevant communication and problem solving; and

(iv) Personalized instruction that addresses cultural and linguistic backgrounds.

## WSR 15-24-068

### PROPOSED RULES

#### TACOMA COMMUNITY COLLEGE

[Filed November 25, 2015, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-154.

Title of Rule and Other Identifying Information: Repealing chapter 132V-300 WAC, Grievance procedure—Sexual harassment, sex discrimination and disability discrimination and adopting chapter 132V-305 WAC, Nondiscrimination and harassment policy and grievance procedure.

Hearing Location(s): Tacoma Community College, Building 12, Room 120, 6501 South 19th Street, Tacoma, WA 98466, on January 13, 2016, at 4:00 p.m.

Date of Intended Adoption: January 13, 2016.

Submit Written Comments to: Mary Chikwinya, Tacoma Community College, 6501 South 19th Street, Tacoma, WA 98466, e-mail [mchikwinya@tacomacc.edu](mailto:mchikwinya@tacomacc.edu), fax (253) 566-5127, by December 30, 2015.

Assistance for Persons with Disabilities: Contact Judy Colarusso by December 30, 2015, [jcolarusso@tacomacc.edu](mailto:jcolarusso@tacomacc.edu) or (253) 566-5136.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update policy to be in compliance with the Office of Civil Rights 2011 Dear Colleague Letter regarding Title IX; Violence Against Women Reauthorization Act (VAWA); and Section 304 of VAWA, Campus Save Act.

Reasons Supporting Proposal: To update policy to be in compliance with the Office of Civil Rights 2011 Dear Colleague Letter regarding Title IX; Violence Against Women Reauthorization Act (VAWA); and Section 304 of VAWA, Campus Save Act.

Statutory Authority for Adoption: Chapter 49.60 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mary A. Chikwinya, Tacoma Community College, (253) 566-5127 and Elizabeth Brooks, Tacoma Community College, (253) 566-5054.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Policy is relevant to Tacoma Community College employees, students, applicants or visitors only.



A cost-benefit analysis is not required under RCW 34.05.328. Policy is relevant to Tacoma Community College employees, students, applicants or visitors only.

Mary A. Chikwinya  
Vice-President  
for Student Services

### Chapter 132V-305 WAC

## NONDISCRIMINATION AND HARASSMENT POLICY AND GRIEVANCE PROCEDURE

### POLICY

#### NEW SECTION

**WAC 132V-305-010 Statement of policy.** Tacoma Community College 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, Tacoma Community College has enacted policies prohibiting discrimination against and harassment of members of these protected classes. Any individual found to be in violation of these policies will be subject to disciplinary action up to and including dismissal from the college or from employment.

#### NEW SECTION

**WAC 132V-305-020 Objective and responsibilities.** Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX coordinator or designee. The college's Title IX coordinator is posted on the college's web site. If the complaint is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

The Title IX coordinator or designee:

- (1) Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- (2) Will make determinations regarding how to handle requests by complainants for confidentiality;
- (3) Will keep accurate records of all complaints and referrals for the required time period;
- (4) May conduct investigations or delegate and oversee investigations conducted by a designee;

(5) May impose interim remedial measures to protect parties during investigations of discrimination or harassment;

(6) Will issue written findings and recommendations upon completion of an investigation;

(7) May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, a formal complaint form is available on the college web site. Hard copies of the complaint form are available at the following locations on campus: Student services administration office, advising and counseling center, and human resources office.

#### NEW SECTION

**WAC 132V-305-030 Definitions.** The following definitions are specific to the terms of this procedure and do not modify or revise similar terms as used in related procedures or collective bargaining agreements.

**Advisor:** A person of the complainant or respondent's choosing who can accompany the complainant or respondent to any related meeting or proceeding.

**College:** Tacoma Community College main campus and any other campus or college facility which may be created by the board of trustees.

**College employee:** any person employed by the college performing assigned administrative or professional responsibilities.

**Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of Tacoma Community College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

**Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

**Consent:** 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.

**Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

**Force:** Use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation and coercion that overcome resistance or

produce consent. Sexual activity that is forced is by definition nonconsensual, but nonconsensual sexual activity is not by definition forced.

**Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

**Hazing:** Any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education or postsecondary education. Excluded from this definition are "customary athletic events or other similar contests or competitions."

**Hostile environment:** Any situation in which there is harassing conduct that is based on protected class status and is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational or social programs.

The determination of whether an environment is "hostile" must be based on all of the circumstances. These circumstances could include:

- (a) The frequency of the conduct;
- (b) The nature and severity of the conduct;
- (c) Whether the conduct was physically threatening;
- (d) Whether the conduct was directed at more than one person;
- (e) Whether the conduct arose in the context of other discriminatory conduct;
- (f) Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by mere discourtesy or rudeness;
- (g) Whether the speech or conduct deserves protections of academic freedom or the first amendment.

**Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit 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.

**Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of disciplinary sanction.

**Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

**Sexual exploitation:** Occurs when one person takes nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: Invasion of sexual privacy, engaging in voyeurism, nonconsensual video or audio taping of sexual activity; sexually based stalking and/or bullying may also be forms of sexual exploitation.

**Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors. Examples of conduct that may qualify as sexual harassment include:

- (i) Persistent comments or questions of a sexual nature;
- (ii) A supervisor who gives an employee a raise in exchange for submitting to sexual advances;
- (iii) An instructor who promises a student a better grade in exchange for sexual favors;
- (iv) Sexually explicit statements, questions, jokes, photos, or anecdotes;
- (v) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body;
- (vi) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;
- (vii) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;
- (viii) Direct or indirect propositions for sexual activity;
- (ix) Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

**Sexual violence:** Is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual

sual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(a) **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.

(b) **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.

(c) **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.

(d) **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.

(e) **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.

**Working day:** Any day on which the college is open and can conduct legal business; typically excludes Saturdays, Sundays, and legal holidays.

#### NEW SECTION

**WAC 132V-305-040 Who may file a complaint.** 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. For complainants who wish to submit a written complaint, a formal complaint form is available on the college web site. Hard copies of the complaint form are available at the following locations on campus: Student services administration office, advising and counseling center and human resources office. Any person submitting a discrimination complaint shall be provided with a written copy of the college's nondiscrimination policies and procedures.

#### NEW SECTION

**WAC 132V-305-050 Confidentiality and right to privacy.** Although Tacoma Community College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality.

(1) **Confidentiality requests and sexual violence complaints.** The Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation of a sexual violence complaint. If a sexual vio-

lence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator or designee will inform the complainant that (a) the college will attempt to honor complainants' requests for confidentiality but cannot guarantee complete confidentiality, and (b) that maintaining confidentiality may limit the college's ability to fully respond to the allegations and, that (c) retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX coordinator or designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant.

(2) Factors to be weighed during this determination may include, but are not limited to:

(a) The seriousness of the alleged sexual violence;

(b) The age of the complainant;

(c) Whether the sexual violence was perpetrated with a weapon;

(d) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;

(e) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and

(f) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(3) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator or designee will notify the complainant of the decision and ensure that the complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

(4) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator or designee will evaluate whether other measures are available to limit the effects of the alleged harassment and prevent similar incidents and implement such measures if reasonably feasible.

#### NEW SECTION

**WAC 132V-305-060 Responsible employees and reporting responsibilities.** (1) The college is obligated to address acts of sex-based misconduct (including sexual harassment and/or retaliation) of which a responsible employee knew or should have known occurred. A "responsible employee" is any employee who:

(a) Has the authority to take action to redress sex-based misconduct;

(b) Has been given the duty of reporting incidents of sex-based misconduct or any other misconduct by students; or

(c) Is a student employed by the college who could reasonably believe that they have this responsibility.

(2) A responsible employee must report to the Title IX coordinator or designee all relevant details about alleged sex-based misconduct (including sexual harassment and/or retaliation) that the complainant or other person has shared. This

includes the name of the alleged respondent, if known, the complainant or other person who experienced or witnessed the alleged sex-based misconduct, others involved in the alleged sex-based misconduct, as well as relevant facts, including the date, time, and location. If the complaint is against the Title IX coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

(3) A responsible employee should provide the following information to a complainant:

(a) The reporting obligations (discussed in subsection (2) of this section) of the responsible employee;

(b) Complainant's option to request confidentiality and available confidential resources;

(c) Complainant's right to file a Title IX complaint with the college;

(d) Complainant's right to report a crime to local law enforcement.

(4) For convenience of student complaint reporting, there are college-designated responsible employees and contact information on the college's web site.

(5) For a staff complaint of sex-based misconduct (including sexual harassment and/or retaliation) by a student or another staff member, the staff complaint may be reported to the immediate supervisor, with the supervisor report/referral to the Title IX coordinator or designee. A direct report to the Title IX coordinator or designee will be more expeditious in terms of processing the complaint. If the complaint is against the Title IX coordinator, or his or her relative attending or working for the college, the complainant should report the matter directly to the president's office for referral to an alternate designee.

## PROCEDURE

### NEW SECTION

**WAC 132V-305-070 Investigation procedure, notice and appeal.** Upon receiving a discrimination complaint, the Title IX coordinator or designee will assess the complaint and determine the appropriate steps to take, if any. The Title IX coordinator or designee shall be responsible for commencing and overseeing all investigations. Investigations may be conducted by the Title IX coordinator or designee. If the investigation is assigned to someone other than the Title IX coordinator or designee, the Title IX coordinator or designee shall inform the complainant and respondent of the appointment of an investigator.

(1) **Interim measures.** The Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the outcome 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.

(2) **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 working 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 coordinator or designee who shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the nondiscrimination 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. The Title IX coordinator or designee will issue a decision in writing to each party and to the appropriate student services administrator or appointing authority. 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.

(3) **Written notice of decision to the parties and request for reconsideration.** The complainant shall be informed in writing of the decision and of actions taken or recommended to resolve the complaint, if any, that are directly related to the complainant, such as a recommendation that the respondent 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 decision 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.

(4) **Informal dispute resolution.** Informal dispute resolution processes, including mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve complaints without the complainant's and the respondent's written agreement. If the parties agree to engage in formal dispute resolution, all timelines and limitations herein shall be tolled until a party or the Title IX coordinator or designee provides written notice that they have discontinued mediation which they are free to do at any time. In no event shall informal dispute resolution processes be used to resolve complaints involving allegations of sexual violence.

(5) **Final decision/reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX coordinator or designee. Requests for reconsideration shall be submitted in writing to the Title IX coordinator or designee within seven working 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 working days, the decision becomes final. If a request for reconsideration is received, the Title IX coordinator or designee shall respond within ten working days that the request is denied or granted. If the request for reconsideration is granted, the Title IX coordinator or designee shall issue an amended decision within ten additional working days from the date that the request for reconsideration was granted. Any amended decision is final and no further reconsideration is available unless provided herein.

(6) **Appeal for disciplinary action.** If formal sanctions or disciplinary action is imposed as a result of a finding of violation of this policy, a respondent may file an appeal. Appeals should succinctly state the basis of the appeal, such as findings not supported by the evidence, sanction is substantially disproportionate to the severity of the violation, due process was violated.

(7) **Student appeal.** A student respondent may appeal sanctions or disciplinary action imposed under this policy in accordance with WAC 132V-121-070. The complainant will receive notice of the appeal and may submit either his/her own appeal or a written response to the student respondent's appeal within ten working days, which will be considered by the student conduct appeal board.

(8) **Represented employee grievance.** A faculty member or represented staff member may file a grievance under the applicable collective bargaining agreement.

(9) **Nonrepresented classified staff employee appeal.** Nonrepresented classified staff may file an appeal with the personnel resources board under WAC 357-52-020.

(10) **Nonrepresented employee review.** Nonrepresented employees may request review of disciplinary action through the supervisory chain of command to the college president within twenty working days of the imposition of discipline. This includes student workers if the discipline imposed resulted from conduct that occurred during the performance of student employment and includes a loss in pay as a sanction (nothing prohibits the Title IX coordinator or designee and/or investigator from referring findings against a student employee to the chief student conduct officer or designee for additional review under the code of student conduct). The request for review must be a signed, written document articulating the grounds for review. The responsible supervisor will respond to the request for review within twenty working days of receipt. If the findings and/or discipline is upheld, the college president's decision will constitute final action and there is no further appeal within the college.

(11) **Volunteer or visitor review.** A volunteer or visitor respondent may request review by the college president of sanctions imposed in response to findings under this policy.

#### NEW SECTION

**WAC 132V-305-080 Publication of antidiscrimination policies and procedures.** The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college

policy will be provided a copy of these policies and procedures.

#### NEW SECTION

**WAC 132V-305-090 Limits to authority.** Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Tacoma Community College policies and procedures, collective bargaining agreements, and federal, state, and municipal rules and regulations.

Nothing in this policy or procedure limits the college from considering applicable policies of the college when investigating complaints. For complaints involving students, nothing in this policy or procedure limits the college from evaluating the conduct of any student under the code of student conduct.

#### NEW SECTION

**WAC 132V-305-100 Nonretaliation, intimidation and coercion.** Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX coordinator or designee or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX or EEO coordinator immediately.

#### NEW SECTION

**WAC 132V-305-110 Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with appropriate law enforcement authorities.

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.

#### NEW SECTION

**WAC 132V-305-120 Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

- (1) Washington State Human Rights Commission;
- (2) U.S. Department of Education Office for Civil Rights;
- (3) Equal Employment Opportunity Commission.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132V-300-010 Statement of policy.

WAC 132V-300-020 Jurisdiction.

WAC 132V-300-030 Grievance procedure.

WAC 132V-300-035 Procedural appeal to the student rights and responsibilities hearing committee.

**WSR 15-24-073**  
**PROPOSED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2015-13—Filed November 25, 2015, 2:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-138.

Title of Rule and Other Identifying Information: Making minimal clarifications in the Washington Administrative Code to clearly include the envisioned rider or endorsement allowed under ESSB 5550, Section 2 (2)(a) for "private passenger automobile coverage."

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on January 7, 2016, at 1:30 p.m.

Date of Intended Adoption: January 8, 2016.

Submit Written Comments to: Jim Keogh, P.O. Box 40258, Olympia, WA 98504-0258, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax (360) 586-3109, by January 7, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by January 6, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the 2015 legislative session, chapter 236, Laws of 2015, was enacted; the bill used the term "private passenger automobile" coverage in a manner that was not contemplated when the rule's definition of this term was adopted. The proposed rule will add one new clarifying reference to the definition of "private passenger automobile" in WAC 284-30-500(4) to align with its use in RCW 48.177.010 (the final RCW placement of this legislation).

Reasons Supporting Proposal: To enable issuance of "private passenger automobile" insurance coverage with a rider or endorsement as contemplated in RCW 48.177.010.

Statutory Authority for Adoption: RCW 48.020.060 [48.02.060].

Statute Being Implemented: RCW 48.177.010.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Keogh, P.O. Box 98504-0258 [40258], Olympia, WA 98504-0258, (360) 725-7056; Implementation: Molly Nollette, 5000 Capitol Boulevard, Tumwater, WA 98504, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, 5000 Capitol Boulevard, Tumwater, WA 98504, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that will issue coverage in compliance with the proposed rule are not

small businesses. The proposed rule itself is permissive in that it removes a potential barrier to coverage.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule is not a significant legislative rule but rather an interpretive rule that does not subject a person to a penalty or sanction; instead it sets forth the agency's interpretation of statutory provisions in Title 48 RCW, with the end result that it allows the commissioner to consider approval of the policy coverage described in RCW 48.177-110 (2)(a). The proposed definition adjustment to accommodate its usage in newly adopted RCW 48.177.110 is better described by RCW 34.05.328 (5)(b)(iv) as a rule that only "clarifies the language of a rule without changing its effect."

November 25, 2015

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-03-060, filed 1/12/12, effective 2/12/12)

**WAC 284-30-500 Unfair practices with respect to vehicle insurance.** (1) The following practices by any insurer with respect to every vehicle liability insurance policy applicable to private passenger automobiles registered or principally garaged in this state are unfair and prohibited:

(a) Failing to provide, to any insured under such policy, liability limits at least as great as those required by RCW 46.29.090, as measured at the effective date of the applicable policy or its renewal;

(b) Denying or limiting liability coverage in such policy to less than the insured's policy limits solely because the injured person qualifies as an insured as defined in RCW 48.22.005 (5)(a);

(c) Denying or limiting liability coverage in such policy, with respect to injuries sustained by motorcycle passengers, to an amount below the bodily injury liability limits required by RCW 46.29.090, if the policy provides liability coverage for an insured's ownership, operation, or use of a motorcycle.

(2) With respect to vehicle insurance policies applicable to private passenger vehicles registered or principally garaged in this state, failing to provide a named insured an itemization of the premium costs for the coverages under the policy if there are identifiable separate premium charges for the coverages is unfair and prohibited. The required itemization must be given to a named insured no later than at the time of delivery of a policy and must accompany each offer to renew thereafter.

(3) It is an unfair practice for any insurer to consider traffic violations or accidents which occurred more than three years in the past, with respect to the acceptance, rejection, cancellation or nonrenewal of any insured under a private passenger automobile insurance policy, unless, because of the individual's violations, accidents or driving record during the three years immediately past, the earlier violations or accidents are significantly relevant to the individual's qualifications for insurance.

(4) For purposes of this section, the definition of a "private passenger automobile" is: (a) That set forth in RCW 48.18.297, ((and includes)) including a motorcycle except as otherwise specifically provided in this section; or (b) a per-

sonal vehicle with a private passenger automobile policy with a rider or endorsement as described in RCW 48.177.010 (2)(a).

### WSR 15-24-077

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed November 30, 2015, 7:46 a.m.]

Continuance of WSR 15-14-117.

Title of Rule and Other Identifying Information: Dry pea and lentil commission, chapter 16-536 WAC.

Date of Intended Adoption: April 15, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is continuing the proposed date of intended adoption to allow sufficient time to conduct a referendum vote of affected producers to determine whether to amend the marketing order for dry peas and lentils.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050, chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Name of Proponent: Washington dry pea and lentil commission, governmental.

Name of Agency Personnel Responsible for Drafting: Teresa Norman, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-2043; Implementation and Enforcement: Tim McGreevy, 2780 West Pullman Road, Moscow, ID 83843, (208) 882-3023.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.65.570, the adoption of the final amendments to chapter 16-536 WAC will be determined by referendum vote of affected producers.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington dry pea and lentil commission are not named agencies in RCW 34.05.328 (5)(a)(i).

November 30, 2015

Derek I. Sandison  
Director

### Chapter 16-536 WAC

#### ~~((DRY PEAS AND LENTILS))~~ PULSE CROPS

AMENDATORY SECTION (Amending WSR 04-17-021, filed 8/9/04, effective 9/9/04)

**WAC 16-536-005 Marketing order for Washington ~~((dry peas and lentils))~~ pulse crops—Policy statement.** (1) The marketing of ~~((dry peas and lentils))~~ pulse crops within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its ~~((dry peas and lentils))~~ pulse crops be properly promoted by:

(a) Enabling producers of ~~((dry peas and lentils))~~ pulse crops to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the ~~((dry peas and lentils))~~ pulse crops they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of ~~((dry peas and lentils))~~ pulse crops within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the ~~((dry peas and lentils))~~ pulse crops industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that ~~((dry peas and lentils))~~ pulse crops be promoted individually, and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's ~~((dry peas and lentils))~~ pulse crops.

(b) Increase the sale and use of Washington state's ~~((dry peas and lentils))~~ pulse crops in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's ~~((dry peas and lentils))~~ pulse crops.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's ~~((dry peas and lentils))~~ pulse crops and products.

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of ~~((dry peas and lentils))~~ pulse crops produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state ~~((dry pea and lentil))~~ pulse crops commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to ~~((dry peas and lentils))~~ pulse crops under the provisions of this marketing order.

AMENDATORY SECTION (Amending WSR 04-17-021, filed 8/9/04, effective 9/9/04)

**WAC 16-536-006 Marketing order purposes.** This marketing order is to promote the general welfare of the state and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita consumption of ~~((dry peas and lentils))~~ pulse crops in Washington state. The Washington state ~~((dry pea and lentil))~~ pulse crops commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) To carry out the purposes of the order, the board shall provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for ~~((dry peas and/or lentils))~~ pulse crops. Such programs shall be directed toward increasing the sale of ~~((dry peas and/or len-~~

the)) pulse crops without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims on behalf of (~~dry peas and/or lentils~~) pulse crops nor disparage the quality, value, sale or use of any other agricultural commodity.

(b) Provide for research in the production, processing, irrigation, transportation, handling, and/or distribution of (~~dry peas and/or lentils~~) pulse crops and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried out by experiment stations of Washington State University, but if in the judgment of the board said experiment stations do not have adequate facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the board.

(c) Provide by rules for:

(i) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and/or label for (~~dry peas and/or lentils~~) pulse crops or any products thereof.

(ii) Requiring producers, handlers and/or other persons to conform to such grades and/or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of (~~dry peas and/or lentils~~) pulse crops and/or in offering, advertising and/or delivering it therefor.

(iii) Providing for inspection and enforcement to ascertain and effectuate compliance.

(iv) Providing that the board shall carry out inspection and enforcement of, and may (within the general provisions of the order) establish detailed provisions relating to, such standards and grades and such rules and regulations: Provided, That any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing, and shall not be considered an amendment for the purposes of the act and order.

(d) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services for producers of (~~dry peas and/or lentils~~) pulse crops for the verification of grades, standards, weights, tests, and sampling of quality and quantity of (~~dry peas and/or lentils~~) pulse crops purchased by handlers from affected producers.

(ii) Information and services enabling producers to meet their resource conservation objectives.

(iii) (~~Dry peas and lentils~~) Pulse crops-related education and training.

(e) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of (~~dry peas and/or lentils~~) pulse crops produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of (~~dry peas and/or lentils~~) pulse crops; and

(b) The establishment and effectuation of market research projects, market development projects, or both to the

end that marketing and utilization of (~~dry peas and/or lentils~~) pulse crops may be encouraged, expanded, improved, or made more efficient.

AMENDATORY SECTION (Amending WSR 04-17-021, filed 8/9/04, effective 9/9/04)

**WAC 16-536-010 Definitions.** Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order:

~~((1) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative.~~

(2) "Department" means the department of agriculture of the state of Washington.

~~(3) "Act" means the Washington State Agriculture Commodity Boards Act or chapter 15.65 RCW.~~

(4) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals or any unit or agency of local or state government.

~~(5) "Affected producer" means any person who produces, or causes to be produced, in commercial quantities, dry peas and/or lentils in the state of Washington.~~

(6) "Commercial quantity" means all the dry peas and/or lentils produced for market in any calendar year by any producer.

~~(7) "Affected handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing dry peas and/or lentils not produced by him or her. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.~~

~~(8) "Dry pea and lentil commodity board" hereinafter referred to as "board" or "commission" means the dry pea and lentil commodity board formed under the provisions of WAC 16-536-020.~~

(9) "Dry peas" means and includes all kinds and varieties of dry peas grown in the state of Washington, including chick peas/garbanzo beans and commercially grown wrinkled peas raised for seed: Provided, That it shall not include dry peas used by the producer thereof on his or her premises for feed, seed and personal consumption: Provided further, That the inclusion of commercially grown wrinkled peas raised for seed will not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

(10) "Lentils" means and includes all kinds and varieties of lentils grown in the state of Washington: Provided, That it shall not include lentils used by the producers thereof on his or her premises for feed, seed, and personal consumption.

(11) "Marketing season" or "fiscal year" means the twelve month period beginning with July 1 of any year and ending with the last day of June, both dates being inclusive.

(12) "Producer-handler" means any person who acts both as a producer and as a handler with respect to dry peas and/or lentils. A producer-handler shall be deemed to be a producer with respect to the dry peas and/or lentils which he or she produces, and a handler with respect to the dry peas and/or lentils



which he or she handles, including those produced by himself or herself. "To produce" means to act as a producer. For purposes of the dry peas and lentils marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(13) "Affected area" means the state of Washington.

(14) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(15) "Affected unit" means one hundred pounds of dry peas and/or lentils.) "Act" means the Washington State Agricultural Commodity Boards Act, chapter 15.65 RCW.

"Affected area" means the state of Washington.

"Affected handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing pulse crops not produced by him or her. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

"Affected producer" means any person who produces, or causes to be produced, in commercial quantities, pulse crops in the state of Washington.

"Affected unit" means one hundred pounds of pulse crops.

"Commercial quantity" means all the pulse crops produced for market in any calendar year by any producer.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of agriculture of the state of Washington or his or her duly appointed representative.

"Dry peas" means all kinds and varieties of dry peas grown in the state of Washington, including chick peas/garbanzo beans and commercially grown wrinkled peas raised for seed: Provided, That it shall not include dry peas used by the producer thereof on his or her premises for feed, seed, and personal consumption: Provided further, That the inclusion of commercially grown wrinkled peas raised for seed will not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

"Faba" (Fava) beans means all kinds and varieties of dry faba beans grown in the state of Washington: Provided, That it shall not include faba beans used by the producers thereof on his or her premises for feed, seed, and personal consumption.

"Lentils" means all kinds and varieties of lentils grown in the state of Washington: Provided, That it shall not include lentils used by the producers thereof on his or her premises for feed, seed, and personal consumption.

"Lupine" (lupin) means all kinds and varieties of dry lupine grown in the state of Washington: Provided, That it shall not include lupine used by the producers thereof on his or her premises for feed, seed, and personal consumption.

"Marketing season" or "fiscal year" means the twelve-month period beginning with July 1 of any year and ending with the last day of June, both dates being inclusive.

"Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals or any unit or agency of local or state government.

"Producer-handler" means any person who acts both as a producer and as a handler with respect to pulse crops. A producer-handler shall be deemed to be a producer with respect to the pulse crops which he or she produces, and a handler with respect to the pulse crops which he or she handles, including those produced by himself or herself. "To produce" means to act as a producer. For purposes of the pulse crops marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

"Pulse crops" means the following commodities marketed in their "dry" condition: Dry peas, chick peas/garbanzo beans, lentils, faba beans, and lupine beans as defined in this marketing order.

"Pulse crops commodity board" hereinafter referred to as "board" or "commission" means the dry pea and lentil commodity board formed under the provisions of WAC 16-536-020 and renamed the pulse crops commission.

"Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

**AMENDATORY SECTION** (Amending WSR 04-17-021, filed 8/9/04, effective 9/9/04)

**WAC 16-536-020 The ((dry pea and lentil)) pulse crops board.** (1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

**(2) Board membership.**

(a) The board shall consist of ten members. Eight members shall be affected producers appointed as provided in this marketing order. One member shall be an affected handler appointed as provided in this marketing order. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

(b) For the purpose of nomination and appointment of producer members of the board, the affected area of the state of Washington shall be divided into four representative districts as follows:

(i) District I shall have three board members, being positions 1, 2 and 3 and shall include the county of Whitman.

(ii) District II shall have two board members, being positions 4 and 5 and shall include the county of Spokane.

(iii) District III shall have one board member being position 6 and shall include the counties of Walla Walla, Garfield, Columbia and Asotin.

(iv) District IV shall have two board members, being positions 7 and 8 and shall include all other counties of the state of Washington: Provided, That the addition of another member, being position 8, shall not become effective until approved by a referendum vote of the affected commercial wrinkled pea seed producers.

**(3) Board membership qualifications.**

(a) The producer members of the board must be practical producers of ((dry peas and/or lentils)) pulse crops in the dis-

strict in and for which they are nominated and appointed and each shall be a ~~((citizen and))~~ resident of the state, over the age of eighteen years. Each producer board member must be and have been actually engaged in producing ~~((dry peas and/or lentils))~~ pulse crops within the state of Washington for a period of five years and has during that time derived a substantial portion of his or her income therefrom and is not engaged in business, directly or indirectly, as a handler or other dealer.

(b) The handler member of the board must be a practical handler of ~~((dry peas and/or lentils))~~ pulse crops and shall be a ~~((citizen and))~~ resident of the state, over the age of eighteen years ~~((and who is and has))~~. The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling ~~((dry peas and/or lentils))~~ pulse crops within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

**(4) Term of office.**

(a) The term of office for members of the board shall be three years, and one-third of the membership as nearly as possible shall be appointed each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through eight, the affected handler shall have position nine and the member representing the director position ten.

(c) The term of office for the initial board members shall be as follows:

Positions seven, eight, nine, and ten - One year

Positions four, five and six - Two years

Positions one, two, and three - Three years

(d) Except for the director's representative, no appointed member of the board may serve more than two full consecutive three-year terms.

(e) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

**(5) Nomination of director-appointed board members.**

(a) For the purpose of nominating candidates for appointment to board membership the director shall call separate meetings of affected producers and affected handlers.

(b) Each year the director shall call a nomination meeting for director-appointed board members in those districts whose board members term is about to expire. The meeting(s) shall be held at least thirty days in advance of the date set by the director for the advisory vote of board members.

(c) Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and in addition, written notice of every such meeting shall be given to all affected producers within such affected district and handlers according to the list maintained by the board pursuant to RCW 15.65.295.

(d) Nonreceipt of notice by any interested person shall not invalidate the proceedings at a nomination meeting.

(e) Any qualified affected producer or handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the meeting by written petition filed with the director signed by not less than five affected producers or affected handlers.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers and handlers. Nominating petitions for producers and handlers shall be signed by not less than five affected producers and handlers. Final date for filing nominations shall be not less than twenty days after the notice was mailed.

(g) When only one nominee is nominated for a director-appointed position, RCW 15.65.250 shall apply.

**(6) Advisory vote of board members.**

(a) An advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer and affected handler shall be entitled to one vote.

(b) An advisory vote shall be conducted for board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(c) Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the advisory vote. Not less than ten days prior to every advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his or her qualifications.

(d) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the advisory vote of any board member.

(7) **Vacancies.** In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary or other compensation, but each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying

out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director in order to defray the costs of formulating the order: Provided, That the total reimbursement to all applicants shall not exceed two thousand dollars.

(f) To establish a "~~((dry pea and lentil))~~ pulse crops board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done pursuant to this order. Such records, books and accounts shall be audited at least annually subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least fifteen days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All

records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(p) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(q) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(r) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(s) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of ~~((dry peas and lentils))~~ pulse crops.

(t) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of ~~((dry peas and lentils))~~ pulse crops including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(w) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(x) To maintain a list of the names and addresses of persons who handle ~~((dry peas and lentils))~~ pulse crops within the affected area and data on the amount and value of the dry peas and lentils handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(y) To maintain a list of the names and addresses of all affected persons who produce ~~((dry peas and lentils))~~ pulse

crops and the amount, by unit, of ~~((dry peas and lentils))~~ pulse crops produced during the past three years pursuant to RCW 15.65.295.

(z) To maintain a list of all persons who handle ~~((dry peas and lentils))~~ pulse crops and the amount of ~~((dry peas and lentils))~~ pulse crops handled by each person during the past three years pursuant to RCW 15.65.295.

(aa) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

**(11) Procedures for board.**

(a) The board shall hold regular meetings with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). The notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting through regular wire news services and radio-television press.

(c) The board ~~((shall establish by resolution, the time, place and manner of calling special meetings with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW))~~ may call special meetings as provided under RCW 42.30.080.

AMENDATORY SECTION (Amending WSR 04-17-021, filed 8/9/04, effective 9/9/04)

**WAC 16-536-040 Assessments and collections. (1) Assessments.**

(a) Before January 1, 2016, and after December 31, 2018, the assessment on all varieties of ((dry peas and dry lentils)) pulse crops subject to this marketing order shall be one percent of the net receipts at the first point of sale and shall be deducted by the first purchaser from the price paid to the grower. Such assessment shall be remitted to the commission board in accordance with procedures adopted by the commission board: Provided, That an assessment on commercial wrinkled pea seed shall not become effective unless approved by a referendum vote of the affected wrinkled pea seed producers.

(b) From January 1, 2016, through December 31, 2018, the assessment on all varieties of pulse crops subject to this marketing order shall be two percent of the net receipts at the first point of sale and shall be deducted by the first purchaser from the price paid to the grower. On January 1, 2019, the assessment will revert to the terms in (a) of this subsection.

(c) Assessments shall not be payable on any such ~~((dry peas and/or lentils))~~ pulse crops used by the producer thereof on his or her premises for feed, seed and personal consumption.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of this order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of this marketing order, to all persons from whom moneys were collected or received, or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and this order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of it. In the event of failure of such person or persons to pay any due and payable assessment or other such sum, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent, and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending Order Articles VII and VIII, filed 3/26/65)

**WAC 16-536-070 Effective time.** ~~((+))~~ This marketing order for pulse crops (formerly titled "dry peas and lentils") shall become effective on and after July 1, 1965, as amended by rule.

~~((2) This order shall remain in full force and effect until July 1, 1972 unless terminated prior thereto under the provisions of chapter 15.65 RCW as set forth in WAC 16-536-060: Provided, That if it remains in effect until said July 1, 1972 the director shall conduct a referendum election as required for the approval of an order under chapter 15.65 RCW at such time prior to such date so that he may determine if the affected producers and handlers desire that the order be terminated on such date or continued in full force and effect beyond such date. All the costs of conducting such election shall be defrayed from the funds of the board.))~~

**WSR 15-24-086**

**PROPOSED RULES**

**SEATTLE COLLEGES**

[Filed November 30, 2015, 1:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-087.

Title of Rule and Other Identifying Information: Student activities, rights and discipline.

Hearing Location(s): Seattle Colleges, Siegal Center, 1st Floor Boardroom, 1500 Harvard Avenue, Seattle, WA 98122, on January 7, 2016, at 2:30-3:30 p.m.

Date of Intended Adoption: January 14, 2016.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122-3803, e-mail wacinput@seattlecolleges.edu, fax (206) 934-3894, by January 7, 2016, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact wacinput@seattlecolleges.edu by January 4, 2016, (206) 934-3873.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update language to reflect mandatory changes required by the Violence Against Women Act (VAWA) and Title IX.

Reasons Supporting Proposal: The proposed rules are required in part to come into compliance with the new federal regulations implementing VAWA, *see* 34 C.F.R. Part 668.

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

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of federal law.

Name of Proponent: Seattle Colleges district, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sheila Edwards Lange, Seattle Central College, (206) 934-4454.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Seattle Colleges are not required to provide a cost-benefit analysis under RCW 34.05.328 (5)(a).

Jill Wakefield  
Chancellor

## NEW SECTION

**WAC 132F-121-005 Statement of values.** The Seattle College District is a diverse and dynamic learning community. As such, the college district maintains a strong commitment to our values. We value students: We promote programs, services and activities that address students' needs and interests; student success through accessibility and support services; and student development through activities both inside and outside the classroom. We value diversity: We promote respect for the abilities and interests of each individual; awareness and understanding of all people; and appreciation of the unique cultures of our campuses. We are committed to the concept and practice of equal opportunity for all, and do not tolerate discrimination or retaliation against 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, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification, in accordance with WAC 132F-121-110(1).

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

**WAC 132F-121-010 Definitions and general provisions.** For purposes of this chapter:

(1)(a) (~~Bullying is defined as the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof.~~) **Bullying.** Bullying is physical or verbal abuse, including written or electronic expressions, repeated over time, and involving a power imbalance between the aggressor and victim that is directed at another student or staff that:

(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;

(ii) Places the student in reasonable fear of harm to herself or himself or of damage to the student's property;

(iii) Creates an unlawful hostile environment at school for the student;

(iv) Infringes on the rights of the student at school; or

(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.

(b) (~~Cyber-bullying is defined as bullying through the use of technology or any electronic communication which shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic, or photo optical system including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyber-bullying shall also include the creation of a web page or blog in which the creator posted content or messages, if the creation or impersonation creates any of the conditions constituting bullying in the student conduct code. Cyber bullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions constituting bullying in the student conduct code.~~

(2)) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording, including images or videos of a sexual nature, and nonconsensual distribution of such material.

(c) **Stalking.** 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 person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(2) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, sexual violence, and domestic violence.

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

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

(c) Sexual violence. Sexual violence 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 as defined in (d) of this subsection.

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

(v) Stalking as defined in subsection (1)(c) of this section.

(vi) Consent: 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.

(d) Domestic violence. 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, and, includes conduct that causes emotional, psychological, physical, and sexual trauma.

(3) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle College, Seattle Central College, and South Seattle College. The Seattle Vocational Institute is considered to be part of Seattle Central College.

~~((3))~~ (4) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.

~~((4))~~ (5) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle College, Seattle Central College, South Seattle College, the Seattle Vocational Institute, and/or every other District VI educational facility, each separately and all together.

~~((5))~~ (6) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.

~~((6))~~ (7) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.

~~((7))~~ (8) "Vice-president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.

~~((8))~~ (9) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice-president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on his/her behalf, but this officer retains responsibility for the function.

~~((9))~~ (10) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

~~((10))~~ (11) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

~~((11))~~ (12) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

**WAC 132F-121-020 Student rights, freedoms, and responsibilities.** (1) ((Preamble-)) Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the ((district)) college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

(i) 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.

(ii) 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).

(iii) 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.

(iv) 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.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

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

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(iv) Sexual misconduct investigations. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(2) Classroom freedom of expression. The district recognizes the rights of students to freedom of discussion and free expression of views. However, students' rights of classroom expression do not include expressions or conduct which create a hostile educational environment or violate chapter 49.60 RCW or other applicable law. It is the responsibility of the instructor to insure and encourage the realization not only of the fact but of the spirit of free inquiry. Instructors have the responsibility to maintain order, but this authority shall not be

used to inhibit the expression of views contrary to their own. Students have the right to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they cannot do so in a disruptive manner that interferes with the educational process. Students are responsible for learning the content of any course of study for which they are enrolled. It also is the responsibility of the student to comply with the instructor's efforts to assure freedom of expression and to maintain order.

(3) Protection against improper evaluation. Instructors shall give their students fair and consistent evaluations of the students' course performance. Toward this end, instructors are also responsible for establishing appropriate standards of academic performance for each course. Fair and consistent grading is a legitimate classroom experience.

(4) Protection against improper disclosure. Information about student views, beliefs, and political associations which is acquired by instructors in the course of their work as faculty or advisors, under circumstances which clearly indicate that it is intended to be confidential, shall be treated as confidential and shall not be disclosed to others, unless it relates to the apparent or intended commission of a crime or disclosure is required by law. Protection against improper disclosure of student education record information is a serious professional obligation incurred by the teaching profession and district administrators. However, evaluations of student ability and character may be provided to third parties with the student's consent or in accordance with applicable law.

(5) Nonacademic expression and inquiry. Students and student organizations are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately, in accordance with law. They are free to support causes by orderly and lawful means which do not disrupt the operation of the institution and which comply with the district's policies regarding these activities.

(6) The district shall respect students' right to privacy. It will not inquire into the off-campus activities of its students without legal justification.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

**WAC 132F-121-110 Student misconduct.** Misconduct for which the campuses may impose sanctions includes, but is not limited to, any of the following:

(1) 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, religion; creed; genetic information; sexual orientation; age; gender identity; gender expression; veteran's status; or any other legally protected classification.

(2) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence as defined in WAC 132F-121-010(2).

(3) 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; religion; creed; genetic information; sexual orientation; gender identity; gender expression; veteran's status; or any other legally protected classification, and includes sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic forms of communication.

(4) Any act of course-related dishonesty, including but not limited to cheating or plagiarism.

(a) Cheating includes, but is not limited to, using, or attempting to use, any material, assistance, or source which has not been authorized by the instructor to satisfy any expectation or requirement in an instructional course, or obtaining, without authorization, test questions or answers or other academic material that belong to another.

(b) Plagiarism includes, but is not limited to, using another person's ideas, words, or other work in an instructional course without properly crediting that person.

(c) Academic dishonesty also includes, but is not limited to, submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

~~((2))~~ (5) Any other act of college-related dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, or misuse of any district document, record, or instrument of identification;

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

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

~~((3))~~ (6) Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other district activity, whether occurring on or off district property, or (b) any other activity that is authorized to occur on district property, whether or not actually conducted by the district.

~~((4))~~ (7) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, cyberbullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of ~~((any student, any district officer or employee, or any other person who is on district property or is participating in a district activity.~~

~~(5))~~ another person or another person's property.

(8) Attempted or actual damage to, or theft or misuse of, real or personal property or money of (a) the district or state, (b) any student or district officer, employee, or organization, or (c) any other person or organization lawfully present on district property, or possession of such property or money after it has been stolen.

~~((6))~~ (9) Failure to comply with the direction of a district officer or employee who is acting in the legitimate per-

formance of his or her duties, or failure to properly identify oneself to such a person when requested to do so.

~~((7))~~ (10) Participation in any activity which unreasonably disrupts the operations of the district or infringes on the rights of another member of the district community, or leads or incites another person to engage in such an activity.

~~((8))~~ Possession or use, without express authorization by the district chancellor or a campus president, of any explosive, incendiary device, dangerous chemical, weapon, or other device or substance which can be used to inflict bodily harm or to damage real or personal property.

~~(9))~~ (11) Weapons. Carrying, holding, wearing, exhibiting, displaying or drawing of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or the president's designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

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

(12) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

~~((10))~~ Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, consuming, or selling any alcoholic beverage, except as permitted by law and authorized by the chancellor or a college president.

(11) Being observably under the influence of any legend drug, marijuana, narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except (a) in accordance with a lawful prescription for that student by a licensed health care professional or (b) as permitted by law and authorized by the chancellor or a college president.

~~(12))~~ (13) Alcohol. The use, possession, delivery, or sale of any alcoholic beverage, except as permitted by law, applicable college policies, or authorized by chancellor or a college president, or being observably under the influence of alcohol.

(14) Drugs.

(a) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of mari-



juana, federal law prohibits such use on college premises or in connection with college activities.

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

(15) Obstruction of the free flow of pedestrian or vehicular movement on district property or at a district activity.

~~((13))~~ (16) Conduct which is disorderly, lewd, or obscene.

~~((14))~~ (17) Breach of the peace, or aiding, abetting, or procuring a breach of the peace.

~~((15) Discriminatory action which harms or adversely affects any student or district employee because of her/his race, color, national origin, mental or physical disability, gender, sexual orientation, age, creed, or religion.~~

(16) Sexual harassment of a student or district employee. This includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that has the effect of denying or limiting a student's ability to participate or benefit from any of the college's programs.

(17) Other harassment of a student or district employee. This includes, but is not limited to, repeated and unwelcome following (stalking) or contacting of such a person or making a threat which places that person in reasonable fear of bodily harm.

~~(18) Smoking inside a campus building or in or on any other property where smoking is not authorized.)~~ (18) The use of tobacco, electronic cigarettes, and related products is prohibited in any building owned, leased or operated by the college, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of such buildings, and where otherwise prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, and snuff.

(19) Theft or other misuse of computer time or other electronic information resources of the district. Such misuse includes but is not limited to:

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

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

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

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

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

(f) Use of such time or resources to interfere with normal operation of the district'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 district's electronic information resources without authorization; or

(i) Failure to comply with the district's electronic use policy.

(20) Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to district property, or unauthorized entry onto or into district property.

(21) Abuse or misuse of any of the procedures relating to student complaints or misconduct, including but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

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

(d) Interfering with someone else's proper participation in a proceeding;

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

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

~~(22) ((Operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.))~~ Safety violations. The operation of any motor vehicle on district property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person. Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(23) Violation of any other district rule, requirement, or procedure, including but not limited to any that is posted in electronic form, the district's traffic and parking rules, or the requirements for carpool parking.

(24) Violation of any federal, state, or local law, rule, or regulation.

(25) Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceeding 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.

(26) Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

(27) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies

including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

**AMENDATORY SECTION** (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

**WAC 132F-121-160 Disciplinary actions.** (1) Any of the following disciplinary sanctions may be imposed for violation of one or more specified provisions of this student conduct code:

(a) Warning: Oral notice to the student of the violation(s). There shall be no appeal from a warning.

(b) Reprimand: Written notice to the student of the violation(s). A reprimand indicates, and usually states, that other or further misconduct, especially any continuation or repetition of the misconduct in question, may or will result in more serious disciplinary action. There shall be no appeal from a reprimand.

(c) Probation: Placement of one or more conditions on the student's continued attendance, as specified in the written notice to the student. The time period of the probation will ordinarily be stated in the notice; if not stated at all, or if so stated, the probation shall be for an indefinite period, concluding only with the end of the student's enrollment.

Probation may include formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) Suspension from activities: Disqualification of the student, for a stated or indefinite period of time, from participation in specified (or all) privileges, services, or activities that are provided or sponsored by the district.

(e) Suspension of enrollment: Termination, for a stated or indefinite period of time, of all rights as an enrolled student in the college and/or the district, subject to the student's right to seek reinstatement as provided in WAC 132F-121-240.

(f) Expulsion: Permanent termination of a student's enrollment, and right to enroll, at any college or other educational facility in the district.

(g) Grade change: Lowering of a student's grade in a course below that awarded by the instructor.

(2) The conditions or terms of probation or suspension may include, without limitation:

(a) Restriction of future contact or communication with designated persons;

(b) Restriction of the student's access to district property, and/or

(c) Payment for personal injury, property damage, or other expenses related to the violation;

(d) Requirement of a medical evaluation by a qualified professional to assess the student's ability to function in the academic environment. Upon completion of the medical

evaluation, the student may be readmitted so long as the student does not pose a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services. In determining whether students with disabilities (as defined by Section 504 of the Rehabilitation Act, Title II of the ADA, and chapter 49.60 RCW) pose such a direct threat, the vice-president of student services or designee will make an individualized assessment based on reasonable judgment that relies on current medical knowledge or on the best available evidence, to ascertain the nature, duration, and severity of the risk and the likelihood, imminence, and nature of future harmful conduct to others in the college community;

(e) Requirement of satisfactory completion of anger management therapy or other specified counseling.

Failure to comply with a condition or term of probation or suspension shall be cause for further disciplinary sanction.

(3) A respondent's record of past misconduct may be considered in determining the appropriate disciplinary action.

(4) A summary suspension under WAC 132F-121-250 may be combined with or added to another suspension or an expulsion.

(5) A suspension or expulsion may include a provision stating whether all or any part of the respondent's tuition and other fees will be refunded.

(6) A disciplinary sanction, except a warning, shall be imposed through written notice served on the respondent. Each notice of disciplinary action shall state:

(a) A reasonable description of the facts on which the action is based;

(b) The provision(s) of this student conduct code found to have been violated;

(c) The sanction(s) imposed; and

(d) The respondent's right to appeal, i.e., to request an adjudicative proceeding, under these rules (except for a reprimand).

A copy of these student conduct rules should be included with the notice.

**AMENDATORY SECTION** (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

**WAC 132F-121-170 Appeals and referrals generally.**

(1) Except as otherwise provided herein, a respondent who has received notice of disciplinary sanction(s) imposed by the vice-president for student services may appeal such sanction(s) by filing a written notice of appeal with that officer within ~~((twenty))~~ ten days. The notice of appeal may include any statement that the respondent wishes to make of the grounds for her/his appeal.

(2) If the vice-president has referred the matter to the student conduct committee for action, no appeal is required, but the student may file a written response with the vice-president within twenty days of service of that referral.

(3) Except for conduct matters referred for brief adjudicative proceedings, the vice-president shall promptly transmit any notice of appeal or response to referral, together with a copy of any notification of discipline, to the chair of the student conduct committee, described below. The vice-president should serve a copy of that transmittal on the respondent.

(4) Except through a summary suspension under WAC 132F-121-250, a respondent's enrollment status and rights as an enrolled student shall not be altered, on the basis of a disciplinary sanction imposed by the vice-president, until (a) the appeal period has run without a proper appeal being filed or (b) if there is an appeal, either that appeal has been withdrawn or the final order has been entered.

(5) If a respondent files a timely appeal of a probation or suspension that includes restrictions on contacts, communications, or campus access, the vice-president will ordinarily modify those restrictions as necessary to facilitate the respondent's preparation for the hearing.

**WSR 15-24-091**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed November 30, 2015, 5:51 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-980-065 Home care aide provisional certification, proposing amending the rule to remove an expiration date for training and certification exemption for certain long-term care workers.

Hearing Location(s): Town Center 2, Conference Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on January 14, 2016, at 9:30 a.m.

Date of Intended Adoption: January 21, 2016.

Submit Written Comments to: Stacey Saunders, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4901, by January 14, 2016.

Assistance for Persons with Disabilities: Contact Stacey Saunders by January 4, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule is intended to implement HB 1531 (chapter 152, Laws of 2015). The proposed change removes the end date for issuing provisional certifications for certain long-term care workers.

Reasons Supporting Proposal: The department proposes the revisions to comply with HB 1531, which removed an expiration date for training and certification exemptions for certain long-term care workers.

Statutory Authority for Adoption: RCW 18.88B.060.

Statute Being Implemented: RCW 18.88B.035, HB 1531 (chapter 152, Laws of 2015).

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stacey Saunders, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2813; and Enforcement: Dave Magby, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4660.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025

and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

November 24, 2015  
John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 14-09-002, filed 4/3/14, effective 5/4/14)

**WAC 246-980-065 Home care aide provisional certification.** (1) The department may issue a provisional certification to a long-term care worker who is limited-English proficient and submits:

(a) A request for a provisional certification; and  
(b) Verification of his or her date of hire as a long-term care worker, as follows:

(i) For individual providers, verification of the applicant's date of hire submitted directly by the department of social and health services; or

(ii) For all other applicants, a form supplied by the department and completed by the employer who hired the applicant as a long-term care worker, verifying the applicant's date of hire.

(2) A provisional certification will be issued only once.

(3) A provisional certification will take effect two hundred days from the applicant's date of hire as a long-term care worker, as defined in WAC 246-980-010(2).

(4) A provisional certification will expire two hundred sixty days from the applicant's date of hire as a long-term care worker. The applicant must stop working on the two hundred sixtieth day of employment if the certification has not been granted for any reason.

(5) A request for provisional certification may be denied pursuant to chapter 18.130 RCW, the Uniform Disciplinary Act, or based on RCW 18.88B.080.

(6) For the purposes of this section, "limited-English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

~~((7) Provisional certifications will not be issued after March 1, 2016.))~~

**WSR 15-24-099**  
**PROPOSED RULES**  
**SKAGIT VALLEY COLLEGE**

[Filed December 1, 2015, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-049.

Title of Rule and Other Identifying Information: Chapter 132D-120 WAC, Student rights and responsibilities (request to be repealed). Replaced by chapter 132D-150 WAC, Code of student conduct.

Hearing Location(s): Skagit Valley College, Library, Room No. 161, 2405 East College Way, Mount Vernon, WA 98273; and Skagit Valley College, Oak Hall, Room No. 204, 1900 S.E. Pioneer Way, Oak Harbor, WA 98277, on January 21, 2016, at 2:30 p.m.-3:30 p.m.

Date of Intended Adoption: February 2, 2016.

Submit Written Comments to: Dr. David Paul, Vice-President of Student Services, 2405 East College Way, Mount Vernon, WA 98273, e-mail dave.paul@skagit.edu, fax (360) 416-7890, by January 14, 2016.

Assistance for Persons with Disabilities: Contact Lisa Forsythe by January 14, 2016, TTY (360) 416-7718 or (360) 416-7958.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify disciplinary and grievance procedures; to update language in guidelines and sanctions; to comply with the Violence Against Women Act (VAWA) and Title IX.

Reasons Supporting Proposal: This change will clarify disciplinary and grievance procedures and will update language in guidelines and sanctions. To be in compliance with VAWA and Title IX.

Statutory Authority for Adoption: RCW 28B.50.150.

Statute Being Implemented: Not applicable.

Rule is necessary because of federal law, VAWA, Title IX.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This change will clarify disciplinary and grievance procedures and will update language in guidelines and sanctions. To be in compliance with VAWA and Title IX.

Name of Proponent: Skagit Valley College, Community College District No. 4, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dr. David Paul, 2405 East College Way, Mount Vernon, WA 98273, (360) 416-7738.

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.

December 1, 2015

Lisa Radeleff

Executive Assistant to the  
President/Rules Coordinator

## Chapter 132D-150 WAC

### CODE OF STUDENT CONDUCT

#### NEW SECTION

**WAC 132D-150-010 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures

is the responsibility of the vice-president for student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

#### NEW SECTION

**WAC 132D-150-020 Statement of jurisdiction.** The code of student conduct shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, on-line education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

#### NEW SECTION

**WAC 132D-150-030 Definitions.** The following definitions shall apply for purpose of this student conduct code:

(1) "Student conduct officer" is a college administrator designated by the president or vice-president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

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

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

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are

heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

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

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

(b) By sending the document via first class mail to the party's last known address; or

(c) By sending the document by e-mail via Skagit Valley College's online student conduct software. It is the responsibility of each student to regularly check their official Skagit Valley College e-mail address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

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

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

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

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

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

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

(12) "Calendar day" means days on the calendar including weekends and holidays.

Note: "Day" refers to calendar days unless otherwise specified.

#### NEW SECTION

##### **WAC 132D-150-040 Statement of student rights.** (1)

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.

(2) The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(a) Academic freedom.

(i) 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.

(ii) 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).

(iii) 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.

(iv) 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.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

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

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

#### NEW SECTION

**WAC 132D-150-050 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

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

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

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

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

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

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

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

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

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

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

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

(a) The college or state;

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

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

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, includ-

ing failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical, religious, or other purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) 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 or physical harm, or serious mental or emotional harm, to any student.

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

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

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

(c) **Drugs.** The use, possession, delivery, sale, or being 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 practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" includes, but is not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, 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; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

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

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

(c) **Sexual violence.** "Sexual violence" 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 cer-

tain 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; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

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

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

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

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

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

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

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

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

(i) Failure to comply with the college's electronic use policy.

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

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

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

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 132D-150-070 Disciplinary sanctions—Terms and conditions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from

the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

#### NEW SECTION

**WAC 132D-150-090 Initiation of disciplinary action.**

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

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



conduct officer may take disciplinary action based upon the available information.

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

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132D-150-070.

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

#### NEW SECTION

**WAC 132D-150-110 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten business days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

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

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

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

(b) Dismissals; and

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

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

#### NEW SECTION

**WAC 132D-150-130 Brief adjudicative proceedings authorized.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Parking violations.

(2) Outstanding debts owed by students or employees.

(3) Use of college facilities.

(4) Residency determinations.

(5) Use of library - Fines.

(6) Challenges to contents of education records.

(7) Loss of eligibility for participation in institution sponsored athletic events.

(8) Student conduct appeals involving the following disciplinary actions:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands;

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

#### NEW SECTION

**WAC 132D-150-150 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

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

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

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

(3) The conduct review officer shall serve an initial decision upon both the parties within ten business days of consideration of the appeal. The initial decision shall contain a brief

written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one calendar days of service of the initial decision, the initial decision shall be deemed the final decision.

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

#### NEW SECTION

**WAC 132D-150-170 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

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

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

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

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

#### NEW SECTION

**WAC 132D-150-190 Brief adjudicative proceedings—Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

#### NEW SECTION

**WAC 132D-150-210 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132D-150-230 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing no less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

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

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

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline, or referral to the committee; and

(b) The notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

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

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

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

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

#### NEW SECTION

**WAC 132D-150-250 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

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

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

#### NEW SECTION

**WAC 132D-150-270 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

#### NEW SECTION

**WAC 132D-150-290 Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of

appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

#### NEW SECTION

**WAC 132D-150-310 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

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

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

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

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

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

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

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

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued

while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

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

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

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

#### NEW SECTION

**WAC 132D-150-330 Classroom misconduct and authority to suspend for no more than one day.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one instructional day per incident, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

#### NEW SECTION

**WAC 132D-150-350 Supplemental sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132D-150-005 through 132D-150-080. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132D-150-370 Supplemental definitions.** The following supplemental definitions shall apply for purposes

of student conduct code proceedings involving allegations of sexual misconduct by a student:

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

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 132D-150-025.

#### NEW SECTION

**WAC 132D-150-390 Supplemental complaint process.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX coordinator or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

**WAC 132D-150-410 Supplemental appeal rights.** (1) The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132D-150-390. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) For such appeals that involve sexual misconduct allegations, the student conduct committee shall consist of three members:

- (a) Two faculty members appointed by the president;
- (b) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president at the beginning of the academic year.

(8) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(9) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(10) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assis-

tants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(11) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

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

(13) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

**WSR 15-24-110**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)  
[Filed December 1, 2015, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-084.

Title of Rule and Other Identifying Information: WAC 182-506-0010 Medical assistance units (MAU) for MAGI-based programs and new section WAC 182-506-0012 Determining a person's medical assistance units.

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](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 5, 2016, at 10:00 a.m.

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

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on January 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by December 29, 2015, e-mail [amber.lougheed@hca.wa.gov](mailto: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: To improve clarity and align with 42 C.F.R. 435.603.

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 necessary because of federal law, 42 C.F.R. 435.603.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Sullivan, Olympia, Washington 98504-2716, (360) 725-1344; and Enforcement: Mick Petersen, Olympia, Washington 98504-5534, (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

December 1, 2015  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-506-0010 Medical assistance units ((MAU)) for MAGI-based ((Washington apple health)) programs. (((1) A person's financial eligibility for programs that use modified adjusted gross income (MAGI) methodology, as described in WAC 182-509-0300, is based on multiple factors including relationship to other household members, age, tax status and pregnancy. The rules in this section describe which household members' income is counted in determining a person's eligibility. These household members comprise the person's "medical assistance unit" (MAU). Members of a single household may have different MAUs.**

**((2) The determination of countable income for MAGI-based programs is described in chapter 182-509 WAC.**

**((3) A person's MAGI-based countable income equals the total countable income of the members of the person's MAU (see WAC 182-509-0001). This income is compared to the income standard for the MAU size when determining eligibility for programs based on a federal poverty limit standard.**

**((4) The number of persons in the MAU is increased by one for each unborn child for each pregnant woman already included in the MAU under this section.**

**((5) For any given tax year in which an initial eligibility determination, renewal of eligibility, post-eligibility review or change of circumstance is made, MAUs are determined as follows:**

**((a) The MAU for a person who expects to file a federal tax return and does not expect to be claimed as a tax dependent by another tax filer includes the following:**

**((i) The person (tax filer) and all persons the tax filer expects to claim as a tax dependent; and**

**((ii) The following additional persons, but only if they live in the same residence:**

**((A) The person's spouse;**

**((B) The person's natural, adopted and step-children less than nineteen years of age;**

~~(C) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and~~

~~(D) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.~~

~~(b) The MAU for a person who expects to be claimed as a tax dependent by a tax filer includes:~~

~~(i) The person (tax dependent), the tax filer, and any other persons in the tax filer's MAU (as determined according to (a) of this subsection), except if:~~

~~(A) The person is not the spouse or biological, adopted, or natural child of the tax filer;~~

~~(B) The person is under age nineteen and living in the same residence as both parents, but is expected to be claimed as a tax dependent by only one parent, either because the parents are unmarried or do not expect to file taxes jointly; or~~

~~(C) The person is under age nineteen and expects to be claimed by a noncustodial parent.~~

~~(ii) If (b)(i)(A), (B) or (C) of this section applies, the person's MAU is determined according to the nonfiler rules described in (e) of this subsection.~~

~~(e) The MAU for a person who does not expect to file a federal tax return and who either does not expect to be claimed as a tax dependent or meets one of the tax dependent exceptions in (b) of this subsection includes the following persons, but only if they live in the same residence:~~

~~(i) The person (self);~~

~~(ii) The person's spouse;~~

~~(iii) The person's natural, adopted and step-children less than nineteen years of age;~~

~~(iv) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and~~

~~(v) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.) This section applies to applicants whose financial eligibility for Washington apple health coverage is based on modified adjusted gross income methodology under WAC 182-503-0510 and 182-509-0300.~~

(1) General medical assistance unit (MAU) rules.

(a) The rules in this section describe how the medicaid agency must determine who is in an applicant's MAU.

(b) In this section and WAC 182-506-0012, "applicant" means a person applying for or receiving coverage.

(c) Each person will have an individualized MAU and may have different eligibility results than other people on the same application.

(d) The countable income used to determine a person's eligibility is the sum of the countable income of everyone in the person's MAU.

(2) Rules regardless of tax filing status.

(a) If a married couple resides together, the agency must include both people in each other's MAU regardless of tax filing status.

(b) If a member of the MAU is pregnant, the number of people in the MAU increases by one for each unborn child.

(c) A deceased person does not count in the MAU of other applicants except in the month the person died.

(3) People residing in an institution under chapter 182-514 WAC. An applicant is the only person in the MAU if the applicant:

(a) Has resided in a medical institution, institution for mental diseases (IMD), or inpatient psychiatric facility for thirty consecutive days; or

(b) Based on an assessment by the department of social and health services, is likely to reside in a medical institution, IMD, or inpatient psychiatric facility for thirty consecutive days.

## NEW SECTION

**WAC 182-506-0012 Determining a person's medical assistance unit.** This section applies to people whose financial eligibility for Washington apple health coverage is based on modified adjusted gross income methodology.

(1) Determining a tax filer's medical assistance unit (MAU).

(a) A tax filer is a person who:

(i) Expects to file a federal income tax return; and

(ii) Does not expect to be claimed as a tax dependent on a federal income tax return.

(b) If the applicant is a tax filer, the following people constitute the applicant's MAU:

(i) The tax filer;

(ii) The tax filer's spouse, if residing with the tax filer; and

(iii) Everyone the tax filer expects to claim as a tax dependent.

(2) Determining a tax dependent's MAU.

(a) A tax dependent is a person who expects to be claimed as a tax dependent on a tax filer's federal income tax return.

(b) If the applicant is a tax dependent:

(i) The following people constitute the tax dependent's MAU unless the tax dependent meets one of the exceptions in (b)(ii) of this subsection:

(A) The tax dependent;

(B) The tax dependent's spouse, if living with the tax dependent;

(C) The tax filer who claims the tax dependent;

(D) The spouse of the tax filer who claims the tax dependent, if living with the tax filer; and

(E) All tax dependents claimed by the tax filer.

(ii) A tax dependent who meets one of the exceptions below is treated as a nonfiler under subsection (3) of this section:

(A) A tax dependent who is neither the spouse nor the child of the tax filer;

(B) A child under age nineteen who resides with both parents and those parents do not file a joint tax return; or

(C) The tax dependent expects to be claimed by a non-custodial parent.

(3) Determining a nonfiler's MAU.

(a) A nonfiler is a person who does not expect to file a federal income tax return and either:

(i) Does not expect to be claimed as a dependent; or

(ii) Meets one of the exceptions listed in subsection (2)(b)(ii) of this section.

(b) If the applicant is a nonfiler, the nonfiler and the following people constitute the applicant's MAU, but only if residing with the nonfiler:

- (i) The nonfiler's spouse;
- (ii) The nonfiler's children under age nineteen; and
- (iii) If the nonfiler is under age nineteen, the nonfiler's parents and the nonfiler's siblings under age nineteen.

December 1, 2015  
Wendy Barcus  
Rules Coordinator

**WSR 15-24-112**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)  
[Filed December 1, 2015, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-103.

Title of Rule and Other Identifying Information: WAC 182-500-0010 Medical [assistance] definitions—A.

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](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 5, 2016, at 10:00 a.m.

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

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia WA, 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by January 5, 2015 [2016].

Assistance for Persons with Disabilities: Contact Amber Lougheed, TTY (800) 848-5429, (360) 725-1349, or e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the Washington apple health definition for "agency designee" to include any state agency selected to act on behalf of the HCA. The agency is also amending the definition of "agency" to include the term "medicaid agency." During the course of this review, the agency may identify additional changes that are required in order to improve clarity or update policy.

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, (360) 725-1408; Implementation and Enforcement: Ann Myers, P.O. Box 42716, Olympia, WA, (360) 725-1345.

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.

AMENDATORY SECTION (Amending WSR 15-15-143, filed 7/17/15, effective 8/17/15)

**WAC 182-500-0010 Medical assistance definitions—**  
**A. "Administrative renewal"** means the agency uses (~~(verification from)~~) electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095) with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

**"Agency" or "medicaid agency"** means the Washington state health care authority (HCA) (~~(created under chapter 41.05 RCW)~~).

**"Agency's designee"** means (~~(the Washington state department of social and health services (DSHS), created under chapter 43.20A RCW)~~) any entity expressly designated by the agency to act on its behalf.

**"Allowable costs"** are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients or not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

**"Alternative benefits plan"** means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Ancillary services"** means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

**"Apple health for kids"** is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs (~~(or)~~), Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

**"Attested income"** means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

**"Authorization"** means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See



also "expedited prior authorization" and "prior authorization.")

"**Authorized representative**" is defined under WAC 182-503-0130.

**WSR 15-24-114**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)  
[Filed December 1, 2015, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-047.

Title of Rule and Other Identifying Information: WAC 182-504-0135 Washington apple health—Reinstated coverage pending an appeal and 182-518-0025 Washington apple health—Notice requirements—Changes in and terminations of coverage.

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](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 5, 2016, at 10:00 a.m.

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

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by January 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by December 29, 2015, e-mail [amber.lougheed@hca.wa.gov](mailto: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: These rules are being amended to clarify that reinstated coverage is a remedy to the agency's failure to meet notice obligations. Content regarding reinstated coverage has moved to WAC 182-518-0025 with the intention of repealing WAC 182-504-0135. During the course of this review, WAC 182-518-0025 has also been amended to improve clarity.

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 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Mick Pettersen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0913.

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.

December 1, 2015  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

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

- ~~(a) The change in coverage;~~
- ~~(b) The date your coverage will change or end;~~
- ~~(c) Specific facts and reason(s) for the decision;~~
- ~~(d) Specific rules the decision is based on; and~~
- ~~(e) Information found in WAC 182-518-0005(4).~~

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

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

- ~~(a) You asked us to change or end your coverage;~~
- ~~(b) We are changing or ending your coverage due to a change in law;~~

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

~~(d) We are ending your coverage because mail we sent you was returned to us with no forwarding address and we do not have a more current address for you;~~

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

~~(f) We have facts indicating probable fraud by you, in which case we may notify you five days before we change or end your coverage.~~

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

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

(1) General rule. The agency sends written notice to the client at least ten days before terminating, suspending, or reduc-

ing the client's medicaid eligibility. The ten-day notice period starts on the day the agency sent the notice.

**(2) Exceptions to ten-day notice period.**

(a) If the agency has facts indicating fraud by the client or on the client's behalf, the agency sends written notice to the client at least five days before changing the client's coverage.

(b) The agency sends written notice to the client no later than the date the agency changed the client's eligibility if:

(i) The client requested the change;

(ii) A change in law caused the change;

(iii) The client is incarcerated and is expected to remain incarcerated at least thirty days;

(iv) Mail sent to the client has been returned without a forwarding address; or

(v) The agency is terminating the client's eligibility because everyone in the medical assistance unit under chapter 182-506 WAC either:

(A) Died; or

(B) Began receiving medicaid from a jurisdiction other than Washington state.

**(3) Notice contents.** Written notice under this section states:

(a) The nature of the change;

(b) The effective date of the change;

(c) The reason for the change;

(d) The regulation on which the change is based;

(e) The client's appeal rights, if any; and

(f) The client's right to continued coverage, if any.

**(4) Reinstated coverage.** If the agency fails to meet its notice obligations under this section, the agency reinstates the client's coverage back to the date of the change.

**(5) Hearing rights.** A person who does not agree with agency action under this section may request an administrative hearing under chapter 182-526 WAC, and may be entitled to continued coverage under WAC 182-504-0130.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 182-504-0135 Washington apple health—Reinstated coverage pending an appeal.

**WSR 15-24-115**

**PROPOSED RULES**

**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed December 1, 2015, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-089.

Title of Rule and Other Identifying Information: WAC 182-545-400 Habilitative services, 182-545-900 Neurodevelopmental centers, and 182-551-2110 Home health services—Covered specialized therapy.

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](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on January 5, 2016, at 10:00 a.m.

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

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5 p.m. on January 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by December 29, 2015, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are necessary to comply with service requirements in the Patient Protection and Affordable Care Act.

Reasons Supporting Proposal: This rule is necessary to create a habilitative services section by January 1, 2014, to comply with service requirements in the Patient Protection and Affordable Care Act, and to update related sections to reflect the creation of habilitative services.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Jean Gowen, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1966.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed new and amended rules and determines they will not have an adverse economic impact on small businesses. The preparation of a comprehensive small business economic impact statement therefore is not required.

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.

December 1, 2015

Wendy Barcus

Rules Coordinator

**NEW SECTION**

**WAC 182-545-400 Habilitative services.** (1) Habilitative services assist the client in partially or fully attaining, learning, maintaining, or improving developmental-age appropriate skills that were not fully acquired as a result of a congenital, genetic, or early acquired health condition. To the extent practical, habilitative services maximize the client's ability to function in the client's environment.

(2) Eligibility is limited to clients who are enrolled in the Washington apple health alternative benefits plan defined in WAC 182-501-0060 and who have a diagnosis which is one of the qualifying conditions listed in the agency's provider guide for habilitative services. Clients enrolled in an agency-

contracted managed care organization (MCO) must arrange for rehabilitative services through their MCO.

(3) The following licensed health care professionals may enroll with the agency to provide rehabilitative services within their scope of practice to eligible clients:

- (a) Physiatrists;
- (b) Occupational therapists;
- (c) Occupational therapy assistants supervised by a licensed occupational therapist;
- (d) Physical therapists;
- (e) Physical therapy assistants supervised by a licensed physical therapist;

(f) Speech-language pathologists who have been granted a certificate of clinical competence by the American Speech-Language-Hearing Association; and

(g) Speech-language pathologists who have completed the equivalent educational and work experience necessary for such a certificate.

(4) The agency pays for rehabilitative services that are:

(a) Covered within the scope of the client's alternative benefits plan under WAC 182-501-0060;

(b) Medically necessary;

(c) Within currently accepted standards of evidence-based medical practice;

(d) Ordered by a physician, physician assistant, or an advanced registered nurse practitioner;

(e) Begun within thirty calendar days of the date ordered;

(f) Provided by one of the health care professionals listed in subsection (3) of this section;

(g) Authorized under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published provider guides;

(h) Billed under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published provider guides; and

(i) Provided as part of a rehabilitative treatment program:

(i) In an office or outpatient hospital setting;

(ii) In the home, by a home health agency as described in chapter 182-551 WAC; or

(iii) In a neurodevelopmental center, as described in WAC 182-545-900.

(5) For billing purposes under this section:

(a) Each fifteen minutes of timed procedure code equals one unit.

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(c) Duplicate services for rehabilitative services are not allowed for the same client when both providers are performing the same or similar procedure on the same day.

(d) The agency does not pay a health care professional for rehabilitative services performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

(6) The limitations in subsection (7) of this section do not apply to eligible clients under age twenty-one.

(7) For eligible clients age twenty-one and older, the agency covers rehabilitative services that include an ongoing management plan for the client or the client's caregiver to support continued client progress. The agency limits rehabilitative services as follows:

(a) Occupational therapy, per client, per year:

(i) Without authorization:

(A) One occupational therapy evaluation;

(B) One occupational therapy reevaluation at time of discharge; and

(C) Twenty-four units of occupational therapy (which equals approximately six hours).

(ii) With expedited prior authorization (EPA), up to twenty-four additional units of occupational therapy may be available when the therapy is required as part of an initial botulinum toxin injection protocol for spasticity or dystonia and botulinum toxin has been authorized by the agency.

(b) Physical therapy, per client, per year:

(i) Without authorization:

(A) One physical therapy evaluation;

(B) One physical therapy reevaluation at time of discharge; and

(C) Twenty-four units of physical therapy (which equals approximately six hours).

(ii) With EPA, up to twenty-four additional units of physical therapy may be available when the therapy is required as part of an initial botulinum toxin injection protocol for spasticity or dystonia and botulinum toxin has been authorized by the agency.

(c) Speech therapy, per client, per year:

(i) Without authorization:

(A) One speech language pathology evaluation;

(B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With EPA, up to six additional units of speech therapy may be available when:

(A) The therapy is required as part of an initial botulinum toxin injection protocol for spasticity or dystonia and botulinum toxin has been authorized by the agency; or

(B) The client has a speech deficit caused by the qualifying condition which requires a speech generating device.

(d) Two durable medical equipment needs assessments, per client, per year. The agency covers devices and other durable medical equipment for rehabilitative purposes to treat conditions that qualify under chapter 182-543 WAC.

(e) Two program units of orthotics management and training of upper and lower extremities, per client, per day.

(f) Two program units for the provider to assess prosthetic or orthotic use, per client, per year.

(g) One muscle testing procedure, per client, per day.

(h) One wheelchair-needs assessment, per client, per year.

(8) The agency evaluates requests for rehabilitative services that exceed the limitations in this section under WAC 182-501-0169. The agency requires prior authorization for additional units when:

(a) The criteria for EPA do not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) The provider requests it as a medically necessary service.

(9) The agency does not cover the following:

- (a) Day habilitation services designed to provide training, structured activities, and specialized services to adults;
- (b) Services to assist basic needs;
- (c) Vocational services;
- (d) Custodial services;
- (e) Respite care;
- (f) Recreational care;
- (g) Residential treatment;
- (h) Social services; and
- (i) Educational services of any kind.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

**WAC 182-545-900 Neurodevelopmental centers.** (1)

This section describes:

(a) Neurodevelopmental centers that may be reimbursed by the agency;

(b) Clients who may receive covered services at a neurodevelopmental center; and

(c) Covered services ~~((that may be provided at and reimbursed to))~~ for which a neurodevelopmental center may be reimbursed.

(2) In order to provide and be reimbursed for the services listed in subsection (4) of this section, the agency requires a neurodevelopmental center ~~((provider))~~ to do all of the following:

(a) Be contracted with the department of health (DOH) as a neurodevelopmental center;

(b) Provide documentation of the DOH contract to the agency; and

(c) Have an approved core provider agreement with the agency.

(3) Clients ~~((s))~~ age twenty ~~((years of age))~~ or younger ~~((s))~~ may receive outpatient rehabilitation and habilitative services (occupational therapy, physical therapy, and speech therapy) in agency-approved neurodevelopmental centers.

(4) The agency reimburses neurodevelopmental centers for providing the following services to clients:

(a) Outpatient rehabilitation and habilitative services as described in chapter 182-545 WAC ~~((182-545-200))~~; and

(b) Specific pediatric evaluations and team conferences that are:

(i) Attended by the center's medical director; and

(ii) Identified as payable in the agency's ~~((billing instructions))~~ provided guides.

(5) ~~((In order))~~ To be reimbursed, neurodevelopmental centers must meet the agency's billing requirements in WAC 182-502-0020, 182-502-0100, and 182-502-0150.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

**WAC 182-551-2110 Home health services—Covered specialized therapy.** The agency covers ~~((specialized therapy (also known as outpatient rehabilitation)))~~ outpatient rehabilitation and habilitative services in an in-home setting by a home health agency. ~~((See chapter 182-545 WAC outpatient rehabilitation for coverage and limitations.))~~ Outpatient

rehabilitation and habilitative services are described in chapter 182-545 WAC. Specialized therapy is defined in WAC 182-551-2010.

**WSR 15-24-116**

**PROPOSED RULES**

**DEPARTMENT OF REVENUE**

[Filed December 1, 2015, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-02-088.

Title of Rule and Other Identifying Information: WAC 458-20-100 Appeals (Rule 100) explains the procedures for administrative review of actions of the department or of its officers and employees in the assessment or collection of taxes.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on January 7, 2016, at 10:00 a.m.

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

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

Date of Intended Adoption: January 14, 2016.

Submit Written Comments to: Jay Jetter, Department of Revenue, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, by January 7, 2016.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing an amendment to Rule 100 to clarify that the department's administrative review is an informal review by the department, and not an independent review such as that conducted by the board of tax appeals or the Thurston County superior court. In addition, the proposed rule describes a more streamlined and efficient administrative review process.

Reasons Supporting Proposal: The proposed amendments both clarify and update information regarding the department's informal administrative review process.

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

Statute Being Implemented: RCW 82.01.060(4), 82.32.160, and 82.32.170.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1575; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

December 1, 2015  
Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-20-036, filed 9/29/05, effective 11/1/05)

**WAC 458-20-100 ((Appeals:)) Informal administrative reviews. ((1) Introduction.**

(a) This rule explains the procedures for administrative review of actions of the department or of its officers and employees in the assessment or collection of taxes, as provided in RCW 82.01.060(4), including, but not limited to:

- (i) An assessment of tax, interest, or penalties;
- (ii) The denial of a refund, credit, or deferral request;
- (iii) The issuance of a balance due notice or a notice of delinquent taxes, including a notice of collection action; and
- (iv) The issuance of an adverse ruling on future liability from the taxpayer information and education section.

(b) Persons seeking administrative review of a business license revocation, a cigarette license revocation or suspension, a log export enforcement action, or orders to county officials under Title 84 RCW should refer to the following rules:

- (i) WAC 458-20-10001 for information on the revocation of a certificate of registration or the revocation or suspension of a cigarette license; or
- (ii) WAC 458-20-10002 for information on log export enforcement actions and orders to county officials issued under RCW 84.08.120 and 84.41.120.

**(2) Preappeal supervisor's conference and preappeal rulings on future liability.**

(a) **Supervisor's conferences.** Taxpayers are encouraged to request a supervisor's conference when they disagree with an action proposed by the department. Taxpayers should make their request for the conference with the division of the department that proposes to issue an assessment or take some other action in dispute. Supervisor's conferences provide an opportunity to resolve issues prior to the review provided in this rule.

(b) **Rulings.** Taxpayers may request an opinion on future reporting instructions and tax liability from the department's taxpayer information and education section of the taxpayer services division. The request must be in writing, contain all pertinent facts concerning the question presented, and may contain a statement of the taxpayer's views concerning the correct application of the law. The department will advise the taxpayer in writing of its opinion in a tax ruling. The tax ruling must state all pertinent facts upon which the opinion is based and, if the taxpayer's name has been disclosed, is binding upon both the taxpayer and the department under the facts stated. It will remain binding until the facts change, the applicable statute or rule changes, a published appellate court

decision not subject to review changes a prior interpretation of law, the department publicly announces a change in the policy upon which this ruling is based, or the taxpayer is notified in writing that the ruling is no longer valid. Any change in the ruling will have prospective application only. Rulings on future tax liability are subject to review as provided in this rule.

(3) **How are appeals started?** A taxpayer starts a review of a departmental action by filing a written petition. Petitions should be addressed to:

Appeals Division  
Washington State Department of Revenue  
P.O. Box 47460  
Olympia, Washington 98504-7460

A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the appeals division. Taxpayers may use the form petition or prepare one of their own. The taxpayer or its authorized representative must sign the petition, which must contain the following information:

- (a) The taxpayer's name, address, registration/UBI number, telephone number, fax number, e-mail address, and contact person;
- (b) If represented, the representative's name, address, telephone number, fax number, and e-mail address;
- (c) Identifying information from the assessment notice, balance due notice, or other document being appealed;
- (d) The amount of tax, interest, or penalties in controversy, and the time period at issue;
- (e) The type of appeal requested (see subsection (6) of this section);
- (f) Whether an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing is requested; and
- (g) A brief explanation of each issue or area of dispute and an explanation why each issue or area of dispute should be decided in the taxpayer's favor. To the extent known or available, taxpayers should cite applicable rules, statutes, or supporting case law and provide copies of records that support the taxpayer's position.

If a petition does not provide the required information, the department will notify the taxpayer in writing that the petition is not accepted for review. The notice will provide a period of time for the taxpayer to cure the defects in the petition. If a taxpayer is represented, the taxpayer should also have on file with the department a confidential tax information authorization.

(4) **To be timely, when must a petition be filed or extensions requested?** A taxpayer must file a petition with the department within thirty days after the date the departmental action has occurred.

(a) The appeals division may grant an extension of time to file a petition if the taxpayer's request is made within the thirty-day filing period. Requests for extensions may be in writing or by telephone, and must be directed to the department's appeals division.

(b) A petition or request for extension is timely if it is postmarked or received within the thirty-day filing period.

(c) The appeals division may not grant an extension of time to file a petition for refund that would exceed the time limits in WAC 458-20-229 (Refunds). A request for a refund

of taxes paid must be filed within four years after the close of the tax year in which the taxes were paid. See WAC 458-20-229 for procedures on seeking a refund.

(d) The appeals division will notify taxpayers in writing when a petition is rejected as not timely.

**(5) ~~How are appeals scheduled, heard, and decided?~~**

The appeals division will acknowledge receipt of the petition and identify the administrative law judge (ALJ) assigned to the appeal. ALJs are attorneys trained in the interpretation of the Revenue Act and precedents established by prior rulings and court decisions. They are employed by the department to provide an informal, final review of agency actions.

(a) **Scheduling.** The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the taxpayer does not request a hearing, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The appeals division will notify the taxpayer by mail whether a hearing will be held, whether the hearing will be in person or by telephone, the location of any in person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other departmental employees may attend a hearing, and the ALJ will notify the taxpayer when other departmental employees are attending. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before an ALJ are conducted informally and in a nonadversarial, untested manner.

(c) **Hearing and posthearing submissions.** If a taxpayer asks to submit additional records or documents at a hearing, the taxpayer must explain why they were not submitted under the deadlines established in the scheduling letter. The ALJ has the discretion to allow late submissions by the taxpayer or the department and, if allowed, will provide the other party with additional time to respond. If additional document production or additional briefing is allowed by the ALJ, posthearing, such briefing or documents usually must be submitted within thirty days after the hearing, unless good cause is shown for additional time. ALJs have the discretion to allow additional time for further fact-finding, including scheduling an additional hearing, as necessary in a particular case.

(d) **Determinations.** Following the hearing, if any, and review of all submissions, the ALJ will issue a determination consistent with the applicable statutes, rules, case law, and department precedents. The appeals division will notify the taxpayer in writing of the decision. The determination of the ALJ is the final decision of the department and is binding upon the taxpayer unless a petition for reconsideration is timely filed by the taxpayer and accepted by the department.

(6) **Are all appeals the same?** No, in addition to regular appeals, called mainstream appeals, an appeal may also be assigned as a small claims or executive level appeal based on the amount at issue or the complexity of the issues. In addition, an appeal may be expedited under certain urgent circumstances.

(a) **Small claims appeals.** Except as set forth in (a)(i), (ii), or (iii) of this subsection, when the tax at issue in the appeal is twenty-five thousand dollars or less and the total amount of the tax plus penalties and interest at issue in the appeal is fifty thousand dollars or less, the appeal will be heard as a small claims appeal.

(i) The department may decline to hear an appeal as a small claims appeal if the department finds the appeal is not suitable for small claims resolution. Appeals with multiple or complex issues, issues of first impression, issues of industry-wide application, or constitutional issues are generally not suitable for small claims resolution.

(ii) The appeals division will notify the taxpayer in writing when an appeal is to be heard as a small claims appeal. The taxpayer may request in writing that the matter not be heard as a small claims appeal. Such requests will be granted if received or postmarked within fifteen days following the date of the notice.

(iii) In the petition the taxpayer may affirmatively request that the petition not be heard as a small claims appeal. Such requests will be granted.

Taxpayers should provide all evidence and supporting authority prior to or during the small claims hearing. Within ten working days of a small claims hearing, the department will issue an abbreviated written decision (determination) containing only the department's conclusions. The determination in a small claims appeal is the final action of the department.

(b) **Executive level appeals.** If an appeal involves an issue of first impression (one for which no agency precedent has been established) or an issue that has industry-wide significance or impact, a taxpayer may request that the petition be heard at the executive level. The request must specify the reasons why an executive level appeal is appropriate. The appeals division will grant or deny the request and will notify the taxpayer of that decision in writing. If granted, the director or the director's designee and an ALJ will hear the matter. The appeals division, on its own initiative, may also choose to hear an appeal at the executive level. The appeals division will notify the taxpayer if the department chooses to hear an appeal at the executive level.

Following the executive level hearing, the appeals division will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer or another division of the department timely files an objection to the proposed determination. Objections must identify specific errors of law or fact. Unless an extension is granted, objections must be postmarked or received by the appeals division within thirty days from the date the proposed determination was issued. The taxpayer or operating division filing objections must also provide the other party with a copy of its objections. The ALJ will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the ALJ and the director's designee, in

consultation with the director, may grant a second hearing to hear argument on the objections. The determination in an executive level appeal is the final action of the department.

(c) **Expedited appeals.** On a very limited basis it may be necessary to expedite the review of a petition. Taxpayers or other divisions in the department requesting expedited review must make the request in writing to the appeals division, with a copy supplied to the other party. The appeals division will grant or deny such requests solely at its discretion. The appeals division will advise the taxpayer and the affected division of its decision pertaining to the expedited review request. This decision is not subject to appeal. Expedited review will be limited to appeals where it is clear that:

- (i) There is a particular and extraordinary business necessity;
- (ii) Document review is the only issue;
- (iii) Only a legal issue remains in an appeal following a remand to an operating division;
- (iv) A jeopardy warrant or bankruptcy is likely; or
- (v) Urgent review is necessary within the department.

If expedited review is at the taxpayer's request, the determination in an expedited appeal is the final action of the department. If expedited review is requested by the department, the taxpayer may petition for reconsideration as provided in subsection (7) of this section.

(7) **Request for reconsideration.** If a taxpayer believes that an error has been made in a determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Small claim appeals, executive appeals, and appeals expedited at the request of the taxpayer are not subject to reconsideration. The request for reconsideration must specify mistakes in law or fact contained in the determination and should also provide legal authority as to why those mistakes necessitate the reconsideration of the determination. A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue that has industry-wide impact or significance. The request for executive reconsideration must also specify the reasons why executive level review is appropriate.

The appeals division may, without a hearing, grant or deny the request for reconsideration. If the request is denied, the department will mail to the taxpayer written notice of the denial and the reason for the denial. The denial is then the final action of the department. If the request is granted, a hearing on reconsideration may be conducted or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.

(8) **Appeals to board of tax appeals.** A taxpayer may appeal a denial of a petition for correction of an assessment under RCW 82.32.160 or a denial of a petition for refund under RCW 82.32.170 to the board of tax appeals. The board of tax appeals also has jurisdiction to hear appeals taken from department decisions rendered under RCW 82.34.110 (relating to pollution control facilities tax exemptions and credits) and 82.49.060 (relating to watercraft excise tax). The board of tax appeals does not have jurisdiction to hear appeals from determinations involving rulings of future tax liability issued by the taxpayer information and education section. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal

with the board of tax appeals must pay the tax by the due date, unless arrangements are made with the department for a stay of collection under RCW 82.32.200. See WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection).

(9) **Thurston County superior court.** A taxpayer may also pay the tax in dispute and petition for a refund in Thurston County superior court. The taxpayer must comply with the requirements of RCW 82.32.180.

(10) **Settlements.** At any time during the appeal process, the taxpayer or the department may propose to compromise the matter by settlement. Taxpayers interested in settling a dispute should submit a written offer to the ALJ. The offer should identify the amount in dispute, why the dispute should be settled, the amount offered in settlement, and why the amount being offered is reasonable.

(a) Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change;

(ii) A conflict exists between precedents, such as statutes, rules, excise tax bulletins, or specific written instructions to the taxpayer;

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome of the appeal if it were presented to a court. Factors to be considered include the relative degrees of certainty and the costs for both the taxpayer and the state. This category includes cases which involve factual issues that might require extensive expert testimony to resolve.

(b) Settlement is not appropriate when:

(i) The same issue in the taxpayer's appeal is being litigated by the department;

(ii) The taxpayer challenges a long-standing departmental policy or a rule that the department will not change unless the policy or rule is declared invalid by a court of record;

(iii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case;

(iv) The taxpayer's only argument is that a statute is unconstitutional; or

(v) The taxpayer's only argument is financial hardship. Financial hardship issues are properly discussed with the department's compliance division.

(c) Each settlement is concluded by a closing agreement signed by both the department and the taxpayer as provided by RCW 82.32.350 and is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.)

(1) **Introduction.** RCW 82.01.060(4) requires a "departmental review of the actions of the department ... in the assessment or collection of taxes." Under authority of this statute, the department provides an informal, nonadversarial

administrative review of these actions. The department will make such determination and resolve matters as may appear to the department to be just and lawful under its statutory authority. The department's administrative review is designed to be an expeditious and less costly means of review as compared to the costs of an independent review by the board of tax appeals (BTA) or a refund action in superior court.

Before requesting review, taxpayers are encouraged to request a supervisor's conference when they disagree with an action proposed by the department. Taxpayers should make their request for the conference with the division of the department that proposes to issue an assessment or take some other action in dispute. Supervisor's conferences can frequently resolve issues prior to the informal administrative review explained in this rule.

**(a) Departmental actions subject to informal administrative review under this rule.** Actions subject to the department's informal administrative review include, but are not limited to:

- (i) An assessment of tax, interest, or penalties;
- (ii) The denial of a refund, credit, or deferral request;
- (iii) The issuance of a balance due notice or a notice of delinquent taxes, including a notice of collection action; and
- (iv) The issuance of an adverse ruling on future liability from the taxpayer information and education (TI&E) section.

**(b) Departmental actions subject to formal administrative appeal.** The informal review provided under this rule should be distinguished from a formal administrative appeal subject to the Administrative Procedure Act (chapter 34.05 RCW). A person may submit a formal administrative appeal of certain actions by the department. Refer to the following rules for information regarding the actions for which the department conducts formal administrative appeal proceedings:

- (i) WAC 458-20-10001 for information regarding an appeal of:
  - A revocation of a certificate of registration (tax registration endorsement) under RCW 82.32.215;
  - (ii) WAC 458-20-10002 for information regarding an appeal of:
    - Log export enforcement actions pursuant to chapter 240-15 WAC; or
    - Orders to county officials issued under RCW 84.08.120 and 84.41.120;
    - (iii) WAC 458-20-10003 for information regarding an appeal of:
      - A departmental request to the liquor control board to suspend, not renew, or not issue a spirits license as defined in RCW 66.24.010 (3)(c);
      - (iv) WAC 458-20-10004 for information regarding an appeal of the assessment of:
        - The one-time business license application fee or annual renewal application fee in RCW 59.30.050 (3)(a);
        - The annual registration assessment fee in RCW 59.30.050 (3)(b); or
        - The delinquency fee in RCW 59.30.050(4);
        - (v) WAC 458-20-10202 for information regarding an appeal of:
          - Matters relating to the denial or revocation of reseller permits; or

(vi) WAC 458-20-273 for information regarding an appeal of:

- The denial or revocation of a renewable energy system certification; or
- The denial or revocation of a manufacturer's certification of a solar inverter, solar module, wind generator blade, or stirling converter qualifying as made in Washington state.

**(2) How are informal reviews started?** RCW 82.32.-160 and 82.32.170 provide that a taxpayer may petition the department for a correction of the amount of an assessment or of an amount paid, and further examination and review of the assessment or tax liability. A taxpayer starts a review of a departmental action by filing a written petition. A petition must be sent to one of the following:

AdministrativeReviews@dor.wa.gov

or

Administrative Review and Hearings Division  
Washington State Department of Revenue  
P.O. Box 47460  
Olympia, Washington 98504-7460

or

Fax: 360-534-1340

**(a) Information required in a petition.** A form petition is available on the department's web site at <http://dor.wa.gov> or upon request from the administrative review and hearings division. Taxpayers may use the form petition or prepare one of their own. The taxpayer or its authorized representative must sign the petition, which must contain the following information:

- (i) The taxpayer's name, address, registration/UBI number, telephone number, fax number, e-mail address, and contact person;
- (ii) If represented, the representative's name, address, telephone number, fax number, and e-mail address;
- (iii) Identifying information from the assessment notice, balance due notice, or other document related to the action being reviewed;
- (iv) The amount of tax, interest, or penalties in controversy, and the time period at issue;
- (v) The type of review requested (see subsection (4) of this rule);
- (vi) Whether the taxpayer requests an in-person hearing in Olympia or Seattle, a telephone hearing, or no hearing; and
- (vii) A description of each issue or area of dispute and an explanation why each issue or area of dispute should be resolved as the taxpayer requests. To the extent known or available, a taxpayer should cite applicable statutes, rules, other public guidance issued by the department, and case law that support the taxpayer's position. Taxpayers should also submit with the petition all documents, including:
  - Contracts and invoices previously requested and not provided; or
  - Documents not previously provided that the taxpayer believes substantiate the taxpayer's claims.

**(b) Incomplete petition.** If a petition does not provide the required information identified in subsection (2)(a) of this rule, the department will notify the taxpayer in writing that



the petition is incomplete and not accepted for review. The notice will provide a period of time for the taxpayer to provide the required petition information. If the requested information is timely provided, the petition will be treated as timely filed and accepted for review.

**(c) Authorization required for taxpayer's representative.** If a taxpayer is represented, the taxpayer must have on file with the department a confidential tax information authorization (CTIA) for that representative. Without a CTIA on file, the department cannot share confidential taxpayer information with the representative.

**(3) To be timely, when must a petition be filed or extensions requested?** A taxpayer must file a petition with the department within thirty days after the date the departmental action has occurred.

(a) The department may grant an extension of time to file a petition if the taxpayer's request is made within the thirty-day filing period. Requests for extensions must be in writing. A petition or request for extension is timely if it is post-marked or received within the thirty-day period.

Requests must be in writing to the address noted in subsection (2) of this rule.

(b) The department will not grant an extension of time to file a petition for refund that would exceed the time limits in WAC 458-20-229 (Refunds). A request for a refund of taxes paid must be filed within four years after the close of the calendar year in which the taxes were paid. See WAC 458-20-229 for procedures on seeking a refund.

(c) The department will notify taxpayers in writing when a petition is rejected as not timely.

**(4) What are the different types of informal reviews?** The agency conducts four different types of informal reviews.

(a) **Mainstream review.** This is the most common type of review. A review is treated as a mainstream review unless it fits within (b) through (d) of this subsection.

(b) **Small claims review.** When the tax at issue in the review is twenty-five thousand dollars or less and the total amount of the tax plus penalties and interest at issue is fifty thousand dollars or less, the review will normally be assigned as a small claims review, unless the complexity of the issues requires assignment to another category.

The department will issue an abbreviated written determination in a small claims review. This determination is the final action of the department.

**(c) Executive level review.**

(i) If a review involves an issue of first impression (one for which no agency precedent has been established) or an issue that has industry-wide significance or impact, a taxpayer may request that the review be considered at the executive level. The request must specify the reasons why an executive level review is appropriate. The department will grant or deny the request and will notify the taxpayer of that decision in writing. If granted, the director or the director's designee and a tax review officer will conduct an executive level hearing. The department, on its own initiative, may also choose to consider a review at the executive level.

(ii) Following the executive level hearing, the department will issue a proposed determination, which becomes final thirty days from the date of issuance unless the taxpayer

files an objection to the proposed determination within that thirty-day period. Objections must specify mistakes in law or fact contained in the proposed determination, and should also provide legal authority as to why those mistakes necessitate a change to the proposed determination. Unless an extension is granted, objections must be postmarked or received by the department within thirty days from the date the proposed determination was issued. The department will issue the final determination, which may or may not reflect changes based on the objections. Although rare, the tax review officer and the director's designee, in consultation with the director, may grant a second executive level hearing on the objections. The determination in an executive level review is the final action of the department.

**(d) Tax rulings issued by TI&E section.** Review of a tax ruling is limited to the documents and records reviewed by TI&E and any written statements included with the petition. This review is limited to correcting an error that occurred in the course of the tax ruling process. A written determination will be issued following review of all timely submissions without a conference. The determination is the final decision of the department. It is not eligible for reconsideration and not appealable to the board of tax appeals under RCW 82.03.130 (1)(a) or 82.03.190.

**(5) How are reviews scheduled and decided?** The department will acknowledge receipt of the petition and identify the tax review officer assigned to the review.

**(a) Role and responsibility of tax review officers.** Tax review officers are attorneys trained in the interpretation of the Revenue Act, public guidance issued by the department, and precedents established by prior rulings and court decisions. The department's tax review officers are employed by the department to determine that the appropriate departmental procedures and interpretations of law have been correctly applied to the issue(s). They are responsible for providing a departmental (not independent) review. This responsibility includes additional research about the taxpayer's activities related to the tax issue under review when necessary.

**(b) Scheduling.** The department will notify the taxpayer or taxpayer's representative of the time and place for the review hearing, if any, and establish timelines for the submission of additional documents and written arguments. Before a submission date has passed, the taxpayer may request an extension, which the tax review officer may grant at the tax review officer's discretion. If a taxpayer fails to comply with a scheduling letter or any extension, the tax review officer may dismiss the petition or decline to consider arguments or documents submitted after the scheduled timelines. A tax review officer may also contact the taxpayer to clarify or narrow issues or request more information as needed for the orderly resolution of the case. This may be scheduled as a status conference or direct discussions.

**(c) Taxpayer requests to provide additional materials.** If a taxpayer asks to submit additional documents or written arguments after the deadlines established in the scheduling letter, or any extension thereof, the taxpayer must explain why they could not have been submitted in a timely manner. The tax review officer has the discretion to allow late submissions by the taxpayer. If additional documents or written argument is allowed by the tax review officer after the hear-

ing, they must be submitted within thirty days of the hearing, unless good cause is shown for additional time. The tax review officer has the discretion to allow additional time for further fact-finding, including scheduling an additional hearing, as necessary in a particular case.

(d) **Informal review hearings.** The hearing is an opportunity to discuss the documents and arguments submitted and to clarify the reasons why the taxpayer believes it is entitled to receive the requested relief. No record is made of the hearing. The hearing is not open to the general public. Any person attending the hearing is not placed under oath. The tax review officer has the discretion to decide the case without a hearing if legal or factual issues are not in dispute, or the taxpayer fails to appear at a scheduled hearing or otherwise fails to respond to inquiries from the department. The taxpayer may appear personally or may be represented by an attorney, accountant, or any other authorized person. All hearings before a tax review officer are conducted informally and in a nonadversarial manner.

(e) **Issuing a determination.** Following the hearing, if any, and review of all materials, the department will issue a determination consistent with the applicable statutes, rules, other public guidance issued by the department, case law, and department precedents. The tax review officer will notify the taxpayer in writing of the decision.

(f) **Additional information or research identified by the department.** The tax review officer may identify additional facts or novel legal arguments not previously communicated to the taxpayer. In this event, the tax review officer will provide the taxpayer with an opportunity to respond.

(g) **Determination is final decision by the department.** The determination is the final decision of the department and is binding upon the taxpayer unless a petition for reconsideration is timely filed by the taxpayer and accepted by the department. All determinations issued by the department, except those issued for a review of a TI&E tax ruling (subsection (4)(d) of this rule), are appealable to the board of tax appeals (BTA).

(6) **Request for reconsideration.** If a taxpayer believes that an error has been made in a mainstream determination, the taxpayer may, within thirty days of the issuance of the determination, petition in writing for reconsideration of the decision. Only determinations issued from mainstream reviews are subject to reconsideration. The request for reconsideration must specify mistakes in law or fact contained in the determination and should also provide legal authority as to why those mistakes necessitate the reconsideration of the determination. Any new documents and explanations must be included with the petition.

The department may grant or deny the request for reconsideration. If the request is denied, the department will send to the taxpayer written notice of the denial and the reason for the denial. The denial is then the final action of the department. If the request is granted, although rare, the tax review officer may hold a reconsideration hearing or a determination may be issued without a hearing. A reconsideration determination is the final action of the department.

A taxpayer may request an executive level reconsideration when the determination decided an issue of first impression or an issue that has industry-wide impact or significance.

The request for executive reconsideration must also specify the reasons why executive level review is appropriate. Any new documents and explanations must be included with the petition. The department will grant or deny the request and will notify the taxpayer of that decision in writing.

(7) **Settlements.** At any time during the department's review process, the taxpayer or the department may propose to compromise the matter by settlement. A taxpayer interested in settling a dispute must submit a written offer to the department to the address noted in subsection (2) of this rule. The taxpayer or its authorized representative must sign the offer. A settlement offer may be made with the review petition or at any time during the review process. All documents needed to evaluate the offer must be submitted with the offer.

(a) **When will the department consider an offer?** Settlement may be appropriate when:

(i) The issue is nonrecurring. An issue is nonrecurring when the law has changed so future periods are treated differently than the periods under appeal; or the taxpayer's position or business activity has changed so that in future periods the issue under consideration is changed or does not exist; or the taxpayer agrees to a prospective change;

(ii) A conflict exists between precedents, such as statutes, rules, other public guidance issued by the department, or specific written instructions to the taxpayer;

(iii) A strict application of the law would have unduly harsh consequences which may be only relieved by an equitable doctrine; or

(iv) There is uncertainty of the outcome if the matter were presented to a court.

(b) **When will the department not consider an offer?** Settlement is not appropriate when:

(i) The same issue raised by the taxpayer is being litigated by the department;

(ii) The taxpayer presents issues that have no basis upon which relief for the taxpayer can be granted or given. Settlement will not be considered if the taxpayer's offer of settlement is simply to eliminate the inconvenience or cost of further negotiation or litigation, and is not based upon the merits of the case;

(iii) The taxpayer's only argument is that a statute is unconstitutional; or

(iv) The taxpayer's only argument is financial hardship. If a taxpayer claims financial hardship, the tax review officer may refer the matter to the department's compliance division.

(c) **The closing agreement.** If the taxpayer and the department reach agreement, a settlement is concluded by a closing agreement signed by both the department and the taxpayer as provided by RCW 82.32.350. A closing agreement is binding on both parties as provided in RCW 82.32.360. A closing agreement has no precedential value.

(8) **Appeals to board of tax appeals.** A taxpayer may appeal a denial of a petition for correction of an assessment under RCW 82.32.160 or a denial of a petition for refund under RCW 82.32.170 to the board of tax appeals. The BTA also has jurisdiction to hear appeals taken from department decisions rendered under RCW 82.34.110 (relating to pollution control facilities tax exemptions and credits) and RCW 82.49.060 (relating to watercraft excise tax). The BTA does not have jurisdiction to hear appeals from determinations

involving rulings of future tax liability issued by TI&E. See RCW 82.03.130 (1)(a) and 82.03.190. A taxpayer filing an appeal with the BTA must pay the tax by the due date, unless arrangements are made with the department for a stay of collection under RCW 82.32.200. See WAC 458-20-228 (Returns, remittances, penalties, extensions, interest, stay of collection).

(9) Thurston County superior court. A taxpayer may also pay the tax in dispute and petition for a refund in Thurston County superior court. The taxpayer must comply with the requirements of RCW 82.32.180.

### WSR 15-24-117

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed December 1, 2015, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-013.

Title of Rule and Other Identifying Information: WAC 246-840-010, 246-840-020, 246-840-300 through 246-840-420, proposed rules amend advanced registered nurse practitioner (ARNP) rules to include clinical nurse specialist (CNS), amend definitions, and add licensure requirements for CNS and other updates through general housekeeping.

Hearing Location(s): Nursing Care Quality Assurance Commission (NCQAC), Business Meeting, Crowne Plaza, Seattle Airport, 17338 International Boulevard, SeaTac, WA 98188, on January 8, 2016, at 1:15 p.m.

Date of Intended Adoption: January 8, 2016.

Submit Written Comments to: Willie Hunt, MSN, RN-C, ARNP, P.O. Box 47864, Olympia, WA 98504-7864, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by January 6, 2016.

Assistance for Persons with Disabilities: Contact Jean Wheat by January 6, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adds a new ARNP designation of CNS. The rule establishes the education, examination, licensing, practice requirements and other qualifications for the CNS designation. The proposal also clarifies and updates ARNP related rules through general housekeeping.

Reasons Supporting Proposal: Licensure of ARNP CNS has been demonstrated to promote positive outcomes for improved quality of care, best practices, decreased costs and improved patient satisfaction. It allows nurses to practice to the full extent of their education and expertise. This rule will benefit the health and safety of patients, staff and employers and will align with the National Council of State Boards of Nursing Consensus Model for APRNs [ARNPs]. Key stakeholders support the proposal including ARNP United and the Washington State Nurses Association.

Statutory Authority for Adoption: RCW 18.79.050, 18.79.110, 18.79.160.

Statute Being Implemented: RCW 18.79.050, 18.79.110, 18.79.160.

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

Name of Proponent: Washington state department of health, NCQAC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Willie O. Hunt, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4751.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Willie O. Hunt, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4751, fax (360) 236-4738, e-mail [willie.hunt@doh.wa.gov](mailto:willie.hunt@doh.wa.gov).

December 1, 2015

Paula R. Meyer, MSN, RN, FRE

Executive Director

NCQAC

AMENDATORY SECTION (Amending WSR 13-15-064, filed 7/15/13, effective 8/15/13)

**WAC 246-840-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ~~((An))~~ "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse ~~((who has had))~~ (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and ~~((has achieved))~~ national specialty certification ~~((for the nurse practitioner, nurse anesthetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.~~

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice.

~~((3))~~ through a commission approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

(a) Nurse practitioner (NP);

(b) Certified nurse midwife (CNM);

(c) Certified registered nurse anesthetist (CRNA); and

(d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon suc-

successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection (28) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(7) "Client advocate" means a licensed (~~registered nurse or practical~~) nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and (~~the~~) choices by providing the client with adequate information about their care and options.

(~~(4)~~) (8) "Commission" means the Washington state nursing care quality assurance commission.

(~~(5)~~) (9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(~~(6)~~) (10) "Conditional approval" (~~of a school of nursing~~) is the approval given a (~~school of~~) nursing education program that has not met the requirements of the law and the rules (~~and regulations~~) of the commission(~~;~~). Conditions are specified that must be met within a designated time to rectify the deficiency.

(~~(7)~~) (11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed (~~practical nurse or registered~~) nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The (~~licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability~~) nurse delegating the task is responsible and accountable for the nursing care of the client. The (~~licensed practical nurse or registered~~) nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(~~(a)~~) Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely per-

formed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(e) When delegating a nursing act to an unlicensed person it is the licensed practical nurse or the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

(8) "Faculty" means persons who are responsible for the educational nursing program and who hold faculty appointment in the school.

(~~9~~) (13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a (~~school of~~) nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules (~~and regulations~~) of the commission.

(~~(10)~~) (15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own(~~;~~); receipt of the examination results after thirty days after the nurse technician's date of graduation(~~;~~); or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(~~(11)~~) (16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

(~~(12)~~) (17) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

(18) "Home state" is defined as where the nursing education program has legal domicile.

(19) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

(20) "Immediately available" as applied to nursing technicians, means that (~~a registered nurse~~) an RN who has agreed to act as supervisor is on the premises and is within

audible range and available for immediate response as needed~~((This))~~ which may include the use of two-way communication devices which allow conversation between the nursing technician and ~~((a registered nurse))~~ an RN who has agreed to act as supervisor.

(a) In a hospital setting, ~~((a registered nurse))~~ the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the ~~((registered nurse))~~ RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, ~~((a registered nurse))~~ an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the ~~((registered nurse))~~ RN prior to the delegation of duties to the nursing technician.

~~((13))~~ (21) "Initial approval" of nursing education program~~(s)~~ is the approval ~~((given))~~ status conferred by the commission to a new nursing program based on its proposal prior to the graduation of its first class.

~~((14))~~ (22) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a nursing student through a commission approved refresher course. This authorization does not permit practice for employment. ~~((A limited educational authorization may be issued to:~~

(a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or

(b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.

~~((15))~~ (24) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

~~((16))~~ (25) "National nursing accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

(26) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching~~(s)~~ and learning component in clinical settings.

~~((17))~~ (27) "Nursing education program administrator" is an individual who ~~((meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this position may include, among others, dean, director, coordinator or chairperson.~~

~~((18))~~ has the authority and responsibility for the administration of the nursing education program.

(28) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

(29) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

(30) "Nursing technician" means a nursing student preparing for ~~((registered nurse))~~ RN licensure who meets the qualifications for licensure under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic~~(, and who:~~

~~(a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or~~

~~(b) Is a graduate of a nursing program approved by the commission who graduated:~~

~~(i) Within the past thirty days; or~~

~~(ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period; or~~

~~(c) Is enrolled in an approved school of nursing in the United States or its territories. Approved schools for nursing technicians include the list of registered nursing programs (schools) approved by state boards of nursing in the United States or its territories as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not include nontraditional schools as defined in subsection (16) of this section.~~

~~((19))~~ The nursing student must be in a nursing educational program in the United States or its territories that is approved by the National Council Licensure Examination-RN. Approved nursing education programs do not include nontraditional schools as defined in subsection (27) of this section.

(31) "Philosophy" means the beliefs and principles upon which ~~((the))~~ a nursing education program curriculum is based.

~~((20))~~ "Program" means a division or department within a state supported educational institution, or other institution of higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

~~((21))~~ (32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

(33) "Registered nurse" ~~((as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).~~

~~((22))~~ or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

(34) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed (~~(registered nurse)~~) RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed (~~(registered nurse)~~) RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed (~~(registered nurse)~~) RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

~~((23))~~ (35) "Traditional (~~(program of)~~) nursing education program" means a program that has a curriculum which includes a faculty supervised teaching(~~(/)~~) and learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 10-24-047, filed 11/24/10, effective 1/1/11)

**WAC 246-840-020 Credentials issued to (~~(nurses)~~) an LPN, RN, or ARNP in Washington state.** The following credentials are issued to nurses in Washington state.

(1) Active status license for LPN or RN. A license is issued upon completion of (~~(all requirements for)~~) licensure requirements. The license holder may use the title licensed practical nurse or registered nurse and the use of its abbreviation, LPN or RN. The license allows practice as (~~(a licensed practical nurse or registered nurse)~~) an LPN or RN in the state of Washington. (~~(See WAC 246-840-201 through 246-840-207 for continuing competency program requirements.)~~)

A student who has graduated from a basic professional nursing course and who is pursuing a baccalaureate degree in nursing, an advanced degree in nursing or an advanced certification in nursing must hold an active Washington RN license before participating in the practice of nursing as required to fulfill the learning objectives in a clinical course.

(2) (~~(Inactive status license. A license issued to a person previously holding an active license in this state, is in good standing, and does not practice in Washington state. Refer to chapter 246-12 WAC, Part 4.~~)

~~(3))~~ (3)) Advanced registered nurse practitioner (ARNP) license. An ARNP license may be issued to (~~(any person)~~) an individual who meets the requirements of the commission as contained in WAC 246-840-300 through 246-840-365. Only persons holding this license have the right to use the title "advanced registered nurse practitioner" or the abbreviation "ARNP" or any title or abbreviation which indicates that the (~~(person)~~) individual is entitled to practice at an advanced and specialized role as (~~(a nurse practitioner, a nurse midwife, or a nurse anesthetist. The ARNP may engage in the scope allowed for his or her area of national certification as approved by the commission)~~) a NP, CNM, CRNA, or CNS. The license is valid only with a current (~~(registered nurse)~~) RN license. The ARNP's scope of practice is defined by

(~~(national certification standards and)~~) a national certifying body approved by the commission.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-300 (~~(Advanced registered nurse practitioner (ARNP))~~) ARNP scope of practice.** (~~((1) A licensed advanced registered nurse practitioner (ARNP) is a registered nurse prepared in a formal educational program to assume primary responsibility for continuous and comprehensive management of a broad range of patient care, concerns and problems.~~)

~~(2))~~ (2)) The scope of practice of a licensed ARNP is as provided in RCW 18.79.250 and this section.

(1) The ARNP is prepared and qualified to assume primary responsibility and accountability for the care of patients.

~~((3))~~ (2) ARNP practice is grounded in nursing process and incorporates the use of independent judgment (~~(as well as)~~). Practice includes collaborative interaction with other health care professionals (~~(when indicated)~~) in the assessment and management of wellness and health conditions (~~(as appropriate to the ARNP's area of practice and certification.~~)

~~(4))~~.

(3) The ARNP functions within his or her scope of practice (~~(according to the commission approved certification program and standards of care developed by professional organizations.~~)

~~(5) The))~~ following the standards of care defined by the applicable certifying body as defined in WAC 246-840-302. An ARNP may choose to limit the area of practice within the commission approved certifying body's practice.

(4) An ARNP shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices.

~~((6))~~ (5) Performing within the scope of the ARNP's knowledge, experience and practice, the licensed ARNP may perform the following:

(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;

(b) Admit, manage, and discharge patients to and from health care facilities;

(c) Order, collect, perform, and interpret diagnostic tests;

(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;

(e) Prescribe therapies and medical equipment;

(f) Prescribe medications when granted prescriptive authority under this chapter;

(g) Refer patients to other health care practitioners, services, or facilities; and

(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to the commission approved (~~(certification program)~~) certifying body as defined in WAC 246-840-302.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-302 ARNP designations, certification, and approved certification examinations.** (1) ARNP designations recognized by the commission include(~~(:~~

- (a) Nurse practitioner (NP);
- (b) Certified nurse-midwife (CNM); and
- (c) Certified registered nurse-anesthetist (CRNA).)) NP, CNM, CRNA, and CNS;

(2) An ARNP must maintain current certification within his or her designation(s) by ((an accredited)) a commission approved certifying body as identified in subsection (3) of this section. An ARNP license becomes invalid when the certification expires.

(3) ~~((The commission approved certification examinations include those approved by the National Commission on Certifying Agencies or the American Boards of Nursing Specialties from the following programs:))~~ To be eligible for licensure as an ARNP, an applicant must pass an examination from one of the following certifying bodies within the ARNP's specialty designation:

- (a) For NP designation(~~(-NP exams from))~~:
  - (i) The American Academy of Nurse Practitioners;
  - (ii) The American Nurses Credentialing Center;
  - (iii) The National Certification Corporation ((for Obstet-ric, Gynecological, and Neonatal Nursing; and));
  - (iv) The Pediatric Nursing Certification Board;
  - (v) The American Association of Critical Care Nurses;

or

(vi) The Oncology Nursing Certification Corporation.

(b) For CNM designation, the ~~((CNM exam from))~~ American Midwifery Certification Board.

(c) For CRNA designation, the ~~((CRNA exam from Council on))~~ National Board of Certification ((of)) and Recertification for Nurse Anesthetists.

(d) For CNS designation:

- (i) The American Nurses Credentialing Center;
- (ii) The American Association of Critical Care Nurses;

or

(iii) The Oncology Nursing Certification Corporation.

~~(4) ((An ARNP may choose to limit his or her area of practice within the commission approved certification program area of practice.~~

~~(5)-(f))~~ An ARNP ((is)) recognized in more than one ((certification area, he or she)) designation must obtain and maintain education, training, and practice in each area.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-310 Use and protection of professional titles.** ~~((1-Any))~~ A person who holds a license to practice as an ARNP shall have the right to use the title "advanced registered nurse practitioner" ((or "nurse practitioner")) and the abbreviation following the nurse's name shall read "ARNP" or "NP."

~~((2-The))~~ An ARNP may also use the applicable title or abbreviation ((designated by the approved certifying body.

~~(3))~~, or designation as defined in WAC 246-840-302.

No other person shall assume such titles or use such abbreviations.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-311 ARNP previously adopted specialties.** (1) ~~((On the effective date of this rule,))~~ An ARNP holding ((a)) an active license, without sanctions or restrictions, under one or more of the following previously existing advanced practice certification ((categories)) designations, may continue to renew his or her license as an ARNP:

(a) Community health ((nurse));

(b) ~~((Maternal/GYN/neonatal nurse))~~ Maternal-gynecological-neonatal;

(c) Medical(~~(/))~~-surgical ((nursing));

(d) Occupational health ((nurse));

(e) Neurosurgical ((nursing)); or

(f) Enterostomal therapy((~~-or~~

~~(g) Psychiatric mental health clinical nurse specialist)).~~

(2) ~~((Any lapse in certification))~~ An expired license identified in subsection (1)(a) through ((~~(g))~~) ((f)) of this section ((will result in an invalid ARNP license. The license)) will not be renewed.

(3) The commission will not accept initial ARNP licensure applications from individuals certified in the categories identified in subsection (1)(a) through ~~((~~(g))~~)~~ ((f)) of this section.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-340 Initial ARNP ((application)) requirements ((for new graduates of advanced registered nurse programs)).** (1) An applicant for licensure as an ARNP must ~~((meet))~~ have the following ((requirements)) qualifications:

(a) ~~((Hold a registered nurse license in the state of Washington that is not subject to))~~ An active Washington state RN license, without sanctions or restrictions ((by the commission));

(b) ~~((Have graduated))~~ A graduate degree from an advanced nursing education program ((within the past year;

(i) ~~For new graduates of advanced nursing education programs in the United States, the program must be accredited by a nursing or nursing-related accrediting organization recognized by the United States Department of Education (USDE) or the Council of Higher Education Accreditation (CHEA);~~

(ii) ~~For new graduates of advanced nursing education programs outside the United States, the program must be equivalent to the advanced registered nurse education in Washington; and~~

~~(c) Hold certification from a commission approved certification program)~~ accredited by a national nursing accreditation body recognized by the United States Department of Education;

(c) Certification from a certifying body as identified in WAC 246-840-302;

(d) Completion of advanced clinical practice hours, when applicable, in situations under subsection (3) of this section.

(2) An applicant for ARNP licensure must submit:

(a) ((Apply for Washington state registered nurse licensure if not a current holder of the RN license;

(b) Submit) A completed ARNP application for licensure to the commission;

((e) Submit) (b) The license fee as specified in WAC 246-840-990;

((d) Request the commission approved certification program) (c) A request to the certifying body, as identified in WAC 246-840-302((3)), to send official documentation of certification directly to the commission;

((e) Request) (d) A request to the advanced nursing educational program to send an official transcript directly to the commission showing ((H)) courses, grades, degree or certificate granted, official seal, and appropriate registrar ((or program director's signature;

(f) Submit documentation from the graduate program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript;

(g) Submit); and

(e) Program objectives and course descriptions when requested by the commission((; and

(h) Request a certificate or credential from a commission approved credential evaluating service if the applicant is a new graduate educated outside the United States.

(3) The ARNP applicant may petition the commission for an exemption to the requirement that application for licensure occur within one year of graduation if the applicant has had undue hardship.

(a) Undue hardship includes difficulty scheduling for the approved certification examination through no fault of his or her own, natural disaster, or an unexpected health or family crisis which caused him or her to delay completing the certification examination.

(b) Undue hardship does not include failure of the examination.

(c) The ARNP applicant shall provide evidence as requested by the commission of any undue hardship)).

(3) To be granted a license without meeting the advanced clinical practice requirements identified in subsection (4) of this section, the ARNP shall initiate the application process within one year of earning a graduate degree from an advanced nursing education program.

(4) An ARNP applicant who does not apply within one year of earning a graduate degree from an advanced nursing education program must complete one hundred twenty-five hours of advanced clinical practice for each additional year following graduation, not to exceed one thousand hours.

(a) An ARNP applicant's clinical practice must be supervised by an ARNP, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or equivalent licensure in another state or United States jurisdiction. The ARNP must complete supervised advanced clinical practice as defined in subsections (3) through (5) of this section.

(b) The supervisor must be in the same practice specialty in which the applicant is seeking licensure. The supervising ARNP or physician must:

(i) Have an active ARNP or physician license, without sanctions or restrictions, for two or more years;

(ii) Not be a relative of the applicant;

(iii) Not have a personal or financial relationship with the applicant;

(iv) Not have current disciplinary action on their license;

(v) Submit a written evaluation to the commission verifying the applicant's successful completion of the required supervised clinical practice hours and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.

(5) An ARNP applicant needing to complete supervised advanced clinical practice must:

(a) Meet the requirements of subsection (1)(a) and (b) of this section; and

(b) Have commission approval for the following:

(i) The clinical site in which the supervision will take place; and

(ii) The supervising ARNP or physician.

(6) The nursing commission may request additional evidence supporting the applicant's completion of advanced clinical practice hours for the purposes of this section. The commission reserves the right to conduct on-site visits.

(7) The nurse will not use the designation ARNP during the time of the supervised practice hours.

(8) An applicant holding an active RN license, without sanctions or restrictions, and current national certification as a CNS, and is practicing in Washington state in an advanced nursing role, will be exempt from the supervised practice requirement if they can provide evidence of two hundred fifty hours of advanced clinical practice within the last two years.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-342 ((ARNP application requirements for licensed advanced practice nurse applicants from other states or jurisdictions.)) **Licensure for ARNP applicants by interstate endorsement.** (1) An applicant ((who is currently licensed as an advanced practice nurse in another state or jurisdiction and who is applying for ARNP licensure in Washington.)) for interstate endorsement for Washington state licensure as an ARNP must meet the following requirements:

(a) ((Hold current registered nurse and advanced practice nurse licenses that are not subject to sanctions or restrictions by)) Have an active RN and ARNP license, or recognition in another state or jurisdiction ((licensing agency)), as practicing in an advanced practice role, without sanctions or restrictions;

(b) Have ((graduated)) a graduate degree from an advanced nursing ((educational program that:

(i) Requires a minimum of one academic year for completion if graduated on or before December 31, 1994; or

(ii) Requires a graduate degree with a concentration in advanced nursing practice if graduated on or after January 1, 1995; or



(iii) ~~Is equivalent to that leading to a graduate degree in advanced nursing practice if the formal educational program is taken after completion of the graduate degree~~) education program as identified in WAC 246-840-340 (1)(b);

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3); and

(d) ~~Have been ((practicing in direct patient care)) performing advanced clinical practice as a licensed ((nurse practitioner, certified nurse-midwife or certified nurse-anesthetist in his or her state)) ARNP, or in the role of an advanced practice nurse, for at least two hundred fifty hours ((of direct patient services)) within the two years prior to the date of application ((for ARNP licensure); and~~

(d) ~~Be currently certified as a nurse practitioner, nurse midwife or registered nurse anesthetist by a commission approved certification program as identified in WAC 246-840-302(3)).~~

(2) An ~~((out-of-state applicant for ARNP licensure))~~ applicant for an ARNP license through interstate endorsement must:

(a) Apply for and be granted a Washington state ~~((registered nurse licensure))~~ RN license as identified in WAC 246-840-090;

(b) Submit a completed ARNP ~~((license))~~ application for licensure to the commission;

(c) Submit ~~((a))~~ the license fee as specified in WAC 246-840-990;

(d) Request the ~~((commission approved certification program))~~ certifying body, as identified in WAC 246-840-302~~((3))~~, to send official documentation of certification directly to the commission;

(e) Request the advanced nursing educational program to send an official transcript directly to the commission showing ~~((a))~~ courses, grades, degree or certificate granted, official seal and appropriate registrar ~~((or program director's signature))~~;

(f) Submit ~~((documentation from the graduate program director or faculty identifying the area of practice, unless the area of practice is clearly indicated on the official transcript;~~

~~((g))~~ Submit educational) nursing education program objectives and course descriptions when requested by the commission; and

~~((h))~~ (g) Submit evidence of at least two hundred fifty hours of ~~((direct patient care services as an advanced practice nurse))~~ advanced clinical practice as an ARNP, or at an advanced nursing practice level, within the two years prior to the date of application ~~((for ARNP licensure))~~. The two hundred fifty hours may include teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor in a clinical setting.

(3) An ARNP applicant who does not meet practice requirements must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) An ARNP applicant needing to complete the supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-344** ~~((ARNP application requirements for advanced practice nurse))~~ **Licensure for ARNP applicants educated and licensed outside the United States.** (1) ~~((Persons educated outside the United States who are currently licensed in their country as advanced registered nurse practitioners, registered nurse-midwives or registered nurse anesthetists and who are applying for ARNP licensure in Washington, must meet the following requirements:~~

(a) ~~Hold current registered nurse and ARNP licenses that are not subject to)~~ An applicant for ARNP licensure in Washington state, educated and licensed outside the United States, must:

(a) Apply for and be granted an active RN license, or recognition in another state or jurisdiction, without sanctions or restrictions ((by a foreign nurse licensing agency)), issued by a regulatory entity outside the United States, and have been practicing at an advanced practice level;

(b) ~~((Have a certificate or credential))~~ Submit a course-by-course evaluation of education from a commission approved credential evaluating service verifying ~~((that))~~ the advanced nursing educational program completed by the applicant is equivalent to the ~~((advanced registered nurse))~~ ARNP education identified in WAC 246-840-455;

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3); and

(d) ~~Have been ((practicing in direct patient care as a licensed nurse practitioner, certified nurse-midwife or certified nurse anesthetist)) performing advanced clinical practice in his or her country for at least two hundred fifty hours ((of direct patient services)) within the two years prior to the date of application for ARNP licensure(;~~ and

(d) ~~Be certified as a nurse practitioner, nurse midwife or registered nurse anesthetist by a commission approved certification program).~~

(2) The applicant educated and licensed outside of the United States must:

(a) ~~((Obtain registered nurse licensure))~~ Apply for and be granted a Washington state RN license, without sanctions or restrictions, as identified in WAC 246-840-045;

(b) Submit a completed ARNP application to the commission;

(c) Submit the ~~((application))~~ license fee as specified in WAC 246-840-990;

(d) Submit a ~~((certificate or credential))~~ course-by-course evaluation of education completed from a commission approved credential evaluating service;

(e) Request the ~~((commission approved certification program))~~ certifying body, as identified in WAC 246-840-302(3) to send official documentation of certification directly to the commission; and

(f) Submit evidence of at least two hundred fifty hours of ~~((direct patient care services))~~ advanced clinical practice as an ((advanced practice nurse)) ARNP, or in an advanced practice role, within the two years prior to the date of application ~~((for ARNP licensure))~~. The two hundred fifty hours may include teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor in a clinical setting.

(3) Internationally educated ARNP applicants who do not meet advanced clinical practice requirements must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) The ARNP applicant needing to complete supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-360 Renewal of ARNP ((license)) licensure.** (1) An applicant applying for ARNP license renewal, ((the applicant)) must have:

(a) An active ((registered nurse license in)) Washington state RN license, without sanctions or restrictions;

(b) ((Maintained)) Current certification ((in area of practice from a commission approved certification program)) from a certifying body as identified in WAC 246-840-302;

(c) Obtained thirty contact hours of continuing education ((credit)) during the renewal period in each ((area of certification-ARNPs who have)) ARNP designation. An ARNP who has certification in more than one ((related)) area of practice may count the continuing education hours for more than one certification when applicable to each area of practice; and

(d) Practiced for at least two hundred fifty hours in advanced clinical practice ((as an)) for each ARNP designation within the two-year licensing renewal cycle. The two hundred fifty hours may include teaching advanced nursing practice only when the faculty member is providing patient care or serving as a preceptor in a clinical setting.

((i) Clinical practice includes the formulation, implementation and evaluation of plans of care for patients for whom ARNPs are responsible.

((ii) Clinical practice includes teaching advanced nursing practice if the faculty member is providing patient care or serving as a preceptor.

(2) The ARNP applicant must:

(a) Submit a) (2) An applicant for ARNP licensure renewal must comply with the requirements of chapter 246-12 WAC, Part 2 and submit:

(a) The renewal license fee as specified in WAC 246-840-990; and

(b) ((Submit)) Evidence of current certification by the commission approved ((certification program in all areas of practice)) certifying body for each designation;

(c) ((Submit)) A written declaration, on forms provided by the commission((- that he or she has completed)) attesting to:

(i) Completion of thirty contact hours of continuing education during the renewal period ((in each area of certification;)) for each ARNP designation; and

(ii) Completion of a minimum of two hundred fifty hours of advanced clinical practice for each designation in the ARNP role within the last two years.

(d) ((Submit a written declaration on forms provided by the commission, to having within the last two years, a mini-

um of two hundred fifty hours of independent clinical practice in the ARNP role;

(e) Submit)) Evidence of completion of continuing education contact hours and ((independent)) advanced clinical practice hours when requested by the commission((-and

(f) Comply with the requirements of chapter 246-12 WAC, Part 2)).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-361 Continuing education for ARNP license renewal.** The thirty contact hours of continuing education required for the two-year renewal of ARNP licensure must:

(1) Be acceptable to the ((commission approved certification program)) certifying body identified in WAC 246-840-302(3); ((and))

(2) Be obtained from courses in which the contact hour is at least fifty minutes; ((and))

(3) Not include the fifteen hours of continuing education required for an ARNP((s)) with prescriptive authority as identified in WAC 246-840-450 (1)(b); and

(4) Not include the same course taken more than once during the renewal cycle.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-365 Inactive ((credential)) and reactivating an ARNP license.** ((1) An ARNP may apply for and renew an inactive credential as identified in chapter 246-12 WAC, Part 4.

((2)) To apply for an inactive ARNP license, an ARNP must comply with WAC 246-12-090 or 246-12-540, as appropriate.

(1) An ARNP may apply for an inactive ((credential)) license if he or she ((meets the following criteria:

(a)) holds an active Washington state ARNP ((credential);

(b) Does not have any sanctions or restrictions issued on the current ARNP license; and

(c) Will not practice in Washington.

(3) Prior to returning to active status, the applicant must complete two hundred fifty hours for each two-year period of inactive license status for a maximum of one thousand hours of advanced clinical practice supervised by an ARNP or physician in the same practice area that the applicant is seeking licensure.

(a) The applicant must submit a written notification to the commission thirty days prior to the supervision experience identifying the name of the ARNP or physician who will be supervising the applicant.

(b) The supervising ARNP or physician must submit a written evaluation to the commission verifying that the applicant has successfully completed the required hours of supervised clinical practice and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.

~~(c) During the time of the supervision, the nurse will be practicing under his or her RN license and will not use the designation ARNP.~~

~~(4) A person with an inactive credential and who does not hold a current active advanced practice nursing license in any other United States jurisdiction, may return to active status. The applicant must:~~

~~(a) Meet the requirement identified in chapter 246-12 WAC, Part 4;~~

~~(b) Hold a registered nurse license in the state of Washington that is not subject to sanctions or restrictions;~~

~~(c) Submit a fee as identified in WAC 246-840-990;~~

~~(d) Submit evidence of current certification by the commission approved certification program identified in WAC 246-840-302(3);~~

~~(e) Submit a written declaration, on forms provided by the commission, of completion within the past two years of thirty contact hours of continuing education related to area of certification and practice; and~~

~~(f) Submit evidence of supervised advanced clinical practice.~~

~~(5) A person with an inactive credential and who has been in active practice in another United States jurisdiction may return to active status and must:~~

~~(a) Meet the requirements identified in chapter 246-12 WAC, Part 4;~~

~~(b) Meet the requirements of WAC 246-840-342; and~~

~~(c) Submit a fee as identified in WAC 246-840-990.~~

~~(6) To obtain)) license without sanctions or restrictions.~~

~~(2) To return to active status the nurse must:~~

~~(a) Meet the requirement identified in chapter 246-12 WAC, Part 4;~~

~~(b) Hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;~~

~~(c) Submit the fee as identified in WAC 246-840-990;~~

~~(d) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1);~~

~~(e) Submit evidence of thirty contact hours of continuing education for each designation within the past two years; and~~

~~(f) Submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(5) To regain prescriptive authority ((an)) after inactive status, the applicant must ((apply as identified in WAC 246-840-410 once the ARNP license has been returned to active status)) meet prescriptive authority requirements identified in WAC 246-840-410.~~

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

WAC 246-840-367 Expired license. ((+H)) When an ARNP license ((has expired for two years or less, the practitioner must)) is not renewed, it will be in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

~~((2) Prior to returning to active status, the applicant must complete two hundred fifty hours for each two-year period of expired license status for a maximum of one thousand hours of advanced clinical practice supervised by an ARNP or physician in the same practice area that the applicant is seeking licensure.~~

~~(i) The applicant must submit a written notification to the commission thirty days prior to the supervision experience identifying the name of the ARNP or physician who will be supervising the applicant.~~

~~(ii) The supervising ARNP or physician must submit a written evaluation to the commission verifying that the applicant has successfully completed the required hours of supervised clinical practice and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP.~~

~~(iii) During the time of the supervision, the nurse will be practicing under his or her RN license and will not use the designation ARNP.~~

~~((3)) Applicants not meeting the required advanced clinical practice requirements must complete two hundred fifty hours of advanced clinical practice for each two years the applicant may have been out of practice, not to exceed one thousand hours.~~

(2) The ARNP applicant needing to complete supervised advanced clinical practice must meet the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

(3) If the ARNP license has expired for ((more than)) two years ((and the practitioner has not been in active practice in another United States jurisdiction, the practitioner)) or more, the applicant must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved ((certification program)) certifying body identified in WAC 246-840-302(3);

(c) Submit ((a written declaration, on forms provided by the commission, of completion)) evidence of thirty contact hours of continuing education for each designation within the past two years ((of thirty hours of continuing education related to area of certification and practice; and

(d) Submit evidence of the supervised advanced clinical practice hours.

(4) If the ARNP license has expired for more than two years and the practitioner has been in active advanced nursing practice in another jurisdiction, the practitioner must:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet the requirements of WAC 246-840-342; and

(c) Submit verification of active practice from any other United States jurisdiction.

(5) If the license has expired for two or more years, applicants may apply for):

(d) Submit evidence of two hundred fifty hours of advanced clinical practice completed within the past two years; and

(e) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority ((as identified in WAC 246-840-410 once the ARNP license has been returned to active status)), which may be granted once the ARNP license is returned to active status.

(4) If the applicant does not meet the required advanced clinical practice hours, he or she must complete the supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-400 ARNP prescriptive authority.** (1) An ARNP licensed under chapter 18.79 RCW when authorized by the nursing commission may prescribe drugs(=) and medical ((equipment and therapies)) devices pursuant to applicable state and federal laws.

(2) The ARNP when exercising prescriptive authority is accountable for competency in:

(a) ~~((Patient selection;~~

~~(b)))~~ Problem identification through appropriate assessment;

~~((c)))~~ (b) Medication ~~((and~~ and device selection;

~~((d)))~~ (c) Patient education for use of therapeutics;

~~((e)))~~ (d) Knowledge of interactions of therapeutics(~~(=if any));~~

~~((f)))~~ (e) Evaluation of outcome; and

~~((g)))~~ (f) Recognition and management of side effects, adverse reactions, and complications (~~(and untoward reactions)).~~

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-410 Application requirements for ARNP prescriptive authority.** (1) An ARNP who applies for prescriptive authority must:

(a) ~~((Have a current))~~ Hold an active Washington state ARNP license ((as an ARNP in Washington that is not subject to)), without sanctions or restrictions, issued by the commission; ~~((and))~~

(b) ~~((Complete))~~ Provide evidence of thirty contact hours of education in ((pharmaceuticals related to the applicant's scope of practice)) pharmacology, including didactic and clinical application, and consisting of pharmacodynamics, pharmacokinetics, pharmacotherapeutics, and

pharmacological management of individual patients related to the applicant's scope of practice.

(2) Pharmacology education must be completed within a two-year time period immediately prior to the date of application for prescriptive authority(~~(, unless the applicant has graduated within the past two years from a graduate program which meets the requirements identified in WAC 246-840-455 (11)(e).~~

The ~~pharmaceutical~~ pharmaceutical educational content shall include pharmacokinetic principles and their clinical application and the use of pharmacological agents in the prevention of illness, restoration, and maintenance of health.

~~(2)))~~ unless the applicant has graduated within the past two years from an advanced nursing education program meeting requirements identified in WAC 246-840-455 (11)(e).

(3) If an ARNP applicant does not have advanced pharmacology education, the applicant must complete:

(a) Advanced pharmacology education of at least thirty contact hours, including pharmacodynamics, pharmacokinetics, pharmacotherapeutics and pharmacological management of individual patients, differential diagnosis, and applied pharmacological management of patients consistent with the applicant's area of certification.

(b) Supervised advanced clinical practice of no less than one hundred fifty hours that meets the requirements of WAC 246-840-340 (4) and (5). The clinical practice hours shall occur after completion of the thirty hours of advanced pharmacology education under the direct supervision of an ARNP with prescriptive authority, a physician as identified in chapter 18.71 RCW, an osteopathic physician as identified in chapter 18.57 RCW, or equivalent in other states or jurisdictions. The thirty contact hours of advanced pharmacology education is obtained from the following:

(i) Study within the advanced nursing education program; or

(ii) Continuing education programs accepted by a national credentialing body.

(4) The ARNP applying for prescriptive authority must submit:

(a) ~~((Submit))~~ A completed application ((on a form provided by the)) commission approved form;

(b) ~~((Submit a))~~ The fee as specified in WAC 246-840-990; and

(c) ~~((Submit))~~ Evidence of completion of ((thirty contact hours of education in pharmaceuticals related to the applicants scope of practice.

~~(3)))~~ required advanced pharmacology education hours and supervised advanced clinical practice hours identified in subsection (3)(a) and (b) of this section.

(5) If an ARNP does not apply for prescriptive authority within two years of graduation from ((the)) an advanced practice program, an additional thirty contact hours of ((pharmaceuticals)) advanced pharmacology education shall be required.

~~((4)))~~ (6) An ARNP who applies for a new or additional ARNP designation must send proof of advanced pharmacology educational content appropriate to each designation.

~~((5))~~ The thirty contact hours of pharmaceutical education shall be obtained from the following:

~~(a) Study within the advanced educational program; or  
(b) Continuing education programs.~~

~~(6)) (7)~~ Applicants who hold prescriptive authority from another state at the time of application may request an exemption to subsection ~~((1)(b) and (2)(e))~~ (3)(a) and (b) of this section if he or she provides evidence of at least two hundred fifty hours of ~~((independent advanced registered nurse practice))~~ advanced clinical practice in an ARNP role with prescriptive authority in his or her scope of practice within the two years prior to application for prescriptive authority.

AMENDATORY SECTION (Amending WSR 09-01-060, filed 12/11/08, effective 1/11/09)

**WAC 246-840-420 Authorized prescriptions by ARNP with prescriptive authority.** ~~((1))~~ Prescriptions for drugs ~~(s)~~ and medical ~~((equipment and therapies))~~ devices must comply with all applicable state and federal laws and be within the ARNP's scope of practice.

~~((2) The advanced registered nurse practitioner)~~ (1) An ARNP must sign ((#)) prescriptions and include the initials ARNP or NP.

~~((3)) (2)~~ An ARNP may not, under RCW 18.79.240(1) and chapter 69.50 RCW, prescribe controlled substances in Schedule I.

~~((4) Any)~~ (3) An ARNP with prescriptive authority who prescribes controlled substances must be registered with the drug enforcement administration.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-840-304 Certification and certification program requirements.
- WAC 246-840-350 Application requirements for ARNP interim permit.

### **WSR 15-24-118**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

(Dental Quality Assurance Commission)

[Filed December 1, 2015, 4:14 p.m.]

Supplemental Notice to WSR 15-03-067.

Preproposal statement of inquiry was filed as WSR 09-13-097.

Title of Rule and Other Identifying Information: WAC 246-817-310 Maintenance and retention of records, new WAC 246-817-304, 246-817-305, and 246-817-315. Creating new rules and renaming and amending an existing rule to set requirements for dental treatment record content, retention and accessibility. This is a supplemental notice to WSR 15-03-067.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on January 22, 2016, at 8:05 a.m.

Date of Intended Adoption: January 22, 2016.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 23-2901 [236-2901], by January 15, 2016.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by January 15, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal renames and modifies WAC 246-817-310 and creates three new rules, WAC 246-817-304, 246-817-305, and 246-817-315. The proposed rules create definitions, detail patient record content requirements, move business record related requirements to a new rule, and separate business and patient record accessibility. The current proposal is different from the previous proposal as it adds definitions, changes retention time, modifies detail [detailed] patient record content requirements, and modifies when business records can be obtained and by whom.

Reasons Supporting Proposal: A complete and accurate patient record is vital for patient safety and for appropriate regulation. Thorough records are necessary to inform the work of other treatment providers who subsequently treat the patient, as well as for the commission when investigating complaints and regulating practitioners. The proposed rules clarify what should be included in patient records and ensure that patient records are complete, legible, and consistent. The commission agreed with stakeholder comments at the March 6, 2015, hearing and modified the rules accordingly.

Statutory Authority for Adoption: RCW 18.32.655 and 18.32.0365.

Statute Being Implemented: RCW 18.32.655 and 18.32.-0365.

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

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

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

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov).

December 1, 2015

Charles Hall, D.D.S., Chair  
Dental Quality Assurance Commission

#### NEW SECTION

**WAC 246-817-304 Definitions.** The following definitions apply to WAC 246-817-304 through 246-817-315 unless context requires otherwise:

(1) "**Clinical record**" is the portion of the record that contains information regarding the patient exam, diagnosis, treatment discussion, treatment performed, patient progress, progress notes, referrals, studies, tests, imaging of any type and any other information related to the diagnosis or treatment of the patient.

(2) "**Financial record**" is the portion of the record that contains information regarding the financial aspects of a patient's treatment including, but not limited to, billing, treatment plan costs, payment agreements, payments, insurance information or payment discussions held with a patient, insurance company or person responsible for account payments.

(3) "**Notation**" is a condensed or summarized written record/note.

(4) "**Patient record**" the entire record of the patient maintained by a practitioner that includes all information related to the patient.

#### NEW SECTION

**WAC 246-817-305 Patient record content.** (1) A licensed dentist who treats patients shall maintain legible, complete, and accurate patient records.

(2) The patient record must contain the clinical records and the financial records.

(3) The clinical record must include at least the following information:

(a) For each clinical record entry note, the signature, initials, or electronic verification of the individual making the entry note;

(b) For each clinical record entry note, identify who provided treatment if treatment was provided;

(c) The date of each patient record entry, document, radiograph or model;

(d) The physical examination findings documented by subjective complaints, objective findings, an assessment or diagnosis of the patient's condition, and plan;

(e) A treatment plan based on the assessment or diagnosis of the patient's condition;

(f) Up-to-date dental and medical history that may affect dental treatment;

(g) Any diagnostic aid used including, but not limited to, images, radiographs, and test results. Retention of molds or study models is at the discretion of the practitioner, except for molds or study models for orthodontia or full mouth reconstruction shall be retained as listed in WAC 246-817-310;

(h) A complete description of all treatment/procedures administered at each visit;

(i) An accurate record of any medication(s) administered, prescribed or dispensed including:

(i) The date prescribed or the date dispensed;

(ii) The name of the patient prescribed or dispensed to;

(iii) The name of the medication; and

(iv) The dosage and amount of the medication prescribed or dispensed, including refills.

(j) Referrals and any communication to and from any health care provider;

(k) Notation of communication to or from the patient or patient's parent or guardian, including:

(i) Notation of the informed consent discussion. This is a discussion of potential risk(s) and benefit(s) of proposed treatment, recommended tests, and alternatives to treatment, including no treatment or tests;

(ii) Notation of posttreatment instructions or reference to an instruction pamphlet given to the patient;

(iii) Notation regarding patient complaints or concerns associated with treatment, this includes complaints or concerns obtained in person, by phone call, e-mail, mail, or text; and

(iv) Termination of doctor-patient relationship; and

(l) A copy of each laboratory referral retained for three years as required in RCW 18.32.655.

(4) Clinical record treatment entries must not be erased or deleted from the record.

(a) Mistaken handwritten entries must be corrected with a single line drawn through the incorrect information. New or corrected information must be initialed and dated.

(b) If the record is an electronic record then a record audit trail must be maintained with the record that includes a time and date history of deletions, edits and/or corrections to electronically signed records.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

**WAC 246-817-310 (~~(Maintenance and)~~) Patient record retention (~~(of records)~~) and accessibility requirements.** (~~(Any dentist who treats patients in the state of Washington shall maintain complete treatment records regarding patients treated. These records shall include, but shall not be limited to X rays, treatment plans, patient charts, patient histories, correspondence, financial data and billing. These records shall be retained by the dentist for five years in an orderly, accessible file and shall be readily available for inspection by the DQAC or its authorized representative. X rays or copies of records may be forwarded to a second party upon the patient's or authorized agent's written request. Also, office records shall state the date on which the records were released, method forwarded and to whom, and the reason for the release. A reasonable fee may be charged the patient to cover mailing and clerical costs.~~)

~~Every dentist who operates a dental office in the state of Washington must maintain a comprehensive written and dated record of all services rendered to his/her patients. In offices where more than one dentist is performing the services the records must specify the dentist who performed the services. Whenever requested to do so, by the secretary or his/her authorized representative, the dentist shall supply documentary proof:~~

~~(1) That he/she is the owner or purchaser of the dental equipment and/or the office he occupies.~~

~~(2) That he/she is the lessee of the office and/or dental equipment.~~

~~(3) That he/she is, or is not, associated with other persons in the practice of dentistry, including prosthetic dentistry, and who, if any, the associates are.~~

~~(4) That he/she operates his office during specific hours per day and days per week, stipulating such hours and days.)~~

(1) A licensed dentist shall keep readily accessible patient

records for at least six years from the date of the last treatment.

(2) A licensed dentist shall respond to a written request to examine or copy a patient's record within fifteen working days after receipt. A licensed dentist shall comply with chapter 70.02 RCW for all patient record requests.

(3) A licensed dentist shall comply with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act, 45 C.F.R. destruction and privacy regulations.

#### NEW SECTION

**WAC 246-817-315 Business records accessibility.** If requested as part of an authorized investigation, a licensed dentist who operates a dental practice in the state of Washington shall provide to the secretary:

(1) Documentation that the licensed dentist is:

(a) The owner, purchaser, or lessee of the dental equipment;

(b) The owner, purchaser, or lessee of the office the dentist occupies; and

(c) Associated with other persons in the practice of dentistry, whether or not the associate is licensed to practice dentistry.

(2) All contracts or agreements relating to the dental practice business relationships with co-owners, partners, and associates.

sure threshold for major contributions reported by an out-of-state political committee who participates in Washington state elections. The modification is based on the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce. The proposed amendment also declares that reports are available on PDC's web site.

Reasons Supporting Proposal: PDC proposes these adjustments in keeping with the people's declaration that campaign contributions be fully disclosed to the public and that secrecy is to be avoided. The adjustments are further proposed to comply with the statutory mandates to adjust, (1) at the beginning of every even-numbered year, contribution limits and the other dollar amounts set out in WAC 390-05-400 and (2) annually, the disclosure threshold defining which major contributions will be reported by an out-of-state committee making expenditures in support of or opposition to Washington state candidates and/or ballot measures.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.125(1), and 42.17A.250 (1)(g).

Statute Being Implemented: RCW 42.17A.005(26), 42.17A.405, 42.17A.410, 42.17A.445(3), 42.17A.475, 47.17A.630(1), and 42.17A.250 (1)(g).

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: The proposed amendments conform to statutory mandates that certain dollar amounts be adjusted for inflation at regular intervals. No fiscal impact is expected to result from these amendments.

Name of Proponent: 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. 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. PDC is not an agency listed in subsection (5)(1)(i) of RCW 34.05.328. Further, 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.

December 1, 2015

Lori Anderson  
Communications and  
Training Officer

**WSR 15-24-122**  
**PROPOSED RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed December 1, 2015, 5:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-112.

Title of Rule and Other Identifying Information: WAC 390-05-400 Changes in dollar amounts and 390-16-050 Forms for contributions and expenditures of out-of-state political committee.

Hearing Location(s): Office of the Public Disclosure Commission (PDC), 711 Capitol Way, Room 206, Olympia, WA 98504, on Thursday, 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: In accordance with RCW 42.17A.125(1), proposed amendments to WAC 390-05-400(1) make inflationary adjustments to contribution limits and other dollar amounts found in chapter 42.17A RCW. These adjustments are made based on changes in economic conditions as reflected in the inflationary index recommended by the office of financial management.

In accordance with RCW 42.17A.250 [(1)](g), the proposed amendment to WAC 390-16-050 modifies the disclo-

AMENDATORY SECTION (Amending WSR 14-01-010, filed 12/5/13, effective 1/5/14)

**WAC 390-05-400 Changes in dollar amounts.** Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	<del>((2014))</del> 2016 Revision
.005	Definition of "Independent Expenditure"	<del>\$(900)</del> <u>950</u>	<del>\$(950)</del> <u>1,000</u>
.445(3)	Reimbursement of candidate for loan to own campaign	<del>\$(5,000)</del> <u>5,500</u>	<del>\$(5,500)</del> <u>6,000</u>
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	<del>\$(18,000)</del> <u>19,000</u>  <del>\$(900)</del> <u>950</u>	<del>\$(19,000)</del> <u>20,000</u>  <del>\$(950)</del> <u>1,000</u>
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office Candidates for school board office Candidates for hospital district	<del>\$(900)</del> <u>950</u> <del>\$(900)</del> <u>950</u> <del>\$(1,800)</del> <u>1,900</u> <del>\$(1,800)</del> <u>1,900</u> <del>\$(900)</del> <u>950</u> <del>\$(900)</del> <u>950</u> <del>\$(900)</del> <u>950</u> <del>\$(800)</del> <u>950</u>	<del>\$(950)</del> <u>1,000</u> <del>\$(950)</del> <u>1,000</u> <del>\$(1,900)</del> <u>2,000</u> <del>\$(1,900)</del> <u>2,000</u> <del>\$(950)</del> <u>1,000</u> <del>\$(950)</del> <u>1,000</u> <del>\$(950)</del> <u>1,000</u> <del>\$(950)</del> <u>1,000</u>
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	  <del>\$(900)</del> <u>950</u> <del>\$(1,800)</del> <u>1,900</u>	  <del>\$(950)</del> <u>1,000</u> <del>\$(1,900)</del> <u>2,000</u>
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees State parties and caucus committees County and leg. district parties Limit for all county and leg. district parties to a candidate	  <del>((90))</del> <u>.95</u> per voter <del>((45))</del> <u>.50</u> per voter <del>((45))</del> <u>.50</u> per voter	  <del>((95))</del> <u>\$1.00</u> per registered voter .50 per registered voter .50 per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall State parties and caucuses County and leg. district parties Limit for all county and leg. district parties to state official up for recall or pol. comm.	  <del>((90))</del> <u>.95</u> per voter <del>((45))</del> <u>.50</u> per voter	  <del>((95))</del> <u>\$1.00</u> per registered voter .50 per registered voter



Code Section	Subject Matter	Amount Enacted or Last Revised	<del>((2014))</del> <u>2016</u> Revision
	supporting recall	<del>((.45))</del> <u>.50</u> per voter	.50 per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	<del>\$((900))</del> <u>950</u>	<del>\$((950))</del> <u>1,000</u>
	To political party	<del>\$((4,500))</del> <u>5,000</u>	<del>\$((5,000))</del> <u>5,500</u>
.410(1)	Candidates for judicial office	<del>\$((1,800))</del> <u>1,900</u>	<del>\$((1,900))</del> <u>2,000</u>
.475	Contribution must be made by written instrument	<del>\$((90))</del> <u>95</u>	<del>\$((95))</del> <u>100</u>

AMENDATORY SECTION (Amending WSR 14-01-010, filed 12/5/13, effective 1/5/14)

WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees. The official form for the report required by RCW 42.17A.250 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 is designated "C-5," revised ((1/14)) 2/16. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.

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Form <b>C5</b> (1/14)	This space for office use P M A R K  R E C E I V E D
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Out-of-State Political Committee Campaign Finance Report

<b>1. Name and full address of committee making the contribution</b> Name Street address City / State / Zip	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
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3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)

<b>4. Officers or responsible leaders of committee:</b> Name and full address	Title
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<b>5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:</b> Name of state(s) & administrative agency(s)	Agency(s) website address
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6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.

Candidate name	Office sought	Political party	Date	Amount

7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.

Committee name & full address	Ballot number	For or Against?	Date	Amount

8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

9. Total contributions and expenditures (Add parts 6, 7, 8) .....

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Form <h1 style="margin: 0;">C5</h1> (2/16)	This space for office use  P M O A S R T K  R E C E I V E D
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## Out-of-State Political Committee Campaign Finance Report

<b>1. Name and full address of committee making the contribution</b> Name Street address City / State / Zip	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
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**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

<b>4. Officers or responsible leaders of committee:</b>	
Name and full address	Title

<b>5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:</b>	
Name of state(s) & administrative agency(s)	Agency(s) website address

**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate name	Office sought	Political party	Date	Amount

**7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.**

Committee name & full address	Ballot number	For or Against?	Date	Amount

**8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

**9. Total contributions and expenditures (Add parts 6, 7, 8) .....**

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**10. Aggregate contributions and expenditures made during this calendar year in Washington State.** Include amounts shown on this report and C5 reports previously submitted this calendar year. . . . . \_\_\_\_\_

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y  N

**11. Contributions received from Washington residents.** List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**12. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,645.00 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**13. Eligibility to Give to Political Committees and State Office Candidates:** A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters.

A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

**14. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official \_\_\_\_\_ Name – Typed or Printed \_\_\_\_\_

Title \_\_\_\_\_ Daytime Telephone No. (    ) \_\_\_\_\_

E-Mail Address \_\_\_\_\_

))

**10. Aggregate contributions and expenditures made during this calendar year in Washington State.** Include amounts shown on this report and C5 reports previously submitted this calendar year. . . . . \_\_\_\_\_

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y  N

**11. Contributions received from Washington residents.** List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**12. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,680.00 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**13. Eligibility to Give to Political Committees and State Office Candidates:** A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters.

A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

**14. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official _____	Name – Typed or Printed _____
Title _____	Daytime Telephone No. (     ) _____
	E-Mail Address _____

**Instructions – (Statutory reference: RCW 42.17A.250)**

**Who Must Report on C5 Form:** An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state. See WAC 390-16-049 reprinted below. A political committee making contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state that fails to satisfy all of the conditions of WAC 390-16-049(3) shall not use the C5 form but instead shall register and report as a political committee pursuant to RCW 42.17A.205 through 42.17A.240 and as otherwise required by RCW 42.17A.

**When to Report:** A C5 report is due no later than the 10<sup>th</sup> day of the month following any month in which a contribution or other expenditure of more than \$50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10<sup>th</sup> day of the month following any month in which an additional contribution or other expenditure of more than \$50 is made. The C5 report is considered filed as of the postmark date.

**Send Report to:** Public Disclosure Commission, 711 Capitol Way, Room 206, PO Box 40908, Olympia, Washington 98504-0908

**Questions?** Contact PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111

**WAC 390-16-049 Out-of-state political committees – Implementation of RCW 42.17A.250**

(1) RCW 42.17A.250 governs campaign reporting in Washington State by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17A.250 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) below must be satisfied:

(a) **Out-of-State.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational Purpose and Campaign Activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,

(iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria subsection (2) shall file as an in-state committee under RCW 42.17A, including RCW 42.17A.205 – RCW 42.17A.240.

(4) Out-of-state political committees reporting under RCW 42.17A.250 are also subject to reporting pursuant to RCW 42.17A.260 (political advertising independent expenditures) and 42.17A.305 through 42.17A.315 (electioneering communications).

**WSR 15-24-133**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
 [Filed December 2, 2015, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-101.

Title of Rule and Other Identifying Information: Chapter 308-91 WAC, Reciprocity and proration, these rules support the administration of chapter 46.87 RCW, Proportional registration. This statute supports the administration of the international registration plan (IRP), a commercial vehicle reciprocity agreement between the states and Canadian provinces regarding interstate motor carrier registration and operations.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on January 5, 2016, at 10:00 a.m.

Date of Intended Adoption: January 6, 2016.

Submit Written Comments to: Art Farley, P.O. Box 9020, Olympia, WA 98507, e-mail afarley@dol.wa.gov, fax (360) 570-7048, by January 4, 2016.

Assistance for Persons with Disabilities: Contact Art Farley by January 4, 2016, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement the provisions of SSB 5297, Laws of 2015, and to update or remove obsolete language and provisions in chapter 308-91 WAC.

WAC 308-91-030, removed obsolete definitions and defined "reporting period."

WAC 308-91-040 and 308-91-095, removed obsolete language.

WAC 308-91-050, removed obsolete language and clarified language relating to temporary authorities.

WAC 308-91-055, created new section regarding application records and retention.

WAC 308-91-060, 308-91-090 and 308-91-130, amended language to reflect and synchronize with the current provisions of IRP and removed obsolete language.

WAC 308-91-080, deleted section relating to temporary authorization permits as program is no longer in existence.

WAC 308-91-120, 308-91-171 and 308-91-172, amended language for clarity.

WAC 308-91-150, removed obsolete language and amended for clarity.

Statutory Authority for Adoption: RCW 46.87.010(2).

Statute Being Implemented: Chapter 46.87 RCW.

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

Name of Proponent: Department of licensing, prorate and fuel tax services, governmental.

Name of Agency Personnel Responsible for Drafting: Art Farley, 1125 Washington Street, Olympia, 98503, (360) 902-0183; Implementation and Enforcement: Paul Johnson, 2424 Bristol Court S.W., Olympia, 98502, (360) 664-1844.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not meet small business economic impact statement criteria as required under chapter 34.05 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. No cost associated with amendments contained in this proposal.

December 2, 2015

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-030 Definitions.** The definitions set forth below, and in chapters 46.04, 46.85, and 46.87 RCW, apply throughout this chapter.

For the purpose of this code, the terms "apportioned," "proration," "prorate," "International Registration Plan (IRP)," and "proportional registration" are synonymous.

(1) (~~"Backing plate" means a license plate which is designed for displaying validation decals, stickers or tabs.~~

(2) (~~"Base jurisdiction," means the jurisdiction in which the owner has "properly registered" vehicle(s) of a fleet as defined in RCW 46.87.020(14).~~

(3)) (~~"Bus" (BS) means every motor vehicle designed for carrying more than five passengers and the driver and used primarily for the transportation of people.~~

((4)) (2) "Combination of vehicles" means a power unit used in combination with trailer(s), semitrailer(s) and/or converter gear.

((5) (~~"Converter gear" (CG) means an auxiliary under carriage assembly with the fifth wheel and tow bar, used to convert a semitrailer to a full trailer.~~

(6)) (3) "Department" means the department of licensing, state of Washington.

((7)) (4) "Dump truck" (DT) means a truck whose contents are unloaded by tilting the truck bed backward with the tailgate open.

((8) (~~"Experience period." See "preceding year" definition.~~

(9) (~~"Full trailer" (FT) means every vehicle without motive power, designed for carrying persons or property, drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.~~

(10)) (5) "Interstate or interjurisdiction movement" means vehicle movement between or through two or more jurisdictions.

((11)) (6) "Intrastate or intrajurisdiction movement" means vehicle movement within a single jurisdiction, from one point within that jurisdiction to another point within the same jurisdiction.

((12)) (7) "Latest purchase cost or price" means the actual purchase cost or price, if reasonable, for a vehicle paid by the current owner, including the value of any trade-in or other valuable considerations, cost of accessories and modifications but excluding taxes, transportation or shipping costs, and preparatory or delivery costs. Reasonable purchase cost is considered to be the value of the vehicle as determined from guide books, reports or compendiums of value recognized in the automotive industry. All values are to be expressed in United States dollars.

~~((13))~~ (8) "Lessee" means a person, firm or corporation which has legal possession and control of a vehicle owned by another under the terms of a lease agreement.

~~((14))~~ (9) "Lessor" means a person, firm or corporation which, under the terms of a lease, grants the legal right of possession, control of and responsibility for the operation of the vehicle to another person, firm or corporation.

~~((15) "Mileage year." See "preceding year" definition.~~

~~(16))~~ (10) "Owner-operator" means an equipment lessor who leases their vehicle with driver to a carrier.

~~((17) "Preceding year" means the period of twelve consecutive months prior to July 1st of the year immediately before the commencement of the registration or license year for which apportioned registration is sought. This term is used interchangeably with experience period and mileage year.~~

~~(18))~~ (11) "Reciprocity jurisdiction" means a jurisdiction with which the state of Washington extends vehicle license reciprocity as provided for in chapter 46.85 RCW.

~~((19))~~ (12) "Reporting period" means the period of twelve consecutive months prior to July 1st. If the registration year begins in July, August, or September, the reporting period will be the previous July 1st through June 30th in the prior calendar year.

(13) "Road tractor" (RT) means every motor vehicle designed without a fifth wheel and used for drawing other vehicles by use of a ball hitch and so constructed as to carry part of the weight of a vehicle or load so drawn (commonly referred to as a mobile home toter).

~~((20) "Semitrailer" (ST) means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by the towing vehicle.~~

~~(21))~~ (14) "Tractor" (TR) means every motor vehicle designed and used primarily for drawing other vehicles but not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

~~((22))~~ (15) "Trip lease" means a lease of vehicle(s) to a carrier (lessee) for a single interjurisdictional movement. The term may also include a similar intrajurisdictional movement where such movement is authorized under the laws of the jurisdiction.

~~((23))~~ (16) "Truck" (TK) means every motor vehicle designed, used or maintained primarily for the transportation of property (the maximum gross weight for solo trucks with three axles is 54,000 pounds) under RCW 46.87.040.

~~((24))~~ (17) "Truck tractor" (TT) means every motor vehicle designed and used primarily for drawing other vehicles but so constructed as to carry a load thereon in addition to a part of the weight of the vehicle and load so drawn (dromedary).

~~((25))~~ (18) "Utility trailer" means any full trailer or semitrailer constructed and used solely for the purpose of carrying property and not to exceed a gross weight of 6,000 pounds.

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-040 General provisions.** (1) **Can carriers separate their apportionable vehicles into more than one fleet?** Yes, carriers may separate their apportionable vehicles into two or more fleets.

(2) ~~((Can a fleet consist of both motor and nonmotor vehicles?~~ No, a fleet must consist of either motor or nonmotor vehicles.

~~(3) **What are proportional registration credentials?** Proportional registration credentials consist of a current cab card, vehicle license plate and validation tabs.~~

(4) **How must I display my cab card?** The original cab card must be carried in or on the vehicle to which it has been issued (, or in the case of a trailing unit, may be carried in the power unit). If you have renewed for a subsequent registration year but are still operating in the current registration year, you are required to carry both cab cards.

~~((5))~~ (3) **Are photocopies of the cab card acceptable?** No, photocopies or other facsimiles (fax) of any cab card cannot be used for the power unit (but may be used for any trailing unit).

~~((6))~~ (4) **May my proportional registration credentials be transferred?** Yes, vehicle license plates and validation tabs may be transferred when moving the vehicles from one fleet to another fleet for the same registrant. Cab card(s) cannot be transferred under any circumstance.

~~((7))~~ (5) **When must I surrender my proportional registration credentials?** Cab card(s) must be surrendered in order to receive license fee credit unless the supplement is filed electronically.

~~((8))~~ (6) **Under what circumstances may Washington license fees be adjusted?** For any unpaid invoices, Washington license fees may be adjusted, in one-twelfth increments, if reasonable cause has been established. Reasonable cause may be considered as the demise of the registrant, destruction of a vehicle, theft or other cause the department determines otherwise acceptable. Washington license fees may also be adjusted by audit.

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-050 Applications for proportional registration.** (1) **How do I apply for proportional registration?** Application for proportional registration must be submitted to the ~~((prorate section. Incorrect, illegible, unsigned ☺))~~ Motor Carrier Section by mail, fax or online via Taxpayer Access Point (TAP). Incomplete applications may be returned.

(2) **What titling/registration options are available to owner-operators registering vehicles under the IRP?** Options available for owner-operators registering under the IRP are ~~((as follows))~~:

(a) The owner-operator may be the registrant. The vehicle(s) will be titled and registered in the owner-operator's name only. The cab card will show the name of the owner-operator followed by the name of the carrier to whom the vehicle(s) and driver(s) are leased for operations. The owner-operator will be responsible for registration of such vehi-



cles(s), and establishing and maintaining records required of proportionally registered fleets.

(b) The carrier (lessee) may be the registrant. The vehicle(s) will be titled and registered in the names of both the carrier as lessee and the owner-operator as lessor. The carrier will be responsible for registration of such vehicle(s), and establishing and maintaining records required of proportionally registered fleets.

(3) **What titling/registration options are available to household goods carriers registering vehicles under the IRP?** Household goods carriers may register vehicles under the IRP (~~(in the following ways)~~) if:

(a) ~~((When))~~ The agent is the lessor and the company is the lessee, you may title and register as dual applicants. Under this procedure, the lessor's fleet is prorated in its name and cab cards are issued in the name of both the lessor and lessee. The IRP application is based on the lessor's vehicles and the mileage accumulated by the lessor under its name and that of the lessee; or

(b) Owner-operators, other than service representatives, who exclusively transport cargo for household goods carriers, ~~((shall))~~ must register their vehicle in the carriers base jurisdiction. Registration ~~((shall))~~ must be in both the owner-operator's name and that of the carrier as lessee.

(4) **What is a temporary ~~((letter of))~~ authority ~~(TA)~~?** ~~((A temporary letter of authority, issued))~~ Authorization by the department that allows operation of a vehicle pending issuance of permanent credentials. This is only issued by the department.

(5) **May I receive a ~~((temporary letter of authority))~~ ~~TA~~?** Yes, you may receive a temporary ~~((letter of))~~ authority if the ~~((proportional registration supplement - Schedule "A & C" and supporting))~~ proper documents relating to ~~((such vehicles are acceptable, on file and under any of))~~ the vehicles have been received by the department and the following conditions have been met:

(a) The applicant's proportional registration account is ~~((on))~~ active ~~((status))~~ and considered to be in good standing. Good standing is an active account and there has been no collection activity in the previous two years; or

(b) ~~((If))~~ You have an existing account and ~~((are start- ing))~~ start a new fleet; or

(c) ~~((If))~~ The vehicle is currently prorated or fully licensed in the state of Washington and ~~((the registrant is establishing))~~ you create a new prorate account.

(6) **How long is the ~~((temporary letter of authority))~~ ~~TA~~ effective?** The department may determine the duration of the ~~((temporary letter of authority))~~ TA, not to exceed two months from the effective date.

(7) **How can I receive a ~~((temporary letter of author- ity))~~ ~~TA~~?** A ~~((temporary letter of authority))~~ TA is issued ~~((in one of the following ways))~~ by:

(a) Mail;

(b) Facsimile (fax) transmission; ~~((or))~~

(c) ~~((At))~~ E-mail;

(d) Taxpayer Access Point (TAP); or

(e) Through a prorate and fuel tax licensing services office(s).

## NEW SECTION

**WAC 308-91-055 Application records—Preservation—Content.** An owner must preserve the records on which the owner's application for apportioned registration is based for a period of three years following the close of the registration year. These records shall be complete and shall include, but not be limited to, the following: Copies of proportional registration applications and supplements for all jurisdictions in which the fleet is prorated; proof of proportional or full registration with other jurisdictions; vehicle license or trip permits; temporary authorization permits; documents establishing the latest purchase year and cost of each fleet vehicle in ready-for-the-road condition; weight certificates indicating the unladen, ready-for-the-road, weight of each vehicle in the fleet; periodic summaries of mileage by fleet and by individual vehicles; individual trip reports, driver's daily logs, or other source documents maintained for each individual trip that provide trip dates, points of origin and destinations, total miles traveled, miles traveled in each jurisdiction, routes traveled, vehicle equipment number, driver's full name, and all other information pertinent to each trip.

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-060 Reporting actual ~~((and estimated))~~ mileage and prorate percentage.** (1) **How does the preceding year mileage relate to the application Schedule B?** The Schedule B application is used to list all actual miles traveled by all apportioned vehicles licensed with the fleet during the reporting period ~~((of July 1st through June 30th of the preceding year and estimated annual miles in new jurisdictions where travel is intended))~~.

(2) **How are the miles listed on the Schedule B used?** The miles are used to determine a jurisdiction's prorate percentage. ~~((The jurisdiction's prorate))~~ This percentage determines how much of the jurisdiction's fees will be charged. ~~((The jurisdiction's))~~ This mileage ~~((will be))~~ is divided by ~~((an appropriate))~~ the total ~~((mile))~~ mileage figure to determine ~~((that))~~ percentage.

(3) ~~**Would there be any time in which actual miles would not be reported on my Schedule B application?**~~ Yes, if an apportioned vehicle did not operate in two or more jurisdictions during the registration year, you would not include those vehicle miles on the Schedule B.

(4) ~~**What is the registration year?**~~ A registration year is any twelve-month time period in which apportioned vehicles are registered in any given fleet.

(5) ~~**When would estimated miles be used on my application Schedule B for the registration year?**~~ You would use estimated miles under one of the following conditions:

(a) First year operation of a new account or fleet; or

(b) When a registrant wants to expand operations into new jurisdiction(s); or

(c) If the fleet failed to accumulate actual miles during the preceding year into jurisdiction(s) not traveled in which the fleet was registered and registration is still desired.

If there is a major change of operation to an existing fleet during the registration year, you will need to submit an

amended application Schedule B. The Schedule B will list estimated miles for all jurisdictions in which you desire apportioned registration for the new operation.

~~(6)) How do I report my mileage if I incorporate? ((If you incorporate,)) You must use ((estimated miles as a new account unless you have at least three months of actual mileage during the preceding year.~~

~~(7) What is a major change of operation? There are two types of major change of operations. They are:~~

~~(a) A major change of operation occurs when fleet mileage and registered jurisdictions increase more than fifty percent during the registration period; and~~

~~(b) Any change in registration pattern, which leaves Washington the only registration jurisdiction with actual mileage in the preceding year.~~

~~(8) What mileage would I report on the application Schedule B for my trailer fleet? Use either the mileage traveled by trailers of the fleet or use the mileage traveled by the motor vehicles while used in combination with the trailers of the fleet. In instances where the use of mileage accumulated by the trailer fleet is impractical, see measures provided under the provisions of RCW 46.87.120(3) or the International Registration Plan)) mileage used from your reporting period under your previous business account.~~

~~((9)) (4) What type of ((conditions)) reporting errors would cause my application Schedule B to be rejected? ((The department may reject an application Schedule B based upon, but not limited to,)) See the following examples:~~

~~(a) ((Estimated mileage that does not realistically reflect proposed operations;~~

~~(b)) Mileage data((, other than estimated mileage,)) expressed in rounded off numbers on renewal applications; or  
~~((c)) (b) Identical mileage data reported for consecutive registration years for the same fleet.~~~~

~~((10) How does the department treat actual or estimated miles in the determination of the prorate percentage? The department has adopted a consistent approach. Any jurisdiction which shows actual miles will have a prorate percentage based on the total actual miles traveled by the fleet. Any jurisdiction which shows estimated miles will have a percentage based on the total actual miles and estimated miles by the fleet.~~

~~(11) What is the result of an applicant answering either Y or N on the application Schedule B? A Y indicates that the applicant requests registration in a jurisdiction and apportioned fees will be calculated. An N indicates that the applicant does not request registration in a jurisdiction and no apportioned fees will be calculated.~~

~~(12)) (c) And any other inconsistencies in mileage data reported.~~

~~(5) How do I determine my apportionable miles? Apportionable miles are accumulated by registered ((apportionable)) vehicles ((and determined as follows)) that:~~

~~(a) Include only ((those)) miles for ((a)) vehicles ((which)) that traveled ((in two or more jurisdictions during the registration year. If a vehicle did not travel interstate during the registration year, do not include the mileage for that vehicle in your apportionable miles)) in the reporting period; and~~

~~(b) ((Except as noted in (a) of this subsection, the)) Mileage reported must be the actual miles accumulated by those vehicles that were part of the proportionally registered fleet during the preceding year.~~

~~(c) If a vehicle was part of the proportionally registered fleet for only a part of the preceding year, ((then only)) report the miles accumulated by this vehicle during ((the)) this time ((it was a part of the fleet are to be included in the preceding year.~~

~~(d) If a carrier has more than one proportionally registered fleet, a separate mileage report must be kept for each fleet)).~~

AMENDATORY SECTION (Amending WSR 00-16-045, filed 7/26/00, effective 8/26/00)

**WAC 308-91-090 Leased and rented vehicles.** How are leased or rented vehicles registered? The registration of leased or rental passenger vehicles will be conducted under the provisions of chapter ~~((46.16))~~ 46.16A RCW. ~~((Trucks, tractors, and truck tractors; trucks of one-way fleets (less than 26,000 pounds gross weight); trailers and semitrailers (exceeding 6,000 pounds gross weight), and utility trailers (not exceeding 6,000 pounds gross weight) may be registered under the provisions of Article XI of the International Registration Plan (IRP). In addition to the certificate of registration (cab card) or a photocopy, a copy of the rental/lease agreement must be carried in the rental/leased vehicle or if it is a nonpowered vehicle, the vehicle providing the motive power for the combination. Refer to WAC 308-91-030 for the definition of terms used in this section.))~~

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-095 Trip leasing. What are the requirements for trip leasing?** The requirements for trip leasing are as follows:

(1) The lessor's vehicles must be prorated in this state or operated under authority of vehicle trip permits.

(2) The duration of the lease agreement is for a single trip and cannot exceed thirty days.

(3) A completed copy of the trip lease agreement must be carried in the lessor's vehicle throughout the duration of the lease.

(4) All mileage accumulated throughout the duration of the trip lease agreement will be recorded by the lessor and become a part of the lessor's mileage ~~((experience year))~~ reporting period. The mileage records, trip reports, and trip lease agreement must be maintained by the lessor for a period of four years following the mileage ~~((preceding year or period upon which the application is based))~~ reporting period.

(5) The lessor of a trip lease agreement is responsible for licensing and recordkeeping.

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-120 Federal heavy vehicle use tax. (1) Who must show proof of payment of federal heavy vehicle use tax?** The department ~~((of licensing))~~ requires owners of

motor vehicles with a declared combined gross weight of 55,000 pounds or more to provide acceptable proof (~~(acceptable to the department, that)~~) the federal heavy vehicle use tax imposed by (~~(section 4481 of)~~) the Internal Revenue (~~(Code of 1954)~~) Service has been suspended or paid at the time of registration (~~(unless specifically exempt by the rules and regulations of the Internal Revenue Service)~~).

(2) **What does the department require for proof of payment of federal heavy vehicle use tax?** Acceptable proof (~~(for registration purposes)~~) is either:

(a) The original or photocopy of an Internal Revenue Service (IRS) receipted Schedule 1 (IRS form 2290) schedule of highway motor vehicles; (~~(or)~~)

(b) Photocopy of IRS form 2290 with Schedule 1 as filed with the IRS and a photocopy of the front and back sides of the (~~(canceled)~~) canceled check used for the payment of taxes to the IRS; or

(c) Other proof of payment acceptable to the department.

(3) **When is proof of payment of federal heavy vehicle use tax not required?** If a vehicle is purchased within sixty days, proof of federal heavy vehicle use tax is not required at the time of registration.

(4) **What happens if I do not provide proof of payment of the federal heavy vehicle use tax?** The department (~~(shall)~~) must refuse registration of such vehicles if sufficient proof is not presented at time of registration or renewal.

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-130 Hunter's permit.** (1) **What is a hunter's permit also known as an unladen weight permit?** A permit (~~(authorized)~~) issued by the department that allows owner-operators to move their empty (unladen) vehicle(s) from one lessee-carrier fleet to a new lessee-carrier fleet (~~(in which they will become a part of the fleet)~~). This permit (~~(will be)~~) is issued without cost and (~~(be)~~) is valid for ten days from the date of issuance.

(2) (~~(Can my)~~) **Will the department honor a hunter's permit (~~(be used in other)~~) issued by another jurisdiction(~~(s)~~)?** Yes, (~~(a hunter's)~~) this permit issued by (~~(an)~~) another IRP jurisdiction (~~(to an owner-operator, who was formerly based in such jurisdiction,)~~) will be honored in this state (~~(or any other jurisdiction for operation at the unladen weight of the vehicle(s) listed therein)~~).

AMENDATORY SECTION (Amending WSR 00-08-032, filed 3/28/00, effective 4/28/00)

**WAC 308-91-150 Dishonored checks.** (1) **What (~~(will)~~) happens (~~(if my check becomes)~~) with a dishonored check?** (~~(A dishonored check represents failure to pay proportional registration, fees and/or penalties and interest when due, and)~~) The department will enforce such proportional registration licensing and taxing laws (~~(as are necessary)~~) to recover (~~(the)~~) unpaid fees when they become due and payable.

(2) (~~(What form of payment does the department require for dishonored checks?~~) Any registrant who tenders a check that is subsequently dishonored by a financial institution upon which it was drawn, may be required to tender all

subsequent payments in certified funds, i.e., cash, cashier's check, certified check, traveler's check, official check, or money order.

(~~3~~) **Are there any additional fees charged for a dishonored check (DHC)?** Yes, a handling fee (~~(shall be)~~) is assessed by the department for each check dishonored by the financial institution.

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-171 Mitigation of fees, penalties (~~(and/or)~~) or interest.** (1) **Under what circumstances may a fee, penalty (~~(and/or)~~) or interest be mitigated?** The department may mitigate (~~(extinguish and/or adjust)~~) fees, penalties (~~(and/or)~~) or interest (~~(arising)~~) occurring from proportional registration transactions, assessments, (~~(and/or lack of complete)~~) or incomplete records.

(2) **How will the department determine whether fees, penalties (~~(and/or)~~) or interest should be mitigated?** The department will review records, account(~~(s)~~) history, or other information (~~(in arriving at its decision to mitigate)~~).

AMENDATORY SECTION (Amending WSR 00-01-150, filed 12/21/99, effective 1/21/00)

**WAC 308-91-172 Appeals.** (1) **What are the appeal procedures?** Any person (~~(having been)~~) issued a notice of assessment for taxes, fees, penalties (~~(and/or)~~) or interest who (~~(wishes to contest such)~~) chooses to appeal the notice, may petition the department (~~(of licensing)~~) for an informal hearing (~~(in lieu)~~) instead of proceeding directly to a formal hearing. A petition for a hearing must be in writing and must be received by the department (~~(of licensing)~~) within thirty days after the receipt of the notice of assessment. (~~(A petition shall set forth)~~) The appeal must include the specific reasons why reassessment is (~~(sought)~~) wanted and the amount of tax, fees, penalties (~~(and/or)~~) or interest (~~(that the petitioner believes)~~) believed to be due.

(2) **What happens after the department receives the (~~(petition)~~) request for an informal hearing?** (~~(Upon receipt of a petition for an informal hearing,)~~) The department will establish the time and place for the hearing and notify the petitioner by mail or e-mail at least ten days prior to the scheduled date. If the petitioner is unable to attend the hearing on the date or time scheduled, (~~(the petitioner)~~) they may request the department to reschedule the hearing. The petitioner may appear in person or (~~(may be represented by an attorney, accountant, or any other person)~~) a representative authorized to present the case.

(3) **What happens if I fail to appear for my hearing without prior notification?** Failure (~~(to appear)~~) may result in the loss of your administrative appeal rights.

(4) **What happens following my informal hearing?** The department will make a determination in accordance with the Revised Code of Washington, rules, and policies established by the department.

(5) **What if I do not agree with the department's informal hearing determination?** (~~(You may,)~~) Within thirty days after the date of mailing of the determination, appeal in writing and request a formal hearing by an adminis-

trative law judge. The appeal ~~((shall))~~ must indicate the portions of the determination that the petitioner ~~((feels))~~ believes are in error and ~~((set forth))~~ provide the reasons ~~((for believing that))~~ the decision should be amended. The department will establish a time and place for a formal hearing ~~((and give the petitioner))~~ within at least ten days(!) notice.

(6) **When does my reassessment become final?** The department's decision ~~((of the department upon a petition))~~ for reassessment ~~((shall))~~ becomes final, due, and payable thirty days after service ~~((upon the petitioner))~~ unless further appealed.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-91-080    Temporary authorization permits  
TAPs.