

WSR 16-07-152
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)
 [Filed March 23, 2016, 10:25 a.m.]

Supplemental Notice to WSR 16-01-026.

Preproposal statement of inquiry was filed as WSR 15-18-035.

Title of Rule and Other Identifying Information: The department is repealing, adopting, and amending sections in chapters 388-865, 388-875, 388-877, 388-877A, 388-877B, and 388-877C WAC that pertain to regional support networks (RSN) being renamed behavioral health organizations (BHO).

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 25, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 24, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 10, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department determined while in the permanent rule adoption process, that the rules would be significant rules requiring a small business economic impact statement (SBEIS) and cost-benefit analysis (CBA). Because of that, the department is filing this supplemental CR-102 and completed the CBA and SBEIS. The permanent rule filed as part of this supplemental process will replace the emergency rule filed to be effective April 1, 2016. These rules support the requirements in 2SSB 6312, chapter 225, Laws of 2014, which requires the renaming of RSN to BHO effective April 1, 2016. The anticipated effect is to ensure BHOs provide or contract with behavioral health agencies to provide both substance use disorder treatment services and mental health services to individuals who need these services. An RSN currently provides only mental health services. Changes include updating definitions of "mental health professional" and "peer counselor," moving grievance system rules from chapter 388-877A WAC to chapter 388-877 WAC, and changing a grievance system rule concerning when a "notice of action" should be sent. Finally, processes and editing changes are made to provide clarification and consistency within the rules.

Reasons Supporting Proposal: The rule supports implementation of 2SSB 6312, chapter 225, Laws of 2014. The updated rule will provide more consistent statewide administration, continuity, delivery, and monitoring of behavioral health services which impact consumers, their families, advocates, and contracted providers.

Statutory Authority for Adoption: RCW 70.02.290, 70.96A.040(4), 71.05.560, 71.24.035 (5)(c), 71.34.380.

Statute Being Implemented: 2SSB 6312, chapter 225, Laws of 2014.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Tony O'Leary, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1039.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement and Cost-Benefit Analysis

NEW SECTIONS: WAC 388-865-0232 Behavioral health organizations—General, 388-865-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services, 388-865-0236 Behavioral health organizations—How to request an exemption of a minimum standard of this chapter, 388-865-0238 Behavioral health organizations—Definitions, 388-865-0242 Behavioral health organizations—Payment for behavioral health services, 388-865-0246 Behavioral health organizations—Public awareness of behavioral health services, 388-865-0248 Behavioral health organizations—Governing body responsible for oversight, 388-865-0252 Behavioral health organizations—Advisory board membership, 388-865-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services, 388-865-0256 Behavioral health organizations—Community support, residential, housing, and employment services, 388-865-0258 Behavioral health organizations—Administration of the Mental Health and Substance Use Disorders Involuntary Treatment Acts, 388-865-0262 Behavioral health organizations—Behavioral health ombuds office, 388-865-0264 Behavioral health organizations—Quality strategy, 388-865-0266 Behavioral health organizations—Quality review teams, 388-865-0268 Behavioral health organizations—Standards for contractors and subcontractors, 388-865-0272 Behavioral health organizations—Operating as a behavioral health agency, 388-865-0370 Behavioral health organization managed care plan—Minimum standards, 388-865-0375 Behavioral health organization managed care plan—Utilization management, 388-865-0380 Behavioral health organization managed care plan—Choice of primary provider, and 388-865-0385 Behavioral health organization managed care plan—Behavioral health screening for children.

AMENDED SECTIONS: WAC 388-875-0070 Transfer of a patient between state-operated facilities for persons with mental illness, 388-877-0100 Behavioral health services—Purpose and scope, 388-877-0200 Behavioral health services—Definitions, 388-877-0300 Agency licensure—General information, 388-877-0305 Agency licensure—Application, 388-877-0335 Agency licensure and program-specific certification—Denials, suspensions, revocations, and penalties,

388-877-0365 Agency licensure and program-specific certification—Fee requirements, 388-877-0420 Agency administration—Policies and procedures, 388-877-0600 Clinical—Individual rights, 388-877-0605 DBHR complaint process, 388-877-0610 Clinical—Initial assessment, 388-877-0620 Clinical—Individual service plan, and 388-877-0640 Clinical—Record content.

NEW SECTIONS: WAC 388-877-0654 How individuals can express concern about their rights, services, or treatment, 388-877-0655 Grievance system—Definitions, 388-877-0660 Grievance process, 388-877-0665 Notice of action, 388-877-0670 Appeal process, 388-877-0675 Administrative hearings, and 388-877-0680 Individual rights specific to medicaid recipients.

AMENDED SECTIONS: WAC 388-877A-0200 Crisis mental health services—General, 388-877A-0270 Crisis mental health services—Peer support services, 388-877A-0340 Recovery support services requiring program-specific certification—Peer support services, 388-877B-0100 Substance use disorder detoxification services—General, 388-877B-0110 Substance use disorder detoxification services—Agency staff requirements, 388-877B-0120 Substance use disorder detoxification services—Clinical record content and documentation requirements, 388-877B-0130 Substance use disorder detoxification services requiring program-specific certification—Youth detoxification services, 388-877B-0200 Substance use disorder residential treatment services—General, 388-877B-0210 Substance use disorder residential treatment services—Agency staff requirements, 388-877B-0220 Substance use disorder residential treatment services—Clinical record content and documentation requirements, 388-877B-0230 Substance use disorder residential treatment services—Additional assessment standards, 388-877B-0240 Substance use disorder residential treatment services—Non-compliance reporting requirements, 388-877B-0250 Substance use disorder residential treatment services requiring program-specific certification—Intensive inpatient services, 388-877B-0260 Substance use disorder residential treatment services requiring program-specific certification—Recovery house, 388-877B-0270 Substance use disorder residential treatment services requiring program-specific certification—Long-term treatment services, 388-877B-0280 Substance use disorder residential treatment services requiring program-specific certification—Youth residential services, 388-877B-0300 Substance use disorder outpatient treatment services—General, 388-877B-0310 Substance use disorder outpatient treatment services—Agency staff requirements, 388-877B-0320 Substance use disorder outpatient treatment services—Clinical record content and documentation, 388-877B-0330 Substance use disorder outpatient treatment services—Additional assessment standards, 388-877B-0340 Substance use disorder outpatient treatment services—Noncompliance reporting requirements, 388-877B-0350 Substance use disorder outpatient treatment services requiring program-specific certification—Level II intensive outpatient services, 388-877B-0360 Substance use disorder outpatient treatment services requiring program-specific certification—Level I outpatient treatment services, 388-877B-0370 Substance use disorder outpatient treatment services—Substance use disorder counseling subject to RCW 46.61.5056, 388-877B-0400

Substance use disorder opiate substitution treatment services—General, 388-877B-0405 Substance use disorder opiate substitution treatment services—Certification, 388-877B-0410 Substance use disorder opiate substitution treatment services—Agency staff requirements, 388-877B-0420 Substance use disorder opiate substitution treatment services—Clinical record content and documentation requirements, 388-877B-0430 Substance use disorder opiate substitution treatments services—Additional assessment standards, 388-877B-0440 Substance use disorder opiate substitution treatment services—Program physician responsibility, 388-877B-0450 Substance use disorder opiate substitution treatment services—Medication management, 388-877B-0500 Substance use disorder assessment services—General, 388-877B-0510 Substance use disorder assessment only services—Agency staff requirements, 388-870B-0530 Substance use disorder assessment only services—Additional assessment standards, 388-877B-0540 Substance use disorder assessment services—Noncompliance reporting requirements, 388-877B-0550 Substance use disorder assessment only services requiring program-specific certification—DUI assessment services, 388-877B-0600 Substance use disorder information and assistance services—General, 388-877B-0610 Substance use disorder information and assistance services—Agency staff requirements, 388-877B-0630 Substance use disorder information and assistance services requiring program-specific certification—Alcohol and drug information school services, 388-877B-0640 Substance use disorder information and assistance services requiring program-specific certification—Information and crisis services, 388-877B-0650 Substance use disorder information and assistance services requiring program-specific certification—Emergency service patrol services, 388-877B-0660 Substance use disorder information and assistance services requiring program-specific certification—Screening and brief intervention services, and 388-877C-0110 Program and pathological gambling services—Agency staff requirements.

REPEALED SECTIONS: WAC 388-865-0100 Purpose, 388-865-0105 What the mental health division does and how it is organized, 388-865-0106 When local services are administered by the mental health division, 388-865-0107 Peer counselor certification, 388-865-0110 Access to records of registration, 388-865-0115 Access to clinical records, 388-865-0120 Waiver of a minimum standard of this chapter, 388-865-0150 Definitions, 388-865-0200 Regional support networks, 388-865-0205 Initial certification of a regional support network, 388-865-0210 Renewal of regional support network certification, 388-865-0215 Consumer eligibility and payment for services, 388-865-0220 Standards for administration, 388-865-0221 Public awareness of mental health services, 388-865-0222 Advisory board, 388-865-0225 Resource management, 388-865-0229 Inpatient services, 388-865-0230 Community support services, 388-865-0235 Residential and housing services, 388-865-0240 Consumer employment services, 388-865-0245 Administration of the Involuntary Treatment Act, 388-865-0250 Ombuds services, 388-865-0265 Mental health professional—Exception, 388-865-0270 Financial management, 388-865-0275 Management information system, 388-865-0280 Quality management process, 388-865-0282 Quality review teams,

388-865-0284 Standards for contractors and subcontractors, 388-865-0286 Coordination with a mental health prepaid health plan, 388-865-0288 Regional support networks as a service provider, 388-865-0300 Mental health prepaid health plans, 388-865-0305 Regional support network contracting a mental health prepaid health plan, 388-865-0310 Mental health prepaid health plans—Minimum standards, 388-865-0315 Governing body, 388-865-0320 Utilization management, 388-865-0325 Risk management, 388-865-0330 Marketing/education of mental health services, 388-865-0335 Consumer enrollment, 388-865-0345 Choice of primary care provider, 388-865-0350 Mental health screening for children, 388-865-0355 Consumer request for a second opinion, 388-865-0360 Monitoring of mental health prepaid health plans, 388-865-0363 Coordination with the regional support network, 388-865-0365 Suspension, revocation, limitation or restriction of a contract, 388-877A-0400 How individuals can express concern about their rights, services, or treatment, 388-877A-0410 Grievance system—Definitions, 388-877A-0420 Grievance process, 388-877A-0430 Notice of action, 388-877A-0440 Appeal process, 388-877A-0450 Administrative hearings, and 388-877A-0460 Individual rights specific to medicaid recipients.

SUMMARY OF PROPOSED RULES: The division of behavioral health and recovery (DBHR) of the department of social and health services (the department) is proposing to adopt, amend, and repeal sections in chapters 388-865, 388-875, 388-877, 388-877A, 388-877B, and 388-877C WAC.

The proposed permanent rules:

- Are written to accomplish the intended effect of integrating mental health and substance use disorders into a unified set of rules under 2SSB 6312, chapter 225, Laws of 2014 that requires RSN to be renamed BHO effective April 1, 2016, and requires a BHO to provide both substance use disorder treatment services and mental health services.
 - Replace the current emergency rule filed to meet the requirements of 2SSB 6312, chapter 225, Laws of 2014.
 - Repeal sections in chapter 388-865 WAC that pertain to RSNs.
 - Add new sections that pertain specifically to RSNs becoming BHOs.
 - Update and clarify language in chapters 388-875, 388-877, 388-877A, 388-877B, and 388-877C WAC regarding BHOs, the BHO managed care plan, behavioral health services, and the grievance system.
 - Change "chemical dependency" to "substance use disorder."
 - Expand the definition of "mental health professional" by adding that a mental health professional can be a person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate.
 - Update the definition of "peer counselor."
 - Change a reference to a credentialed peer counselor to a person recognized by DBHR as a peer counselor.
 - Update cross references to WAC sections.
 - Move the grievance system rules from chapter 388-877A WAC to chapter 388-877 WAC.
- Add to WAC 388-877-0665 Notice of action, that when a BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frames, or fails to provide services in a timely manner or to act within the grievance system time frames, as defined in rule, it is considered a denial; add that in these cases, the BHO sends a notice of action which includes the individual's right to request an administrative hearing.
 - Provide other changes to update, clarify, and simplify language and to provide consistency within the rules.

INVOLVEMENT OF STAKEHOLDERS AND SMALL BUSINESSES: The department filed a CR-101 (preproposal statement of inquiry) under WSR 15-18-035 on August 26, 2015. Copies of the CR-101 were sent to tribal leaders and all stakeholders and providers listed in DBHR's mailing list.

In October 2015, the department sent a draft of the rules to interested parties who contacted the department with an interest to participate in reviewing the proposed rules. The department provided a response to each comment received.

The department filed a CR-102 under WSR 16-01-026 on December 8, 2015, and a public hearing was held on February 9, 2016. An SBEIS and CBA were not filed with the CR-102.

After the public hearing was held, the department determined a CBA/SBEIS was necessary to address any part of the proposed rules that may not meet the exemptions under RCW 34.05.328 (5)(b)(v) (rules the content of which is explicitly and specifically dictated by statute) and chapter 19.85 RCW, the Regulatory Fairness Act.

The department filed a supplemental CR-102 and CBA/SBEIS with the office of the code reviser and a public hearing has been scheduled for May 24, 2016. Interested parties on the notification mailing list were notified of the public hearing.

This CBA/SBEIS does not address the parts of the proposed language that is explicitly and specifically dictated by statute to be exempt. Interested parties can access 2SSB 6312, (chapter 225, Laws of 2014), the final bill report, and the fiscal note on the Washington state legislature's web site. The Washington Association of Counties (WSAC) was given the opportunity to propose composition of regional service areas. Counties corresponding to regional service areas, or the RSN if the county made a decision not to contract as an RSN prior to January 1, 2014, submitted a detailed plan demonstrating capacity to serve as BHOs. If an adequate plan was submitted, the counties or RSN were awarded the contract in that region. Stakeholders involved as sources in the study of the integration of mental health services and substance use disorder treatment services included Thurston-Mason RSN, Southwest Washington behavioral health RSN, Peninsula RSN, and WSAC.

2SSB 6312 requires contracts with BHOs to be effective on April 1, 2016. RCW 71.24.380(4). This rule making supports implementation of BHOs. The department is filing an emergency rule to meet the timeline requirements of 2SSB 6312. Notification of this emergency rule is being sent to tribal leaders and all stakeholders and providers listed on DBHR's mailing list.

SBEIS—DETERMINATION OF NEED: Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and it outlines the information that must be included in an SBEIS. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The department has prepared an SBEIS to address the proposed changes in rules that are not exempt under chapter 19.85 RCW.

These proposed rules include language pertaining to changing RSNs to BHOs and changing "chemical dependency" to "substance use disorder" as required by 2SSB 6312. Complying with 2SSB 6312 required other necessary changes in rule. The intended overall effect was to integrate mental health and substance use disorder treatment that will be provided by BHOs.

These rules apply to BHOs, the behavioral health organization managed care plan within the BHO that is responsible for services to medicaid enrollees, and to behavioral health agencies that provide mental health and substance use disorder treatment services. These businesses fall under the North American Industry Classification System (NAICS) codes:

- 622210 - Psychiatric and substance abuse hospitals.
- 623220 - Residential substance abuse facilities.
- 621420 - Outpatient substance abuse and mental health centers.
- 623220 - Residential mental health facilities.

Under chapter 19.85 RCW, the department has considered annual costs to small businesses that are fifty dollars or more per client. "Small businesses" are business entities with fifty or fewer employees. The department's analysis revealed that there are no costs or minor costs to small businesses for the proposed rules. Small businesses affected by the rules may include some BHOs (some are incorporated as limited liability companies) and behavioral health agencies, which could include tribal providers. For the rules of DSHS, "minor cost" means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service. The licensing and certification process for behavioral health agencies is not changed with this rule making. Changes to the definitions of "mental health professional" and "peer counselor" are not expected to financially impact behavioral health agencies, and may assist them in being able to hire additional types of licensed professionals to deliver behavioral health services. Finally, changes to the grievance rule where failure to meet grievance system time frames is considered a "denial" requiring the sending of a "notice of action" by BHO may involve process adjustments for BHOs and behavioral health agencies, but any additional costs by those entities are expected to be minimal.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: These proposed rules, in part, are exempt under RCW 34.05.328 (5)(b)(v) because they include requirements that are specifically dictated by statute and clarify the language of existing rules without changing their effect. Nonpartisan legislative staff prepared a final bill report for 2SSB

6312 concerning state purchasing of mental health and chemical dependency treatment services. The office of financial management also published a fiscal note on 2SSB 6312. The final bill report and fiscal note are available to the public on the Washington state legislature web site.

To address any part of the proposed rules that may not meet this exemption requirement, the department has prepared a CBA. The department has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative costs and benefits. RCW 34.05.328 (1)(d). The department's analysis shows the costs and benefits of the proposed rules to those impacted by the rules. Impacted groups include BHOs, the BHO managed care plan, behavioral health agencies owned by nonprofit businesses, for-profit businesses, public nonprofit providers, tribal programs that provide DBHR-certified substance use disorder treatment services and/or DBHR-certified outpatient mental health services, and individuals who need and are eligible for behavioral health services.

COSTS: Costs identified in the legislative fiscal note to SSB 6312 (2014) were indeterminate contract renegotiation costs and adoption of new data systems by RSNs/BHOs. These costs, however, are driven by the legislative directive to integrate mental health and substance use disorder services. This rule making does not directly require those changes. Like the analysis above for impacts to small businesses, the rule making is expected to have minimal costs because it largely implements the legislative directive by changing the name RSN to BHO. For example, the licensing and certification process for behavioral health agencies is not changed with this rule making. In those areas where the department proposes to adopt substantive changes not directly required by SSB 6312, additional costs to BHOs, agencies and consumers are minimal. Changes to the definitions of "mental health counselor" and "peer counselor" are not expected to financially impact behavioral health agencies, and may assist them in being able to hire additional types of licensed professionals to deliver behavioral health services. Finally, changes to the grievance rule where failure to meet grievance system time frames is considered a "denial" requiring the sending of a "notice of action" by BHO may involve process adjustments for BHOs and behavioral health agencies, but any additional costs by those entities are expected to be minimal and outweighed by benefit to consumers.

BENEFITS: The benefits to the implementation of these rules is a uniform set of rules that updates, clarifies, and standardizes requirements for BHOs and the BHO managed care plan, behavioral health agencies, and the individuals they serve. The proposed rules assure compliance with 2SSB 6312, provide necessary updates as a result of renaming RSNs to BHOs effective April 1, 2016, and require BHOs to provide both substance use disorder treatment services and mental health services to individuals who need and are eligible for these services. Most of [the] changes reflected in these rules are driven by the legislative directive of 2SSB 6312. In certain areas, however, the department proposes to adopt additional changes, such as an expanded definition of "mental health professional" to include a person who is licensed by the department of health as a mental health counselor, mental

health counselor associate, marriage and family therapist, or marriage and family therapist associate. Similarly, the definition of "peer counselor" is updated. For better organization of its rules, the department proposes to move the grievance system rules from chapter 388-877A WAC to chapter 388-877 WAC. Finally, the department proposes to require that when a BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frames or meet grievance system time frames, it is considered a denial that will trigger a "notice of action" which includes the individual's right to system and individuals receiving services because the changes facilitate access to services in a more efficient, integrated, and fair manner.

CONCLUSION: To comply with the Regulatory Fairness Act, chapter 19.85 RCW, the department has analyzed impacts of this rule making on small businesses. The department has determined that the impacts are minimal and should not exceed fifty dollars per client served. The department has also given careful consideration to the costs of the proposed rules that are not included in the exemption under RCW 34.05.328 (5)(b)(v). The department has determined the costs to be minor and has determined the probable benefits outweigh the probable costs.

The department has staff available to answer any questions an agency may have in order to implement these rules.

Please contact Kathy Sayre if you have any questions at (360) 725-1342, toll-free 1-877-301-4557, or e-mail kathy.sayre@dshs.wa.gov.

A copy of the statement may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 586-0341, e-mail kathy.sayre@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 586-0341, e-mail kathy.sayre@dshs.wa.gov.

March 18, 2016
Katherine I. Vasquez
Rules Coordinator

~~((SECTION ONE — COMMUNITY MENTAL HEALTH AND INVOLUNTARY TREATMENT PROGRAMS))~~
BEHAVIORAL HEALTH ORGANIZATIONS

~~((SECTION TWO — REGIONAL SUPPORT NETWORKS))~~

NEW SECTION

WAC 388-865-0232 Behavioral health organizations —General. (1) Effective April 1, 2016, regional support networks (RSN) become behavioral health organizations (BHO). A BHO contracts with the department's division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-

538A WAC for rules that govern the FIMC program operated by the health care authority (HCA).

(3) BHOs, behavioral health agencies, and the BHO managed care plan must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use disorders, mental illness, and community mental health services.

(b) Meet the requirements in chapters 388-877, 877A, and 877B WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 388-865-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 388-865-0234 apply.

(6) The BHO managed care plan is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 388-865-0238 and 388-877-0200 contain definitions for terms and phrases used in the BHO and the BHO managed care plan rules.

(8) Contact information can be found on the DBHR website at www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery.

NEW SECTION

WAC 388-865-0234 Behavioral health organizations —When the division of behavioral health and recovery administers regional behavioral health services. (1) If a currently operating behavioral health organization (BHO) chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the secretary:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 388-865-0232 through 388-865-0272 and the BHO managed care plan requirements in WAC 388-865-0370 through 388-865-0385.

(2) An individual who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with and licensed by DBHR; and

(b) Who is a Title XIX medicaid recipient is entitled to receive medically necessary behavioral health services without charge to the individual.

(3) This section does not apply to a region in which the health care authority (HCA) operates the Washington apple health fully integrated managed care (FIMC) program which provides fully-integrated physical and behavioral health services to medicaid beneficiaries through managed care. See chapter 182-538A WAC for information on Washington apple health FIMC.

NEW SECTION

WAC 388-865-0236 Behavioral health organizations —How to request an exemption of a minimum standard.

(1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care plan subject to the BHO and BHO managed care plan rules may request an exemption of a minimum standard in WAC 388-865-0232 through 388-865-0272 and WAC 388-865-0370 through 388-865-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how an individual(s) affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requester receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requester must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

NEW SECTION

WAC 388-865-0238 Behavioral health organizations —Definitions. The definitions in this section, WAC 388-877-0200, and WAC 388-877-0655 apply to behavioral health organizations (BHO) and the BHO managed care plan.

"Behavioral health organization" or "BHO" means any county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

"Behavioral health organization (BHO) managed care plan" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

"Chemical dependency professional" or "CDP" means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

"Child" means a person under the age of eighteen years. For the purposes of the medicaid program, child means a person who is under the age of twenty-one years.

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week; prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

"Consultation" means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by persons with appropriate knowledge and experience to make recommendations.

"County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

"Designated chemical dependency specialist" means a person designated by the behavioral health organization (BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

"Designated mental health professional" or **"DMHP"** means a mental health professional designated by the behavioral health organization (BHO) county or other authority authorized in rule to perform duties under the involuntary treatment act as described in RCW 10.77.010, 71.05.-020, 71.24.025 and 71.34.020.

"Ethnic minority" or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

- (1) African American;
- (2) An American Indian or Alaskan native, which includes:
 - (a) A person who is a member or considered to be a member in a federally recognized tribe;
 - (b) A person determined eligible to be found Indian by the secretary of interior;
 - (c) An Eskimo, Aleut, or other Alaskan native; and
 - (d) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization;
- (3) Asian/Pacific Islander; or
- (4) Hispanic.

"Housing services" means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the individual's age, culture, and needs.

"Medical necessity" or **"medically necessary"** is a term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause or physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Mental health professional" means:

- (1) A psychiatrist, psychologist, psychiatric nurse or social worker as defined in chapters 71.05 and 71.34 RCW;
- (2) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;
- (3) A person with a master's degree or further advanced degree in counseling or one of the behavioral sciences from an accredited college or university. Such person shall have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the supervision of a mental health professional;

(4) A person who meets the waiver criteria of RCW 71.24.260, which was granted prior to 1986;

(5) A person who had an approved waiver to perform the duties of a mental health professional that was requested by a regional support network and granted by the mental health division prior to July 1, 2001; or

(6) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the division of behavioral health and recovery.

"Mental health specialist" means:

(1) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(2) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of persons sixty years of age and older; and

(b) The equivalent of one year of full-time experience in the treatment of persons sixty years of age and older, under the supervision of a geriatric mental health specialist.

(3) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(a) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(b) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority individuals.

(4) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means an individual with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(a) If the consumer is deaf, the specialist must be a mental health professional with:

(i) Knowledge about the deaf culture and psychosocial problems faced by who are deaf; and

(ii) Ability to communicate fluently in the preferred language system of the consumer.

(b) The specialist for individuals with developmental disabilities must be a mental health professional who:

(i) Has at least one year's experience working with people with developmental disabilities; or

(ii) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Peer counselor" means a person recognized by the division of behavioral health and recovery (DBHR) as a person who:

(1) Is a self-identified consumer of mental health services;

(2) Is a counselor credentialed under chapter 18.19 RCW;

(3) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in subsection (1), (2) and (4) of this section by January 31, 2005, the person is exempt from completing this specialized training;

(4) Has successfully passed an examination administered by DBHR or an authorized contractor; and

(5) Has received a written notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"Quality assurance and quality improvement" means a focus on compliance to minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

"Quality strategy" means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO)'s operations.

"Regional support network (RSN)" no longer exists as of March 31, 2016. See **"Behavioral health organization (BHO)."**

"Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Resource management services" means the planning, coordination, and authorization of residential services and community support services for:

(1) Adults and children who are acutely mentally ill;

(2) Adults who are chronically mentally ill;

(3) Children who are severely emotionally disturbed; or

(4) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and nec-

essary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Tribal authority" means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the federally recognized Indian tribes and the major Indian organizations recognized by the secretary as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

NEW SECTION

WAC 388-865-0242 Behavioral health organizations —Payment for behavioral health services. Within available resources as defined in RCW 71.24.025(2), a behavioral health organization (BHO) must ensure an individual's eligibility for and payment for behavioral health services meet the following:

(1) An individual who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the individual, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care plan without charge.

(2) An individual who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities established by the department. The individual, the parent(s) of an individual who has not reached their eighteenth birthday, the individual's legal guardian, or the estate of the individual:

(a) Is responsible for payment for services provided; and

(b) May apply to the following entities for payment assistance:

(i) The health care authority (HCA) for medical assistance;

(ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or

(iii) The BHO for authorization of payment for involuntary evaluation and treatment services.

NEW SECTION

WAC 388-865-0246 Behavioral health organizations —Public awareness of behavioral health services. A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

(1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public websites, and other public places in easily accessible formats;

(2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all individuals, including those who

may be visually impaired, limited English proficient, or unable to read; and

(3) Post and make information available to individuals regarding the behavioral health ombuds office consistent with WAC 388-865-0262, and local advocacy organizations that may assist individuals in understanding their rights.

NEW SECTION

WAC 388-865-0248 Behavioral health organizations—Governing body responsible for oversight. The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

(1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the individuals it serves.

(2) Have rules about:

(a) When a conflict of interest becomes evident;

(b) Not voting or joining a discussion when a conflict of interest is present; and

(c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

NEW SECTION

WAC 388-865-0252 Behavioral health organizations—Advisory board membership. (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

(a) Promote active engagement with individuals with behavioral health disorders, their families, and behavioral health agencies; and

(b) Solicit and use the advisory board members input to improve service delivery and outcome.

(2) The BHO must appoint advisory board members and maintain an advisory board that:

(a) Broadly represents the demographic character of the service area;

(b) Is composed of at least fifty-one percent representation of one or more of the following:

(i) Persons with lived experience;

(ii) Parents or legal guardians of persons with lived experience; or

(iii) Self-identified as persons in recovery from a behavioral health disorder;

(c) Includes law enforcement representation; and

(d) Includes tribal representation, upon request of a tribe.

(3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.

(4) The advisory board:

(a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.

(b) Has the discretion to set rules in order to meet the requirements of this section.

(c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms

may be served by a member if the advisory board rules allow it.

(5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

NEW SECTION

WAC 388-865-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services. A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

(1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:

(a) Referrals;

(b) Admissions; and

(c) Discharges.

(2) For involuntary evaluation and treatment services, the BHO:

(a) Must ensure that individuals in their regional service area have access to involuntary inpatient care; and

(b) Is responsible for coordinating discharge planning with the treating inpatient facility.

(3) The BHO must:

(a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.

(b) Authorize admissions into inpatient evaluation and treatment services for eligible individuals from:

(i) State psychiatric hospitals:

(A) Western state hospital;

(B) Eastern state hospital; and

(C) The child study and treatment center.

(ii) Community hospitals.

(iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.

(iv) The children's long-term inpatient program (CLIP).

(c) Receive prior approval from the department's division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to individuals on a ninety or one hundred eighty day community inpatient involuntary commitment order consistent with the exception criteria in WAC 388-865-0531.

NEW SECTION

WAC 388-865-0256 Behavioral health organizations—Community support, residential, housing, and employment services. (1) **Community support services** as defined in WAC 388-865-0238. A behavioral health organization (BHO) must:

(a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental

health and substance use disorder services listed in chapters 388-877A and 388-877B WAC can be accessed by all eligible individuals in the BHO's service area and are provided to eligible individuals directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for individuals with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in 388-865-0238. A BHO must:

(a) Ensure active search and promotion of individual access to, and choice in, safe and affordable independent housing that is appropriate to the individual's age, culture, and residential needs. This includes:

(i) Providing services to families of eligible children and to eligible individuals who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting individuals in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that eligible individuals in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 388-865-0238. A BHO must ensure active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the individual's age, culture, and needs. This includes:

(a) Providing services to families of eligible children and to eligible individuals who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting individuals in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the division of vocational rehabilitation or other local entities that support employment services to assure that individuals wanting to work are provided with recovery support-employment services under WAC 388-877A-0330.

NEW SECTION

WAC 388-865-0258 Behavioral health organizations—Administration of the Mental Health and Substance Use Disorders Involuntary Treatment Acts. A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary

Treatment Act, including investigation, detention, transportation, court-related, and other services required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated mental health professionals (DMHP) and designated chemical dependency specialists perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting individual compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed individual for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety day commitments and one hundred eighty day commitments.

(b) Notifying the DMHP if noncompliance with the less restrictive alternative order impairs the individual sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

NEW SECTION

WAC 388-865-0262 Behavioral health organizations—Behavioral health ombuds office. A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of individual and family advocate organizations when revising the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

(1) Is responsive to the age and demographic character of the region and assists and advocates for individuals with resolving issues, grievances, and appeals at the lowest possible level;

(2) Is independent of agency service providers;

(3) Supports individuals, family members, and other interested parties regarding issues, grievances, and appeals;

(4) Is accessible to individuals, including having a toll-free, independent phone line for access;

(5) Is able to access service sites and records relating to individuals with appropriate releases so that it can reach out to individuals and help to resolve issues, grievances, and appeals;

(6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;

(7) Continues to be available to advocate and support individuals through the grievance, appeal and administrative hearing processes;

(8) Involves other persons, at the individual's request;

- (9) Supports individuals in the pursuit of a formal resolution;
- (10) If necessary, continues to assist the individual through the administrative hearing process;
- (11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same individual;
- (12) Provides information on grievances to the DBHR and BHO quality strategy; and
- (13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

NEW SECTION

WAC 388-865-0264 Behavioral health organizations—Quality strategy. A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

- (1) Roles, structures, functions and interrelationships of all the elements of the quality strategy, including but not limited to the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.
- (2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:
 - (a) Collect, analyze and display information regarding:
 - (i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;
 - (ii) System performance indicators;
 - (iii) Quality and intensity of services;
 - (iv) Incorporation of feedback from individuals, allied service systems, community providers, the behavioral health ombuds office and quality review team;
 - (v) Clinical care and service utilization including consumer outcome measures; and
 - (vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of individuals and practitioners;
 - (b) Monitor management information system data integrity;
 - (c) Monitor complaints, grievances and adverse incidents for adults and children;
 - (d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;
 - (e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;
 - (f) Monitor delegated administrative activities;
 - (g) Identify necessary improvements;

- (h) Interpret and communicate practice guidelines to practitioners;
- (i) Implement change;
- (j) Evaluate and report results;
- (k) Demonstrate incorporation of all corrective actions to improve the system;
- (l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and
- (m) Review, update, and make the plan available to community stakeholders.
- (3) Targeted improvement activities, including:
 - (a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;
 - (b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;
 - (c) Efficient use of human resources; and
 - (d) Efficient business practices.

NEW SECTION

WAC 388-865-0266 Behavioral health organizations—Quality review teams. A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include individuals who currently receive or have in the past received behavioral health services, and may also include the family members of such individuals. The BHO must assure that quality review teams:

- (1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of individual outcomes in rehabilitation and recovery, including all of the following:
 - (a) Quality of care;
 - (b) The degree to which services are focused on the individual and are age and culturally appropriate;
 - (c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and
 - (d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.
- (2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.
- (3) Meet with interested individuals and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and persons that represent the age and ethnic diversity of the BHO's service area to:
 - (a) Determine if services are accessible and address the needs of individuals based on sampled individual recipient's perception of services using a standard interview protocol. The protocol will query the sampled individuals regarding ease of accessing services, the degree to which services

address medically necessary needs, and the benefit of the service received; and

(b) Work with interested individuals and other persons, if requested by the individual, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

NEW SECTION

WAC 388-865-0268 Behavioral health organizations—Standards for contractors and subcontractors. A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the division of behavioral health and recovery (DBHR) for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with DBHR;

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

NEW SECTION

WAC 388-865-0272 Behavioral health organizations—Operating as a behavioral health agency. A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the division of behavioral health and recovery.

NEW SECTION

WAC 388-865-0370 Behavioral health organization managed care plan—Minimum standards. To be eligible to contract with the department's division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care plan must comply with all applicable local, state, and federal rules and laws. The BHO managed care plan must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible persons covered lives within the

service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office of the insurance commissioner as a health care service contractor under chapter 48.44 RCW.

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid recipients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO managed care plan, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

NEW SECTION

WAC 388-865-0375 Behavioral health organization managed care plan—Utilization management. Utilization management is the way the behavioral health organization (BHO) managed care plan authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on individual access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42 C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

(1) Provide effective and efficient management of resources;

(2) Assure capacity sufficient to deliver appropriate quality and intensity of services to enrolled individuals without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);

(3) Plan, coordinate, and authorize community support services;

(4) Ensure that services are provided according to the individual service plan;

(5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and enrolled individuals;

(6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:

(a) A clear process for the BHO managed care plan's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in an individual consumer's care, including laypersons;

(b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;

(c) Methods to ensure that services are individualized to meet the needs of all medicaid recipients served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and

(d) Assure the BHO managed care plan retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated;

(7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and

(8) Report to DBHR any knowledge it gains that the BHO managed care plan or behavioral health service provider is not in compliance with a state or federal rule or law.

NEW SECTION

WAC 388-865-0380 Behavioral health organization managed care plan—Choice of primary provider. (1) The behavioral health organization (BHO) managed care plan must:

(a) Ensure that each individual receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and

(b) Allow individuals, parents of individuals under age thirteen, and guardians of individuals of all ages to select a primary provider from the available primary provider staff within the BHO managed care plan.

(2) For an individual with an assigned case manager, the case manager is the primary provider.

(3) If the individual does not select a primary provider, the BHO managed care plan or its designee must assign a primary provider not later than fifteen working days after the individual requests services.

(4) The BHO managed care plan or its designee must allow an individual to change primary providers at any time for any reason. The individual must notify the BHO managed care plan or its designee of the request for a change, and inform the plan of the name of the new primary provider.

NEW SECTION

WAC 388-865-0385 Behavioral health organization managed care plan—Behavioral health screening for children. The behavioral health organization (BHO) managed care plan is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

(1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and

(2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

AMENDATORY SECTION (Amending WSR 01-01-008, filed 12/6/00, effective 1/6/01)

WAC 388-875-0070 Transfer of a patient between state-operated facilities for persons with mental illness. In some instances, it is appropriate for the department to transfer a patient currently residing in a state facility to another state facility for ongoing treatment. The department (~~(shall accomplish)~~) accomplishes the transfer with the utmost care given to the therapeutic needs of the patient. This section describes the procedures for handling a patient transfer between state facilities in a manner consistent with the best interest of the patient.

(1) The department (~~(may use)~~) uses the following criteria when determining the appropriateness of a patient transfer:

(a) The patient's family resides within the receiving facility's (~~(catchment)~~) service area; or

(b) The patient's primary home of residence is in the receiving facility's (~~(catchment)~~) service area; or

(c) A particular service or need of the patient is better met at the receiving facility; or

(d) Transfer to the receiving facility may facilitate community discharge due to the availability of community service in the receiving facility's (~~(catchment)~~) service area; or

(e) The county, (~~(regional support network)~~) behavioral health organization (BHO), or patient requests a transfer.

(2) Prior to any proposed transfer of a patient, the state facility (~~(shall)~~) must comply with the following:

(a) The sending facility, at the request of the (~~(superintendent)~~) chief executive officer (CEO), (~~(shall in writing forward)~~) must have forwarded in writing information necessary to make a decision on whether transfer is appropriate to the receiving facility's (~~(liaison)~~) attending physician or the physician's designee and the (~~(regional support network)~~) (BHO) liaison;

(b) The receiving facility's (~~(liaison)~~) attending physician or the physician's designee and the (~~(regional support network)~~) BHO liaison (~~(shall recommend)~~) must have recommended appropriate action to the (~~(superintendent)~~) CEO of the sending facility in writing within five calendar days of receipt of the request;

(c) If the receiving facility accepts the proposed patient transfer, the sending facility (~~(shall)~~) must notify the patient, guardian, (~~(regional support network)~~) BHO liaison, and attorney, if known, at least five days before the proposed patient transfer;

(d) The sending facility is responsible for all patient transfer arrangements, (~~(e.g.)~~) such as, transportation(~~(-)~~) and staff escort(~~(- etc-)~~), and (~~(shall)~~) coordinates the day and time of arrival with the receiving (~~(facility's liaison)~~) facility; and

(e) The sending facility (~~(shall)~~) arranges for the transfer of patient's medical record to the receiving facility.

(3) The sending (~~(state)~~) facility (~~(shall)~~) must document the following in the patient's record:

(a) That the physician (~~(documentation of)~~) documented the medical suitability of the patient for transfer; and

(b) That the social worker (~~(documentation regarding)~~) documented:

- (i) Justification as to why the transfer is considered in the patient's best interests; and
 - (ii) The patient's wishes regarding transfer.
- (4) The sending facility ~~((shall))~~ must contact the prosecuting attorney's office of the committing county ~~((prior to))~~ before the transfer.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0100 Behavioral health services— Purpose and scope. The rules in chapter 388-877 WAC:

(1) Establish the following for agencies that provide behavioral health services:

- (a) Licensure and certification requirements;
- (b) Agency administrative requirements;
- (c) Agency personnel requirements; ~~((and))~~
- (d) Agency clinical policies and procedures~~((:))~~; and
- (e) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings for agencies that serve individuals whose services are covered by the federal medicaid program.

(2) Support the specific program rules in chapter 388-877A WAC for mental health, chapter 388-877B WAC for ~~((chemical dependency))~~ substance use disorders, and chapter 388-877C WAC for problem and pathological gambling.

(3) The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0200 Behavioral health services— Definitions. The definitions in this section contain words and phrases used in chapter 388-865 WAC for behavioral health organizations (BHOs) and the BHO managed care plan, and chapter 388-877 WAC for behavioral health services programs. These definitions also apply to the program-specific rules for mental health services in chapter 388-877A WAC, ~~((chemical dependency))~~ substance use disorder rules in chapter 388-877B WAC, and problem and pathological gambling rules in chapter 388-877C WAC.

"Administrative hearing" means a proceeding before an administrative law judge that gives a party an opportunity to be heard in disputes about DSHS programs and services.

"Administrator" means the designated person responsible for the operation of the licensed treatment agency and/or certified treatment service.

"Adult" means an individual eighteen years of age or older. For ~~((an individual eligible for))~~ purposes of the medicaid program, adult means an individual twenty-one years of age or older.

"Agency" means an entity licensed by the department to provide behavioral health services.

"Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Behavioral health" means the prevention, treatment of, and recovery from ~~((chemical dependency))~~ substance use disorders, mental health disorders and/or problem and pathological gambling disorders.

"Branch site" means a physically separate licensed site, governed by a parent organization, where qualified staff provides certified treatment services.

"Care coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

~~((**"Certified peer counselor"** means a current or former qualified recipient of behavioral health services, who has met the experience and training requirements of, satisfactorily passed the examination given by, and is recognized by the division of behavioral health and recovery as a certified peer counselor under WAC 388-865-0107.))~~

"Certified" means the status given by the department to ~~((chemical dependency))~~ substance use disorder, mental health, and problem and pathological gambling program-specific services.

"Certified problem gambling counselor" is an individual certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or the International Gambling Counselor Certification Board to provide problem and pathological gambling treatment services.

"Change in ownership" means one of the following:

(1) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

(2) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

(3) The current ownership takes on a new owner of five per cent or more of the organizational assets.

"Clinical record" means a paper and/or electronic file that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.

"Clinical supervision" means regular and periodic activities performed by an appropriate level of professional for clinical staff. Clinical supervision includes review of assessment, diagnostic formulation, treatment planning, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care.

"Community mental health agency (CMHA)" means a behavioral health agency ~~((certified))~~ licensed by the department to provide a mental health service.

"Community relations plan" means a plan to minimize the impact of an opiate substitution treatment program as defined by the Center for Substance Abuse Guidelines for the

Accreditation of Opioid Treatment Programs, section 2.C.(4).

"Complaint" means the expression of a dissatisfaction with a service or program which may be investigated by the department.

"Consent" means agreement given by an individual after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

"Criminal background check" means a search for any record of an individual's conviction or civil adjudication related to crimes against children or other persons, including developmentally disabled and vulnerable adults. A background check includes a search and review of current and past background check applicant self-disclosures, Washington state patrol criminal history data, Washington courts criminal history data, civil adjudication proceedings, department of health disciplinary board final decisions, out-of-state court or law enforcement records, and department of corrections information. A background check may include a national fingerprint-based background check, including a federal bureau of investigation criminal history search.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when an individual's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Critical incident" means any one of the following events:

- (1) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;
- (2) Alleged abuse or neglect of an individual receiving services, that is of a serious or emergency nature, by an employee, volunteer, licensee, contractor, or another individual receiving services;
- (3) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to facility operation or client safety;
- (4) A bomb threat;
- (5) Theft or loss of data in any form regarding an individual receiving services, such as a missing or stolen computer, or a missing or stolen computer disc or flash drive;
- (6) Suicide attempt at the facility;
- (7) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and
- (8) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

"Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of ~~((cultural))~~ culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environ-

ment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Deemed" means a status that may be given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with DBHR.

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

"Designated chemical dependency specialist" means a person designated by the ~~((county alcoholism and/or other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW:))~~ behavioral health organization (BHO) or by the county alcoholism and other drug addiction program coordinator designated by the BHO to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

"Designated mental health professional (DMHP)" means a mental health professional designated by the behavioral health organization (BHO), county, or other authority authorized in rule to perform duties under the involuntary treatment act as described in RCW 10.77.010, 71.05.020, 71.24.025 and 71.34.020.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

- (1) Has a record of such an impairment; or
- (2) Is regarded as having such impairment.

"Division of behavioral health and recovery (DBHR)" means the division within the department of social and health services (formerly the mental health division and the division of alcohol and substance abuse) that administers mental health, problem gambling and substance abuse programs authorized by chapters 43.20A, 71.05, 71.24, 71.34, and 70.96A RCW.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

~~((**"Grievance"** means an expression of dissatisfaction made by or on behalf of an individual and referred to the agency or regional support network (RSN), as applicable, for resolution.))~~

"HIV/AIDS brief risk intervention" means a face-to-face interview with an individual to help the individual assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

"Individual" means a person ~~((receiving treatment services))~~ who applies for, is eligible for, or receives behavioral health organization (BHO) authorized behavioral health services from an agency licensed by the department as from a ~~((licensed))~~ behavioral health agency.

"**Less restrictive alternative (LRA)**" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"**Licensed**" means the status given to behavioral health agencies by the department under its authority to license and certify mental health programs chapters 71.05, 71.34, 71.24 RCW and its authority to certify (~~(chemical dependency)~~) substance use disorder treatment programs chapter 70.96A RCW.

"**Medical practitioner**" means a physician, advance registered nurse practitioner (ARNP), or certified (~~(physician's)~~) physician assistant. An ARNP and a midwife with prescriptive authority may perform practitioner functions related only to specific specialty services.

"**Medication administration**" means the direct application of a medication or device by ingestion, inhalation, injection or any other means, whether self-administered by a resident, or administered by a guardian (for a minor), or an authorized healthcare provider.

"**Mental health professional (MHP)**" means a designation given by the department to an agency staff member who is:

(1) A psychiatrist, psychologist, psychiatric advanced registered nurse practitioner (ARNP), or social worker as defined in chapters 71.05 and 71.34 RCW;

(2) A person who is licensed by the department of health as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(3) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, that was gained under the supervision of a mental health professional and is recognized by the department;

~~((3))~~ (4) A person who meets the waiver criteria of RCW 71.24.260, which was granted prior to 1986;

~~((4))~~ (5) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the (~~(regional support network (RSN))~~) behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001; or

~~((5))~~ (6) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the (~~(department consistent with WAC 388-865-0265))~~ division of behavioral health and recovery (DBHR).

"**Minor**" means an individual who is not yet eighteen years of age.

"**Off-site**" means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment and/or treatment is not the primary purpose of the site, such as in schools, hospitals, long term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

"**Outpatient services**" means behavioral health treatment services provided to an individual in a nonresidential setting.

"**Patient placement criteria (PPC)**" means admission, continued service, and discharge criteria found in the patient placement criteria (PPC) for the treatment of substance-related disorders as published by the American Society of Addiction Medicine (ASAM).

"**Peer counselor**" means a person recognized by the division of behavioral health and recovery (DBHR) as a person who meets all of the following:

(1) Is a self-identified consumer of mental health services.

(2) Is a counselor registered under chapter 18.19 RCW.

(3) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the mental health division (now DBHR) before October 1, 2004, and has met the requirements in (1), (2), and (4) by January 31, 2005, the person is exempt from completing this specialized training.

(4) Has successfully passed an examination administered by DBHR or an authorized contractor.

(5) Has received a notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"**Probation**" means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.

"**Progress notes**" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment, progress in recovery, and progress toward intended outcomes.

"**Recovery**" means a process of change through which an individual improves their health and wellness, lives a self-directed life, and strives to reach their full potential.

"**Relocation**" means a physical change in location from one address to another.

"**Remodeling**" means expanding existing office space to additional office space at the same address, or remodeling interior walls and space within existing office space to a degree that accessibility to or within the facility is impacted.

"**Summary suspension**" means the immediate suspension of a facility's license and/or program-specific certification by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"**Supervision**" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"**Suspend**" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement.

"**Vulnerable adult**" means an individual who receives services from the department and has at least one of the following characteristics:

(1) A vulnerable adult as defined in chapter 74.34 RCW; and

(2) An individual admitted for detoxification or detained or committed to an involuntary treatment facility that is certified by the division of behavioral health and recovery.

"Youth" means an individual who is seventeen years of age or younger.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0300 Agency licensure—General information. The department licenses agencies to provide behavioral health treatment services. To gain and maintain licensure, an agency must meet the requirements of chapter 388-877 WAC, applicable local and state rules, and state and federal statutes. In addition, the agency must meet the applicable specific program requirements of chapter 388-877A WAC for mental health, chapter 388-877B WAC for ~~((chemical dependency))~~ substance use disorders, and/or chapter 388-877C WAC for problem and pathological gambling.

(1) An agency currently accredited by a national accreditation agency recognized by and having a current agreement with the department may be eligible for licensing through deeming. See WAC 388-877-0310.

(2) Initial applications and renewal forms for behavioral health agency licensure or certification may be downloaded at (~~(http://www.dshs.wa.gov/dbhr/daforms.shtml)~~) https://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery/licensing-and-certification-behavioral-health-agencies. Completed application packets, forms, and requests for deeming or other services should be mailed to the aging and disability services finance office at the address listed on the applicable application packet or form.

(3) An agency must report to the department any changes that occur following the initial licensing or certification process. The department may request a copy of additional disclosure statements or background inquiries if there is reason to believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.

(4) The department may grant an exemption or waiver from compliance with specific licensing or program certification requirements if the exemption does not violate an existing state, federal, or tribal law.

(a) To request an exemption to a rule in this chapter, the agency must:

- (i) Submit the request in writing to the department;
- (ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and
- (iii) Assure the exemption request does not impede fair competition of another service agency.

(b) The department approves or denies an exemption request in writing and requires the agency to keep a copy of the decision.

(c) Appeal rights under WAC 388-877-0370 do not apply to exemption to rule decisions.

(5) In the event of an agency closure or the cancellation of a program-specific certification, the agency must provide each individual currently being served:

(a) Notice of the agency closure or program cancellation at least thirty days before the date of closure or program cancellation;

(b) Assistance with relocation; and

(c) Information on how to access records to which the individual is entitled.

(6) If an agency certified to provide any behavioral health service closes, the agency must ensure all individual clinical records are kept and managed for at least six years after the closure before destroying the records in a manner that preserves confidentiality. In addition:

(a) The closing agency must notify the division of behavioral health and recovery (DBHR) that the agency will do one of the following:

(i) Continue to retain and manage all individual clinical records; or

(ii) Arrange for the continued storage and management of all individual clinical records.

(b) The closing agency must notify DBHR in writing and include the name of the licensed agency or entity storing and managing the records, provide the method of contact, such as a telephone number, and/or electronic address, and provide the mailing and street address where the records will be stored.

~~((b))~~ ~~((c))~~ (c) When a closing agency that has provided ~~((chemical dependency))~~ substance use disorder services arranges for the continued storage and management of clinical records by another entity, the closing agency must enter into a specific qualified services organization agreement with a DBHR licensed agency or other entity. See 42 C.F.R. Part 2, Subpart B.

(d) When any agency or entity storing and maintaining individual clinical records receives an authorized request for a record, the record must be provided to the requester within a reasonable period of time.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0305 Agency licensure—Application. To apply for licensure to provide any behavioral health service, an agency must submit an initial application that is signed by the agency's administrator.

(1) The application must include the following:

(a) A copy of the agency's master business license that authorizes the organization to do business in Washington state;

(b) A list of the specific program services for which the agency is seeking certification;

(c) A copy of the report of findings from a criminal background check of the administrator and any owner of five percent or more of the organizational assets;

(d) The physical address of any agency operated facility where behavioral health services will be provided;

(e) A statement assuring the agency meets ~~((American Disability Act [Americans with Disabilities Act]))~~ Americans with Disabilities Act (ADA) standards and that the facility is:

(i) Suitable for the purposes intended;

(ii) Not a personal residence; and

(iii) Approved as meeting all building and safety requirements.

(f) A copy of the policies and procedures specific to the agency;

(g) A staff roster, including each staff member's license under department of health (DOH) rules for professional standards and licensing if credentials are required for the position;

(h) A copy of a current DOH residential treatment facility certificate if the agency is providing ~~((chemical dependency))~~ substance use disorder residential treatment or mental health residential treatment; and

(i) Payment of associated fees.

(2) The department conducts an on-site review as part of the initial licensing or certification process (see WAC 388-877-0320).

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0335 Agency licensure and program-specific certification—Denials, suspensions, revocations, and penalties. (1) The department will deny issuing or renewing an agency's license or specific program certification(s), place an agency on probation, or suspend, or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency fails to meet requirements in this chapter.

(b) The agency fails to cooperate or disrupts department representatives during an on-site survey or complaint investigation.

(c) The agency fails to assist the department in conducting individual interviews with ~~((individuals or))~~ either staff members or individuals receiving services, or both.

(d) The agency owner or agency administrator:

(i) Had a license or specific program certification issued by the department subsequently denied, suspended, or revoked;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of substantiated child abuse;

(iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult;

(iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(v) Committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a patient or displayed acts of discrimination;

(vii) Misappropriated patient (individual) property or resources;

(viii) Failed to meet financial obligations or contracted service commitments that affect patient care;

(ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;

(x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

(A) The submitted application or materials attached; or

(B) Any matter under department investigation.

(xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;

(xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);

(xiv) Does not meet criminal background check requirements;

(xv) Fails to provide satisfactory application materials; or

(xvi) Advertises the agency as certified when licensure or certification has not been granted, or has been revoked or canceled.

(e) The department determines there is imminent risk to consumer health and safety.

(f) The agency's licensure or specific program certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.

(2) The department may deny issuing or renewing an agency's license or specific program certification, place an agency on probation, or suspend or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency voluntarily cancels licensure or certification.

(b) The agency fails to pay the required license or certification fees.

(c) The agency stops providing the services for which the agency is certified.

(d) The agency fails to notify the department before changing ownership.

(e) The agency fails to notify the department before relocating its licensed location.

(3) The department sends a written notice to deny, suspend, revoke, or modify the licensure or certification status (see RCW 43.20A.205) that includes the reason(s) for the decision and the agency's right to appeal a department decision (refer to WAC 388-877-0370).

(4) If an agency fails to comply with the requirements of this chapter, the department may:

(a) Assess fees to cover costs of added licensing and program-specific certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation;

(b) Stop referral(s) of an individual who is a program recipient of a state and/or federally-funded program; and

(c) Notify the county alcohol and drug coordinator, ~~((regional support network (RSN)))~~ behavioral health organization (BHO) and/or local media of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or program-specific certification(s).

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0365 Agency licensure and program-specific certification—Fee requirements. (1) Payment of licensing and specific program certification fees required under this chapter must be included with the initial application, renewal application, or with requests for other services.

(2) Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.

(3) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(4) Fees will not be refunded when licensure or certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved substance use disorder treatment programs:

Application Fees for Agency Certification for Approved ((Chemical Dependency)) Substance Use Disorder Treatment Programs	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and Annual Certification Fees for Detoxification, Residential, and Nonresidential Services	
Detoxification and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 388-877-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 388-877-0310
Complaint/Critical Incident Investigation Fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(6) Agency providers must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification

information. Required information includes, but is not limited to:

(a) The number of licensed detoxification and residential beds; and

(b) The agency provider's national accreditation status.

(7) The department charges the following fees for approved mental health treatment programs:

Initial Licensing Application Fee for Mental Health Treatment Programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and Annual Licensing Fees for Agencies not Deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual Licensing Fees for Deemed Agencies	
Deemed agencies licensed by DBHR	\$500 annual licensing fee
Complaint/Critical Incident Investigation Fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(8) Agencies providing nonresidential mental health services must report the number of annual service hours provided based on the division of behavioral health and recovery's (DBHR's) current published "Service Encounter Reporting Instructions for ~~((RSN's))~~ BHOs" and the "Consumer Information System (CIS) Data Dictionary for ~~((RSN's))~~ BHOs." These publications are available at: (<http://www.dshs.wa.gov/dbhr/mhpublications.shtml>) <https://www.dshs.wa.gov/bhsia/division-behavioral-health-and-recovery/contractors-and-providers>.

(a) Existing licensed agencies must compute the annual services hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

(9) For inpatient evaluation and treatment facility initial and annual certification bed fees charged by the department, see WAC 388-865-0511.

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

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0420 Agency administration—Policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain administrative policies and procedures to meet the minimum requirements of this chapter. The policies and procedures must demonstrate the following, as applicable:

(1) **Ownership.** Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:

(a) Articles and certificate of incorporation and bylaws if the owner is a corporation;

(b) Partnership agreement if the owner is a partnership; or

(c) Sole proprietorship if one person is the owner.

(2) **Licensure.** A copy of the agency's master business license that authorizes the organization to do business in Washington state that:

(a) Includes the entity's name, firm name, or registered trade name; and

(b) Lists all addresses where the entity performs services.

(3) **Organizational description.** An organizational description detailing all positions and associated licensure or certification, updated as needed.

(4) **Agency staffing and supervision.** Documentation that shows the agency has staff members:

(a) Adequate in number to provide program-specific certified services to serve the agency's caseload of individuals; and

(b) Who provide treatment in accordance to regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.

(5) **Interpreter services for individuals with Limited English Proficiency (LEP) and individuals who have sensory disabilities.** Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities.

(a) Certified interpreters or other interpreter services must be available for individuals with limited English speaking proficiency and individuals who have sensory disabilities; or

(b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.

(6) **Reasonable access for individuals with disabilities.** A description of how reasonable accommodations will be provided to individuals with disabilities.

(7) **Nondiscrimination.** A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.

(8) **Fee schedules.** A copy of the agency's current fee schedules for all services must be available on request.

(9) **Funding options for treatment costs.** A description of how the agency works with individuals to address the funding of an individual's treatment costs, including a mechanism to address changes in the individual's ability to pay.

(10) **State and federal rules on confidentiality.** A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.

(11) **Reporting and documentation of suspected abuse, neglect, or exploitation.** A description how the agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

(12) **Protection of youth.** Documentation of how the agency addresses compliance with program-specific rules and the protection of youth participating in group or residential treatment with adults.

(13) **Completing and submitting reports.** A description of how the agency directs staff to:

(a) Complete and submit in a timely manner, all reports required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services; and

(b) Include a copy of the report(s) in the clinical record and document the date submitted.

(14) **Reporting the death of an individual seeking or receiving services.** A description of how the agency directs staff to report to the department or ((~~regional support network (RSN)~~) behavioral health organization (BHO), as applicable, within one business day the death of any individual which occurs on the premises of a licensed agency.

(15) **Reporting critical incidents.** A description of how the agency directs staff to report to the department or ((~~RSN~~) BHO, as applicable, within one business day any critical incident that occurs involving an individual, and actions taken as a result of the incident.

(16) **A smoking policy.** Documentation that a smoking policy consistent with chapter 70.160 RCW (smoking in public places), is in effect.

(17) **Outpatient evacuation plan.** For a nonresidential agency, an evacuation plan for use in the event of a disaster or emergency that addresses:

(a) Different types of disasters or emergencies;

(b) Placement of posters showing routes of exit;

(c) The need to mention evacuation routes at public meetings;

(d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;

(e) Evacuation of mobility impaired individuals; and

(f) Evacuation of children if child care is offered.

(18) **Individual rights.** A description of how the agency has individual participation rights and policies consistent with WAC 388-877-0600 and if applicable, WAC 388-877-0680.

(19) **Individual complaints and grievances.** A description of how the agency addresses an individual's complaint, consistent with WAC 388-877-0605, and/or the grievance system, consistent with WAC 388-877-0650 through 388-877-0675.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0600 Clinical—Individual rights. (1)

Each agency licensed by the department to provide any behavioral health service must develop a statement of individual participant rights applicable to the service categories the agency is licensed for, to ensure an individual's rights are protected in compliance with chapters 70.96A, 71.05, 71.12, and 71.34 RCW. In addition, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Review your clinical record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections;

(i) Receive a copy of agency (~~(complaint and)~~) grievance system procedures upon request and to (~~(lodge a complaint or)~~) file a grievance with the agency, or (~~(regional support network (RSN))~~) behavioral health organization (BHO), if applicable, if you believe your rights have been violated; and

(j) (~~(File)~~) Lodge a complaint with the department when you feel the agency has violated a WAC requirement regulating behavior health agencies.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are blind;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency (~~(enrolled as a medicare and/or medicaid provider)~~) providing services to medicaid recipients must ensure an

individual seeking or participating in behavioral health treatment services, or the person legally responsible for the individual is informed of their medicaid rights at time of admission and in a manner that is understandable to the individual or legally responsible person.

(5) The grievance system rules in WAC 388-877-0654 through WAC 388-877-0675 apply to an individual who receives behavioral health services funded through a federal medicaid program or sources other than a federal medicaid program.

AMENDATORY SECTION (Amending WSR 15-14-058, filed 6/25/15, effective 7/26/15)

WAC 388-877-0605 DBHR complaint process. Any individual or the individual's representative may use the division of behavioral health and recovery's (DBHR's) complaint process to express concern or dissatisfaction with some aspect of a behavioral health service. See WAC 388-877-0200 for terms and definitions used in this section that apply to the complaint process.

(1) The DBHR complaint manager can be contacted at 360-725-3752 or DBHRcomplaintmgr@dshs.wa.gov.

(2) Examples of complaints include, but are not limited to:

(a) An issue with a behavioral health service or case management;

(b) A possible violation of a DSHS rule; and

(c) (~~(A belief that)~~) The individual believes their rights have been or are being violated.

(3) DBHR requires the following information for each complaint:

(a) The name of the agency or agency provider involved;

(b) The name of the person making the complaint and the person's contact information;

(c) The name of the individual receiving the service and the individual's contact information;

(d) A description of the complaint issue and the date or timeframe it occurred; and

(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the (~~(RSN))~~ behavioral health organization (BHO), the agency, or agency provider.

(4) If DBHR conducts a complaint investigation in order to resolve a complaint, agency representatives must cooperate to allow DBHR representatives to:

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

(i) An individual's clinical record and/or personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by DBHR to determine compliance and to resolve the complaint.

(c) Conduct individual interviews with staff members and/or individuals receiving services.

(5) The agency must immediately correct compliance deficiencies found as a result of an investigation, or as agreed to by a plan of correction approved by DBHR.

(6) An agency or agency provider must not retaliate against any:

(a) Individual for making a complaint with DBHR or being interviewed by DBHR about a complaint. Examples of retaliation include, but are not limited to:

- (i) Restricting access to a treatment program;
- (ii) Restricting access to the individual involved with the complaint issue;
- (iii) Increasing or threatening to increase charges for services;
- (iv) Decreasing or threatening to decrease services, rights, or privileges;
- (v) Taking any action that coerces or compels the individual to leave the facility or to stop receiving services; and
- (vi) Abusing or harassing, or threatening to abuse or harass the individual.

- (b) Person representing the individual.
- (c) A witness involved in the complaint issue.
- (d) An employee of the agency.

(7) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

- (a) Any allegation within the complaint being substantiated; or
- (b) DBHR's finding that the individual, an individual's representative, a witness, and/or employee of the agency experienced an act of retaliation by the agency as described in subsection (6) of this section during or after a complaint investigation.

(8) DBHR reviews all complaints and behavioral health agency actions to assure compliance with this section.

(9) At any time during the complaint process, an individual applying for, eligible for, or receiving mental health services, or the individual's representative, may access any of the following through the ~~((regional support network's (RSN's)))~~ behavioral health organization's (BHO) grievance system, subject to the applicable rules:

- (a) The grievance process, subject to the rules in WAC ~~((388-877A-0420))~~ 388-877-0660.
- (b) The appeal process, subject to the rules in WAC ~~((388-877A-0440))~~ 388-877-0670.
- (c) An administrative hearing, subject to the rules in WAC ~~((388-877A-0460))~~ 388-877-0675.
- (d) Ombuds services, as described in WAC ~~((388-877A-0400(3)))~~ 388-877-0655(3) and ~~((388-865-0250))~~ 388-865-0262.

AMENDATORY SECTION (Amending WSR 13-12-054, filed 5/31/13, effective 7/1/13)

WAC 388-877-0610 Clinical—Initial assessment. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's initial assessment.

- (1) The initial assessment must be:
 - (a) Conducted in person; and
 - (b) Completed by a professional appropriately credentialed or qualified to provide ~~((chemical dependency))~~ sub-

stance use disorder, mental health, and/or problem and pathological gambling services as determined by state law.

(2) The initial assessment must include and document the individual's:

- (a) Identifying information;
- (b) Presenting issues;
- (c) Medical provider's name or medical providers' names;
- (d) Medical concerns;
- (e) Medications currently taken;
- (f) Brief mental health history;
- (g) Brief substance use history, including tobacco;
- (h) Brief problem and pathological gambling history;
- (i) The identification of any risk of harm to self and others, including suicide and/or homicide;
- (j) A referral for provision of emergency/crisis services must be made if indicated in the risk assessment;
- (k) Information that a person is or is not court-ordered to treatment or under the supervision of the department of corrections; and
- (l) Treatment recommendations or recommendations for additional program-specific assessment.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0620 Clinical—Individual service plan. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's service plan as follows:

- (1) The individual service plan must:
 - (a) Be completed or approved by a professional appropriately credentialed or qualified to provide mental health, ~~((chemical dependency))~~ substance use disorder, and/or problem and pathological gambling services.
 - (b) Address age, gender, cultural, strengths and/or disability issues identified by the individual or, if applicable, the individual's parent(s) or legal representative.
 - (c) Be in a terminology that is understandable to the individual and the individual's family.
 - (d) Document that the plan was mutually agreed upon and a copy was provided to the individual.
 - (e) Demonstrate the individual's participation in the development of the plan.
 - (f) Document participation of family or significant others, if participation is requested by the individual and is clinically appropriate.
 - (g) Be strength-based.
 - (h) Contain measurable goals or objectives, or both.
 - (i) Be updated to address applicable changes in identified needs and achievement of goals and objectives.
- (2) If the individual service plan includes assignment of work to an individual, the assignment must have therapeutic value and meet all the requirements in (1) of this section.
- (3) When required by law, the agency must notify the required authority of a violation of a court order or nonparticipation in treatment, or both.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877-0640 Clinical—Record content. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's clinical record content. The clinical record must include:

(1) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential.

(2) Demographic information.

(3) An initial assessment.

(4) Documentation of the individual's response when asked if:

(a) The individual is under department of corrections (DOC) supervision.

(b) The individual is under civil or criminal court ordered mental health or ~~((chemical dependency))~~ substance use disorder treatment.

(c) There is a court order exempting the individual participant from reporting requirements. A copy of the court order must be included in the record if the participant claims exemption from reporting requirements.

(5) Documentation that the agency met all the following requirements when an individual informs the agency that the individual is under supervision by DOC due to a less restrictive alternative or DOC order for treatment:

(a) The agency notified DOC orally or in writing. The agency must confirm an oral notification with a written notice by electronic mail or fax.

(b) The agency obtained a copy of the court order from the individual and placed it in the record when the individual has been given relief from disclosure by the committing court.

(c) When appropriate, the agency requested an evaluation by a designated mental health professional when the provider becomes aware of a violation of the court-ordered treatment and the violation concerns public safety.

(6) The initial and any subsequent individual service plan that include:

(a) All revisions to the plan, consistent with the service(s) the individual receives; and

(b) Documentation of objective progress towards established goals as outlined in the plan.

(7) Documentation the individual was informed of applicable federal and state confidentiality requirements.

(8) Documentation of confidential information that has been released without the consent of the individual under:

(a) RCW 70.02.050;

(b) The Health Insurance Portability and Accountability Act (HIPAA); and

(c) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services.

(9) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred.

(10) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative.

(11) If treatment is court-ordered, a copy of the order.

(12) Documentation of coordination of care, as needed.

(13) Documentation of all service encounters.

(14) Medication records, if applicable.

(15) Laboratory reports, if applicable.

(16) Properly completed authorizations for release of information, if applicable.

(17) Copies of applicable correspondence.

(18) Discharge information.

(19) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of social and health services, and the date the report was submitted.

NEW SECTION

WAC 388-877-0654 How individuals can express concern about their rights, services, or treatment. (1) An individual applying for, eligible for, or receiving mental health services or substance use disorder services, or both, authorized by a behavioral health organization (BHO), the individual's representative, or the individual's legal guardian, may access the BHO's grievance system to express concern about their rights, services, or treatment. The grievance system includes:

(a) A grievance process;

(b) An appeal process; and

(c) Access to administrative hearings.

(2) Before requesting an administrative hearing, the individual must exhaust:

(a) The grievance process, subject to WAC 388-877-0660; or

(b) The appeal process, subject to WAC 388-877-0670.

(3) Individuals may also use the free and confidential ombuds services through the BHO that contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and agency services providers and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(4) See WAC 388-865-0262 for more information on ombuds services through the behavioral health ombuds office.

NEW SECTION

WAC 388-877-0655 Grievance system—Definitions. The terms and definitions in this section and WAC 388-877-0200 apply to the grievance system rules.

(1) "Action" means, in the case of a behavioral health organization (BHO):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state; or

(e) The failure of a BHO or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877-0660 through 388-877-0675.

(2) "Administrative hearing" means a proceeding before an administrative law judge that gives an individual an opportunity to be heard in disputes about DSHS programs and services.

(3) "Appeal" means an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the behavioral health organization (BHO) to review an "action," as defined in this section. See also "expedited appeal."

(4) "Appeal process" is one of the processes included in the grievance system that allows an individual to appeal an action made by the behavioral health organization (BHO) and communicated on a "notice of action."

(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed by the behavioral health organization (BHO) more quickly than a standard appeal.

(6) "Grievance" means an expression of dissatisfaction about any matter other than an "action."

(7) "Grievance process" is one of the processes included in the grievance system that allows an individual to express concern or dissatisfaction about a behavioral health service.

(8) "Grievance system" means the processes through a behavioral health organization (BHO) in which an individual applying for, eligible for, or receiving behavioral health services may express dissatisfaction about services. The grievance system must be established by the BHO, must meet the requirements of 42 C.F.R. Sec. 438, Subpart F, and include:

- (a) A grievance process;
- (b) An appeal process; and
- (c) Access to the department's administrative hearing process.

(9) "Individual" means a person who applies for, is eligible for, or receives behavioral health organization (BHO)-authorized behavioral health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance system, the definition of individual also includes the following if another person is acting on the individual's behalf:

- (a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;
- (b) The individual's legal guardian; or
- (c) The individual's representative if the individual gives written permission.

(10) "Notice of action" is a written notice a behavioral health organization (BHO) provides to an individual to communicate an "action."

(11) "Regional support network" or "RSN" no longer exists as of March 31, 2016. See WAC 388-865-0238, "Behavioral health organization."

NEW SECTION

WAC 388-877-0660 Grievance process. (1) The grievance process is used by an individual or the individual's representative to express dissatisfaction in person, orally, or in writing about any matter other than an "action," as defined in WAC 388-877-0655, to:

- (a) The behavioral health agency providing the behavioral health services; or

(b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If an individual receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the individual's grievances or expressions of dissatisfaction.

(3) The ombuds serving the behavioral health agency or BHO may assist the individual in resolving the grievance at the lowest possible level.

(4) Grievances are subject to the rules in this section, WAC 388-877-0650, 388-877-0655, and 388-877-0665 through 388-877-0680. An individual may choose to file a grievance with the behavioral health agency that provides the behavioral health services or with the BHO, subject to the following:

(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (6) of this section, the individual may then choose to file the grievance with the BHO. If the individual is not satisfied with the BHO's written decision on the grievance, or if the individual does not receive a copy of the decision from the BHO within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it.

(b) **Filing a grievance with a BHO.** If the individual first files a grievance with the BHO (and not the agency), and the individual either is not satisfied with the BHO's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (6) of this section, the individual can request an administrative hearing to have the grievance reviewed and the BHO's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from a BHO, the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance.

(5) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (6) of this section.

(6) When an individual files a grievance, the behavioral health agency or BHO receiving the grievance must:

- (a) Acknowledge the receipt of the grievance in writing within five business days;
- (b) Investigate the grievance;
- (c) Apply the rules in subsection (7) of this section; and
- (d) Send the individual who filed the grievance a written notice describing the decision within ninety calendar days from the date the grievance was filed.

(7) The behavioral health agency or BHO receiving the grievance must ensure all of the following:

- (a) Other people, if the individual chooses, are allowed to participate in the grievance process.

(b) The individual's right to have currently authorized behavioral health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.

(c) That a grievance is resolved even if the individual is no longer receiving behavioral health services.

(d) That the persons who make decisions on a grievance:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise if the grievance involves clinical issues.

(e) That the individual and, if applicable, the individual's representative, receive a written notice containing the decision within ninety days from the date a grievance is received by the agency or BHO. This timeframe can be extended up to an additional fourteen days:

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or BHO when additional information is needed and the BHO can demonstrate that it needs additional information and that the added time is in the individual's interest.

(f) That the written notice includes:

(i) The decision on the grievance;

(ii) The reason for the decision; and

(iii) The right to request an administrative hearing and the required timeframe to request the hearing.

(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained and:

(i) Kept for six years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy;

(iii) Kept in confidential files separate from the individual's clinical record; and

(iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance.

NEW SECTION

WAC 388-877-0665 Notice of action. (1) The behavioral health organization's (BHO's) notice of action provided to an individual must be in writing, be in the individual's primary language, be easily understood and, at a minimum, explain:

(a) The action the BHO or its contractor (behavioral health agency) has taken or intends to take;

(b) The reason for the action and a citation of the rule(s) being implemented;

(c) The individual's right to file an appeal with the BHO and the required timeframes if the individual does not agree with the decision or action;

(d) The circumstances under which an expedited resolution is available and how to request it; and

(e) The individual's right to receive behavioral health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of ser-

vices received while the appeal is pending if the appeal decision upholds the decision or action.

(2) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required timeframes, or fails to provide services in a timely manner or to act within the grievance system timeframes, as defined in rule, it is considered a denial. In these cases, the BHO sends a formal notice of action, which includes the individual's right to request an administrative hearing.

NEW SECTION

WAC 388-877-0670 Appeal process. (1) The appeal process is used by an individual to ask the behavioral health organization (BHO) to review an action that the BHO has communicated on a written notice of action (see WAC 388-877-0665). An individual's representative may appeal an action with the individual's written consent. If a written notice of action was not received, an appeal may still be filed.

(2) The individual requesting review of an action must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) The appeal process can be:

(a) Standard as described in subsection (6) of this section; or

(b) Expedited if the criteria in subsection (7) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The BHO must inform the individual of the limited time available.

(b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical record, including medical records and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The individual, the individual's representative, or both; or

(ii) The legal representative of a deceased individual's estate.

(5) The BHO must ensure that the persons who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service involved in the appeal.

(6) **Standard appeal process.** The standard appeal process includes the following:

(a) **Standard appeals for actions communicated on a notice of action-continued services not requested.** An individual who disagrees with a decision or action communicated on a notice of action may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. All of the following apply:

(i) The individual must file the appeal within ninety calendar days from the date on the notice of action.

(ii) The BHO must confirm receipt of the appeal in writing within five business days.

(iii) The BHO must send the individual a written notice of the resolution within forty-five calendar days of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the BHO can demonstrate that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution must include:

(A) The BHO's decision;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice of the resolution.

(b) **Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual receiving a notice of action from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. All of the following apply:

(i) The individual must:

(A) File the appeal with the BHO on or before the later of the following:

(I) Within ten calendar days of the date on the notice of action; or

(II) The intended effective date of the BHO's proposed action.

(B) Request continuation of services.

(ii) The BHO must:

(A) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing within five business days;

(B) Send a notice in writing that follows up on any oral confirmation made; and

(C) Include in the notice that if the appeal decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(iii) The BHO's written notice of the resolution must contain:

(A) The BHO's decision on the appeal;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision and include the following timeframes:

(I) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.

(II) Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

(7) **Expedited appeal process.** If an individual or the individual's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously

jeopardize the individual's life or health and ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal can be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within two calendar days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The action taken on the notice of action is for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services; and

(ii) The appeal must be filed with the BHO, either orally or in writing, within:

(A) Ten calendar days of the BHO's mailing the written notice of action that communicated the action, or the intended effective date of the BHO's proposed action, if the individual is requesting continued benefits; or

(B) Twenty calendar days from the date on the BHO's written notice of action that communicated the action if the individual is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the individual a written notice of the resolution within three business days of receiving the request for an expedited appeal.

(c) The BHO may extend the timeframes up to fourteen additional days if the individual requests an extension or the BHO can demonstrate it needs additional information and that the added time is in the individual's interest.

(8) **Duration of continued services during the appeal process.** When an individual has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO ensures the services are continued until one of the following occurs:

(a) The individual withdraws the appeal.

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the individual and the individual does not request an administrative hearing within ten days from the date the BHO mails the notice. (See WAC 388-877-0675, Administrative Hearings, for rules on duration of continued services during the administrative hearing process.)

(c) The time period of a previously authorized service has expired.

(d) A behavioral health treatment service limit of a previously authorized service has been fulfilled.

(9) **Recovery of the cost of behavioral health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section.

(10) The BHO must maintain full records of all appeals and ensure an individual's records are:

(a) Kept for six years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy;

(c) Kept in confidential files separate from the individual's clinical record; and

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal.

NEW SECTION

WAC 388-877-0675 Administrative hearings. (1) An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in WAC 388-877-0200, an opportunity to be heard in disputes about a behavioral health program or service.

(2) An individual must first exhaust the grievance process described in WAC 388-877-0660, or the appeal process described in WAC 388-877-0670 before requesting an administrative hearing.

(3) An individual requesting an administrative hearing must do so within one of the following timeframes:

(a) If continued services are not requested, a hearing must be requested within ninety calendar days from:

(i) The date on the written notice from the agency or behavioral health organization (BHO) at the end of the grievance process; or

(ii) The date on the written notice of the resolution received from the BHO at the end of the appeal process.

(b) If continued services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The decision on a notice of action must be for termination, suspension, or reduction of the individual's behavioral health services and the individual appealed this decision;

(ii) The individual received a written notification of the resolution of the appeal from the BHO that upholds the decision on the notice of action; and

(iii) The individual requests an administrative hearing and continued behavioral health services within ten calendar days of the date on the written notification of the resolution.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution. Subsection (3)(b) of this section applies if continued behavioral health services are requested.

(5) If a written notice was not received under subsection (3) or (4) of this section, the individual may still request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO continues the individual's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

(c) The period covered by the original authorization of mental health services has expired.

(7) If the administrative hearing decision is not in favor of the individual, the BHO may recover the cost of the behavioral health services furnished to the individual while the hearing was pending to the extent that they were provided solely because of the requirements of this section.

(8) For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

NEW SECTION

WAC 388-877-0680 Individual rights specific to medicaid recipients. (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 388-877-0600; and

(iii) Applicable necessary supplemental accommodation services in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the department in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA) division of behavioral health and recovery (DBHR) website.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.

(iii) Receive information about the structure and operation of the BHO.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

- (x) Refuse any proposed treatment.
- (xi) Receive care that does not discriminate against you.
- (xii) Be free of any sexual exploitation or harassment.
- (xiii) Receive an explanation of all medications prescribed and possible side effects.
- (xiv) Make a mental health advance directive that states your choices and preferences for mental health care.
- (xv) Receive information about medical advance directives.
- (xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.
- (xvii) Change behavioral health care providers at any time for any reason.
- (xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.
- (xix) Be free from retaliation.
- (xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.
- (xxi) Receive the amount and duration of services you need.
- (xxii) Receive services in a barrier-free (accessible) location.
- (xxiii) Medically necessary services in accordance with the early periodic screen, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.
- (xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.
- (xxv) Be treated with dignity, privacy and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.
- (xxvi) Participate in treatment decisions, including the right to refuse treatment.
- (xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience or retaliation.
- (xxviii) A second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. § 438.206(3).
- (xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.
- (xxx) File a grievance with the BHO if you are not satisfied with a service.
- (xxxi) Receive a notice of action so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.
- (xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state, or act within the timeframes provided in 42 CFR § 438.408(b).
- (xxxiii) Request an administrative (fair) hearing if your grievance or appeal is not resolved in your favor.

(xxxiv) Services by the behavioral health ombuds office to help you in filing a grievance or appeal, or to request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) and certified by DBHR to provide mental health and/or substance use disorder services must ensure the medicaid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0200 Crisis mental health services—General. The rules in WAC 388-877A-0200 through 377A-0280 apply to behavioral health agencies that provide crisis mental health services. The definitions in WAC 388-877-0200 also apply to crisis mental health services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Crisis mental health services are intended to stabilize an individual in crisis to:

(a) Prevent further deterioration;

(b) Provide immediate treatment and intervention in a location best suited to meet the needs of the individual; and

(c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

(a) Crisis telephone support (see WAC 388-877A-0230);

(b) Crisis outreach services (see WAC 388-877A-0240);

(c) Crisis stabilization services (see WAC 388-877A-0260);

(d) Crisis peer support services (see WAC 388-877A-0270); and

(e) Emergency involuntary detention services (see WAC 388-877A-0280).

(3) An agency providing any crisis mental health service to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Be certified by the department to provide crisis mental health services;

(c) Meet the applicable behavioral health agency licensure, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Program-specific requirements in WAC 388-877A-0230 through WAC 388-877A-0280 for each crisis mental health service provided; and

(iii) Department of Corrections Access to Confidential Mental Health Information requirements in WAC 388-865-600 through 388-865-0640.

(4) An agency providing crisis mental health services only is not required to meet the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(5) An agency must ensure crisis mental health services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis; and

(c) Are provided in a setting that provides for the safety of the individual and agency staff members.

(6) An agency providing involuntary crisis mental health services must hold a contract with the county in which it is located, or the appropriate ~~((regional support network (RSN)))~~ behavioral health organization (BHO).

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0270 Crisis mental health services—Peer support services. Crisis peer support services assist an individual in exercising control over their own life and recovery process through the practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(1) Peer support services are intended to augment and not supplant other necessary mental health services.

(2) An agency providing crisis peer support services must:

(a) Ensure services are provided by a ~~((peer counselor, properly credentialed under WAC 388-865-0107))~~ person recognized by the division of behavioral health and recovery (DBHR) as a peer counselor, as defined in WAC 388-877-0200, under the supervision of a mental health professional.

(b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential.

(c) Ensure that a peer counselor responding to a crisis is accompanied by a mental health professional.

(d) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication.

(e) Ensure peer counselors receive annual training that is relevant to their unique working environment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0340 Recovery support services requiring program-specific certification—Peer support services. Peer support services are a recovery support service that requires program-specific certification by the department's division of behavioral health and recovery.

(1) Peer support services provide a wide range of activities to assist an individual in exercising control over their own life and recovery process through:

(a) Developing self-advocacy and natural supports;

(b) Maintenance of community living skills;

(c) Promoting socialization; and

(d) The practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(2) An agency providing peer support services must ensure peer support counselors~~(s)~~:

(a) ~~((Meet the requirements of WAC 388-865-0107))~~ Are recognized by the division of behavioral health and recovery (DBHR) as a "peer counselor" as defined in WAC 388-877-0200.

(b) Provide peer support services:

(i) Under the supervision of a mental health professional; and

(ii) Within the scope of the peer counselor's training and department of health credential.

(c) Receive annual training relevant to their unique working environment.

(3) An agency providing peer support services must document the frequency, duration, and expected outcome of all peer support services in the individual service plan.

~~((CHEMICAL DEPENDENCY))~~ SUBSTANCE USE DISORDER SERVICES

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0100 ~~((Chemical dependency))~~ Substance use disorder detoxification services—General. The rules in WAC 388-877B-0100 through 388-877B-0130 apply to behavioral health agencies that provide detoxification services. The definitions in WAC 388-877-0200 also apply to ~~((chemical dependency))~~ substance use disorder detoxification services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) ~~((Chemical dependency))~~ Substance use disorder detoxification services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, in accordance with patient placement criteria (PPC).

(2) A behavioral health agency certified for detoxification services may choose to provide optional ~~((chemical dependency))~~ substance use disorder youth detoxification services (see WAC 388-877B-0130). Optional youth detoxification services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR).

(3) An agency providing detoxification services to an individual must:

(a) Be a facility licensed by department of health under one of the following department of health chapters:

- (i) Hospital licensing regulations (chapter 246-320 WAC);
- (ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);
- (iii) Private alcohol and ~~((chemical dependency))~~ substance use disorder hospitals (chapter 246-324 WAC); or
- (iv) Residential treatment facility (chapter 246-337 WAC);
- (b) Be licensed by the department as a behavioral health agency;
- (c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and
- (d) Have policies and procedures to support and implement the:
 - (i) General requirements in chapter 388-877 WAC; and
 - (ii) Specific applicable requirements in WAC 388-877B-0100 through 388-877B-0130.
- (4) An agency must:
 - (a) Use PPC for admission, continued services, and discharge planning and decisions.
 - (b) Provide counseling to each individual that addresses the individual's:
 - (i) ~~((Chemical dependency))~~ Substance use disorder and motivation;
 - (ii) Continuing care needs and need for referral to other services.
 - (c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services.
 - (d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.
 - (e) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.
 - (f) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0110 ~~((Chemical dependency))~~ Substance use disorder detoxification services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ~~((chemical dependency))~~ substance use disorder detoxification services must ensure:

- (1) All ~~((chemical dependency))~~ substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.
- (2) There is a designated clinical supervisor who:
 - (a) Is a CDP;
 - (b) Has documented competency in clinical supervision;
 - (c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-

annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each staff member providing detoxification services to an individual, with the exception of licensed staff members and CDPs, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

- (a) Substance use disorders;
- (b) Infectious diseases, to include hepatitis and tuberculosis (TB); and
- (c) Detoxification screening, admission, and signs of trauma.

(4) Each CDPT has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(5) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel file.

(6) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens, and TB. The training must be documented in the personnel file.

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

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0120 ~~((Chemical dependency))~~ Substance use disorder detoxification services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing ~~((chemical dependency))~~ substance use disorder detoxification services must maintain an individual's clinical record that contains:

- (1) Documentation of a ~~((chemical dependency))~~ substance use disorder screening before admission.
- (2) A voluntary consent to treatment form, or any release forms, signed and dated by the individual, or the individual's parent or legal guardian, except as authorized by law for protective custody and involuntary treatment.
- (3) Documentation that the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R., Part 2.
- (4) Documentation that the individual received the HIV/AIDS brief risk intervention.
- (5) Documentation of progress notes in a timely manner from each shift and as events occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the shift or event, and the name of the staff member who provided it.
- (6) Documentation that a discharge summary, including a continuing care recommendation and a description of the

individual's physical condition, was completed within seven working days of discharge.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0130 ((~~Chemical dependency~~)) Substance use disorder detoxification services requiring program-specific certification—Youth detoxification services. Youth detoxification services are ((~~chemical dependency treatment~~)) substance use disorder services provided to an individual seventeen years of age or younger. Youth detoxification services are optional detoxification services that require program-specific certification by the department's division of behavioral health and recovery. An agency providing youth detoxification services must:

(1) Admit youth only with the written permission of the youth's parent or, if applicable, the youth's legal guardian. If a youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(2) Assess the individual's need for referral to the department's child welfare services.

(3) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older.

(b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(4) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(5) ((~~Must~~)) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notification and attempts of notification in the clinical record.

(6) Discharge the youth to the care of the parent or legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(7) Ensure at least one adult staff member of each gender is present or available by phone at all times if co-educational treatment services are provided.

(8) Ensure a staff member who demonstrates knowledge of adolescent development and addiction is available at the facility or available by phone.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0200 ((~~Chemical dependency~~)) Substance use disorder residential treatment services—General. The rules in WAC 388-877B-0200 through 388-877B-0280 apply to behavioral health agencies that provide ((~~chemical dependency~~)) substance use disorder residential treatment services. The definitions in WAC 388-877-0200 also apply to ((~~chemical dependency~~)) substance use disorder residential treatment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC,

chapter 388-877A WAC, chapter 388-877B WAC, chapter 388-877C WAC no later than September 1, 2013.

(1) Residential treatment services provide ((~~chemical dependency~~)) substance use disorder treatment for an individual and include room and board in a facility with twenty-four hours a day supervision.

(2) Residential treatment services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Intensive inpatient services (see WAC 388-877B-0250);

(b) Recovery house treatment services (see WAC 388-877B-0260);

(c) Long-term residential treatment services (see WAC 388-877B-0270); and

(d) Youth residential services (see WAC 388-877B-0280).

(3) An agency providing residential treatment services must:

(a) Be a facility licensed by department of health (DOH) and meet the criteria under one of the following DOH chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and ((~~chemical dependency~~)) substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0200 through 388-877B-0280.

(4) An agency must:

(a) Use patient placement criteria (PPC) for admission, continued services, and discharge planning and decisions.

(b) Provide education to each individual admitted to the treatment facility on:

(i) Alcohol, other drugs, and/or ((~~chemical dependency~~)) substance use disorder;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(c) Provide education or information to each individual admitted on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction; and

(iii) The impact of ((~~chemical~~)) substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

(d) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services.

(e) Screen for the prevention and control of tuberculosis.

(f) Limit the size of group counseling sessions to no more than twelve individuals.

(g) Have written procedures for:

(i) Urinalysis and drug testing, including laboratory testing; and

(ii) How agency staff members respond to medical and psychiatric emergencies.

(5) An agency that provides services to a pregnant woman must:

(a) Have a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs; and

(b) Provide referral information to applicable resources.

(6) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 388-877B-0550.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0210 ((~~Chemical dependency~~)) Substance use disorder residential treatment services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ((~~chemical dependency~~)) substance use disorder residential treatment services must ensure all ((~~chemical dependency~~)) substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

The agency must ensure:

(1) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records maintained by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(2) Each CDPT has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(3) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens and tuberculosis (TB) and the training is documented in each personnel file.

(4) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screening or testing in their personnel file.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0220 ((~~Chemical dependency~~)) Substance use disorder residential treatment services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing ((~~chemical dependency~~)) substance use disorder residential treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(c) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(f) Documentation that a staff member(s) met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided with a copy of the plan.

(g) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress toward each individual service plan goal.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs.

(b) Be initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.

(c) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) Patient bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(d) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(e) Document that the plan was updated to reflect any changes in the individual's treatment needs, status, and progress towards goals, or as requested by the individual, at least weekly.

(f) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0230 (~~Chemical dependency~~) Substance use disorder residential treatment services—Additional assessment standards. An individual must have a (~~chemical dependency~~) substance use disorder assessment before receiving (~~chemical dependency~~) substance use disorder residential treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, including:

(i) The type of substances used, including tobacco;

(ii) The route of administration; and

(iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education;

(c) The individual's self-assessment of use of alcohol and other drugs;

(d) A history of relapse;

(e) A history of self-harm;

(f) A history of legal involvement; and

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) A placement decision, using patient placement criteria (PPC) dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) The additional requirements for DUI assessment providers in WAC 388-877B-0550 if the agency is providing services to an individual under RCW 46.61.5056.

(6) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0240 (~~Chemical dependency~~) Substance use disorder residential treatment services—Non-compliance reporting requirements. An agency providing (~~chemical dependency~~) substance use disorder residential treatment services must report noncompliance in all levels of care, for an individual ordered into (~~chemical dependency~~) substance use disorder treatment by a court of law or other appropriate jurisdictions. An agency that fails to report non-compliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4).

An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure under the requirements of 42 C.F.R. Part 2, Sections 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revoking the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction.

tion(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(c) An individual leaving the program against program advice.

(d) An individual discharged for rule violation.

(4) Reporting and recommending action for (~~nonemergency~~) nonemergency noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups.

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports.

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0250 (~~(Chemical dependency)~~) Substance use disorder residential treatment services requiring program-specific certification—Intensive inpatient services. Intensive inpatient services are (~~chemical dependency~~) substance use disorder residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for a detoxified individual and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle. Intensive inpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing intensive inpatient services must:

(1) Complete the individual service plan within five days of admission.

(2) Conduct and document at least weekly, one face-to-face individual (~~chemical dependency~~) substance use disorder counseling session with the individual.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(4) Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals.

(5) Provide a minimum of twenty hours of treatment services each week to each individual. At least ten hours of these services must be (~~chemical dependency~~) substance use dis-

order counseling. The agency may provide an individual up to ten hours of education each week to meet the minimum requirements.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0260 (~~(Chemical dependency)~~) Substance use disorder residential treatment services requiring program-specific certification—Recovery house. Recovery house services are (~~chemical dependency~~) substance use disorder residential treatment services that provide a program of care and treatment with social, vocational, and recreational activities to aid in individual adjustment to abstinence and to aid in job training, employment, or participating in other types of community services. Recovery house services require program-specific certification by the department's division of behavioral health and recovery.

An agency providing recovery house services must:

(1) Provide an individual a minimum of five hours of treatment each week consisting of individual or group counseling and education regarding drug-free and sober living, and general re-entry living skills.

(2) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur. Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(3) Conduct and document an individual service plan review at least monthly.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0270 (~~(Chemical dependency)~~) Substance use disorder residential treatment services requiring program-specific certification—Long-term treatment services. Long-term treatment services are (~~chemical dependency~~) substance use disorder residential treatment services that provide a program for an individual needing consistent structure over a longer period of time to develop and maintain abstinence, develop recovery skills, and to improve overall health. Long-term treatment services require program-specific certification by the department's division of behavioral health and recovery. An agency providing long-term treatment services must:

(1) Provide an individual a minimum of two hours each week of individual or group counseling.

(2) Provide an individual a minimum of two hours each week of education regarding alcohol, other drugs, and other addictions.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the names of the staff member who provided it.

(4) Provide an individual, during the course of services, with:

- (a) Education on social and coping skills;
 - (b) Social and recreational activities;
 - (c) Assistance in seeking employment, when appropriate; and
 - (d) Assistance with re-entry living skills to include seeking and obtaining safe housing.
- (5) Conduct and document an individual service plan review at least monthly.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0280 (~~Chemical dependency~~) Substance use disorder residential treatment services requiring program-specific certification—Youth residential services. Youth residential services are (~~chemical dependency~~) substance use disorder residential treatment services provided to an individual seventeen years of age or younger. Youth residential services require program-specific certification by the department's division of behavioral health and recovery. The agency must:

- (1) Ensure at least one adult staff member of each gender is present or on call at all times if co-educational treatment services are provided.
- (2) Ensure group counseling sessions with nine to twelve youths include a second adult staff member.
- (3) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:
 - (a) Verbal de-escalation;
 - (b) Crisis intervention;
 - (c) Anger management;
 - (d) Suicide assessment and intervention;
 - (e) Conflict management and problem solving skills;
 - (f) Management of assaultive behavior;
 - (g) Proper use of therapeutic physical intervention techniques; and
 - (h) Emergency procedures.
- (4) Provide group meetings to promote personal growth.
- (5) Provide leisure, and other therapy or related activities.
- (6) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.
- (7) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:
 - (a) Document the individual's most recent academic placement and achievement level; and
 - (b) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.
- (8) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.
- (9) Only admit youth with the written permission of the youth's parent or if applicable, legal guardian. In cases where the youth meets the requirements of a child in need of ser-

vices (CHINS), the youth may sign themselves into treatment.

(10) Assess the individual's need for referral to the department's child welfare services.

(11) Ensure the following for individuals who share a room:

- (a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older.
- (b) An individual sixteen or seventeen years of age must be evaluated for clinically appropriateness before being placed in a room with an individual eighteen years of age or older.

(12) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(13) (~~Must~~) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notifications and attempts of notifications in the clinical record.

(14) Discharge the youth to the care of the youth's parent or if applicable, legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(15) Ensure each individual's clinical record:

- (a) Contains any consent or release forms signed by the youth and their parent or legal guardian.
- (b) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible.
- (c) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0300 (~~Chemical dependency~~) Substance use disorder outpatient treatment services—General. The rules in WAC 388-877B-0300 through 388-877B-0370 apply to behavioral health agencies that provide (~~chemical dependency~~) substance use disorder outpatient treatment services. The definitions in WAC 388-877-0200 also apply to (~~chemical dependency~~) substance use disorder outpatient treatment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Outpatient treatment services provide (~~chemical dependency~~) substance use disorder treatment to an individual and include essential education and counseling services in accordance with patient placement criteria (PPC).

(2) (~~Chemical dependency~~) Substance use disorder outpatient treatment services require additional program-specific certification by the department's division of behavioral health and recovery and include:

- (a) Level II intensive outpatient treatment services (see WAC 388-877B-0350); and
- (b) Level I outpatient treatment services (see WAC 388-877B-0360).

(3) An agency providing outpatient treatment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0300 through 388-877B-0370.

(4) An agency must:

(a) Use the PPC for admission, continued services, and discharge planning and decisions.

(b) Have an outline of each lecture and education session included in the service, sufficient in detail for another trained staff member to deliver the session in the absence of the regular instructor.

(c) Maintain a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(d) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.

(5) An agency must:

(a) Provide education to each individual admitted to the treatment facility on:

(i) Alcohol, other drugs, and/or ~~((chemical dependency))~~ substance use disorders;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(b) Provide education or information to each individual admitted on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction; and

(iii) The impact of ~~((chemical))~~ substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.

(c) Limit the size of group counseling sessions to no more than twelve individuals.

(d) Have written procedures for:

(i) Urinalysis and drug testing, including laboratory testing; and

(ii) How agency staff members respond to medical and psychiatric emergencies.

(6) An agency that provides services to a pregnant woman must:

(a) Have a written procedure to address specific issues regarding a woman's pregnancy and prenatal care needs; and

(b) Provide referral information to applicable resources.

(7) An agency that provides youth outpatient treatment services must:

(a) Have a written procedure to assess and refer an individual to the department's child welfare services when applicable; and

(b) Ensure that counseling sessions with nine to twelve youths include a second adult staff member.

(8) An agency that provides a DUI assessment to an individual under RCW 46.61.5056 must also be certified by the department under WAC 388-877B-0550.

(9) An agency must ensure that when offering off-site treatment:

(a) The agency maintains a current list of all locations where off-site services are provided, including:

(i) The name and address (except for an individual receiving in-home services);

(ii) The primary purpose of the off-site location;

(iii) The level of services provided; and

(iv) The date the off-site services began at that location.

(b) The agency maintains a written procedure of:

(i) How confidentiality will be maintained at each off-site location, including how confidential information and individual records will be transported between the certified facility and the off-site location; and

(ii) How services will be offered in a manner that promotes individual and agency staff safety.

(c) The agency is certified to provide the type of service offered at its main location.

(d) ~~((Chemical dependency))~~ Substance use disorder assessment or treatment is not the primary purpose of the location where the individual is served (such as in a school, hospital, or correctional facility).

(e) Services are provided in a private, confidential setting within the off-site location.

(10) Minimum treatment requirements for deferred prosecution are established in chapter 10.05 RCW.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0310 ~~((Chemical dependency))~~ Substance use disorder outpatient treatment services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ~~((chemical dependency))~~ substance use disorder outpatient treatment services must ensure:

(1) All ~~((chemical dependency))~~ substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a department of health-credential CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must

decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(4) Each staff member that provides individual care has a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel file.

(5) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens and TB, and document the training in the personnel file.

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

WAC 388-877B-0320 (~~(Chemical dependency)~~) Substance use disorder outpatient treatment services—Clinical record content and documentation. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing (~~(chemical dependency)~~) substance use disorder outpatient treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(c) Documentation that the initial individual service plan was completed before treatment services are received.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan(-);

(ii) Assist the individual in making contact with necessary agencies or services(-); and

(ii) Provide and document the individual was provided with a copy of the plan.

(h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter.

(e) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0330 (~~(Chemical dependency)~~) Substance use disorder outpatient treatment services—Additional assessment standards. An individual must have a (~~(chemical dependency)~~) substance use disorder assessment before receiving outpatient treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document a history of the individual's involvement with alcohol and other drugs, including:

(a) The type of substances used, including tobacco;

(b) The route of administration; and

(c) The amount, frequency, and duration of use.

(2) A history of alcohol or other drug treatment or education.

(3) The individual's self-assessment of use of alcohol and other drugs.

(4) A history of relapse.

(5) A history of self-harm.

(6) A history of legal involvement.

(7) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(8) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using:

(a) Diagnostic and Statistical Manual (DSM IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(9) A placement decision, using PPC dimensions when the assessment indicates the individual is in need of services.

(10) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(11) The additional requirements outlined under WAC 388-877B-0550 for driving under the influence (DUI) assessments, for an agency providing services to an individual under RCW 46.61.5056.

(12) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems, which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) The ability of parents, or if applicable, a legal guardian to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0340 ((~~Chemical dependency~~)) Substance use disorder outpatient treatment services—Non-compliance reporting requirements. An agency providing ((~~chemical dependency~~)) substance use disorder outpatient treatment services must report noncompliance, in all levels of care, for an individual ordered into ((~~chemical dependency~~)) substance use disorder treatment by a court of law or other appropriate jurisdictions. An agency that fails to report non-compliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 C.F.R. Part 2, Sections 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(c) An individual leaving the program against program advice or an individual discharged for rule violation.

(4) Reporting and recommending action for ((~~nonemergency~~)) nonemergency, noncompliance to the court or other appropriate jurisdiction(s) within ten working days from the end of each reporting period, upon obtaining information on:

(a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups.

(b) An individual's failure to make acceptable progress in any part of the treatment plan.

(5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports.

(6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0350 ((~~Chemical dependency~~)) Substance use disorder outpatient treatment services requiring program-specific certification—Level II intensive outpatient services. Level II intensive outpatient services are ((~~chemical dependency~~)) substance use disorder outpatient treatment services that provide a concentrated program of individual and group counseling, education, and activities, in accordance with patient placement criteria (PPC). Level II intensive outpatient services require program-specific certification by the department's division of behavioral health and recovery. An agency providing Level II intensive outpatient treatment services must:

(1) Develop an initial individual service plan prior to the individual's participation in treatment.

(2) Provide individual ((~~chemical dependency~~)) substance use disorder counseling sessions with each individual at least once a month or more if clinically indicated.

(3) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary

of the session and the name of the staff member who provided it.

(4) Conduct and document a review of each individual's service plan in individual counseling sessions, at least once a month, to assess adequacy and attainment of goals.

(5) Refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary.

(6) Ensure that individuals admitted under a deferred prosecution order, under chapter 10.05 RCW:

(a) Receive a minimum of seventy-two hours of treatment services within a maximum of twelve weeks, which consist of the following during the first four weeks of treatment:

(i) At least three sessions each week, with each session occurring on separate days of the week.

(ii) Group sessions must last at least one hour.

(b) Attend self-help groups in addition to the seventy-two hours of treatment services.

(c) Have approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0360 (~~(Chemical dependency)~~) **Substance use disorder outpatient treatment services requiring program-specific certification—Level I outpatient treatment services.** Level I outpatient treatment services are (~~(chemical dependency)~~) substance use disorder outpatient treatment services that provide (~~(chemical dependency)~~) substance use disorder treatment to an individual less than twenty-four-hours-a-day, including individual and group treatment services of varying duration and intensity according to a prescribed plan. Level I outpatient treatment services require program-specific certification by the department's division of behavioral health and recovery.

An agency providing Level I outpatient treatment services must:

(1) Develop an initial individual service plan before the individual's participation in treatment.

(2) Conduct group or individual (~~(chemical dependency)~~) substance use disorder counseling sessions for each individual, each month, according to an individual service plan.

(3) Conduct and document an individual service plan review for each individual once a month for the first three months and quarterly thereafter or sooner if required by other laws.

(4) Document progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0370 (~~(Chemical dependency)~~) **Substance use disorder outpatient treatment services—**~~(Chemical dependency)~~ **Substance use disorder counseling subject to RCW 46.61.5056.** (~~(Chemical dependency)~~) Substance use disorder outpatient treatment services provided to an individual convicted of driving under the influence or physical control under RCW 46.61.5056 are subject to the requirements in this section. An agency providing outpatient treatment services subject to RCW 46.61.5056 must ensure treatment is completed as follows:

(1) Treatment during the first sixty days must include:

(a) Weekly group or individual (~~(chemical dependency)~~) substance use disorder counseling sessions according to the individual service plan.

(b) One individual (~~(chemical dependency)~~) substance use disorder counseling session of not less than thirty minutes duration, excluding the time taken for a (~~(chemical dependency)~~) substance use disorder assessment, for each individual, according to the individual service plan.

(c) Alcohol and drug basic education for each individual.

(d) Participation in self-help groups for an individual with a diagnosis of substance dependence. Participation must be documented in the individual's clinical record.

(e) The balance of the sixty-day time period for individuals who complete intensive inpatient (~~(chemical dependency)~~) substance use disorder treatment services must include, at a minimum, weekly outpatient counseling sessions according to the individual service plan.

(2) The next one hundred twenty days of treatment includes:

(a) Group or individual (~~(chemical dependency)~~) substance use disorder counseling sessions every two weeks according to the individual service plan.

(b) One individual (~~(chemical dependency)~~) substance use disorder counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan.

(c) Referral of each individual for ongoing treatment or support, as necessary, using PPC, upon completion of one hundred eighty days of treatment.

(3) For an individual who is assessed with insufficient evidence of a substance use disorder, a (~~(chemical dependency)~~) substance use disorder professional (CDP) must refer the individual to alcohol/drug information school.

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

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0400 (~~(Chemical dependency)~~) **Substance use disorder opiate substitution treatment services—General.** The rules in WAC 388-877B-0400 through WAC 388-877B-0450 apply to behavioral health agencies that provide (~~(chemical dependency)~~) substance use disorder opiate substitution treatment services. The definitions in

WAC 388-877-0200 also apply to ~~((chemical dependency))~~ substance use disorder opiate substitution treatment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Opiate substitution treatment services include the dispensing of an opioid agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opiate addiction. These services include detoxification treatment and maintenance treatment.

(2) An agency must meet all the certification requirements in WAC 388-877B-0405 in order to provide opiate substitution treatment services and:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Program-specific requirements in WAC 388-877B-0400 through 388-877B-0450.

(3) An agency providing opiate substitution treatment services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.

(4) An agency must:

(a) Use patient placement criteria (PPC) for admission, continued services, and discharge planning and decisions.

(b) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:

(i) Alcohol, other drugs, and ~~((chemical dependency))~~ substance use disorder;

(ii) Relapse prevention;

(iii) Blood borne pathogens; and

(iv) Tuberculosis (TB).

(c) Provide education or information to each individual on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine addiction;

(iii) The impact of chemical use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy; and

(iv) Family planning.

(d) Have written procedures for:

(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions.

(ii) Urinalysis and drug testing, to include obtaining:

(A) Specimen samples from each individual, at least eight times within twelve consecutive months.

(B) Random samples, without notice to the individual.

(C) Samples in a therapeutic manner that minimizes falsification.

(D) Observed samples, when clinically appropriate.

(E) Samples handled through proper chain of custody techniques.

(iii) Laboratory testing.

(iv) The response to medical and psychiatric emergencies.

(v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

(5) An agency must ensure that an individual is not admitted to opiate substitution treatment detoxification services more than two times in a twelve-month period following admission to services.

(6) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.

(7) An agency providing youth opiate substitution treatment services must:

(a) Have a written procedure to assess and refer the youth to the department's child welfare services, when applicable.

(b) Ensure that a group counseling session with nine to twelve youths include a second staff member.

(c) Ensure that before admission the youth has had two documented attempts at short-term detoxification or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term detoxification treatment.

(d) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.

(8) An agency providing opiate substitution treatment services must ensure:

(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor (as defined in 42 C.F.R. Part 8), or medical director.

(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8.

(c) The number of individuals receiving treatment services does not exceed three hundred fifty unless authorized by the county, city, or tribal (~~legislative~~) authority in which the program is located.

(d) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid addiction.

(e) The death of an individual enrolled in opiate substitution treatment is reported to the department within one business day.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0405 (~~(Chemical dependency)~~) Substance use disorder opiate substitution treatment services—Certification. An agency providing opiate substitution treatment services must be certified by the department's division of behavioral health and recovery to provide these services. An agency applying to provide opiate substitution treatment service must:

(1) Submit to the department documentation that the agency has communicated with the county legislative authority and if applicable, the city legislative authority or tribal (~~(legislative)~~) authority, in order to secure a location for the new opiate substitution treatment program that meets county, tribal or city land use ordinances.

(2) Ensure that a community relations plan developed and completed in consultation with the county, city, or tribal (~~(legislative)~~) authority or their designee, in order to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include:

(a) Documentation of the strategies used to:

(i) Obtain stakeholder input regarding the proposed location;

(ii) Address any concerns identified by stakeholders; and

(iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders.

(b) Documentation that transportation systems will provide reasonable opportunities to persons in need of treatment to access the services of the program.

(c) A copy of the application for:

(i) A registration certificate from the Washington state board of pharmacy.

(ii) Licensure to the federal Drug Enforcement Administration.

(iii) Certification to the federal Center for Substance Abuse Treatment (CSAT) of the Substance Abuse and Mental Health Services Administration (SAMHSA).

(iv) Accreditation from a federal CSAT/SAMHSA-approved opioid treatment program accreditation body.

(d) A declaration to limit the number of individual program participants to three hundred fifty as specified in RCW 70.96A.410 (1)(e).

(e) For new applicants who operate opiate substitution treatment programs in another state, copies of all survey reports written by their national accreditation body and state certification, if applicable, within the past six years.

(3) Have concurrent approval to provide opiate substitution treatment by:

(a) The Washington State department of health board of pharmacy;

(b) The Federal CSAT SAMHSA, as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The federal Drug Enforcement Administration.

(4) An agency must ensure that opiate substitution treatment is provided to an individual in compliance with the applicable requirements in 42 C.F.R. Part 8 and 21 C.F.R. Part 1301.

(5) The department may deny an application for certification when:

(a) There is not a demonstrated need in the community where the applicant proposes to locate the program.

(b) There is sufficient availability, access, and capacity of other certified programs near the area where the applicant is proposing to locate the program.

(c) The applicant has not demonstrated in the past, the capability to provide the appropriate services to assist individuals using the program to meet goals established by the legislature.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0410 (~~(Chemical dependency)~~) Substance use disorder opiate substitution treatment services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing (~~(chemical dependency)~~) substance use disorder opiate substitution treatment services must:

(1) Appoint a program sponsor, as defined in 42 C.F.R. Part 8, who is responsible for notifying the federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the federal Drug Enforcement Administration (DEA), the department, and the Washington State board of pharmacy of any theft or significant loss of a controlled substance.

(2) Ensure there is an appointed medical director who:

(a) Is licensed by department of health (DOH) to practice medicine and practices within their scope of practice.

(b) Is responsible for all medical services performed. See the program physician responsibilities in WAC 388-877B-0440.

(c) Ensures all medical services provided are in compliance with applicable federal, state, and local rules and laws.

(3) Ensure all medical services provided are provided by an appropriate DOH-credentialed medical provider practicing within their scope of practice.

(4) Ensure all (~~(chemical dependency)~~) substance use disorder assessment and counseling services are provided by a DOH-credentialed chemical dependency professional (CDP), or a CDP trainee (CDPT) under the supervision of an approved supervisor.

(5) Ensure there is a designated and identified clinical supervisor who:

(a) Is a CDP.

(b) Has documented competency in clinical supervision.

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. This monitoring must include a semi-annual review of a sample of each CDP's clinical records.

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(6) Ensure an agency using CDPTs has at least one approved supervisor that meets the qualification in WAC 246-811-049. An approved supervisor must decrease the

hours of individual contact by twenty percent for each full-time CDPT supervised.

(7) Ensure at least one staff member has documented training in:

- (a) Family planning;
- (b) Prenatal health care; and
- (c) Parenting skills.

(8) Ensure that at least one staff member is on duty at all times who has documented training in:

- (a) Cardiopulmonary resuscitation (CPR); and
- (b) Management of opiate overdose.

(9) Ensure that a personnel file for a staff member providing individual care includes a copy of an initial tuberculosis (TB) screen and subsequent screening as appropriate.

(10) Provide and ensure all staff members receive annual training on:

(a) The prevention and control of communicable disease, blood borne pathogens, and TB; and

(b) Opiate dependency clinical and medical best practice, specific to the staff member's scope of practice and job function.

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

WAC 388-877B-0420 (~~Chemical dependency~~) Substance use disorder opiate substitution treatment services—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing (~~chemical dependency~~) substance use disorder opiate substitution treatment services must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation the individual was informed of the federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opiate substitution treatment and take appropriate action.

(c) Documentation that the agency:

- (i) Referred the individual to self-help group(s).
- (ii) Addressed the individual's vocational, educational, and employment needs; and
- (iii) Encouraged family participation.

(d) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction.

(e) Documentation that the individual service plan was completed before the individual received treatment services.

(f) Documentation that the individual service plan was reviewed:

(i) Once every month, for the first ninety days in treatment;

(ii) Once every three months, for every two years of continued enrollment in treatment; and

(iii) Once every six months, after the second year of continued enrollment in treatment.

(g) Documentation that individual or group counseling sessions were provided:

(i) Once every week, for the first ninety days:

(A) For a new individual in treatment;

(B) For an individual readmitted more than ninety days since the most recent discharge from opiate substitution treatment.

(ii) Once every week, for the first month, for an individual readmitted within ninety days since the most recent discharge from opiate substitution treatment; and

(iii) Once every month, for an individual transferring from another opiate substitution treatment program, when the individual had received treatment for at least ninety days.

(h) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur, or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(i) Documentation when an individual refuses to provide a drug testing specimen sample or refuses to initial the log containing the sample number. The refusal is considered a positive drug screen specimen.

(j) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results.

(k) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(l) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervisory status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(m) Documentation that a staff member(s) met with the individual at the time of discharge from the agency, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan.

(ii) Assist the individual in making contact with necessary agencies or services.

(iii) Provide and document the individual was provided a copy of the plan.

(n) Documentation that the discharge summary was completed within seven working days of the individual's discharge from the agency, which includes the date of discharge and a summary of the individual's progress towards each individual service plan goal.

(o) Documentation of all medical services. See WAC 388-877B-0440 and 388-877B-0450, regarding program physician responsibility and medication management.

(2) In addition to the requirements in (1) of this section, an agency must ensure the following for each individual service plan. The individual service plan must:

(a) Be personalized to the individual's unique treatment needs;

(b) Include individual needs identified in the diagnostic and periodic reviews, addressing:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) The treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem.

(c) Document approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP.

(d) Document that the plan has been reviewed with the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0430 (~~Chemical dependency~~) Substance use disorder opiate substitution treatment services—Additional assessment standards. An individual must have a (~~chemical dependency~~) substance use disorder assessment before receiving (~~chemical dependency~~) substance use disorder opiate substitution treatment services. The purpose of the assessment is to gather information to determine if a substance disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, to include:

(i) The type of substances used, including tobacco;

(ii) The route of administration; and

(iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education.

(c) The individual's self-assessment of use of alcohol and other drugs.

(d) A history of relapse.

(e) A history of self-harm.

(f) A history of legal involvement.

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using the:

(a) Diagnostic and Statistical Manual (DMS IV TR, 2000) as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) A placement decision, using patient placement criteria dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) The additional requirements for driving under the influence (DUI) assessment providers in WAC 388-877B-0550 if the agency is providing services to an individual under RCW 46.61.5056.

(6) When assessing youth, documented attempts to obtain the following information:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0440 (~~Chemical dependency~~) Substance use disorder opiate substitution treatment services—Program physician responsibility. An agency providing (~~chemical dependency~~) Substance use disorder opiate substitution treatment services must ensure the program physician, or the medical practitioner under supervision of the program physician, performs and meets the following:

(1) The program physician or medical practitioner under supervision of the program physician:

(a) Is responsible to verify an individual is currently addicted to an opioid drug and that the person became addicted at least twelve months before admission to treatment.

(b) May waive the twelve month requirement in (a) of this subsection upon receiving documentation that the individual:

(i) Was released from a penal institution, if the release was within the previous six months;

(ii) Is pregnant; or

(iii) Was previously treated within the previous twenty-four months.

(2) A physical evaluation must be completed on the individual before admission that includes the determination of opiate physical addiction consistent with the Diagnostic and Statistical Manual (DSM-5) criteria, and an assessment for

appropriateness for Sunday and holiday take-home medication. Information on the DSM-5 can be found on the American Psychiatric Association's public website at www.DSM5.org.

(3) A review must be completed by the department of health prescription drug monitoring program data on the individual:

- (a) At admission;
- (b) Annually after the date of admission; and
- (c) Subsequent to any incidents of concern.

(4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual.

(5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:

(a) The concerns of possible addiction, health risks, and benefits the opiate substitution medication may have on the individual and the fetus.

(b) The risk of not initiating opiate substitution medication on the individual and the fetus.

(c) Referral options to address neonatal abstinence syndrome for the baby.

(6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment.

(7) Within fourteen days of admission, a medical examination must be completed that includes:

(a) Documentation of the results of serology and other tests; and

(b) An assessment for the appropriateness of take-home medications as required by 42 C.F.R. part 8.12(i).

(8) When exceptional circumstances exist for an individual to be enrolled with more than one opiate substitution treatment agency, justification granting permission must be documented in the individual's clinical record at each agency.

(9) Each individual admitted to detoxification services must have an approved detoxification schedule that is medically appropriate.

(10) Each individual administratively discharged from services must have an approved detoxification schedule that is medically appropriate.

(11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful detoxification episodes within twelve consecutive months.

(12) An annual medical examination must be completed on each individual that includes the individual's overall physical condition and response to medication.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0450 ((~~Chemical dependency~~)) Substance use disorder opiate substitution treatment services—Medication management. An agency providing ((~~chemical dependency~~)) substance use disorder opiate substitution treatment services must ensure the medication management requirements in this section are met.

(1) An agency:

(a) Must use only those opioid agonist treatment medications that are approved the Food and Drug Administration under section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction.

(b) Providing opiate substitution treatment that is fully compliant with the procedures of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. The following opioid agonist treatment medications are approved by the Food and Drug Administration for use in the treatment of opioid addiction:

- (i) Methadone; and
- (ii) Buprenorphine.

(2) An agency providing opiate substitution treatment must ensure that initial dosing requirements are met as follows:

(a) Methadone must be administered or dispensed only in oral form and is formulated in such a way as to reduce its potential for parenteral abuse.

(b) The initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the individual's record that forty milligrams did not suppress opiate abstinence symptoms.

(c) The establishment of the initial dose must consider:

- (i) Signs and symptoms of withdrawal;
- (ii) Individual comfort; and
- (iii) Side effects from over medication.

(3) An agency providing opiate substitution treatment must ensure that:

(a) Each opioid agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling.

(b) All dosing and administration decisions are made by a:

- (i) Program physician; or
- (ii) Medical practitioner under supervision of a program physician familiar with the most up-to-date product labeling.

(c) Any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the individual's record.

(4) An agency providing opiate substitution treatment must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1-5) and are authorized only to stable individuals who:

- (i) Have received opiate substitution treatment medication for a minimum of ninety days; and
- (ii) Have not had any positive drug screens in the last sixty days.

(b) Assessed and authorized, as appropriate, for a Sunday or legal holiday as identified in RCW 1.16.050.

(c) Assessed and authorized, as appropriate, when travel to the facility presents a safety risk for an individual or staff member due to inclement weather.

(d) Not allowed in short-term detoxification or interim maintenance treatment.

(5) All exceptions to take-home requirements must be submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

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

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

WAC 388-877B-0500 ((Chemical dependency)) Substance use disorder assessment services—General. The rules in WAC 388-877B-0500 through 388-877B-0550 apply to behavioral health agencies that provide ((chemical dependency)) substance use disorder assessment services. The definitions in WAC 388-877-0200 also apply to ((chemical dependency)) substance use disorder assessment services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) ((Chemical dependency)) Substance use disorder assessment services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(2) ((Chemical dependency)) Substance use disorder assessment services include:

(a) Assessment only services; and
(b) Driving under the influence (DUI) assessment services.

(3) A behavioral health agency certified for assessment only services may choose to provide optional program-specific DUI assessment services (see WAC 388-877B-0550). Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(4) An agency providing assessment services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and
(ii) Program-specific requirements in WAC 388-877B-0500 through 388-877B-0550.

(5) An agency providing assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 388-877-0620.

(6) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(7) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and
(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.
(B) Tuberculosis (TB) screen or test result.
(C) A record of the individual's detoxification and treatment history.
(D) The reason for the individual's transfer.
(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(8) An agency providing driving under the influence (DUI) assessment services must meet the additional program-specific standards in WAC 388-877B-0550.

(9) An agency that offers off-site assessment services must meet the requirements in WAC 388-877B-0300(9).

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

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0510 ((Chemical dependency)) Substance use disorder assessment only services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ((chemical dependency)) substance use disorder assessment services must ensure:

(1) All ((chemical dependency)) substance use disorder assessment only services are provided by a chemical dependency professional (CDP).

(2) There is a designated clinical supervisor who:

(a) Is a CDP;
(b) Has documented competency in clinical supervision; and

(c) Is responsible for monitoring the continued competency of each CDP. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP.

(3) Each staff member that provides individual care has a copy of an initial tuberculosis (TB) screen or test and any subsequent screening or testing in their personnel file.

(4) All staff members are provided annual training on the prevention and control of communicable disease, blood borne pathogens, and TB. The training must be documented in the personnel file.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0530 ((~~Chemical dependency~~)) Substance use disorder assessment only services—Additional assessment standards. An individual must have a (~~chemical dependency~~) substance use disorder assessment before receiving (~~chemical dependency~~) substance use disorder treatment services. The purpose of the assessment is to gather information to determine if a substance use disorder exists and if there are services available to address the individual's needs. In addition to the assessment requirements in WAC 388-877-0610, the assessment must include:

(1) A face-to-face diagnostic interview with the individual in order to obtain, review, evaluate, and document the following:

(a) A history of the individual's involvement with alcohol and other drugs, including:

- (i) The type of substances used, including tobacco;
- (ii) The route of administration;
- (iii) The amount, frequency, and duration of use.

(b) A history of alcohol or other drug treatment or education.

(c) The individual's self-assessment of use of alcohol and other drugs.

(d) A history of relapse.

(e) A history of self-harm.

(f) A history of legal involvement.

(g) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made.

(2) A diagnostic assessment statement, including sufficient information to determine the individual's diagnosis using the:

(a) Diagnostic and Statistical Manual (DSM IV TR, 2000), as it existed on the effective date of this section; then

(b) DSM-5 as it exists when published and released in 2013, consistent with the purposes of this section. Information regarding the publication date and release of the DSM-5 is posted on the American Psychiatric Association's public website at www.DSM5.org.

(3) A placement decision, using patient placement criteria dimensions when the assessment indicates the individual is in need of services.

(4) Evidence the individual was notified of the assessment results and documentation of the treatment options provided and the individual's choice. If the individual was not notified of the results and advised of referral options, the reason must be documented.

(5) Documented attempts to obtain the following information when assessing youth:

(a) Parental and sibling use of alcohol and other drugs.

(b) A history of school assessments for learning disabilities or other problems which may affect ability to understand written materials.

(c) Past and present parent/guardian custodial status, including a history of running away and out-of-home placements.

(d) A history of emotional or psychological problems.

(e) A history of child or adolescent developmental problems.

(f) Ability of the youth's parent(s) or if applicable, legal guardian, to participate in treatment.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0540 ((~~Chemical dependency~~)) Substance use disorder assessment services—Noncompliance reporting requirements. An agency providing (~~chemical dependency~~) substance use disorder assessment services must report noncompliance in all levels of care for an individual ordered into (~~chemical dependency~~) substance use disorder treatment by a court or other appropriate jurisdiction(s). An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to an individual court-mandated to treatment, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure under the requirements of 42 C.F.R. Part 2, Section 2.63 through 2.67.

(2) Notifying the designated chemical dependency specialist within three working days from obtaining information of any violation of the terms of the court order for purposes of revoking the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision.

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third party report confirmed by the agency, or blood alcohol content or other laboratory test.

(b) An individual's report of subsequent alcohol and/or drug related arrests.

(4) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0550 ((~~Chemical dependency~~)) Substance use disorder assessment only services requiring program-specific certification—DUI assessment services. Driving under the influence (DUI) assessment services are diagnostic services requested by a court to determine an individual's involvement with alcohol and other drugs and to recommend a course of action.

(1) A behavioral health agency certified for (~~chemical dependency~~) substance use disorder assessment only services may choose to provide optional program-specific DUI assessment services. Optional DUI assessment services require additional program-specific certification by the department's division of behavioral health and recovery.

(2) An agency providing DUI assessment services, as defined in chapter 46.61 RCW, must ensure:

- (a) The assessment is conducted in person.
- (b) The individual has a summary included in the assessment that evaluates the individual's:
 - (i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and
 - (ii) Self-reported driving record and the abstract of the individual's legal driving record.
- (3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:
 - (a) A copy of the police report;
 - (b) A copy of the court originated criminal case history;
 - (c) The results of a urinalysis or drug testing obtained at the time of the assessment; and
 - (d) A referral to alcohol and drug information school.
- (4) If the information in subsection (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.
- (5) Upon completion of the DUI assessment, the individual must be:
 - (a) Informed of the results of the assessment; and
 - (b) Referred to the appropriate level of care according to patient placement criteria (PPC).

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0600 ((~~Chemical dependency~~)) Substance use disorder information and assistance services—General. The rules in WAC 388-877B-0600 through 388-877B-0660 apply to behavioral health agencies that provide ((~~chemical dependency~~)) substance use disorder information and assistance services. The definitions in WAC 388-877-0200 also apply to ((~~chemical dependency~~)) substance use disorder information and assistance services. The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.

(1) Information and assistance services are considered nontreatment services provided to support an individual who has a need for interventions related to the use of alcohol and/or other drugs.

(2) Information and assistance services require additional program-specific certification by the department's division of behavioral health and recovery and include:

- (a) Alcohol and drug information school (see WAC 388-877B-0630);
- (b) Information and crisis services (see WAC 388-877B-0640);
- (c) Emergency service patrol (see WAC 388-877B-0650); and
- (d) Screening and brief intervention (see WAC 388-877B-0660).

(3) An agency providing information and assistance services to an individual must:

- (a) Be licensed by the department as a behavioral health agency;
- (b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, Behavioral health services administrative requirements; and
- (c) Have policies and procedures to support and implement the:
 - (i) General requirements in chapter 388-877 WAC; and
 - (ii) Specific applicable requirements in WAC 388-877B-0600 through 388-877B-0660.
- (4) ((~~Chemical dependency~~)) Substance use disorder information and assistance services are available without an initial assessment or individual service plan and are not required to meet the requirements under WAC 388-877-0640.
- (5) An agency providing information and assistance services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0610 ((~~Chemical dependency~~)) Substance use disorder information and assistance services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing ((~~chemical dependency~~)) substance use disorder information and assistance services must ensure each staff member:

(1) Is provided annual training on the prevention and control of communicable disease, blood borne pathogens and tuberculosis (TB). The training must be documented in the personnel file.

(2) Who provides individual care has a copy of their initial TB screen or test and any subsequent screening or testing in their personnel file.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0630 ((~~Chemical dependency~~)) Substance use disorder information and assistance services requiring program-specific certification—Alcohol and drug information school services. Alcohol and drug information school services are a ((~~chemical dependency~~)) substance use disorder information and assistance services educational program about the use and abuse of alcohol and other drugs. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. The services require program-specific certification by the department's division of behavioral health and recovery. An agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a certified information school instructor or a chemical dependency professional (CDP) who:

- (a) At the time of enrollment, informs each student of the course fees.

(b) Advises each student there is no assumption the student has a substance use disorder, and that the course is not a therapy session.

(c) Discusses the class rules.

(d) Reviews the course objectives.

(e) Follows a department-approved curriculum.

(f) Ensures each course has no fewer than eight and no more than fifteen hours of classroom instruction.

(g) Ensures adequate and comfortable seating in a well-lit and ventilated room.

(h) Administers each enrolled student the post-test for each course after the course is completed.

(2) Ensure a school instructor who is not a CDP:

(a) Has a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department, and the personnel file contains documentation of the training.

(b) Maintains school instructor status by completing fifteen clock hours of continuing education. The fifteen hours of continuing education must:

(i) Occur during each two-year period beginning January of the year following the instructor's initial qualification; and

(ii) Be in subject areas that increase knowledge and skills in training, teaching techniques, curriculum planning and development, presentation of educational material, laws and rules, and developments in the ~~((chemical dependency))~~ substance use disorder field.

(3) Ensure each individual student record contains:

(a) An intake form, including demographics;

(b) The hours of attendance, including dates;

(c) The source of the student's referral;

(d) A copy of all reports, assessments, letters, certificates, and other correspondence to the courts and the department of licensing, including noncompliance reporting under chapter 46.61 RCW;

(e) A record of any referrals made; and

(f) A copy of the scored post-test.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877B-0640 ~~((Chemical dependency))~~ Substance use disorder information and assistance services requiring program-specific certification—Information and crisis services. ~~((Chemical dependency))~~ Substance use disorder information and crisis services provide an individual assistance or guidance related to the abuse of addictive substances, twenty-four hours a day by telephone or in-person. Information and crisis services require program-specific certification by the department's division of behavioral health and recovery. An agency providing information and crisis services must:

(1) Have services available to any individual twenty-four hours a day, seven days a week.

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) ~~((Chemical dependency))~~ Substance use disorder crisis intervention techniques; and

(b) Alcoholism and drug abuse.

(3) Ensure a chemical dependency professional (CDP), or a CDP trainee (CDPT) under supervision of a CDP, is available or on staff twenty-four hours a day.

(4) Have at least one approved supervisor that meets the qualifications in WAC 246-811-049, if services are provided by a CDPT or other certified or licensed counselor in training to become a CDP. The supervisor must decrease the number of individual contact hours for each full-time CDPT under their supervision.

(5) Maintain a current directory of all certified ~~((chemical dependency))~~ substance use disorder service providers in the state.

(6) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

(7) Maintain records of each individual contact, including:

(a) The name, age, sex, and ethnic background of the individual.

(b) The presenting problem.

(c) The outcome.

(d) A record of any referral made.

(e) The signature of the person handling the case.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0650 ~~((Chemical dependency))~~ Substance use disorder information and assistance services requiring program-specific certification—Emergency service patrol services. Emergency service patrol services are ~~((chemical dependency))~~ substance use disorder information and assistance services that provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. An agency providing emergency service patrol services must:

(1) Ensure the staff member providing the service:

(a) Has proof of a valid Washington state driver's license.

(b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training.

(c) Has completed forty hours of training in ~~((chemical dependency))~~ substance use disorder crisis intervention techniques and alcoholism and drug abuse, to improve skills in handling crisis situations.

(2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place.

(3) Patrol assigned areas and give assistance to an individual intoxicated in a public place.

(4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention.

(5) Transport the individual to their home or shelter, to a certified treatment provider, or a health care facility if the individual is intoxicated, but subdued and willing to be transported.

(6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is

incapacitated, unconscious, or has threatened or inflicted harm on another person.

(7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody.

(8) Maintain a log, including:

(a) The date, time and origin of each call received for assistance.

(b) The time of arrival at the scene.

(c) The location of the individual at the time of the assist.

(d) The name and sex of the individual transported.

(e) The results of the preliminary screening.

(f) The destination and address of the transport and time of arrival.

(g) In case of nonpickup of a person, documentation of why the pickup did not occur.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877B-0660 (~~(Chemical dependency)~~) Substance use disorder information and assistance services requiring program-specific certification—Screening and brief intervention services. Screening and brief intervention services are a combination of information and assistance services designed to screen an individual for risk factors that appear to be related to alcohol and other drug use disorders, provide interventions, and make appropriate referral as needed. These services require program-specific certification by the department's division of behavioral health and recovery and may be provided in a wide variety of settings. An agency providing screening and brief intervention services must:

(1) Ensure services are provided by a chemical dependency professional (CDP), a chemical dependency professional trainee (CDPT) under the supervision of a CDP, or another appropriately credentialed staff member.

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) (~~(Chemical dependency)~~) Substance use disorder screening and brief intervention techniques;

(b) Motivational interviewing; and

(c) Referral.

(3) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

(4) Ensure each individual's record contains:

(a) A copy of a referral.

(b) Demographic information.

(c) Documentation the individual was informed and received a copy of the requirements under 42 C.F.R. Part 2.

(d) Documentation the individual received a copy of the counselor disclosure information.

(e) Documentation the individual received a copy of the individual rights.

(f) Authorization for the release of information.

(g) A copy of screening documents, including outcome and referrals.

(h) Documentation of progress notes in a timely manner summarizing any contact with the individual. Progress notes

must include the date, time, duration, participant names, a brief summary of the screening and brief intervention, and the name of the staff member who provided it.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877C-0110 Problem and pathological gambling services—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing problem and pathological gambling services must ensure:

(1) All problem and pathological gambling treatment services are provided by:

(a) A certified Washington state, national, or international gambling counselor who is credentialed by the department of health (DOH) under chapter 18.19, 18.83, or 18.225 RCW; or

(b) An individual credentialed by DOH under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified problem gambling counselor, in training to become a certified problem gambling counselor.

(2) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have minimum of:

(a) At least one thousand five hundred hours of professionally supervised post-certification or post-registration experience providing mental health or (~~(chemical dependency)~~) substance use disorder treatment services; and

(b) Thirty hours of unduplicated gambling specific training, including the basic training. One of the following state, national, or international organizations must approve the training:

(i) Washington state gambling counselor certification committee;

(ii) National or international gambling counselor certification board; or

(iii) The department's division of behavioral health and recovery.

(3) An individual who meets (2)(b) of this section must complete training to become a certified problem and pathological gambling counselor within two years of beginning problem and pathological gambling clinical practice.

(4) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:

(a) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(b) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(i) Washington state gambling counselor certification committee;

(ii) National or international gambling counselor certification board; or

(iii) The department's division of behavioral health and recovery.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-865-0100 Purpose.
 WAC 388-865-0105 What the mental health division does and how it is organized.
 WAC 388-865-0106 When local services are administered by the mental health division.
 WAC 388-865-0107 Peer counselor certification.
 WAC 388-865-0110 Access to records of registration.
 WAC 388-865-0115 Access to clinical records.
 WAC 388-865-0120 Waiver of a minimum standard of this chapter.
 WAC 388-865-0150 Definitions.
 WAC 388-865-0200 Regional support networks.
 WAC 388-865-0205 Initial certification of a regional support network.
 WAC 388-865-0210 Renewal of regional support network certification.
 WAC 388-865-0215 Consumer eligibility and payment for services.
 WAC 388-865-0220 Standards for administration.
 WAC 388-865-0221 Public awareness of mental health services.
 WAC 388-865-0222 Advisory board.
 WAC 388-865-0225 Resource management.
 WAC 388-865-0229 Inpatient services.
 WAC 388-865-0230 Community support services.
 WAC 388-865-0235 Residential and housing services.
 WAC 388-865-0240 Consumer employment services.
 WAC 388-865-0245 Administration of the Involuntary Treatment Act.
 WAC 388-865-0250 Ombuds services.
 WAC 388-865-0265 Mental health professional—Exception.
 WAC 388-865-0270 Financial management.
 WAC 388-865-0275 Management information system.
 WAC 388-865-0280 Quality management process.
 WAC 388-865-0282 Quality review teams.
 WAC 388-865-0284 Standards for contractors and subcontractors.
 WAC 388-865-0286 Coordination with a mental health prepaid health plan.

WAC 388-865-0288 Regional support networks as a service provider.
 WAC 388-865-0300 Mental health prepaid health plans.
 WAC 388-865-0305 Regional support network contracting as a mental health prepaid health plan.
 WAC 388-865-0310 Mental health prepaid health plans—Minimum standards.
 WAC 388-865-0315 Governing body.
 WAC 388-865-0320 Utilization management.
 WAC 388-865-0325 Risk management.
 WAC 388-865-0330 Marketing/education of mental health services.
 WAC 388-865-0335 Consumer enrollment.
 WAC 388-865-0345 Choice of primary care provider.
 WAC 388-865-0350 Mental health screening for children.
 WAC 388-865-0355 Consumer request for a second opinion.
 WAC 388-865-0360 Monitoring of mental health prepaid health plans.
 WAC 388-865-0363 Coordination with the regional support network.
 WAC 388-865-0365 Suspension, revocation, limitation or restriction of a contract.
 WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment.
 WAC 388-877A-0410 Grievance system—Definitions.
 WAC 388-877A-0420 Grievance process.
 WAC 388-877A-0430 Notice of action.
 WAC 388-877A-0440 Appeal process.
 WAC 388-877A-0450 Administrative hearings.
 WAC 388-877A-0460 Individual rights specific to Medicaid recipients.

WSR 16-09-012

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 8, 2016, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-11-024.

Title of Rule and Other Identifying Information: Chapter 182-517 WAC, Medicare-related medical eligibility and WAC 182-502-0110 Conditions of payment—Medicare deductible and coinsurance.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 25, 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, fax (360) 586-9727, by 5:00 p.m. on May 24, 2016.

Assistance for Persons with Disabilities: Contact Amber Loughheed by May 20, 2016, e-mail amber.loughheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to chapter 182-517 WAC clarify requirements for medicare savings programs and state-funded buy-in programs.

- WAC 182-517-0310 and 182-517-0320 were repealed and the content was moved to WAC 182-517-0100 and 182-517-0300 as appropriate.
- WAC 182-517-0100 and 182-517-0300 were renamed and content from the chapter was reorganized to more clearly distinguish between requirements for federal medicare savings programs and state-funded medicare buy-in programs.

Amendments to WAC 182-502-0110 streamline language and clarify how the agency pays deductible and coinsurance for QMB and non-QMB clients.

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: Amy Johnson, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1329.

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.

April 8, 2016
Wendy Barcus
Rules Coordinator

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

WAC 182-502-0110 Conditions of payment—Medicare deductible and coinsurance. (1) The following people are eligible for benefits under this section:

(a) Dual-eligible clients enrolled in categorically needy Washington apple health programs;

(b) Dual-eligible clients enrolled in medically needy Washington apple health programs; or

(c) Clients enrolled in the qualified medicare beneficiary (OMB) program.

(2) The ((department)) agency pays the medicare Part A and B deductible and coinsurance amounts for ((a client participating in Parts A and/or B of medicare (Title XVIII of the Social Security Act) when the:

(a) Total reimbursement to the provider from medicare and the department does not exceed the rate in the department's fee schedule)) an eligible person under subsection (1) of this section:

(a) Up to the published or calculated medicaid-only rate; and

(b) If the provider accepts assignment for medicare payment.

((2) The department pays the deductible and coinsurance amounts for a client who has Part A of medicare. If the client:

(a) Has not exhausted lifetime reserve days, the department considers the medicare diagnostic related group (DRG) as payment in full; or

(b) Has exhausted lifetime reserve days during an inpatient hospital stay, the department considers the medicare DRG as payment in full until the medicaid outlier threshold is reached. After the medicaid outlier threshold is reached, the department pays an amount based on the policy described in the Title XIX state plan.))

(3) If a medicare Part A recipient has remaining lifetime reserve days, the agency pays the deductible and coinsurance amounts up to the allowed amount as calculated by the agency.

(4) If a medicare Part A recipient has exhausted lifetime reserve days during an inpatient hospital stay, the agency pays the deductible and coinsurance amounts up to the agency-calculated allowed amount minus any payment made by medicare, and any payment made by the agency, up to the outlier threshold. Once the outlier threshold is reached, the agency pays according to WAC 182-550-3700.

(5) If medicare and medicaid cover the service, the ((department)) agency pays ((only)) the deductible ((and/or)) and coinsurance up to medicare or medicaid's allowed amount, whichever is less.

(6) If only medicare ((and not medicaid)) covers the service, the ((department)) agency pays ((only)) the deductible ((and/or)) and coinsurance up to ((medicare's allowed amount.

(4) The department bases its outlier policy on the methodology described in the department's Title XIX state plan, methods, and standards used for establishing payment rates for hospital inpatient services.

(5) The department pays, according to department rules and billing instructions, for medicaid covered services when

~~the client exhausts medicare benefits)) the agency's allowed amount established for a QMB client, and at zero for a non-QMB client.~~

~~(7) If a client exhausts medicare benefits, the agency pays for medicaid-covered services under Title 182 WAC and the agency's billing instructions.~~

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

WAC 182-517-0100 Federal medicare savings programs(~~—Monthly income standards~~)). ~~((1) The income standards for medicare savings programs change each year based on the federal poverty level (FPL) published yearly by the federal government in the Federal Register at <http://aspe.hhs.gov/poverty/index.shtml>. The qualified medicare beneficiary (QMB) program income standard is up to one hundred percent of the FPL.~~

~~(2) The specified low-income medicare beneficiary (SLMB) program income standard is over one hundred percent of FPL, but not more than one hundred twenty percent of FPL.~~

~~(3) The qualified individual (QI-1) program income standard is over one hundred twenty percent of FPL, but not more than one hundred thirty-five percent of FPL.~~

~~(4) The qualified disabled working individual (QDWI) program income standard is two hundred percent of FPL.)~~

(1) Available programs. The agency offers eligible clients the following medicare savings programs (MSPs):

(a) The qualified medicare beneficiary (QMB) program;

(b) The specified low-income medicare beneficiary (SLMB) program;

(c) The qualified individual (QI-1) program; and

(d) The qualified disabled and working individuals (QDWI) program.

(2) Eligibility.

(a) To be eligible for an MSP a person must:

(i) Be entitled to medicare Part A;

(ii) Be a U.S. citizen, U.S. national, qualified American Indian born abroad, or a qualified alien who satisfies or is exempt from the five-year bar under WAC 182-503-0535;

(iii) Not exceed the income limits in (c) of this subsection; and

(iv) Not exceed the resource limits in (c) of this subsection.

(b) To be eligible for QDWI, a person must be under age sixty-five.

(c) Except as provided under (d) and (e) of this subsection, MSPs follow the income, resource, and deeming rules for SSI-related persons in chapter 182-512 WAC.

(d) Income limits.

(i) If a person's countable income is less than or equal to the federal poverty level (FPL), the person may qualify for the QMB program.

(ii) If a person's countable income is over the FPL, but does not exceed one hundred twenty percent of the FPL, the person may qualify for the SLMB program.

(iii) If a person's countable income is over one hundred twenty percent of the FPL, but does not exceed one hundred

thirty-five percent of the FPL, the person may qualify for the QI-1 program.

(iv) If a person's countable income is over one hundred thirty-five percent of the FPL, but does not exceed two hundred percent of the FPL, the person may qualify for the QDWI program.

(e) Resource limits.

(i) The resource limit for the QMB, SLMB, and QI-1 programs may be found at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(ii) The resource limit for the QDWI program is \$4,000 for a single person and \$6,000 for a married couple.

(f) When calculating income under this section:

(i) The agency subtracts client participation from a long-term care client's countable income under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(ii) The agency counts the annual Social Security cost-of-living increase beginning April 1st each year.

(g) Relationship of MSPs to other medicaid programs:

(i) A client eligible for another medicaid program may also receive QMB or SLMB coverage.

(ii) A client eligible for another medicaid program is not eligible for QI-1 or QDWI.

(3) Covered costs.

(a) The QMB program pays:

(i) Medicare Part A and Part B premiums using the start date in WAC 182-504-0025; and

(ii) Medicare coinsurance, deductibles, and copayments for Part A, Part B, and medicare advantage Part C, subject to the limitations in WAC 182-502-0110.

(b) If the client is eligible for both SLMB and another medicaid program:

(i) The SLMB program pays the Part B premiums using the start date in WAC 182-504-0025; and

(ii) The medicaid program covers medicare Part A and Part B coinsurance and deductibles under WAC 182-502-0110.

(c) If the client is only eligible for SLMB, the SLMB program covers medicare Part B premiums using the start date in WAC 182-504-0025.

(d) The QI-1 program pays medicare Part B premiums using the start date in WAC 182-504-0025 until the agency's federal funding allotment is spent. The agency resumes QI-1 benefit payments the beginning of the next calendar year.

(e) The QDWI program covers medicare Part A premiums using the start date in WAC 182-504-0025.

(4) Medicaid eligibility may affect MSP eligibility:

(a) QMB and SLMB clients may receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) QI-1 and QDWI clients who begin receiving medicaid are no longer eligible for QI-1 or QDWI benefits, but may be eligible for the state-funded medicare buy-in program under WAC 182-517-0300.

(5) The FPL standards are found at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(6) A person who disagrees with agency action under this section may request an administrative hearing under chapter 182-526 WAC.

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

WAC 182-517-0300 (~~(Federal medicare savings and)~~ **State-funded medicare buy-in programs.** ~~((1) Federal medicare savings and state-funded medicare buy-in programs help clients pay some of the costs that medicare does not cover under WAC 388-517-0320 (for program eligibility, see WAC 388-517-0310).~~

~~(2) The department offers the following medicare savings programs to eligible clients:~~

~~(a) Qualified medicare beneficiary (QMB);~~

~~(b) Specified low-income medicare beneficiary (SLMB);~~

~~(c) Qualified individual (QI-1); and~~

~~(d) Qualified disabled working individual (QDWI).~~

~~(3) The department offers the state-funded medicare buy-in program for clients who receive medicaid but do not qualify for the federal medicare savings programs.)~~ (1) A person is eligible for the state-funded medicare buy-in program (SBIP) if the person:

(a) Is entitled to or receiving medicare;

(b) Is not eligible for a federal medicare savings program under WAC 182-517-0100; and

(c) Is receiving benefits under:

(i) The categorically needy (CN) program; or

(ii) The medically needy (MN) program;

(2) The SBIP begins the second month after the month a person meets eligibility requirements.

(3) The SBIP pays only medicare Part B premiums.

(4) The agency pays medicare deductibles and coinsurance under WAC 182-502-0110.

(5) A person who disagrees with agency action under this section may request an administrative hearing under chapter 182-526 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-517-0310 Eligibility for federal medicare savings and state-funded medicare buy-in programs.

WAC 182-517-0320 Medicare savings and state-funded medicare buy-in programs cover some client costs.

WSR 16-09-013

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 8, 2016, 4:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-147.

Title of Rule and Other Identifying Information: Chapter 182-520 WAC, Fraud referrals and overpayments.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 25, 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, fax (360) 586-9727, by 5:00 p.m. on May 24, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by May 20, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal adds new WAC 182-520-0015 to support agency and agency designee action in establishing and recovering long-term services and supports client overpayments. Housekeeping changes were also made in WAC 182-520-0005 and 182-520-0010 [to] remove the abbreviation "WAH" and make language about the agency's designee parallel with the new section in the chapter.

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, 41.05A.005, 41.05A.010, and 74.09.741.

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: Amy Johnson, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1329.

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.

April 8, 2016

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-520-0005 Washington apple health fraud referrals and overpayments. (1) The agency or ~~((its))~~ the agency's designee may refer a case to the office of fraud and accountability for a fraud investigation when it has reliable information that the person purposely misrepresented their circumstances in order to qualify for Washington apple health ~~((WAH))~~.

(2) When a fraud investigation reveals substantial evidence to support a finding of fraud, the case is referred for prosecution. The prosecuting attorney's office decides which cases will be prosecuted.

(3) When a referral results in a conviction, an overpayment amount for the cost of the ((WAH)) apple health coverage is established.

(4) The person is responsible to pay the agency for the amount of overpayment established as a result of a fraud conviction.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-520-0010 Washington apple health overpayments resulting from an administrative hearing. (1) If a person asks for Washington apple health ((WAH)) coverage to continue during an appeal, he or she must pay the agency for the cost of that coverage if both (a) and (b) of this subsection occur:

(a) The administrative law judge, or review judge if applicable, enters an order:

(i) That the person was not eligible for ((WAH)) apple health coverage during the appeal;

(ii) Dismissing the hearing under WAC 182-526-0285(3) because the person defaulted (did not attend or refused to participate) and the agency's action that was appealed included a finding that the person was not eligible for ((WAH)) apple health coverage; or

(iii) Dismissing the hearing under WAC 182-526-0285(4) due to a written agreement between all the parties that the person will pay for an overpayment of the cost of ((WAH)) apple health coverage.

(b) The agency decides to collect the overpayment.

(2) The overpayment amount is limited to payments for ((WAH)) apple health coverage that were spent:

(a) During the sixty days following receipt of the hearing request; and

(b) For a person who was not eligible for ((WAH)) apple health coverage.

(3) The agency will not attempt to recover ((a-WAH)) an apple health overpayment from a nonneedy caretaker relative or guardian except in the case of fraud by the caretaker relative or guardian as described in WAC 182-520-0005.

NEW SECTION

WAC 182-520-0015 Long-term services and supports client overpayments. (1) **General right to recover.**

(a) A long-term services and supports (LTSS) client overpayment is any payment for LTSS made by the agency or the agency's designee on a client's behalf in excess of that to which the client is legally entitled.

(b) An LTSS client overpayment may be caused by:

(i) A client or a client's authorized representative misstating or failing to reveal a fact affecting eligibility under WAC 182-503-0505;

(ii) A client or a client's authorized representative failing to timely report a change required under WAC 182-504-0105; or

(iii) The agency or the agency's designee's error.

(c) The agency or the agency's designee may recoup an LTSS client overpayment:

(i) Up to six years after the date of the notice in subsection (2) of this section; and

(ii) Regardless of whether the program is state-funded, federally funded, or both.

(d) The amount of the LTSS client overpayment equals the amount the agency or the agency's designee paid on the client's behalf minus the amount to which the client was legally entitled.

(2) Notice.

(a) The agency notifies the client or the client's authorized representative by:

(i) Personal service under RCW 4.28.080; or

(ii) Certified mail, return receipt requested.

(b) The agency or the agency's designee may prove that it notified the client by providing:

(i) A sworn statement;

(ii) An affidavit or certificate of mailing; or

(iii) The certified mail receipt signed by the client or the client's authorized representative.

(c) The notice states:

(i) The client's name;

(ii) The client's address;

(iii) The date the agency or the agency's designee issued the notice;

(iv) The amount of the LTSS client overpayment;

(v) How the agency calculated the LTSS client overpayment;

(vi) How the client may request an administrative hearing; and

(vii) How the client may make a payment.

(3) Response.

(a) The client must respond to the notice within ninety days of the date the agency or the agency's designee served the client with the notice of the LTSS client overpayment by:

(i) Paying the agency or the agency's designee;

(ii) Establishing a payment plan with the agency or the agency's designee; or

(iii) Requesting an administrative hearing.

(b) If the client does not respond to the notice within ninety days of the date the agency or the agency's designee served the client with the notice, the agency or the agency's designee may initiate collection action.

(4) **Hearings.** A person who disagrees with agency or the agency's designee's action under this section may request an administrative hearing under chapter 182-526 WAC.

WSR 16-09-025

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed April 12, 2016, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-11-090.

Title of Rule and Other Identifying Information: The department is proposing to repeal WAC 388-70-615 Local Indian child welfare advisory committee—Subcommittees; and to amend WAC 388-70-091 Foster care planning for Indian children—Definitions, 388-70-092 Foster care for Indian children—Tribal sovereignty, 388-70-093 Foster care for Indian children—Services, 388-70-095 Foster care for Indian children—Serious injury, death, abandonment, child abuse, neglect, incarceration, 388-70-450 Adoptive planning for Indian children by department staff, 388-70-600 Local Indian child welfare advisory committee—Purpose, 388-70-610 Local Indian child welfare advisory committee—Membership, 388-70-620 Local Indian child welfare advisory committee—Functions, 388-70-630 Local Indian child welfare advisory committee—Meetings, and 388-70-640 Local Indian child welfare advisory committee—Confidentiality.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 25, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 24, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 10, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these changes to match requirements in chapter 13.38 RCW, the Washington State Indian Child Welfare Act, and the federal Indian Child Welfare Act, 25 U.S.C. Chapter 21, as well as to reflect changes in children's administration policy. Currently, the definition of Indian child and the application of the local Indian child welfare advisory committee (LICWAC) processes are contrary to state and federal law. Updates to each of these WAC sections will harmonize the WAC sections with state and federal law.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: Chapter 13.38 RCW, 25 U.S.C. Chapter 21.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Juliette Knight, DSHS Headquarters, 1115 Washington Street S.E., Olympia, WA 98504, (360) 902-7578.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt from preparing a small business economic impact statement under RCW 19.85.025(3) and 34.05.310 (4)(c),

and align language with federal and state Indian child welfare laws.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iii), rules adopting or incorporating by reference without material change federal statutes or regulations and Washington state statutes. The proposed rules align language with the federal Indian Child Welfare Act, 25 U.S.C. Chapter 21, and chapter 13.38 RCW, the Washington State Indian Child Welfare Act.

April 5, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-091 Foster care planning for Indian children—Definitions. ((For the purposes of these rules, the term "Indian" includes the following groups:

(1) An enrolled Indian:

(a) Any person who is enrolled or eligible for enrollment in a recognized tribe.

(b) Any person determined, or eligible to be found, to be an Indian by the Secretary of the Interior.

(c) An Eskimo, Aleut or other Alaskan native.

(2) A Canadian Indian: Any person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.

(3) An unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized Indian tribe or urban Indian/Alaskan native community organization.))

For the purposes of WACs 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age eighteen and is one of the following:

(1) A member of an Indian tribe; or

(2) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-092 Foster care for Indian children—Tribal sovereignty. Neither the licensing of Indian foster homes nor the placement and supervision of Indian children within the ((~~exterior~~)) boundaries of an Indian reservation, shall in any way abridge the sovereignty of an Indian nation or tribe nor shall compliance with these rules and regulations be deemed a relinquishment of sovereign authority by an Indian nation or tribe or by the state of Washington.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-093 Foster care for Indian children—Services. Documented efforts shall be made to avoid separating the Indian child from his or her parents, relatives, tribe or cultural heritage. Consequently:

(1) When a family identifies Indian ancestry under the federal and state Indian child welfare acts, the children's administration (CA) caseworker has fifteen calendar days, or ten business days, from the date of identification to complete a family ancestry chart and begin the membership inquiry process. A copy of the family ancestry chart will be retained in the child's most current case file volume.

(2) CA staff will contact all identified federally recognized tribes ((4)) in the case of Indian children being placed in foster care by the department or for whom the department has supervisory responsibility((, the local Indian child welfare advisory committee, predesignated by a tribal council, or appropriate urban Indian organization shall be contacted. Members of that committee will serve as resource persons for the purposes of cooperative planning and aid in placement)).

((2)) (3) If requested by a federally recognized tribe, or if a federally recognized tribe is unavailable the local Indian child welfare advisory committees (LICWAC) as defined under WAC 388-70-600 will serve as resource persons for the purposes of cooperative planning and aid in placement.

(4) The resources of the tribal government, ((department and)) the Indian community, and the department shall be used to locate the child's parents and relatives to assist in locating possible placement resources, and to assist in the development of a plan to overcome the problem that brought the child to the attention of the authorities, ((and)) or the department, or both the authorities and the department.

((3)) (5) In planning foster care placements for Indian children, ((demonstrable consideration shall be given to tribal membership, tribal culture and Indian religions)) CA will follow the federal and state Indian child welfare acts with regard to placement preference. The case record shall document the reasons and circumstances of casework decisions and consideration in those regards.

((4)) (6) ((The following resources for foster home placement of Indian children will be explored and followed in the following order: Relatives' homes, homes of other Indian families of same tribe, other Indian foster parents and non-Indian foster homes specifically recruited and trained in cooperation with the local Indian child welfare advisory committee to meet the special needs of Indian foster children and in the geographic proximity that will insure continuation of the parent-child relationship. The training of non-Indian foster parents shall be designed and delivered in cooperation with the above committee and/or persons designated by the committee.

(5) For each Indian child who will be in care for more than 30 days, including those for whom adoption is planned, the ESSO shall make documented effort to complete two copies of the "family ancestry chart" (except in those cases where parents specifically indicate in writing they do not want the child enrolled). One copy will be retained in the child's file; the other will be forwarded to the bureau of Indian affairs office or the department of Indian affairs agency in Canada serving that child's tribe or band. The BIA of the department of Indian affairs agency will review the chart for possible enrollment eligibility in conjunction with the enrollment committee of the appropriate tribe or urban Indian community.

(6) The ESSO shall develop its social resources and staff training programs designed to meet the special needs of Indian children through coordination with tribal, Indian health service, bureau of Indian affairs social service staff, appropriate urban Indian and Alaskan native consultants, national, state and local Indian welfare organizations and ESSO child welfare advisory committees-)) CA, in partnership with federally recognized tribes and CA contracted agencies, will develop training for staff and caregivers designed to meet the needs of Indian children and their families. CA may also partner with urban Indian organizations, CA LICWACs, national, state and local Indian child welfare organizations, and Native American/Alaskan Native consultants.

(7) The ((ESSO)) CA shall make diligent and ((demonstrable)) ongoing efforts to recruit facilities and/or homes particularly capable of meeting the ((special)) needs of Indian children ((with the assistance of the local Indian child welfare advisory committees)).

AMENDATORY SECTION (Amending Order 1255, filed 12/1/77)

WAC 388-70-095 ((Foster care for Indian children —)) **Serious injury, death, abandonment, child abuse, neglect, incarceration of an Indian child.** When an Indian child in ((foster)) the care and custody of the department dies, is seriously injured, abandoned or incarcerated, in addition to other appropriate notifications, the department shall ((promptly advise the ESSO Indian child welfare advisory committee and appropriate tribal council)) notify the federally recognized tribe or tribes within twenty-four hours. ((WAC 388-15-131(4) provides for notification about child abuse/neglect incidents.))

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-450 Adoptive planning for Indian children by department staff. (1) ((Definitions: For the purposes of these rules the term "Indian" includes the following groups:

- (a) Enrolled Indian
 - (i) Any person who is enrolled or eligible for enrollment in a recognized tribe.
 - (ii) Any person determined, or eligible to be found, to be an Indian by the secretary of the interior.
 - (iii) An Eskimo, Aleut or other Alaskan native.
- (b) Canadian Indian: A person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.
- (c) Unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized tribe or urban Indian/Alaskan native community organization-)) In planning adoptive or pre-adoptive placements for Indian children under WAC 388-70-091, CA will follow the federal and state Indian child welfare acts with regard to placement preference.

(2) ((An adoptive family shall be considered Indian if one or both parents are Indian by the above definitions.)) An

adoptive family shall be considered Indian if one or both parents is:

(a) A member of a federally recognized tribe; or

(b) An Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C sec. 1606.

(3) ~~In adoptive planning for Indian children, the unique ((tribal, cultural and religious sovereignty of Indian nations,)) cultural, religious, and sovereignty of federally recognized tribes and communities shall be recognized. When consistent with the wishes of the biological parents and/or the child, the adoption of Indian children by Indian families is the primary goal.~~

(4) ~~((Standards implementing the policy are:~~

(a) ~~Adoption exchange. In the referrals for an Indian child, adoptive homes having the following characteristics shall be given preference in the following order, each category being allowed 30 days before proceeding to the next.~~

(i) ~~An Indian family of the same tribe as the child.~~

(ii) ~~A Washington Indian family considering tribal cultural differences.~~

(iii) ~~An Indian family from elsewhere in the United States or Canada through the adoption resource exchange of North America. Attention shall be given to matching the child's tribal culture to that of the adoptive family.~~

(iv) ~~Any other family which can provide a suitable home to an Indian child, as well as instill pride and understanding in the child's tribal and cultural heritage.~~

(b) ~~Foster parent adoptions: As a part of the total evaluation for approving a foster parent adoption of an Indian child, ESSO service staff shall document the foster family's past performance and future commitment in exposing the child to its Indian tribal and cultural heritage. The child's wish to be involved in his Indian culture shall be considered.)~~ As a part of the total evaluation for approving a foster parent adoption of an Indian child, CA staff will document the foster family's past performance and future commitment in exposing the child to their Indian heritage. The child's wish to be involved in his or her Indian culture shall be considered.

~~((e)) (5) When an Indian child, in the custody of an out-of-state agency, is referred for potential adoptive parents residing in Washington, ((documentation shall be obtained that assures the department's standards for planning for Indian children have been complied with.)) CA will follow the interstate compact and placement of Indian children policy of Washington state.~~

(6) When an Indian child, in the care and custody of CA, is referred for adoption out of Washington, CA will follow the interstate compact and placement of Indian children policy of Washington state.

(7) In the event of an international adoption CA will follow policy and ensure that placement preferences are followed per the federal and state Indian child welfare acts.

~~((f)) (8) ((Local)) CA staff ((shall)) may consult with ((a)) a local Indian child welfare advisory committee in planning for adoptive placement of Indian children when a federally recognized tribe has chosen not to be involved.~~

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

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-600 Local Indian child welfare advisory committee—Purpose. The intent of WAC ((388-70-096)) 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640 ((is)) are to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom the department of social and health services has a responsibility shall be referred to a local Indian child welfare advisory committee on an ongoing basis when a federally recognized tribe has not responded, is unavailable, or requests LICWAC involvement according to procedures which recognize the privacy rights of the families.

The purposes of local Indian child welfare advisory committees are:

(1) To promote ((relevant)) social service planning for Indian children.

(2) To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the department of social and health services.

(3) To assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-610 Local Indian child welfare advisory committee—Membership. Local Indian child welfare advisory committees shall be established within each region. The number and locations of the local committees shall be mutually determined by the Indian tribal governments and urban Indian organizations served by that region and the DSHS regional administrator.

(1) The committee shall consist of representatives designated by tribal government and urban Indian organizations. The regional administrator shall appoint committee members from among those individuals designated by Indian authorities. These members should be familiar with and knowledgeable about the needs of children in general as well as the particular needs of Indian children residing in the service area.

(2) The committee may also include bureau of Indian affairs staff, ((and/or)) Indian health service staff ((if approved by participating tribal councils and urban Indian organizations)), and other community members.

(3) The ((DSHS)) CA regional administrator ((and/or the ESSO administrator shall)) may appoint a member of his or her child welfare ((supervisory)) staff as a liaison member of the committee.

(4) The local Indian child welfare advisory committee is an ad hoc advisory committee not specifically authorized by statute. As such its members are not entitled to per diem and travel expenses for the performance of advisory committee functions. ~~((This rule shall not be construed, however, to prohibit expense payments to members who are otherwise qual-~~

ified for and perform services compensable under other programs such as the volunteer programs:))

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-620 Local Indian child welfare advisory committee—Functions. ~~((+))~~ The functions of the local Indian child welfare advisory committee are to:

~~((a)) (1) ((Assistance to)) Assist~~ DSHS staff in cooperative planning for Indian children.

~~((b) Consultation to DSHS staff regarding the provision of adoption, foster care and child protective services on behalf of Indian children.~~

~~((c) Reviewing the situations of Indian children.))~~

(2) Consult DSHS staff on behalf of Indian children, regarding the provision of the child's safety, well-being, and permanency on behalf of Indian children.

~~((d) Assisting in the implementation of recommended plans.~~

~~((e) Assisting in the recruitment of and making recommendations regarding the licensing of foster and adoptive homes for Indian children and providing culturally relevant services to Indian children.))~~

(3) Assist in providing culturally relevant services to Indian children; and

~~((f)) (4) Make requests to the ((ESSO)) CA~~ administrator to initiate reviews of casework decisions that the committee believes to be detrimental to the best interests of Indian children.

~~((g) Acts in an advisory capacity to the regional administrator and ESSO administrator regarding the department's implementation and monitoring of the rules related to foster care, child protection, and adoption services to Indian children and their families.))~~

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

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-630 Local Indian child welfare advisory committee—Meetings. Each committee and the ~~((regional administrator and/or ESSO administrator)) CA~~ local Indian child welfare advisory committee staff liaison will mutually agree as to time, place and frequency and conduct of official committee meetings.

AMENDATORY SECTION (Amending WSR 89-05-063, filed 2/15/89)

WAC 388-70-640 Local Indian child welfare advisory committee—Confidentiality. The members of the local Indian child welfare advisory committee shall agree to abide by RCW 74.04.060 and the rules of confidentiality binding the DSHS staff.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-70-615 Local Indian child welfare advisory committee—Subcommittees.

WSR 16-09-035

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 14, 2016, 9:39 a.m.]

Supplemental Notice to WSR 15-09-024.

Preproposal statement of inquiry was filed as WSR 14-12-093, 14-22-082, 14-22-083, and 15-12-060.

Title of Rule and Other Identifying Information: The department is proposing to amend chapters 388-823, 388-825, 388-828, 388-831, and 388-845 WAC, and create new sections in chapter 388-845 WAC. The proposed rule changes are related to the individual and family services (IFS) waiver, the community first choice (CFC) program, the client's choice for place of assessment, and overnight planned respite services.

Existing Sections Being Amended: WAC 388-823-0010 Definitions, 388-825-020 Definitions, 388-825-057 Am I eligible to receive paid services from DDD?, 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?, 388-825-059 How will I know which paid services I will receive?, 388-825-068 What medicaid state plan services may DDD authorize?, 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?, 388-825-305 What service providers are governed by the qualifications in these rules?, 388-825-310 What are the qualifications for providers?, 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or Core waivers, or attendant care services?, 388-825-330 What is required for agencies to provide care in the home of a person with developmental disabilities?, 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services?, 388-828-1020 What definitions apply to this chapter?, 388-828-1060 What is the purpose of the DDD assessment?, 388-828-1500 When does DDD conduct a reassessment?, 388-828-1520 Where is the DDD assessment and reassessment administered?, 388-828-1540 Who participates in your DDD assessment?, 388-828-8000 What is the purpose of the individual support plan (ISP) module?, 388-831-0065 What if I refuse to participate in the risk assessment?, 388-831-0160 What services may I receive if I refuse placement in the community protection program?, 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the develop-

mental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different waiver DDA HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0111 Are there limitations regarding who can provide services?, 388-845-0115 Does my waiver eligibility limit my access to DDA nonwaiver services?, 388-845-0200 What waiver services are available to me?, 388-845-0210 Basic Plus waiver services, 388-845-0215 Core waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0415 What is assistive technology?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0505 Who is a qualified provider of behavior support and consultation?, 388-845-0510 Are there limits to the behavior support and consultation I can receive?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1110 What are the limits of behavioral health crisis diversion bed services?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1170 What is nurse delegation?, 388-845-1180 Are there limitations to the nurse delegation services that I receive?, 388-845-1300 What are personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1700 What is skilled nursing?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?, 388-845-1840 What is specialized nutrition and specialized clothing?, 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?, 388-845-1850 Are there limitations to my

receipt of specialized nutrition and specialized clothing?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?, 388-845-2160 What is therapeutic equipment and supplies?, 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?, 388-845-2210 Are there limitations to the transportation services I can receive?, 388-845-2260 What are vehicle modifications?, 388-845-2270 Are there limitations to my receipt of vehicle modification services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my individual support plan effective?, 388-845-3061 Can a change in my individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?, 388-845-3063 Can my individual support plan be effective before the end of the month?, 388-845-3065 How long is my plan effective?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change?, and 388-845-3085 What if my needs exceed what can be provided under the IFS, CIIBS, Core or Community Protection waiver?

New Sections Being Added: WAC 388-845-0230 What is the scope of services for the individual and family services waiver?, 388-845-0650 What are community engagement services?, 388-845-0655 Who is a qualified provider of community engagement service?, 388-845-0660 Are there limitations to the community engagement services I can receive?, 388-845-1190 What is peer mentoring?, 388-845-1191 Who are qualified providers of peer mentoring?, 388-845-1192 What limitations are there for peer mentoring?, 388-845-1195 What is person-centered planning facilitation?, 388-845-1196 Who are qualified providers of person-centered planning facilitation?, 388-845-1197 What limitations are there for person-centered planning facilitation?, 388-845-1855 What is specialized clothing?, 388-845-1860 Who are qualified providers of specialized clothing?, 388-845-1865 Are there limitations to my receipt of specialized clothing?, 388-845-2130 What are supported parenting services?, 388-845-2135 Who are qualified providers of supported parenting services?, and 388-845-2140 Are there any limitations on my receipt of supported parenting services?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on June 21, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 22, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., June 21, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 4, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes Related to the IFS Waiver: Once SSB 6387 of the 63rd legislature, 2014 regular session, was passed, DDA worked on the new required IFS waiver while at the same time identifying and programming the necessary enhancements to the statewide CARE assessment tool to incorporate the waiver into our daily work process. Our intent was to be ready to file the emergency rules and implement the system changes to CARE upon the waiver approval date given by CMS. Once CMS approved our IFS waiver, we filed the CR-103E to make those changes to rule effective by emergency rules on June 1, 2015. This was a short period of time from when CMS approved the waiver to when the waiver would be effective. Although we had also filed the CR-102 and held the public hearing, we were unable to make those rules permanent through the regular rule-making process before additional changes were needed in some sections of chapter 388-845 WAC due to the CMS implementation date for the new CFC program.

Changes Related to the CFC Program: ESHB 2746 requires DSHS to refinance personal care services and establish a 1915(k) CFC program per §1915(k) of the Social Security Act. To that end, DSHS worked to develop a state plan amendment for implementation after CMS approval. This new program also required modifications to our statewide CARE assessment tool and updates to rules, some of which were the same sections in chapter 388-845 WAC that were effective via emergency rules but had not yet completed the permanent rule-making process.

Changes Related to Where the DDA Assessment and Reassessment is Administered: These changes more closely align our rules with 42 C.F.R. 441.540 (a)(3) to allow the individual to select a time and location for their convenience for assessments.

Changes Related to the Definition of Overnight Planned Respite Services: Rule changes to implement overnight planned respite services, as approved in ESSB 6052 S.L. of the 64th legislative 2015 3rd sp. sess., are being implemented by a different emergency rule filing. However, we are including the definition changes in this filing.

Reasons Supporting Proposal: The proposed changes will permit DSHS to continue the new IFS waiver, the CFC program, and the client's choice for the place of assessment. In addition, another change includes the definition of overnight planned respite services.

Statutory Authority for Adoption: RCW 71A.12.030.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ann Whitehall, DDA, P.O. Box 45310, Olympia, 98504-5310, (360) 725-3445.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do

no impact small businesses or nonprofits, they only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii) and relate only to client medical or financial eligibility.

April 12, 2016
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 16-11 issue of the Register.

WSR 16-09-043
PROPOSED RULES
GAMBLING COMMISSION

[Filed April 15, 2016, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-130.

Title of Rule and Other Identifying Information: Amending WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games, 230-13-170 Recordkeeping for commercial amusement games, 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations, and 230-13-005 Amusement games authorized.

Hearing Location(s): Red Lion, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 14 or 15, 2016, at 9:30 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 14 or 15, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over. These rules address recordkeeping and the nontransferability of tokens. Currently, amusement game operators are only required to notify us once a year of the amusement games they have. They are also only required to report their overall amusement game gross receipts. Given the questions about group 12 amusement games, staff needs to know where group 12 amusement games are being operated and the gross receipts they are bringing in. For group 12 amusement games, coupons, tickets, tokens or tokens on an electronic token cards [card] are nontransferable, such as player tracking systems, customer rewards systems, etc.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

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

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

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

April 15, 2016
Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

WAC 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations. (1) Organizations operating without a license under RCW 9.46.0315 or 9.46.0321 and lower volume charitable or nonprofit licensees must keep a set of permanent monthly records of the gambling activities. Lower volume licensees include:

- (a) Fund-raising events;
 - (b) Bingo (Classes A, B, and C);
 - (c) Raffles (Classes A, B, C, and D);
 - (d) Amusement games (Classes A, B, C, and D); and
 - (e) Card games (Classes A, B, and C).
- (2) The monthly records must include, at least:
- (a) The gross receipts from each activity;
 - (b) The gross receipts from group 12 amusement games;
 - (c) The total amount of cash prizes actually paid out;
 - ~~((e))~~ (d) The total of the cost to the licensee of all merchandise prizes actually paid out for each activity;
 - ~~((e))~~ (e) A summary of all expenses related to each of the activities; and
 - ~~((e))~~ (f) The net income received from the activity, the purpose(s) for which the net income was raised, and the amount paid to each recipient.

(3) Licensees must keep these records for three years from the end of the license year for which the record was created.

(4) Organizations operating under RCW 9.46.0315 or 9.46.0321 must maintain their records for one year.

AMENDATORY SECTION (Amending WSR 15-15-063, filed 7/10/15, effective 8/10/15)

WAC 230-13-005 Amusement games authorized. (1) We authorize the approved groups of amusement games set forth in this chapter. Operators must only operate amusement

games that meet the standards of at least one of the authorized groups.

(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.

(3) Charitable or nonprofit organizations also may conduct amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.

(4) Operators must operate amusement games as either:

(a) An attended amusement game.

(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and

(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; or

(b) A coin or token activated amusement game.

(i) A "coin or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins (~~((€))~~), tokens, or tokens on an electronic token card; and

(ii) These games may dispense merchandise prizes, or coupons, tickets, ~~((€))~~ tokens, or tokens onto an electronic token card redeemable for merchandise prizes; and

(iii) For group 12 amusement games, coupons, tickets, tokens or tokens on an electronic token card are nontransferable, such as player tracking systems, customer rewards systems, etc.

(5) Amusement games must not award additional plays as prizes.

(6) Electronic token card means a card issued by the operator that stores purchased credits available to play the amusement game separate from the coupons, tickets, or tokens awarded or dispensed as prizes from the play of the amusement game. Coupons, tickets, or tokens awarded as prizes cannot be used to play amusement games and must only be redeemed for merchandise prizes.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games. (1) Amusement game licensees must determine the authorized group number of each game and prepare a list of all games they plan to operate during each license year. They must submit this list to us with their activity report. The list must contain, at least, the name and group number of each game.

(2) Amusement game licensees must notify us within thirty days of putting into play and removing from play a group 12 amusement game. Reporting must be in the format we require.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-170 Recordkeeping for commercial amusement games. (1) Amusement game licensees must prepare a detailed record for each location where they operate games. They must retain the records for at least three years. The records must include details necessary to determine:

(a) Gross (~~(gambling)~~) receipts received from players from each group of amusement games; and

(b) Value of prizes awarded to winners.

(2) Records must include, at least:

(a) The gross (~~(gambling)~~) receipts collected from amusement games at each location, with receipting records; and

(b) An entry for each withdrawal of receipts from the games. Coin or token activated amusement games only require an entry of the ending meter reading, the number of plays, and gross (~~(gambling)~~) receipts at the end of each month; and

(c) A summary of the operation of the activity. This includes, at least, coin-in meter readings and gross (~~(gambling)~~) receipts. Operators must provide these coin-in meter readings and gross (~~(gambling)~~) receipts to charitable or non-profit organizations each time they service a game or disburse money.

(3) Licensees must report at least monthly the number and actual cost of merchandise prizes awarded for each location.

(4) For amusement games that issue tickets for the redemption of prizes, licensees must at least log the beginning and ending nonresettable ticket out meters or ticket numbers during each collection of funds from each game.

(5) Licensees must provide the full details for all amusement game operating expenses.

prize available before each play of the game without the insertion of money or anything of value."

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

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

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

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

April 15, 2016

Susan Newer

Rules Coordinator

WSR 16-09-044

PROPOSED RULES

GAMBLING COMMISSION

[Filed April 15, 2016, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-130.

Title of Rule and Other Identifying Information: Amending WAC 230-13-067 Electronic puzzle and pattern solving game standards.

Hearing Location(s): Red Lion, 18220 International Boulevard, Seattle, WA 98188, (206) 246-5535, on July 14 or 15, 2016, at 9:30 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 14 or 15, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2016.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over. This proposed rule change would require group 12 amusement games to prominently display on a sticker or on the screen, "This is not a slot machine. No cash prizes are allowed. You can preview the

AMENDATORY SECTION (Amending WSR 15-15-063, filed 7/10/15, effective 8/10/15)

WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards. (1) In group 12 games, players must correctly solve a puzzle to win a ~~((prize))~~ game, which is viewable by the player before each puzzle is presented.

~~((1))~~ (2) The game must allow the player to ~~((view))~~ preview the prize that is available before each play of the game without the insertion of money or any other thing of value; and

~~((2))~~ (3) Prizes are awarded based upon the player's skill in correctly discerning a pattern and completing that pattern; and

~~((3))~~ (4) When a game presents a potential winning pattern, the puzzle must be capable of completion within the predetermined time period; and

~~((4))~~ (5) Group 12 amusement games are for adults over the age of twenty-one only and may only be operated by licensees where persons under the age of twenty-one are prohibited from entering~~((:))~~; and

(6) The amusement game must prominently display a sticker or on the screen, "This is not a slot machine. No cash prizes are allowed. You can preview the prize available before each play of the game without the insertion of money or anything of value."

WSR 16-09-051
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed April 15, 2016, 3:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-05-081.

Title of Rule and Other Identifying Information: Deferred compensation program rules, including WAC 415-501-110 Definitions, 415-501-410 How do I enroll in the plan?, and 415-501-475 May I choose how I want my deferred compensation invested?

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Wednesday, May 25, 2016, at 10:00 a.m.

Date of Intended Adoption: May 25, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by May 24, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by May 23, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the deferred compensation program enrollment process and establish the default investment.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Brian Berghoff, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7009; and Implementation: Shawn Merchant, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

April 15, 2016
 Jilene Siegel
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-110 Definitions. (1) **Accumulated deferrals.** Compensation deferred under the plan, adjusted by income received, increases or decreases in investment value, fees, and any prior distributions made.

(2) **Beneficiary.** The person or entity entitled to receive benefits under the plan after the death of a participant.

(3) **Compensation.** All payments made to a participant by the employer as remuneration for services rendered.

(4) **Deferred compensation.** The amount of the participant's compensation that is deferred under a participation agreement. See WAC 415-501-410 and 415-501-450.

(5) **Deferred compensation plan or plan.** A plan that allows employees of the state of Washington and approved political subdivisions of the state of Washington to defer a portion of their compensation according to the provisions of Section 457(b) of the Internal Revenue Code.

(6) **Department.** The department of retirement systems created by RCW 41.50.020 or its designee.

(7) **Eligible employee.** Any person who is employed by and receives any type of compensation from a participating employer for whom services are provided, and who is:

(a) A full-time, part-time, or career seasonal employee of Washington state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service;

(b) An elected or appointed official of the executive branch of the government, including a full-time member of a board, commission, or committee;

(c) A justice of the supreme court, or a judge of the court of appeals or of a superior or district court; or

(d) A member of the state legislature or of the legislative authority of a county, city, or town.

(8) **Eligible rollover distribution.** A distribution to a participant of any or all funds from an eligible retirement plan unless it is:

(a) One in a series of substantially equal annuity payments;

(b) One in a series of substantially equal installment payments payable over ten years or more;

(c) Required to meet minimum distribution requirements of the plan; or

(d) Distributed for hardship or unforeseeable emergency from a 457 plan.

(9) **Employer.**

(a) The state of Washington; and

(b) Approved political subdivisions of the state of Washington.

(10) **Normal retirement age.** An age designated by the participant for purposes of the three-year catch-up provision described in WAC 415-501-430(2). The participant may choose a normal retirement age between:

(a) The earliest age at which an eligible participant has the right to receive retirement benefits without actuarial or similar reduction from his/her retirement plan with the same employer; and

(b) Age seventy and one-half.

(11) **Participant.** An eligible employee:

(a) Who has submitted a participation agreement that is approved by the department; and

(b) Who either:

(i) Is currently deferring compensation under the plan; or

(ii) Has previously deferred compensation and has not received a distribution of his/her entire benefit under the plan.

(12) **Participation agreement.** The agreement executed by an eligible employee to enroll in the plan through methods established by the department. Includes the participant's authorization to defer compensation through payroll deductions pursuant to WAC 415-501-410(~~in which the eligible~~

~~employee chooses to become a plan participant)) and 415-501-450.~~

(13) **You**, as used in this chapter, means a participant as defined in subsection (11) of this section.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-410 How do I enroll in the plan? (1)

As an eligible employee, you may enroll in the plan by executing a participation agreement according to methods established by the department.

(2) By ~~((signing))~~ executing the participation agreement, you authorize your employer to reduce your gross compensation each month by a specific amount. This amount will be contributed to your deferred compensation account. Your employer will reduce your compensation by the specified amount until you change the amount (WAC 415-501-450) ~~((or suspend contributions (WAC 415-501-470)))~~.

(3) Deferrals from your compensation will start during the calendar month after the month your participation agreement is approved by the department.

(4) Reenrollment. If you transfer from a state agency to another state agency without a separation of employment, your deferred compensation program (DCP) enrollment will be automatically transferred to the new state agency. Your contributions will automatically continue. If you separate from employment with a DCP employer (break in service) and return to employment with a DCP employer, you must reenroll in the program if you want to resume contributions to DCP.

AMENDATORY SECTION (Amending WSR 14-10-045, filed 4/30/14, effective 6/1/14)

WAC 415-501-475 May I choose how I want my deferred compensation invested? (1) ~~((You must designate on your participation agreement the investment option(s) in which you wish to have your deferrals invested.~~

~~((2)))~~ Yes. When you enroll, you may select one or more of the investment options offered.

(2) The department will invest one hundred percent of your future contributions in the Retirement Strategy Fund that assumes you will retire at age sixty-five if any of the following occurs during the enrollment process.

(a) An investment option is not selected.

(b) The total percentage does not equal one hundred percent when multiple investment options are selected.

(3) In general, you may change the investment of your accumulated deferrals, the investment of your future deferrals, or both, through the methods established by the department. However, if necessary to protect the performance results of the DCP program, the department has the right to:

(a) Limit the number of times you change investment options;

(b) Limit the frequency of the changes;

(c) Limit the manner of making changes; or

(d) Impose other restrictions.

In addition, changes must be consistent with any restrictions on trading imposed by the investment options involved.

~~((3)))~~ (4) Beneficiaries over age eighteen and former spouses may change the investment options through the methods established by the department once a separate account has been established for them. The guardian of a minor beneficiary may change the investment options on the minor's account if authorized by the order of guardianship.

WSR 16-09-053

PROPOSED RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed April 15, 2016, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-05-080.

Title of Rule and Other Identifying Information: New section WAC 415-02-115 How is separation determined for retirement eligibility?

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Wednesday, May 25, 2016, at 10:00 a.m.

Date of Intended Adoption: May 25, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by May 24, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by May 23, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will clarify how the department determines whether a member has separated from service or employment, as required by state laws and Internal Revenue Service interpretations.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Jilene Siegel, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; and Implementation: Seth Miller, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

April 15, 2016

Jilene Siegel

Rules Coordinator

NEW SECTION**WAC 415-02-115 How is separation determined for retirement eligibility? (1) Have I separated from service?**

All retirement plans administered by the department of retirement systems require a separation from service before you are eligible to begin receiving retirement benefits. This is consistent with Internal Revenue Service (IRS) requirements for distributions from qualified retirement plans. In accordance with the IRS interpretation, you have separated from service only when you have ended the employment relationship without any reasonable expectation between you and your employer that you will return to work for the same employer in any capacity (including in an eligible or ineligible position or as an independent contractor).

(2) How will the department determine if separation from service occurred? The department will examine the facts and circumstances on a case-by-case basis to determine whether separation occurred. No single factor is determinative. Factors to be considered may include, without limitation, the following:

(a) Was there a prior agreement between you and your employer that you would return to work for that employer? If there was an understanding between you and your employer that you would perform services for that employer at a later date, you have not separated from service. Such understanding may be written or unwritten; it may be contractual or non-contractual in nature.

(b) How long was your absence? If your absence from work was less than thirty days, the department will presume that separation did not occur unless the employer provides enough information to disprove the presumption. An absence from work longer than thirty days is not sufficient proof that separation did occur if other factors indicate that an agreement existed for you to return to work for the same employer.

(c) Did your employer conduct a competitive hiring process to fill your vacated position?

(d) Were your actions and your employer's actions consistent with the expectation that your absence from work was total and permanent? For example: Was access to the employer's facilities, computer systems, and your personal e-mail and voice mail accounts terminated? Were your leave accruals cashed out? Did you remove all of your personal belongings from the employer's premises?

(3) If I terminate from my position with an understanding that I will return to service with the same employer in an ineligible position or as an independent contractor, will I have separated from service? No. If, at the time of your termination, there was an understanding between you and your employer that you would return to work for that employer in any capacity, including in an ineligible position or as an independent contractor, you have not separated from service and are not eligible to retire.

(4) What happens if I begin to receive retirement benefits and then it is determined that separation from service did not occur? If you begin to receive retirement benefits without a valid separation from service, you have received a benefit overpayment that must be repaid to the department pursuant to RCW 41.50.130 and/or 41.50.139.

(5) May I contest the department's decision? If the department determines, based on a review of the circum-

stances, that you did not separate from service, you may petition for review under chapter 415-04 WAC.

(6) Examples:

(a) **Example 1.** Mary has met the age and service requirements for retirement eligibility. Aaron is hired to fill the position she will be leaving. Mary submits her retirement application and leaves her job. Shortly thereafter, Aaron resigns and leaves abruptly, causing a vacancy at a critical time. After a separation of only three weeks, Mary returns to perform the work until the position can be filled again. Has a separation occurred?

Yes, if there are no other facts to the contrary, Mary separated from service and is eligible to retire. At the time of her termination, neither Mary nor her employer expected that she would return to employment. However, if Mary returns to work before thirty days have passed, this may cause her monthly retirement benefit to be reduced based on the requirements of her plan.

(b) **Example 2.** Robert is leaving his position as a police officer. Before leaving, he agrees to return to work for the same employer in a capacity that is not eligible for membership in the law enforcement officers' and firefighters' retirement system (LEOFF). He will begin his new position following a six week absence. Has a separation occurred?

No, Robert did not separate from service because there was an agreement that he would return to work for the same employer. Without a valid separation from service, Robert is not eligible to begin receiving LEOFF retirement benefits.

(7) Is there a difference between "separation from service" and "separation from employment"? Some of the retirement plans require "separation from service" in order to receive a monthly benefit. Others require "separation from employment." The department interprets these two statutory terms identically for purposes of eligibility for retirement. In this rule the term "separation from service" refers both to:

(a) The requirements for "separation from service" in RCW 41.40.193, 41.32.480, 41.26.090, and 41.26.490; and

(b) The requirements for "separation from employment" in RCW 41.40.680, 41.40.801; 41.32.795, 41.32.855; 41.35.-450, 41.35.640; and 41.37.240.

WSR 16-09-054**PROPOSED RULES****DEPARTMENT OF****RETIREMENT SYSTEMS**

[Filed April 15, 2016, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-05-082.

Title of Rule and Other Identifying Information: Amending WAC 415-04-040 What will the department do after receiving my petition?; and repealing WAC 415-04-010 Definitions.

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Wednesday, May 25, 2016, at 10:00 a.m.

Date of Intended Adoption: May 25, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by May 24, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by May 23, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment clarifies how the department processes stakeholders' petitions for review of administrative decisions.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Ceil Buddeke, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7307; and Implementation: Jacob White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

April 15, 2016
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-09-042, filed 4/14/04, effective 5/15/04)

WAC 415-04-040 What will the department do after receiving my petition? ~~((1) A petition examiner will review your petition.~~

~~(2) Within fourteen days from the date that you file a petition with the department, the petition examiner will determine whether you have a sufficient stake in the outcome of the proceeding to have the department consider the issues in your petition.~~

~~(a) If the petition examiner determines that you **do not** have a sufficient stake in the outcome, the petition examiner:~~

~~(i) May refer the matter back to the plan administrator for further investigation.~~

~~(ii) Will notify you of this decision within fourteen days of the date you file the petition. You may appeal this decision to the presiding officer under WAC 415-04-050.~~

~~(b) If the petition examiner determines that you **do** have a sufficient stake in the outcome, the petition examiner:~~

~~(i) Will notify interested parties, such as the member, current or former employer(s), designated beneficiaries, former spouse or the department, that you filed a petition;~~

~~(ii) Will request that the interested parties submit any written response to the petition no later than twenty days from the date of receipt of the notice;~~

~~(iii) May extend the time limit for response if the interested party shows a good reason to need more time.~~

~~(3) The petition examiner may request additional information at any time.~~

~~(4) The petition examiner will forward a copy of an interested party's response to you.~~

~~(a) You will have ten days to reply.~~

~~(b) The petition examiner may extend your time to respond if you demonstrate that you need more time for good reason.~~

~~(c) If an extension is not granted and you do not reply within ten days, you waive the right to reply.~~

~~(5) The petition examiner will issue a written decision within sixty days of:~~

~~(a) The end of your final period to reply under subsection (4) of this section; or~~

~~(b) Receipt of additional information from the department or the office of the attorney general necessary to make a decision.~~

~~(6) In the written decision, the petition examiner will state facts and sources of law used to make the decision. The petition examiner will send a copy to you and to the other parties.~~

~~(7) The petition examiner may refer the petition back to the plan administrator for an administrative determination without issuing a petition decision if:~~

~~(a) The petition adds new issues or facts that have not been addressed in the plan administrator's final determination; or~~

~~(b) The plan administrator did not have access to a petition decision or final order of the department that would have changed the outcome of the administrative determination.)~~
The department's petition examiner will:

(1) Acknowledge receipt of your petition;

(2) Notify persons or entities potentially impacted by the outcome of the process, such as the member, current or former employer(s), designated beneficiaries, or former spouse, that you filed a petition;

(3) If deemed necessary or useful, request additional information at any time;

(4) Issue a written decision within ninety days of the date the department received your petition, unless that deadline is extended for good cause; and

(5) If deemed necessary or useful, and without issuing a petition decision, refer the petition back to the appropriate administrator for a new determination if:

(a) The petition adds new issues or facts that have not been addressed in the plan administrator's final determination; or

(b) The administrator did not have access to information that may have changed the outcome of the administrative determination.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-04-010 Definitions.

WSR 16-09-055
PROPOSED RULES
WASHINGTON STATE
SCHOOL FOR THE BLIND

[Filed April 15, 2016, 2:05 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: Chapter 72-276 WAC, Public records.

Hearing Location(s): Washington State School for the Blind (WSSB), 2214 East 13th Street, Vancouver, WA 98661, on June 1, 2016, at 1:00 p.m.

Date of Intended Adoption: June 1, 2016.

Submit Written Comments to: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, e-mail dean.stenehjem@wssb.wa.gov, fax (360) 737-2120, by May 25, 2016.

Assistance for Persons with Disabilities: Contact Janet Kurz by May 25, 2016, (360) 947-3302 or (360) 696-6321.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rules adopt best practices in the attorney general's model rules to clarify and streamline procedures for making and processing public records requests, to publish a list of potential other statute exemptions, to clarify procedures for reviewing denials of requests and to update statutory cites resulting from recodification of the Public Records Act in chapter 42.56 RCW.

Statutory Authority for Adoption: RCW 72.40.022.

Statute Being Implemented: RCW 42.56.100.

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

Name of Proponent: WSSB, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie Terada, 1220 Main Street, Suite 510, Vancouver, WA 98660, (360) 759-2100; Implementation and Enforcement: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, (360) 947-3301.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSSB is not subject to RCW 34.05.328 (5)(a)(i).

April 15, 2016
 Dean O. Stenehjem
 Superintendent

AMENDATORY SECTION (Amending WSR 90-16-009, filed 7/19/90, effective 8/19/90)

WAC 72-276-010 Purpose. The purpose of the rules in this chapter is to ~~((ensure that the school complies with the public records provisions of RCW 42.17.250 through 42.17.340))~~ establish the procedures Washington state school for the blind (school) will follow in order to provide full access to nonexempt public records. These rules provide information to persons requesting access to public records of the school and establish processes for both requestors and

school staff that are designed to best assist members of the public in obtaining access.

AMENDATORY SECTION (Amending WSR 90-16-009, filed 7/19/90, effective 8/19/90)

WAC 72-276-030 ~~((Description of central organization of Washington state school for the blind.))~~ Agency description—Public records officer—Public records. (1) Washington state school for the blind is a state agency and school established and organized under the authority of chapter 72.40 RCW ~~((for the purpose of implementing the educational goals established by the legislature in RCW 72.40.010)).~~ The administrative office of the school is located ~~((at))~~ at 2214 East 13th Street, Vancouver, Washington. ~~((The Vancouver campus comprises the central headquarters for all operations of the school.))~~

(2) The school operates under the supervision and control of the superintendent of the state school for the blind, appointed by the governor. The superintendent takes such actions and promulgates such rules, regulations, and policies in harmony with the rules and regulations established by the office of superintendent of public instruction and the United States Department of Education, as are necessary to the administration and operation of the school.

(3) A board of trustees serves as an advisory board to the superintendent and to the legislature. The board consists of a member from each of the states' congressional districts and ex officio members representing specific interests and constituents of the school. The responsibilities and functions of the board are provided in chapter 72.41 RCW.

(4) The on-campus school is ~~((comprised of three components. The education component is under the direction of the school principal. The residential life component is under the supervision of the director of residential life. The support services component is provided by consolidated services under an interagency agreement between the Washington state school for the blind and the Washington state school for the deaf. Medical services and outreach programs are under the direction of the superintendent. A detailed description of the administrative organization of the school))~~ under the direction of the director of education/on-campus programs. Additional departments include outreach, instructional resource/braille production center, early intervention and outreach. An organizational chart is available at the administrative office of the school.

AMENDATORY SECTION (Amending WSR 90-16-009, filed 7/19/90, effective 8/19/90)

WAC 72-276-050 Public records available. ~~((All public records of the school, as defined in this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310.))~~ (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the school, Monday through Friday, 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., excluding legal holidays and holidays established by the school calendar. Records must be inspected at the offices of the school.

(2) **Records index.** An index of public records is available for use by members of the public consisting of the records retention schedule according to record series title, manuals and policy statements by one or more of the following classifications: Administration, statewide (outreach) services, academic and residential life.

(3) **Organization of records.** The school will maintain its records in a reasonably organized manner. The school will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from school offices without the permission of the public records officer or designee.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the school should make the request in writing on the school's public records request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records;
- The date and time of day of the request; and
- A verification that the records requested shall not be used for commercial purposes.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 72-276-090, standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer or online at the school's web site.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 72-276-055 Processing of public records requests. (1) **Order of processing public records requests.** The public records officer or designee will process requests in the order that allows the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided

by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **If no response is received.** If the school does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the school received the request.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for the affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the school believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the school shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the school to copy.

(b) The requestor must claim or review the assembled records within thirty days of the school's notification to him or her that the records are available for inspection or copying. The school will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the school to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the school may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the school and is generally commercially available, or in a format that is reasonably translatable from the format in which the school keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the school has completed a diligent search for the requested records and made any located nonexempt records available for inspection. Then the public records officer will close the request.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the school has closed the request.

(12) **Later discovered documents.** If, after the school has informed the requestor that it has provided all available records, the school becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 90-16-009, filed 7/19/90, effective 8/19/90)

WAC 72-276-090 ((Copying)) Costs of providing copies of public records. ~~((No fee shall be charged for the inspection of public records. The school may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse the school for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record had tendered payment for such copying to the appropriate school official. All charges must be paid by money order, cashier's check, or cash in advance.))~~ (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for twenty-five cents per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The school will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be five dollars for information on a CD-ROM. The cost of scanning existing school paper or

other nonelectronic records is ten cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) **Costs of mailing.** The school may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the Washington state school for the blind.

AMENDATORY SECTION (Amending WSR 90-16-009, filed 7/19/90, effective 8/19/90)

WAC 72-276-100 ((Determination regarding exempt records)) Exemptions. ~~((1) The school reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 72-276-080 is exempt pursuant to the provisions set forth in RCW 42.17.310 and 42.17.315. Such determination may be made in consultation with the public records officer, the school superintendent, or an assistant attorney general assigned to the school.~~

~~((2) Pursuant to RCW 42.17.260, the school reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy; provided, however, in each case, the justification for deletion shall be explained fully in writing.~~

~~((3) Response to requests for a public record must be made promptly. For the purposes of this section, a prompt response occurs if the person requesting the public record is notified within two business days as to whether his request for a public record will be honored.~~

~~((4) All denials of request for public records must be accompanied by a written statement, signed by the public records officer or his/her designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.))~~ (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the school for inspection and copying:

(a) The Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g;

(b) RCW 5.60.060(2), records subject to the attorney-client privilege; and

(c) RCW 42.56.290, attorney work-product involving a controversy.

(2) The school is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 90-16-009, filed 7/19/90, effective 8/19/90)

WAC 72-276-110 Review of denials of public records requests. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a request for a public record may petition in writing (including e-mail) to the public records officer for

prompt review of ~~((such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.~~

~~(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the superintendent, or his or her designee.~~

~~(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying public record, the superintendent, or his or her designee, shall complete such review.~~

~~(4) During the course of the review, the superintendent or his or her designee, shall consider the obligations of the school fully to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW 42.17.310 through 42.17.315, and the provisions of the statute which require the school to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details)) that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.~~

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the public records officer's supervisor for review. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the school's receipt of the petition, or within such other time as mutually agreed upon by the school and the requestor.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the school denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 72-276-020	Definitions.
WAC 72-276-040	Operations and procedures.
WAC 72-276-060	Public records officer.
WAC 72-276-070	Office hours.
WAC 72-276-080	Requests for public records.
WAC 72-276-120	Protection of public records.
WAC 72-276-130	Records index.
WAC 72-276-140	Adoption of form.

WSR 16-09-056
PROPOSED RULES
WASHINGTON STATE
SCHOOL FOR THE BLIND

[Filed April 15, 2016, 2:06 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: Chapter 72-280 WAC, Family Educational Rights and Privacy Act.

Hearing Location(s): Washington State School for the Blind (WSSB), 2214 East 13th Street, Vancouver, WA 98661, on June 1, 2016, at 1:00 p.m.

Date of Intended Adoption: June 1, 2016.

Submit Written Comments to: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, e-mail dean.stenehjem@wssb.wa.gov, fax (360) 737-2120, by May 25, 2016.

Assistance for Persons with Disabilities: Contact Janet Kurz by May 25, 2016, (360) 947-3302 or (360) 696-6321.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes update provisions for consistency with the revision in the federal and state regulations implementing the Family Educational Rights Privacy Act and Individuals with Disabilities Education Act.

Statutory Authority for Adoption: RCW 72.40.022.

Statute Being Implemented: RCW 72.40.022.

Rule is necessary because of federal law, 34 C.F.R. Parts 99 and 300.

Name of Proponent: WSSB, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie Terada, 1220 Main Street, Suite 510, Vancouver, WA 98660, (360) 759-2100; Implementation and Enforcement: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, (360) 947-3301.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSSB is not subject to RCW 34.05.328 (5)(a)(i).

April 15, 2016

Dean O. Stenehjem
Superintendent

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-010 Confidentiality of student records. The Washington state school for the blind implements policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act ((of 1974)), 20 U.S.C. Sec. 1232(g)((, and the Education of the Handicapped Act, 20 U.S.C. Sees. 1400 through 1420, this policy has been created:
~~(1) To ensure that information contained in student education records is treated in a responsible manner with due regard for the personal nature of such information;~~

(2) To ensure the accuracy of information contained in student education records by providing parents (or eligible students) with the opportunity to inspect the records; and

(3) To ensure the continued confidentiality of such records by establishing procedures governing the release of information contained therein;); 34 C.F.R. Part 99 (FERPA).

This law establishes that the education records of students attending or having attended the state school for the blind (school) are confidential and can be released only with written permission of the parent (or adult student). The primary rights of parents and adult students under FERPA are:

(1) To inspect and review education records;

(2) To request amendment of education records; and

(3) To have some control over the disclosure of information from education records.

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-011 Definitions. As used in this chapter:

(1) "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, ~~((address, telephone listing,))~~ date ~~((and place))~~ of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, ~~((degrees))~~ diplomas, honors, and awards received, and the most recent ((previous educational agency or institution)) school or program attended.

(2) "Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(3) "Education records" means ~~((those records, files, documents, and other materials that are:~~

(a) Maintained by the school; and

(b) Directly related to a student.

The term "education records" does not include:

(i) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(ii) Records of the school security department that are kept apart from education records, maintained solely for law enforcement purposes, and are not available to persons other than law enforcement officials of the same jurisdiction;

(iii) In the case of persons who are employed by but do not attend the school, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose. Provided, That this exception from the definition of "education records" does not apply to records relating to an individual in attendance at the school who is employed as a result of his or her status as a student;

(iv) Records on a student who is eighteen years of age or older that are created and maintained by a physician, psychi-

atrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity and that are created, maintained, or used only in connection with the treatment of the student; and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice;

(v) Records that contain only information relating to an individual after he or she is no longer a student at the school)) the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (regulations implementing FERPA).

(4) "Eligible student" means a student who has reached eighteen years of age. When a student becomes an "eligible student," the rights accorded to, and the consent required of, parents under this chapter, transfer from the parents to the student.

(5) "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(6) "Party" means an individual, agency, institution, or organization.

(7) "Personally identifiable information" includes, but is not limited to, the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier, such as the student's Social Security number or student number or biometric records; a list of personal characteristics or other information that would make ((the student's identity easily traceable; or other information that would make the student's identity easily traceable)) it possible to identify the student with reasonable certainty.

(8) "Student" means any individual who is or has been in attendance at the school and regarding whom the school maintains education records.

(9) "Legitimate educational interest" exists if the school official needs to have access to the record in order to fulfill the official's professional responsibility, perform appropriate tasks that are specified in his or her position description or contract agreement, perform a function related to a student's education or discipline, perform a service or benefit relating to the student or student's family, such as health education, counseling, advising, or student employment, or maintain safety and security.

(10) "School official" includes a person employed by the school as a teacher, administrator, supervisor, counselor, support or clerical staff, human resources staff, information systems specialist, school security personnel, a person appointed to the board of trustees, a person with whom the school has contracted to perform a service to or on behalf of the school (such as an attorney, hearing officer, auditor, medical consultant, or therapist), a parent or student serving on an official committee or assisting another school official in performing his or her tasks, or other party to whom the school has outsourced institutional services or functions.

(11) "Participating agency" means any school district, agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained in implementing chapters 392-172A and 72-171

WAC (rules for the provision of special education), and includes the OSPI, school districts and other public agencies.

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-015 Notice. The school (~~(shall)~~) provides parents (~~(of student(s))~~) or eligible students (~~(s)~~) currently in attendance with annual notice of their rights under (~~this chapter. The notice shall inform parents (or eligible students) of their right to:~~

- ~~(1) Inspect and review the student's education records;~~
- ~~(2) Request amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;~~
- ~~(3) Consent to disclosure of personally identifiable information contained in the student's education records;~~
- ~~(4) Obtain a copy of the school's policy on access to and disclosure of education records; and~~

~~(5) File with the United States Department of Education a complaint concerning alleged failures to comply with the requirements of the Family Educational Rights and Privacy Act) FERPA by publication in the parent/student handbook and through these rules.~~

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-020 ((~~Education records—Parents' (or eligible students') right to inspect.~~)) Access rights. (1) ~~((A parent, eligible student, or representative of the parent has the right to inspect and review the education records of the student.))~~ The school shall permit parents of students eligible for special education to inspect and review, during school business hours, any education records relating to the student which are collected, maintained, or used by the school under chapters 392-172A and 72-171 WAC. A request by a parent (or eligible student) to inspect and review education records should be made in writing to the director of education. The director of education or designee shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) Where the education record (~~(or data)~~) includes information on more than one student, the parent(s) of those students (or the eligible students) shall have the right to inspect and review only the information relating to their child (or themselves) or to be informed of that specific information.

(3) ~~((The parent (or eligible student) has the right to obtain copies of the student's education records. Charges for the copies shall not exceed the cost normally charged by the school. However, if the fee effectively prevents the parent (or eligible student) from exercising the right to inspect and review the student's education records, the school may provide such copies free of charge.))~~ The right to inspect and review education records under this section includes:

(a) The right to a response from the school to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent or eligible student from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or eligible student inspect and review records.

(4) The school may presume that a parent has authority to inspect and review records relating to his/her child unless the school has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and dissolution.

(5) A list of the types and locations of education records collected, maintained, or used by the school may be obtained by the parent (or eligible student) at the director of education's office.

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-030 ((~~Education records—~~)) Amendment of records—Hearing on request to amend records.

(1)(a) A parent (or eligible student) who believes that information contained in the education record is inaccurate, misleading, or violates the privacy or other rights of the student, may request the school to amend the information.

(b) ~~((The right to challenge, under this chapter, shall not be used to contest grades which are correctly recorded.))~~ A parent (or eligible student) shall not be permitted under this chapter to challenge the validity of grades or other evaluations which are accurately recorded.

(2) The school shall decide whether to amend the record as requested within a reasonable time after receipt of the request.

(3) If the school decides not to amend the record as requested, it shall inform the parent (or eligible student) of the decision and of the right to a ~~((brief adjudicative proceeding under WAC 72-108-100))~~ hearing.

(4) The school ~~((shall, on request, provide an opportunity for a brief adjudicative proceeding to challenge information in the education record on the grounds provided for in subsection (1) of this section.))~~ will conduct a hearing within a reasonable time after it has received the request for a hearing.

(a) Notice of the date, time and place shall be provided reasonably in advance of the hearing.

(b) The hearing may be conducted by any party, including an official of the school, who does not have a direct interest in the outcome of the hearing. The parent (or eligible student) shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend an education record. The parent (or eligible student) may, at their own expense, be assisted or represented at the hearing by one or more individuals, including an attorney.

(c) The school will provide a written decision within a reasonable period of time after the conclusion of the hearing. The decision shall be based solely upon the evidence presented at the hearing and include a summary of the evidence presented and the reasons for the decision.

(5) ((For the purpose of this chapter:

(a) ~~The decision of the brief adjudicative proceeding must be based solely on the evidence presented at the brief adjudicative proceeding and must include a summary of the evidence and the reasons for the decision.~~

(b) ~~The parent (or eligible student) may, at their own expense, be assisted or represented by one or more individuals of his or her choice, including an attorney. Where the parent (or eligible student) is represented by an attorney, the school may be represented by an assistant attorney general.~~

~~(6)) If, as a result of the ((brief adjudicative proceeding)) hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent (or eligible student) in writing.~~

~~((7)) (6) If, as a result of the ((brief adjudicative proceeding)) hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent (or eligible student) of the right to place in the records it maintains on the student a statement commenting on the challenged information or setting forth any reasons for disagreeing with the decision of the school((-or both)).~~

~~((8)) (7) Any explanation placed in the records of the student under this section must:~~

(a) Be maintained by the school as part of the records of the student as long as the record or contested portion is maintained by the school; and

(b) Be included with any disclosure of the record or contested portion to which the explanation relates.

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-040 ((Disclosure of personally identifiable information from education records.)) Consent for release of records. ~~((1) The school shall not permit access to or the release of education records or personally identifiable information contained there (other than "directory information") without the written consent of the parent (or eligible student) to any party other than the following:~~

(a) ~~School officials, including teachers, when the information is required for a legitimate educational interest within the performance of their responsibilities to the school, with the understanding that its use will be strictly limited to the performance of those responsibilities;~~

(b) ~~Officials of another school, school system, or institution of postsecondary education who have requested the records and in which the student seeks or intends to enroll, upon condition that:~~

(i) ~~The parent (or eligible student) be notified of the transfer (unless the disclosure is initiated by the parent or eligible student);~~

(ii) ~~The parent (or eligible student), upon request, receive a copy of the record that was disclosed; and~~

(iii) ~~The parent (or eligible student), upon request, receive an opportunity for a brief adjudicative proceeding to challenge the content of the record;~~

~~(e) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federal or state-supported education program, or in connection with the enforcement of or compliance with federal or state legal requirements which relate to such programs. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parents to other than those officials and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of legal requirements;~~

~~(d) Organizations conducting studies for, or on behalf of the school, for purposes of developing, validating or administering predictive tests, administering student aid programs, and improving instruction: Provided, That the study is conducted in such a manner that does not permit the personal identification of parents and students by persons other than representatives of such organizations, and such information is destroyed when no longer needed for the purposes for which it was provided;~~

~~(e) Accrediting organizations in order to carry out their accrediting functions;~~

~~(f) Any person or entity designated by judicial order or lawfully issued subpoena: Provided, That the school makes a reasonable effort to notify the parent (or eligible student) of the order or subpoena in advance of compliance. Any school employee receiving a subpoena or judicial order for education records should immediately notify the attorney general;~~

~~(g) Those individuals or agencies to which a release of information without consent is permitted by the rules that implement the Family Educational Rights and Privacy Act of 1974, 34 C.F.R. Secs. 99.31 through 99.37.~~

~~(2) Where the consent of a parent (or eligible student) is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:~~

(a) ~~A specification of the records to be released;~~

(b) ~~The reasons for such release; and~~

(c) ~~The names of the parties to whom such records will be released.~~

~~(3) When a disclosure is made under subsection (2) of this section, if a parent (or eligible student) so requests, the school shall provide him or her with a copy of the records disclosed.~~

~~(4) Personally identifiable education records released to third parties, with or without parent (or eligible student) consent, shall be accompanied by a written statement indicating that the information cannot be subsequently released in a personally identifiable form to any other party without the prior consent of the parent (or eligible student).~~

~~(5) Unless otherwise prohibited by law, information from education records may be released to appropriate persons in connection with an emergency if knowledge of such information is necessary to protect the health or safety of a student or other person(s:)) (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2) of this section, unless the information is contained in education records, and the disclo-~~

sure is authorized without parental consent under 34 C.F.R. Part 99.

(2) Except as provided in this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(3) Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

(4) If a parent (or eligible student) so requests, the school shall provide him or her with a copy of the records disclosed.

(5) "Directory information" may be disclosed without the parent's (or eligible student's) prior written consent, unless the parent (or eligible student) notifies the school in writing within ten days of enrollment and thereafter by the tenth day of the academic year that he or she does not want any or all of the student's information to be designated as directory information.

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-050 Safeguards. (1) The school shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(2) ~~((A school official shall insure))~~ The director of education is responsible for assuring the confidentiality of any personally identifiable information.

(3) The school shall maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to personally identifiable information.

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-055 Record of access. ~~((+))~~ The school shall maintain a record of ~~((each request for access to and each disclosure of personally identifiable information from the education records of each student.~~

~~(2) The school shall maintain the record with the education records of the student as long as the records are maintained.~~

~~(3) For each request or disclosure the record must include:~~

~~(a) The name of the party;~~

~~(b) The date access was given; and~~

~~(c) The legitimate interest or purpose for which the party is authorized to use the records.~~

~~(4) If the party receiving personally identifiable information makes further disclosures of the information on behalf of the school, the record must include:~~

~~(a) The names of additional parties to which the receiving party may disclose the information; and~~

~~(b) The legitimate interests under WAC 72-280-040 which each of the additional parties has in requesting or obtaining the information.~~

~~(5) Subsection (1) of this section does not apply if the request was from, or the disclosure was to:~~

~~(a) The parent or eligible student;~~

~~(b) A school official under WAC 72-280-040 (1)(a);~~

~~(c) A party with written consent from the parent or eligible student; or~~

~~(d) A party seeking directory information)) parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.~~

AMENDATORY SECTION (Amending WSR 90-16-010, filed 7/19/90, effective 8/19/90)

WAC 72-280-060 Destruction of information. (1) Student education records may be destroyed in accordance with state laws and regulations: Provided, That the school shall not destroy any education records if there is an outstanding request to inspect and review the records under this chapter.

(2)(a) The school shall inform parents (or eligible students) when personally identifiable information is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law.

(b) At the request of a parent (or eligible student), the school shall destroy personally identifiable information. However, the school may maintain a permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year of completion without time limitation.

(3) For the purpose of this section, "destruction" means physical destruction or removal of personal identifiers.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 72-280-025 Education records—Access procedures.

WAC 72-280-070 Directory information.

WSR 16-09-057

PROPOSED RULES

WASHINGTON STATE SCHOOL FOR THE BLIND

[Filed April 15, 2016, 2:07 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: Chapter 72-120 WAC, Student conduct code.

Hearing Location(s): Washington State School for the Blind (WSSB), 2214 East 13th Street, Vancouver, WA 98661, on June 1, 2016, at 1:00 p.m.

Date of Intended Adoption: June 1, 2016.

Submit Written Comments to: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, e-mail dean.stenehjem@wssb.wa.gov, fax (360) 737-2120, by May 25, 2016.

Assistance for Persons with Disabilities: Contact Janet Kurz by May 25, 2016, (360) 947-3302 or (360) 696-6321.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to update, clarify and streamline student conduct code standards and procedures, as well as to incorporate federal and state requirements regarding harassment, intimidation, bullying, discrimination and sexual harassment, as well as Title IX/OCR guidance. Prohibited student conduct will be more clearly defined and expanded to cover additional undesirable behaviors.

Statutory Authority for Adoption: RCW 72.40.022.

Statute Being Implemented: RCW 72.40.022, 28A.300.-285.

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

Name of Proponent: WSSB, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie Terada, 1220 Main Street, Suite 510, Vancouver, WA 98660, (360) 759-2100; Implementation and Enforcement: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, (360) 947-3301.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSSB is not subject to RCW 34.05.328 (5)(a)(i).

April 15, 2016

Dean O. Stenehjem
Superintendent

NEW SECTION

WAC 72-120-001 Purpose and application. The purpose of this chapter is to establish standards of conduct for students and prescribe the substantive and procedural due process rights of students at the school. The procedures and standards set forth in this chapter shall govern the imposition of discipline. "Discipline" means all forms of corrective action other than emergency removal from a class, subject, or activity, suspension, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided that the student is in the custody of a school district employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or on behalf of the school. Discipline is considered part of the school's educational process. In every case of misconduct, the nature and circumstances of the violation will be considered and appropriate discipline will be administered on a less restrictive alternative basis including, but not limited to, time out, detention, behavior contracts, restriction of privileges, reprimand, restitution, suspension or expulsion.

AMENDATORY SECTION (Amending WSR 90-16-005, filed 7/19/90, effective 8/19/90)

WAC 72-120-010 Student responsibilities and duties.

The mission of the Washington state school for the blind is to provide specialized educational services to blind, visually impaired and deaf-blind students which will assist those students to develop skills, competencies and attitudes that are fundamental to the development of responsible, contributing citizens. Admission to the Washington state school for the blind carries with it the obligation of responsibility for the welfare of the school. In order to advance the mission of the school, it shall be the responsibility and duty of each student to pursue his/her course of studies, respect the rights of others, comply with written rules adopted herein, and submit to reasonable ((~~disciplinary~~)) corrective action for violation(s) of such rules. This chapter is intended to assure that ((~~disciplinary~~)) corrective action is imposed for just cause and in a fair and reasonable manner.

NEW SECTION

WAC 72-120-012 Jurisdiction. The student conduct code shall apply to student conduct that occurs on school premises, during transportation to and from school, to conduct that occurs at or in connection with school-sponsored programs or activities, or to off-campus conduct (or in non-school electronic environments) that in the judgment of the school threatens safety or security or otherwise adversely impacts the school community.

AMENDATORY SECTION (Amending WSR 90-16-005, filed 7/19/90, effective 8/19/90)

WAC 72-120-015 Student rights. (1) Each student ((~~is guaranteed~~)) shall possess the following substantive rights((~~within the limitations of statutory law and school policy which are deemed necessary to achieve the school's educational goals~~)):

(a) ((~~Students possess the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and sexual harassment.~~)) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal.

(b) Students possess the ((~~rights, guaranteed under the Constitution, to freedom of expression, free inquiry, and peaceable assembly upon and within school facilities that are generally open and available to the public~~)) constitutional right to freedom of speech and press, and the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances.

(c) Students possess the rights, guaranteed under the Constitution, to the free exercise of religion and to have their school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(d) Students possess the constitutional right to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures, subject to limitations set forth in RCW 28A.67.300, 28A.67.310, 28A.67.320, and 28A.67-330.

(e) Students shall have the right to be free from unlawful interference in their pursuit of an education while enrolled at the Washington state school for the blind.

(f) Students shall not be deprived of the right to an equal educational opportunity in whole or in part by the Washington state school for the blind without due process including:

(i) Notice to the accused of the nature of the charges and the proposed disciplinary action; and

(ii) The opportunity to request a hearing as set forth in this chapter.

(2) The foregoing enumeration of rights shall not be construed to deny or disparage other rights guaranteed in the Constitution and the laws of the state of Washington.

(3) The school shall publish and make available to all students and parents, on an annual basis, written rules which state with reasonable clarity the types of misconduct for which disciplinary action may be imposed.

NEW SECTION

WAC 72-120-020 References to OSPI's rules. Where OSPI's rules are incorporated by reference: "School district" means "Washington state school for the blind"; "school district superintendent" means "superintendent of the Washington state school for the blind." These substitutions should be made as appropriate. They should not be made where the "school district" referred to is the student's district of residence.

NEW SECTION

WAC 72-120-110 Prohibited student conduct. The school may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means.

(1) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is fright-

ened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(2) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of school property or the property of another person; including possession of such property or money after it has been stolen. Property for purposes of this subsection includes computer passwords, access codes, identification cards, other confidential personal information, and intellectual property.

(3) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment 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 school's educational programs/activities or that creates an intimidating, hostile, or offensive educational environment.

Sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, sexual coercion, sexual exploitation, or gender- or sex-based stalking. A person may be incapable of giving consent because she or he is underage, unable to understand what is happening, or is disoriented, helpless, asleep or unconscious for any reason, including due to drug or alcohol consumption, is disabled, or cannot consent because of threat or intimidation.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, administrative, or other functions, procedures, services, programs, or activities of the school. The term includes disorderly conduct, breach of the peace, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, or interfering with the orderly conduct of school investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Failure to comply.** Refusal or failure to comply with instructions or directions of school officials, refusing to comply with any term or condition of a disciplinary sanction.

(6) **Safety violations.** Any nonaccidental conduct that interferes with or otherwise compromises any school policy, equipment, or procedure relating to the safety and security of the center and school community, including tampering with or disabling safety equipment and triggering false alarms or other emergency response systems.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of school records, furnishing false or misleading information, or falsely accusing any person of misconduct.

(8) **Academic dishonesty.** All forms of cheating, plagiarism and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment. This includes assisting another to commit an act of academic dishonesty or allowing someone to do these things for one's benefit.

(b) **Plagiarism.** 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.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to a teacher concerning the completion of an assignment.

(9) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the school or the property of another person, including any computer system, e-mail account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

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

(a) **Alcohol.** Use, possession, delivery, or being visibly under the influence of any alcoholic beverages.

(b) **Marijuana.** Use, possession, delivery, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form.

(c) **Drug.** Use, possession, distribution, delivery, 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. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** Smoking or use of tobacco, tobacco products, electronic smoking devices, or other smoking devices.

(11) **Retaliation.** Harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other school policies, provided information about an

alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(12) **Weapons violations.** A "weapons violation" includes possessing, carrying, displaying, exhibiting, or storing any firearm or dangerous weapon. Dangerous weapons include, but are not limited to, firearms, dangerous chemicals, explosives, slung shots, sand clubs, metal knuckles, daggers, dirks, spring blade knives, nunchaku sticks, throwing stars, air guns, stun guns, and devices used or intended to be used as a weapon to injure a person by an electric shock, charge, or impulse.

(13) **Harassment, intimidation or bullying.** Harassment, intimidation or bullying means any intentional electronic, written, verbal or physical act including, but not limited to, one shown to be motivated by race, color, religion, ancestry, national origin, gender, sexual orientation including gender identity or expression, mental or physical disability, socio-economic status, physical appearance, or other distinguishing characteristic, when the act:

(a) Physically harms a student or damages the student's property;

(b) Has the effect of substantially interfering with a student's education;

(c) Is so severe, persistent or pervasive that it creates an intimidating or threatening educational environment; or

(d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

"Intentional act" refers to the individual's choice to engage in the act rather than the ultimate impact of the action(s).

Harassment, intimidation, and bullying are often carried out through acts of misconduct, which are addressed and prohibited under other rules in this chapter.

(14) **Gang activity.** Claiming membership in, association with, affiliation with, or participation in a gang, in gang-related activities or similar destructive or illegal group behavior at school, during school-related functions, or on any school property. "Gang" has the meaning given the term under RCW 28A.600.455.

(15) **Theft or misuse of electronic resources.** Theft or misuse of computer time or other electronic information resources of the school. 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 harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person;

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

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

(i) Failure to comply with the student computing resources policy.

(16) **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.

(17) **Violation of other laws or policies.** Violation of any federal, state, local law, rule, or regulation or other school rules or policies which are published annually in the student/parent handbook.

NEW SECTION

WAC 72-120-201 Discipline procedures. Disciplinary procedures for students at the school who are eligible for special education shall follow the requirements in WAC 392-172A-05140 through 392-172A-05175, which are adopted by reference. In addition to the rules and procedures in this chapter, students may also be subject to rules and procedures governing discipline for all students in public schools in chapter 392-400 WAC. The school shall determine on a case-by-case basis whether and to what extent the rules and procedures in chapter 392-400 WAC may apply.

AMENDATORY SECTION (Amending WSR 90-16-005, filed 7/19/90, effective 8/19/90)

WAC 72-120-205 Limitations. (1) No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement: Provided, That a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) Corporal punishment as defined by the ~~((board of education in WAC 180-40-235 and the unreasonable use of force on children described in RCW 9A.16.100))~~ superintendent of public instruction in WAC 392-400-235(2) as now or hereafter amended, is prohibited.

((DISCIPLINARY EXCLUSION))

NEW SECTION

WAC 72-120-315 Emergency actions. WAC 392-400-290 through 392-400-305, the rules for emergency removal

from a class, subject, or activity, or emergency expulsion are incorporated by reference.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 72-120-100	Conduct violations.
WAC 72-120-200	Policy.
WAC 72-120-210	Emergency removal from class or activity.
WAC 72-120-220	Short-term suspension.
WAC 72-120-225	Short-term suspension—Notice and conference—Grievance procedure.
WAC 72-120-230	Long-term suspension.
WAC 72-120-234	Long-term suspension—Misconduct not a manifestation of disability—Notice.
WAC 72-120-236	Long-term suspension—Misconduct not a manifestation of disability—Hearing.
WAC 72-120-300	Disciplinary exclusion—Definitions.
WAC 72-120-301	Change of placement for disciplinary removals.
WAC 72-120-302	Removals—Ten school days or less.
WAC 72-120-303	Required services.
WAC 72-120-304	Change of placement—Removals for weapons or drugs.
WAC 72-120-305	Functional behavioral assessment and intervention plan.
WAC 72-120-306	Dangerous behavior—Authority of hearing officer.
WAC 72-120-307	Determination of interim alternative educational setting.
WAC 72-120-308	Manifestation determination review requirements.
WAC 72-120-309	Procedures for conducting a manifestation determination.
WAC 72-120-310	Determination that behavior was not manifestation of disability.
WAC 72-120-311	Expedited due process hearings.
WAC 72-120-312	Placement during appeals.
WAC 72-120-313	Referral to and action by law enforcement and judicial authorities.
WAC 72-120-314	Aversive interventions.

WSR 16-09-058
PROPOSED RULES
WASHINGTON STATE
SCHOOL FOR THE BLIND

[Filed April 15, 2016, 2:12 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: Chapter 72-171 WAC, Special education programs.

Hearing Location(s): Washington State School for the Blind (WSSB), 2214 East 13th Street, Vancouver, WA 98661, on June 1, 2016, at 1:00 p.m.

Date of Intended Adoption: June 1, 2016.

Submit Written Comments to: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, e-mail dean.stenehjem@wssb.wa.gov, fax (360) 737-2120, by May 25, 2016.

Assistance for Persons with Disabilities: Contact Janet Kurz by May 25, 2016, (360) 947-3302 or (360) 696-6321.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rules update rules implementing the Individuals with Disabilities Education Act and for consistency with rules for the provision of special education promulgated by the office of the superintendent of public instruction, the state educational agency responsible for ensuring compliance by public agencies involved in education of students eligible for special education.

Statutory Authority for Adoption: RCW 72.40.022.

Statute Being Implemented: RCW 72.40.022, 28A.155.-010.

Rule is necessary because of federal law, 20 U.S.C. §§ 1400 et seq., 34 C.F.R. Part 300.

Name of Proponent: WSSB, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie Terada, 1220 Main Street, Suite 510, Vancouver, WA 98660, (360) 759-2100; Implementation and Enforcement: Dean Stenehjem, 2214 East 13th Street, Vancouver, WA 98661, (360) 947-3301.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSSB is not subject to RCW 34.05.328 (5)(a)(i).

April 15, 2016
 Dean O. Stenehjem
 Superintendent

AMENDATORY SECTION (Amending WSR 01-16-022, filed 7/20/01, effective 8/20/01)

WAC 72-171-001 Purposes. The purposes of this chapter are:

(1) To implement chapter 72.40 RCW in a manner that is compatible with chapters 28A.155 RCW and 392-172A WAC, and in compliance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C. Sec. 1400 et seq.;

(2) To meet the obligations of additional federal and state civil rights laws (e.g., 29 U.S.C. Sec. 794, 42 U.S.C. Sec. 12132, RCW 49.60.030) that apply to students who have a disability regardless of the student's eligibility for special education and related services;

(3) Unless the context clearly requires otherwise, the rules for the provision of special education, contained in chapter 392-172A WAC, are incorporated by reference: Provided, That the Washington state school for the blind (WSSB) may undertake the responsibilities of a local educational agency (LEA) in providing a free appropriate public education only to the extent authorized by chapter 72.40 RCW and inclusion as an LEA makes the school eligible for assistance under the Individuals with Disabilities Education Act;

(4) This chapter sets forth rules and procedures applicable to the provision of special education and related services for eligible students at the WSSB. It should be read in conjunction with chapter 392-172A WAC. In case of any conflict between specific rules and procedures adopted herein, and the rules and regulations in chapter 392-172A WAC, the specific rules and procedures shall control;

(5) Where the term "school district" is used in this chapter, it shall mean the LEA, local school district, or resident district, where a student would be enrolled and/or attending.

((DEFINITIONS OF GENERAL APPLICATION))

AMENDATORY SECTION (Amending WSR 01-16-022, filed 7/20/01, effective 8/20/01)

WAC 72-171-015 Definitions and eligibility criteria ((for visually handicapped)). The definition and eligibility criteria in WAC ((~~392-172-142~~)) 392-172A-01035 are adopted by reference.

((ASSESSMENT AND PLACEMENT))

AMENDATORY SECTION (Amending WSR 01-16-022, filed 7/20/01, effective 8/20/01)

WAC 72-171-120 Evaluation procedures. The evaluation or reevaluation of any student shall be ~~((performed using the procedures established in chapter 392-172 WAC))~~ in accordance with WAC 392-172A-03000 through 392-172A-03040 except as specifically provided otherwise in this chapter.

Evaluations may include assessments to identify students who present a moderate or high risk of sexually aggressive behavior or who may be vulnerable to victimization by such students, as required by RCW 72.40.270. Evaluations will be conducted by a group of qualified professionals selected by the Washington school for the blind who are knowledgeable about the student, the suspected area of disability, and in cases where assessment is required by RCW 72.40.270, sexual abuse and assault.

AMENDATORY SECTION (Amending WSR 01-16-022, filed 7/20/01, effective 8/20/01)

WAC 72-171-150 Admission and placement—Annual review. (1) Upon a referral for admission and placement from a parent, legal guardian, emancipated minor, adult student, or local educational agency (LEA), a Washington state school for the blind admissions team will assess the appropriateness of placement of a visually impaired student residing in the state of Washington as provided for under this chapter.

(2) Applications for placement shall be in writing and shall include the reason for referral. Reasons for referral to the state school for the blind may include, but are not limited to: Vision specific services not readily available in the local school district, need for more intensive vision specific services, adaptive aids and appliances, greater array of vision support services, social skill development, leisure time skill development, and organization skill development.

(3) The LEA will be notified if the referral is from a parent and the student's records will be requested. The following records must be received prior to review by the school's admissions team: Complete application materials, most recent IEP, most recent three-year summary assessment or evaluation, psychological records, transcripts (for high school students), all records subject to disclosure under RCW 28A.225.330, including, but not limited to: History of disciplinary actions, criminal or violent behavior, or other behavior that indicates the student could be a threat to the safety of educational staff or other students.

(4) The admissions team shall review the records and if the information is complete, determine whether to proceed with or terminate the application.

(5) Placement of a student at the state school for the blind shall be determined at ~~((a))~~ an IEP meeting conducted pursuant to WAC ~~((72-171-210))~~ 392-172A-03090 through 392-172A-03115, 72-171-150(9) and 72-171-200.

(6) The determination of the appropriate placement for a student shall be based upon:

(a) The student's individualized education program (IEP);

(b) The least restrictive environment requirements of WAC ~~((392-172-172))~~ 392-172A-02050 through 392-172A-02070; provided that the IEP team may conclude that a student will receive greater benefit from education in a specialized setting due to specific instructional and related service needs such that the least restrictive environment and appropriate placement for a student may be WSSB;

(c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals;

(d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs; and

(e) The status of the student as an adjudicated sex offender classified as risk Level II or III in the state of Washington or the equivalent under the laws of the state in which the student resides.

(7) The decision on the educational placement shall be made by a group of persons, including the parents, the LEA,

and other persons knowledgeable about the student, the evaluation data, and the placement options.

(8) Pursuant to RCW 72.40.040(4) and 72.40.050(2), admission and retention at the Washington state school for the blind may be denied for a student who is an adjudicated sex offender.

(9) The educational placement of each student shall be determined at least annually at a meeting conducted pursuant to WAC ~~((72-171-210))~~ 72-171-150(5).

~~((INDIVIDUALIZED EDUCATION PROGRAMS))~~

NEW SECTION

WAC 72-171-201 Individualized education program. WAC 392-172A-03090 through 392-172A-03115 are adopted by reference.

AMENDATORY SECTION (Amending WSR 01-16-022, filed 7/20/01, effective 8/20/01)

WAC 72-171-220 ~~((Participants))~~ School district involvement and participation IEP meetings. ~~((WAC 392-172-153 is adopted by reference.))~~ Involvement and participation of the LEA at meetings in which a decision is to be made relating to the educational placement of the student is considered essential for meaningful discussion to occur. A representative of the student's LEA will be invited to meetings involving an IEP, transition services, or placement and appropriate notice to the parent(s) and adult student will be provided. The LEA representative should be an individual who is knowledgeable about the availability of resources of the LEA, authorized to allocate resources, or develop collaborative requests for funding to establish programs to meet the extraordinary program needs. If the LEA representative is unable to attend the meeting, Washington state school for the blind staff shall keep the representative informed of the meeting and obtain information that will assist in the provision of services.

~~((ANNUAL REVIEW OR PLACEMENT AND STUDENT PROGRESS REASSESSMENT))~~

NEW SECTION

WAC 72-171-300 Child find. The purpose of child find is to locate, evaluate and identify children with suspected disabilities in need of special education services including those who are not currently receiving special education and related services and who may be eligible for those services. In conjunction with child find activities conducted by school districts pursuant to WAC 392-172A-02040 and the reports on blind/visually impaired or deaf-blind children provided by educational service districts pursuant to RCW 72.40.070, WSSB will provide an online survey on a yearly basis to all special education directors to identify children within their districts who are blind/visually impaired or deaf-blind; information to school districts regarding service delivery options in the state for students who are blind/visually impaired or deaf-blind a resource and referral guide listing programs and services available statewide; and a mechanism for school dis-

tricts to request training and/or consultation support for district personnel.

~~((PROCEDURAL SAFEGUARDS))~~

~~((DUE PROCESS PROCEDURES))~~

~~((MISCELLANEOUS PROGRAM REQUIREMENT))~~

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Washington State School for the Blind and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 72-171-010	Definitions.
WAC 72-171-016	Definition and eligibility criteria for deaf-blind.
WAC 72-171-110	General areas of evaluation.
WAC 72-171-131	Evaluation report and documentation of determination of eligibility.
WAC 72-171-140	Independent educational evaluation.
WAC 72-171-210	IEP meetings.
WAC 72-171-230	Parent participation and involvement.
WAC 72-171-240	Individualized education program.
WAC 72-171-242	Individualized education program—Implementation.
WAC 72-171-244	Individualized education program—Development, review, revision—Consideration of special factors.
WAC 72-171-410	Reevaluation.
WAC 72-171-500	When prior notice must be given.
WAC 72-171-510	Contents of prior written notice.
WAC 72-171-512	Parent consent.
WAC 72-171-514	Transfer of parental rights at age of majority.
WAC 72-171-550	Mediation.
WAC 72-171-601	Due process rights and procedures.
WAC 72-171-605	Request for hearing, notice by parent.
WAC 72-171-650	Surrogate parents.
WAC 72-171-710	Aversive interventions.

WSR 16-09-073

PROPOSED RULES

COLUMBIA BASIN COLLEGE

[Filed April 18, 2016, 2:07 p.m.]

Supplemental Notice to WSR 16-01-007.

Preproposal statement of inquiry was filed as WSR 15-15-091.

Title of Rule and Other Identifying Information: Chapters 132S-90 and 132S-300 WAC.

WAC 132S-90-020, added subsection (12) for student responsibilities - meet financial obligations to the college for outstanding tuition, fees, fines or other debts.

WAC 132S-90-070, added new section - outstanding financial obligations, withholding of services and informal appeal for students.

WAC 132S-300-105, corrected subsection (7) to state "powered."

WAC 132S-300-300, corrected to state "parking citations" rather than ["]traffic tickets.["]

WAC 132S-300-305, added students.

WAC 132S-300-345, corrected time for parking permits during the hours of 6:00 a.m. - 10:00 p.m.

WAC 132S-300-350, deleted night parking.

WAC 132S-300-400, deleted language regarding review of schedule of fines and revised appeal rights for parking citations that includes review by a parking citation committee.

Hearing Location(s): Columbia Basin College (CBC) Board Room, A Building, 2600 North 20th Avenue, Pasco, WA 99301, on May 24, 2016, at 5:00-6:00 p.m.

Date of Intended Adoption: May 25, 2016.

Submit Written Comments to: Camilla Glatt, 2600 North 20th Avenue, Pasco, WA 99301, e-mail cglatt@columbiabasin.edu, fax (509) 544-2029, by May 24, 2016.

Assistance for Persons with Disabilities: Contact Peggy Buchmiller by May 24, 2016, TTY (800) 833-6384 or pbuchmiller@columbiabasin.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The college made subsequent revisions to the proposed rules regarding campus parking and traffic regulations and is providing the public an opportunity to comment. Additionally, the proposed rules regarding financial obligations for students for outstanding debts is now proposed with revisions under the student rights, responsibilities and student status section, rather than under the rules under the vice-president for administrative services.

This supplemental notice extends the public comment time until close of business on May 24, 2016. The college is holding an additional public hearing on May 24, 2016, at 5:00 p.m. CBC will consider public comments.

Reasons Supporting Proposal: College internal processes.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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 rules are available online at <http://www.columbiabasin.edu/index.aspx?page=2105>.

Name of Proponent: [CBC], public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Camilla Glatt, CBC, Pasco Campus, 2600 North 20th Avenue, Pasco, WA 99301, (509) 542-5548.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules impose no costs or regulatory burden on small businesses as defined under RCW 19.85.040. The proposed rules are also exempt under RCW 19.85.025(3) and 34.05.310 (4)(g)(i). Revisions impact college-specific internal policies.

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

April 18, 2016
Camilla Glatt
Vice-President for
Human Resources
and Legal Affairs

Chapter 132S-90 WAC

STUDENT RIGHTS, RESPONSIBILITIES AND STUDENT STATUS

NEW SECTION

WAC 132S-90-010 Student rights. The following enumerated rights which are deemed necessary to achieve the educational goals of the college are guaranteed to each student within the limitations of statutory law and college policy:

Academic freedom.

(1) Students have the right to pursue educational objectives from among the college's curricula, programs, and services subject to the provisions of this chapter.

(2) Students have the right to a learning environment that is free from unlawful and/or discriminatory actions.

(3) Students have the right to present their own views, even though they may differ from those held by faculty members, and will not be subject to adverse action by faculty when such views are expressed in a manner that does not interfere with the rights of others.

(4) Students are protected from academic evaluations which are arbitrary, prejudiced, or capricious.

NEW SECTION

WAC 132S-90-020 Student responsibilities. Students who choose to attend Columbia Basin College also choose to participate actively in the learning process offered by the college. The college is responsible for providing its students with an educational environment that includes resources used by students to attain their educational goals. In return each student is responsible to:

(1) Participate actively in the learning process, both in and out of the classroom;

(2) Seek timely assistance in meeting educational goals;

(3) Attend all class sessions;

(4) Prepare adequately to participate fully in class activities;

(5) Meet the standards of academic performance established by each instructor;

(6) Develop skills required for learning; e.g., basic skills, time management, and study skills;

(7) Assume final authority for the selection of appropriate educational goals;

(8) Select courses appropriate for meeting chosen educational goals;

(9) Make appropriate use of services and resources;

(10) Contribute towards improving the college;

(11) Become knowledgeable of and adhere to the college's policies, practices, and procedures;

(12) Meet financial obligations to the college for outstanding tuition, fees, fines or other debts;

(13) Abide by the standards set forth in the student code of conduct.

NEW SECTION

WAC 132S-90-030 Admissions and registration procedures. Columbia Basin College maintains an open door admission policy and grants admission to applicants who are at least eighteen years of age and/or have graduated from high schools accredited by a regional accrediting association or have a GED certificate. Home school graduates and graduates from nonaccredited high schools are required to petition for admissions through the admissions/graduation committee. For further information regarding the petition process, contact the student records office.

Applicants who are less than sixteen years of age and/or do not meet CBC admission requirements must petition for admissions through the admissions/graduation committee. For further information regarding the petition process, contact the student records office.

Admission to CBC does not guarantee admission to all degree or certificate programs. Some programs have special applications and admission procedures and limited entry dates. Students should consult the individual program and/or department for admission requirements.

Admissions and registration regulations and procedures for students wishing to attend Columbia Basin College are published in the college catalog. Copies of the catalog are available online at www.columbiabasin.edu. Questions and inquires about admission and registration regulations and procedures should be directed to the student records office or the college registrar.

NEW SECTION

WAC 132S-90-040 Deadlines and due dates. Deadlines and due dates for students attending and wishing to attend Columbia Basin College are published in the college yearly catalog and quarterly schedules. Copies of the catalog and schedule are available online at www.columbiabasin.edu. Questions and inquires about deadlines and due dates should be directed to the appropriate college administrator.

NEW SECTION

WAC 132S-90-050 Graduation submissions. (1) Candidates for degrees, certificates, and diplomas are advised to meet with their advisor at least two quarters prior to the anticipated completion date to review degree progress and to ensure graduation requirements will be met.

(2) Students must formally apply for graduation the quarter prior to completing all degree, certificate or diploma requirements. Graduation applications for transfer degrees are available from a counselor or completion coach in the counseling and advising center. Graduation applications for the associate in applied science degrees and certificates are available from program department advisors. Students may graduate at the end of any quarter.

(3) To be approved for graduation, a student must:

(a) Complete all degree/certificate program requirements. No one course can fulfill two distribution requirements within a degree.

(b) Complete at least one-third of the credits required for a degree or certificate in residence at CBC.

NEW SECTION

WAC 132S-90-060 Residency. (1) A resident student is one who is a U.S. citizen and has met specific requirements demonstrating permanent residence in the state of Washington. Permanent residence in the state of Washington is evidenced by physical presence in the state as well as having a sufficient number of permanent Washington documents. Documentation should be dated one year and one day prior to the commencement of the quarter for which a student is applying for residency status. These documents include:

- (a) Voter's registration;
- (b) Washington state driver's license;
- (c) Car registration;
- (d) Bank accounts;
- (e) Federal tax return (required).

(2) Students wishing to change their residency classification must complete a residency questionnaire and provide necessary documentation. Application for reclassification prior to registration into classes is preferred. Residency reclassification must take place within thirty calendar days of the first day of the quarter. Special tuition allowances may apply to some eligible noncitizens, Washington higher education employees, and to military personnel and their dependents stationed in the state of Washington. For further information, contact the student records office.

NEW SECTION

WAC 132S-90-070 Outstanding financial obligations, withholding of services and informal appeal. (1) Outstanding financial obligations.

The college expects that students who receive services for which a financial obligation is incurred will exercise responsibility in meeting those obligations as stated in WAC 132S-90-020(12). Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this regulation, and if necessary to initiate legal action to ensure that collection matters are brought to a timely and satisfactory conclusion.

To the extent permitted by law, in response to a student or former student's failure to pay a debt owed to the college, the college may:

- (a) Initiate collection action;
- (b) Make collections from funds received from or on behalf of a student;

(c) Deny or withhold admission to or registration with the college, conferral of degrees or certificates, and/or issuance of academic transcripts;

(d) Refer the matter for discipline under chapter 132S-100 WAC;

(e) Deny any other provisions or other services, including refunds.

(2) Withholding services for outstanding debts. Upon receipt of a request for services where there is an outstanding debt owed to the college from the requesting person, the college shall notify the student by the most expedient means that the services will not be provided since there is an outstanding debt, and further that until that debt is satisfied, no such services will be provided to the student. The notice shall include a statement that he or she has a right to an informal appeal before the debt review committee if he or she believes that no debt is owed. The notice shall state that the request for the informal appeal must be made to the president's office within twenty-one days from the date of notification. The informal appeal request must be in writing and must clearly state error(s) in fact or matter(s) in extenuation or mitigation which justifies the informal appeal. The informal appeal process excludes parking citation appeals heard by the citation review committee (basis for parking citation) or those waived by untimely filing, but includes appeals before the debt review committee on whether the debt(s) for parking citation(s) are owed.

(3) Appeal of decision to withhold services for outstanding debt(s).

The request may be for an in-person presentation of the appeal before the debt review committee or include a submission of a written appeal for review by the debt review committee.

Upon receipt by the president's office of a timely request for an informal appeal, the president or designee will designate three staff members and/or student(s) to a committee for the purpose of hearing or reviewing the informal appeal, depending on the request. The debt review committee will render a decision in writing within five business days of the hearing or review. If the outstanding debt is found to be owed by the student involved, services shall not be provided until the debt is paid or otherwise resolved. If the outstanding debt, and any resulting action taken under WAC 132S-90-070, is found to be an institutional error, steps will be taken to lift the restriction on services.

If the decision made by the debt review committee is not satisfactory to the student, he or she may file a more formal appeal through the brief adjudicative process in chapter 132S-20 WAC.

Chapter 132S-300 WAC

CAMPUS PARKING AND TRAFFIC REGULATIONS

PART I

TRAFFIC AND PARKING

NEW SECTION

WAC 132S-300-100 Introduction. The rules and regulations provided in this chapter have been established by Columbia Basin College to govern pedestrian traffic, vehicular traffic, and parking on its campuses and upon all state lands devoted to the educational, recreational, and research activities of Columbia Basin College.

NEW SECTION

WAC 132S-300-105 Definitions. The words used in this chapter shall have the meaning given in this section, unless the context clearly indicates otherwise.

(1) "Board" shall mean the board of trustees of Columbia Basin College.

(2) "Campus" shall mean any or all real property owned, operated, or maintained by Columbia Basin College.

(3) "College" shall mean Columbia Basin College.

(4) "Faculty members" shall mean any employee of Columbia Basin College who is employed to teach at Columbia Basin College.

(5) "Campus security officer" shall mean an employed security officer, security guard or communication officer of the college.

(6) "Staff" shall mean the classified, exempt and administrative employees of Columbia Basin College.

(7) "Vehicle" shall mean an automobile, truck, motor driven cycle, scooter, or any vehicle powered by a motor.

(8) "Visitors" shall mean any person or persons, excluding students as defined in WAC 132S-100-030, who come upon the campus as guests, and any person or persons who lawfully visit the campus for the purposes which are in keeping with the college's role as an institution of higher learning in the state of Washington.

(9) "Employee parking permits" shall mean permits which are valid annually and shall be obtained from the plant operations office at the fee set by administration.

(10) "Temporary permits" shall mean permits which are valid for a specific period of time designated on the permit.

NEW SECTION

WAC 132S-300-110 Purposes of regulations. The purposes of the rules and regulations established by this chapter are:

- (1) To control parking on college owned parking lots;
- (2) To protect and control pedestrian and vehicular traffic;
- (3) To assure access at all times for emergency equipment;
- (4) To minimize traffic disturbance during class hours;

- (5) To expedite Columbia Basin College business, protect state property and to provide maximum safety and convenience.

NEW SECTION

WAC 132S-300-115 Applicable rules and regulations. The traffic and parking regulations which are applicable upon state lands devoted to the educational, recreational and research activities of Columbia Basin College are as follows:

(1) The motor vehicle and other traffic laws of the state of Washington;

(2) The traffic code of Pasco and Richland; and

(3) Special regulations set forth in this chapter.

NEW SECTION

WAC 132S-300-120 Special traffic and parking regulations and restrictions authorized. Upon special occasions causing additional heavy traffic, during emergencies or construction of campus facilities, the vice-president of administrative services or designee is authorized to impose additional traffic and parking regulations or modify the existing rules and regulations for the achievement of the general objectives provided in WAC 132S-300-110.

NEW SECTION

WAC 132S-300-125 Exceptions from traffic and parking restrictions. These rules and regulations shall not apply to city, county, or state-owned emergency vehicles.

NEW SECTION

WAC 132S-300-130 Regulatory signs and directions. The vice-president of administrative services or designee is authorized to erect signs, barricades and other structures and to paint marks or other directions upon the entry ways and streets on campus and upon the various parking lots owned or operated by the college. Such signs, barricades, structures, markings, and directions shall be so made and placed to best effectuate the rules and regulations contained in this chapter. Drivers of vehicles shall observe and obey the signs, barricades, structures, markings and directions erected pursuant to this section. Drivers shall also comply with the directions given them by campus security officers in the control and regulation of traffic.

NEW SECTION

WAC 132S-300-135 Speed limit. No vehicle shall be operated on the campuses at a speed in excess of fifteen miles per hour in parking lots; or such lower speed as is reasonable and prudent in the circumstances. No vehicle of any type shall at any time use the campus parking lots for reckless or negligent driving or unauthorized activities.

NEW SECTION**WAC 132S-300-140 Pedestrian's right of way.** (1)

The operator of a vehicle shall yield the right of way, slowing down or stopping, if need be to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(3) Every pedestrian crossing at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles.

(4) Where a sidewalk is provided, pedestrians shall proceed upon such a sidewalk.

NEW SECTION

WAC 132S-300-145 Report of accidents. The operator of any vehicle involved in an accident on campus resulting in injury to or death of any person or claimed damage to either or both vehicles shall immediately report such accident to the campus security office.

NEW SECTION

WAC 132S-300-150 Liability of college. The college assumes no liability under any circumstances for vehicles driven or parked on campus.

NEW SECTION

WAC 132S-300-155 Severability. If any provision of this chapter shall be adjudged by a court of record to be unconstitutional, the remaining provisions of this chapter shall continue in effect.

PART II**ENFORCEMENT**NEW SECTION

WAC 132S-300-200 Enforcement authority. The authority and powers conferred upon the vice-president of administrative services by these regulations shall be subject to delegation to appointed designees, including campus security officers or other designated subordinates.

NEW SECTION

WAC 132S-300-205 Enforcement. (1) Enforcement of the parking rules and regulations will begin the first day of the first week of full classes of the fall quarter and will continue until the end of summer quarter. These rules and regulations will not be enforced on Saturdays, Sundays, and official college holidays.

(2) The vice-president of administrative services or designee shall be responsible for the enforcement of the rules and regulations contained in this chapter. The vice-president

of administrative services is hereby authorized to delegate this responsibility to the campus security officers or other designated subordinates.

PART III**PARKING PERMITS**NEW SECTION**WAC 132S-300-300 Issuance of parking citations.**

Citations and fines may be levied for parking violations that occur on Columbia Basin College (CBC) campuses. A schedule of fines shall be published on the college's web site located at www.columbiabasin.edu. A copy of the fine schedule shall also be available in the campus security office. Upon the violations of any of the rules and regulations contained in this chapter, the vice-president of administrative services, and campus security and staff, including student workers, may issue a warning, summons or citation setting forth the date, the approximate time, permit number, license information, infraction, officer, and fines as appropriate. Such warnings, summons or traffic citations may be served by attaching or affixing a copy thereof in some prominent place outside such vehicle or by personally serving the operator.

NEW SECTION

WAC 132S-300-305 Authorization for issuance of parking permits. The plant operations office or designee is authorized to issue annually parking permits to faculty, staff members, employees of private parties and students using college facilities pursuant to regulations and the payment of appropriate fees as determined by the college.

NEW SECTION

WAC 132S-300-310 Valid parking permits. A valid parking permit is:

- (1) A current parking permit issued by plant operations office and properly displayed;
- (2) A temporary or visitor's parking permit from the sponsoring department and properly displayed;
- (3) A special parking permit and properly displayed;
- (4) A shop permit authorized by a vocational-technical instructor and properly displayed; or
- (5) A carpool permit authorized by college security and properly displayed.

NEW SECTION

WAC 132S-300-315 Display of parking permit. (1) All annual parking permits shall be properly displayed and viewable from the front windshield of the vehicle. Temporary, special, visitor, carpool, or shop permits shall be placed in a visible position on the dashboard of the automobile. Additionally, for a vehicle utilizing a carpool space, two or more carpool permits must be displayed on the dashboard in a manner that is visible to campus security officers (e.g., cannot be stacked or overlapping, etc.).

(2) Permits not displayed pursuant to the provisions of this section shall not be valid and the vehicle may be subject to parking violation.

NEW SECTION

WAC 132S-300-320 Transfer of parking permit. Annually issued parking permits purchased by individuals stated in WAC 132S-300-305 are transferable.

NEW SECTION

WAC 132S-300-325 Parking permit revocation. Parking permits are the property of the college and may be recalled by the vice-president of administrative services for any of the following reasons:

- (1) When the purpose for which the permit was issued changes or no longer exists;
- (2) When a permit is used by an unregistered vehicle or by an unauthorized individual;
- (3) Falsification on a parking permit application;
- (4) Continued violations of parking regulations; or
- (5) Counterfeiting or altering a parking permit.

NEW SECTION

WAC 132S-300-330 Parking permit revocation—Hearing provided. Cancellation or revocation of any parking permit because of any of the causes stated in WAC 132S-300-325 (2) through (5) may be appealed to the vice-president of administrative services. The decision of the vice-president for administrative services or designee may be appealed to the college president.

NEW SECTION

WAC 132S-300-335 Allocation of parking space. The parking space available on campus for annually issued parking permits shall be designated and allocated by the plant operations office or designee in such a manner as will best effectuate the objectives of the rules and regulations in this chapter.

- (1) Parking spaces will be designated for use of visitors on campus.
- (2) Parking spaces for persons with disabilities will be designated pursuant to RCW 46.61.581. The allocated parking spaces are exclusively for use by those designated, provided that appropriate state of Washington "disabled permit" are displayed properly within their vehicles.
- (3) Parking spaces will be designated for use by carpool vehicles.

NEW SECTION

WAC 132S-300-340 Parking within designated spaces. (1) All vehicles shall follow traffic arrows and other markings established for the purpose of directing traffic on campus.

(2) In areas marked for diagonal parking, vehicles shall be parked at a forty-five degree angle with the vehicle facing head in.

(3) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space or stall shall not constitute an excuse for a violation of this section.

NEW SECTION

WAC 132S-300-345 Day parking. The rules and regulations pertaining to the use of certain parking permits in specific areas as contained in WAC 132S-300-340 shall be in force during the hours from 6:00 a.m. to 10:00 p.m.

PART IV

FINES, PENALTIES AND APPEALS

NEW SECTION

WAC 132S-300-400 Fines and penalties. The vice-president of administrative services or designee is authorized to impose fines and penalties for the violation of the rules and regulations contained in this chapter.

(1) **Fines.** A schedule of fines shall be published online at the college's web site located at www.columbiabasin.edu. An individual receiving a parking citation must pay fine(s) imposed in accordance with the schedule of fines. Visitors who have received citations for parking violations may return the citation to the campus security office with name, address, and a brief explanation. The campus safety and security supervisor may void the citation as a courtesy notice. Any individual may file an appeal for any parking citation under the appeals section of this subchapter and as described in further detail on the college's web site.

(2) **Unpaid fines.** If any parking citation remains unpaid eight days after issuance on the citation or after appeal of the citation, Columbia Basin College may take actions including, but not limited to:

- (a) Initiate collection action;
- (b) Make collections from funds received from or on behalf of a student;
- (c) Deny or withhold admission to or registration with the college, conferral of degrees or certificates, and/or issuance of academic transcripts;
- (d) Refer the matter for discipline under chapter 132S-100 WAC;
- (e) Deny any other provisions or other services, including refunds.

(3) **Student conduct referral.** An accumulation of unpaid citations or traffic offenses by a student may be referred to the chief student conduct officer for initiation of disciplinary proceedings under chapter 132S-100 WAC as the chief student conduct officer deems appropriate. No disciplinary action for unpaid citations shall be taken until the student has completed the appeal process or waived his or her appeal rights.

(4) **Impoundment.** Vehicles parked on a Columbia Basin College campus in violation of any of the regulations contained in this chapter may be impounded at the discretion of the vice-president of administrative services or the campus

safety and security supervisor. If a vehicle is impounded, it may be taken to such place for storage as the vice-president of administrative services or designee selects. The expenses of such impounding and storage shall be charged to the owner or operator of the vehicle and paid by him or her prior to its release. The college and its employees shall not be liable for loss or damage of any kind resulting from such impounding and storage.

(5) **Appeals.** Any fines and penalties for citations under the rules and regulations of this chapter must be appealed in writing, stating fully all grounds for appeal, within five days from the date of the citation, to the campus safety and security supervisor or designee who will:

(a) First level appeal. After review of the appeal the campus safety and security supervisor or designee may uphold, reduce or waive the fine(s) associated with the citation. Any fine(s) still levied against the appellant must be paid in accordance with the schedule of fines unless appellant wishes to pursue a second-level appeal. If the citation remains unpaid thereafter, the college may take actions stated above and/or in chapter 132S-100 WAC. The campus safety and security supervisor will advise the appealing party in writing as soon as practicable of his or her decision, along with second-level appeal rights and location of the appeal form.

(b) Second-level appeal. If the appealing party is dissatisfied with the campus safety and security supervisor's decision, the appealing party may submit the same appeal to the citation review committee within five days of receipt of the campus safety and security supervisor's decision. Failure to appeal in writing within the five-day period constitutes a waiver of right of appeal. The written appeal form completed by the appealing party must either request an appearance before the citation review committee or include a written appeal for the citation review committee to consider. Upon receipt of a request to appear before the committee, the appealing party will be notified in writing of the next scheduled committee meeting at which the appealing party can present his or her appeal. The citation review committee will review the second-level appeal and advise the appealing party as soon as practicable of the committee's decision. The citation review committee hears appeals of citations issued pursuant to the regulations of this chapter and using the following criteria:

- (i) Did an institutional error occur?
- (ii) Were there extenuating circumstances that caused the error to occur?
- (iii) Did the appealing party make a good faith effort to comply with the parking rules?

The campus security department is permitted to provide responsive information for the appeal and/or to provide rebuttal during the appealing party's presentation to the committee. The decision of the citation review committee will be final.

(6) **Composition of citation review committee.** The college president shall appoint no less than eight members to the citation review committee. The committee will be composed of at least one faculty member, one exempt staff, one classified staff and one student with the remaining from the same group type in equal numbers. Each timely filed appeal will be reviewed by a minimum of three available members

of the committee and in odd numbers thereafter to avoid a tie for decision making purposes. This composition of the committee will be expected whether the appeal is for the appealing party's presentation or review of the appealing party's written appeal.

(7) **Applicability.** These appeal procedures will be applicable to all students, faculty and staff or other persons utilizing college facilities who receive fines for violations of these rules and regulations.

WSR 16-09-075

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 18, 2016, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-037.

Title of Rule and Other Identifying Information: WAC 308-391-104 Fees.

Hearing Location(s): Department of Licensing, 2000 4th Avenue West, Second Floor, Conference Room 3204, Olympia, WA 98502, on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: May 25, 2016.

Submit Written Comments to: Dolly Casitas, Department of Licensing, UCC Program, P.O. Box 9660, Olympia, WA 98507-9660, e-mail dcasitas@dol.wa.gov, fax (360) 664-6506, by May 23, 2016.

Assistance for Persons with Disabilities: Contact Dolly Casitas by May 23, 2016, TTY (360) 360-0116 [664-0116] or (360) 664-6506.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending UCC WAC 308-391-104 to reflect the new surcharge fee amounts that were increased as a result of HB 1090. It also extended the expiration of RCW 43.330.300 to July 1, 2020.

Reasons Supporting Proposal: The amendments are needed to support the fraud and ID theft program of department of commerce. The proposed rule amendments are supported by industry.

Statutory Authority for Adoption: RCW 62A.9A-526.

Statute Being Implemented: Chapter 62A.9A RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim Summers, 2000 4th Avenue West, Olympia, WA 98502, (360) 664-1532.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is exempt under RCW 34.05.310 (4)(g)(ii).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to these proposed rules under the provisions of RCW 34.05.328 (5)(a)(i).

April 18, 2016
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-067, filed 5/29/09, effective 6/29/09)

WAC 308-391-104 Fees. (1) The nonrefundable processing fee for filing and indexing a UCC record is:

FILINGS	DELIVERY MODE	FEE INCLUDING SURCHARGE
Financing Statement	electronic	\$ ((11.00)) <u>18.00</u>
Financing Statement Amendment	electronic	\$ ((11.00)) <u>18.00</u>
UCC1 Financing Statement (1 or 2 pages)	mail	\$ ((23.00)) <u>25.00</u>
UCC3 Financing Statement Amendment (1 or 2 pages)	mail	\$ ((23.00)) <u>25.00</u>
UCC5 Correction Statement (1 or 2 pages)	mail	\$ ((23.00)) <u>25.00</u>
Attachment	mail and electronic	\$1.00 each page

(2) UCC search fee. The nonrefundable fee for processing a UCC search request is:

SEARCH TYPE	DELIVERY MODE	FEE
Search by debtor name	electronic	No charge
Search by file number	electronic	No charge
Debtor name search with copies	electronic	\$15.00
Search held to reflect the filing	electronic	\$10.00/debtor name
UCC11 Search response	mail	\$10.00
UCC11 Search response with copies	mail	\$15.00
Search held to reflect the filing (UCC1 box 7)	mail	\$10.00/debtor name

(3) The fees for purchase of bulk data are:

BULK DATA	DELIVERY MODE	FEE
Full text	electronic	\$500
Text plus images	electronic	\$1,000
Weekly updates	electronic	\$150

WSR 16-09-076

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 18, 2016, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-125.

Title of Rule and Other Identifying Information: WAC 308-15-150 Fees.

Hearing Location(s): Department of Licensing (DOL), 405 Black Lake Boulevard S.W., Room 2105, Olympia, WA 98502, on May 25, 2016, at 11:00 a.m.

Date of Intended Adoption: May 26, 2016.

Submit Written Comments to: Shanan Gillespie, Geologist Licensing Board, P.O. Box 9012, Olympia, WA 98507, e-mail geologist@dol.wa.gov, fax (360) 570-7098, by May 24, 2016.

Assistance for Persons with Disabilities: Contact Jenni Lingle by May 24, 2016, TTY (360) 664-0116 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will extend a fee suspension in an effort to maintain a balanced budget for the geologist licensing program. The current temporary suspension expires on July 1, 2016.

Reasons Supporting Proposal: This program is required to be self-supporting and operates out of a dedicated fund. Revenue currently being generated to cover the cost of the program is sufficient with the fee suspension in place. This trend is expected to continue over the next couple of years. The suspended fees would have a positive impact on new applicants and existing licensees. This proposed rule amendment is supported by industry.

Statutory Authority for Adoption: RCW 18.220.040.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 405 Black Lake Boulevard, Building 2, Olympia, (360) 664-1570; Implementation and Enforcement: Lorin Doyle, 405 Black Lake Boulevard, Building 2, Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No negative economic impact to applicants or licensees.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. No negative economic impact of applicants or licensees.

April 18, 2016
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-11-013, filed 5/8/14, effective 7/1/14)

WAC 308-15-150 Fees. (1) **Suspension of fees.** Effective July 1, ~~((2014-))~~ 2016, a portion of the listed fees shown

in subsection (2) of this section are temporarily suspended and replaced with the following:

Renewal Fees	
Annual renewal fee for geologist	\$40.00
Annual renewal for each specialty	\$50.00
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$80.00
Annual renewal fee for each specialty, with late fee (if paid ninety days or more after due date)	\$100.00

The fees set forth in this section shall revert back to the fee amounts shown in WAC 308-15-150 on July 1, (~~2016~~) 2017.

(2) Fees.

Type of Fee	Amount
Application fees - includes initial license	
Application fee for geologist (applying by examination)	\$100.00
Application fee for each specialty (applying by examination)	\$100.00
Application fee for geologist (applying by reciprocity)	\$200.00
Application fee for each specialty (applying by reciprocity)	\$150.00
Examination fees	
Fees for the fundamentals of geology and practice of geology examinations are submitted directly to ASBOG	
Administration fee for reexamination	\$65.00
Specialty examination (hydrogeologist or engineering geologist exam)	\$300.00
Renewal fees	
Annual renewal fee for geologist	\$100.00
Annual renewal fee for each specialty	\$85.00
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$200.00
Annual renewal for each specialty, with late fee (if paid ninety days or more after due date)	\$170.00
Miscellaneous fees	
Duplicate license or wall certificate . . .	\$25.00
Certification of license records to other jurisdictions	\$45.00
Proctor examination for another jurisdiction	\$100.00

WSR 16-09-077
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed April 18, 2016, 4:13 p.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 14-22-107.

Title of Rule and Other Identifying Information: The department proposes new WAC 220-55-165 to establish a reduced rate annual fish Washington license, and the ability for anglers to upgrade to a combination or the new fish Washington license.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 10-11, 2016, at 8:30 a.m.

Date of Intended Adoption: On or after June 11, 2016.

Submit Written Comments to: Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by June 6, 2016.

Assistance for Persons with Disabilities: Contact Tami Linninger [Lininger] by June 3, 2016, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The fish Washington license is being proposed as a "value added license package for recreation[al] anglers.["] Purpose of this license is to create a one-stop shop license package that contain[s] all fishing license privileges. The license is being requested based on input from recreation[al] anglers and the dealer community.

Reasons Supporting Proposal: [The] fish Washington package will include all angling privileges creating savings to anglers, the opportunity to create goodwill to these stakeholders by upgrading to a higher cost license while getting credit from purchases of any current annual licenses, and this packaged license will save dealer community time in issuing angler licenses.

Statutory Authority for Adoption: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Jacalyn Hursey, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2861; Implementation: Greg Sallis, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2563; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

There are no new reporting and recordkeeping requirements for the vendor under this proposed rule.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: There are no new anticipated professional services required for the proposed rule.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None. No new requirements are established in this proposal.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. This proposed rule will allow individuals to obtain a license that combines existing licenses and/or endorsements.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

None, the proposed rule does not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Small business will not be negatively impacted by this proposed rule.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency will work with its dealer network through the dealer advisory committee to help develop the rule. The dealer advisory committee consists of eight dealers that are small businesses and it is a cross section of WDFW's six hundred dealers.

8. A List of Industries That Will Be Required to Comply with the Rule: This rule proposes creating a combination license which is an optional purchase for those individuals wishing to purchase all the licenses in one package. There are no new requirements for any industries.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: The rule will not have an impact on job creation or job loss.

A copy of the statement may be obtained by contacting Greg Sallis, WDFW Licensing Division, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2563, fax (360) 902-2466, e-mail Gregory.Sallis@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. No hydraulics impact.

April 18, 2016
Scott Bird
Rules Coordinator

NEW SECTION

WAC 220-55-165 Reduced rate annual fish Washington license, and license upgrades. (1) There is hereby created an annual fish Washington license that combines rec-

reational freshwater and saltwater fishing, shellfish, and seaweed harvest privileges. The fee for the annual fish Washington license will not be priced higher than the sum of the individual items.

(2) The fish Washington license also includes:

- (a) The Columbia River salmon and steelhead endorsement;
- (b) A Puget Sound Dungeness Crab endorsement; and
- (c) A two-pole endorsement.

(3) Residents, and nonresident disabled vets, who have purchased an annual freshwater, saltwater, shellfish, razor or combination license may upgrade to the fish Washington license for the cost difference of his or her current annual fishing license(s) and the cost of the fish Washington license.

(4) Any person who has purchased an annual freshwater, saltwater, razor, or shellfish may upgrade to a combination license for the cost difference of his or her current annual fishing license(s) and the cost of the combination license.

(5) There is hereby created an annual senior combination recreation fishing license which includes freshwater and saltwater fishing, shellfish, and seaweed harvest privileges. The state fee for the annual senior combination fishing license will not be priced higher than the sum of the individual items and is available to any senior residents seventy years of age and older.

WSR 16-09-081

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 19, 2016, 8:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-001.

Title of Rule and Other Identifying Information: WAC 182-533-0320 Maternity support services—Client eligibility, 182-533-0325 Maternity support services—Provider requirements, 182-533-0327 Maternity support services—Professional staff qualifications and interdisciplinary team, and 182-533-0375 Infant case management—Provider requirements.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf, or directions can be obtained by calling (360) 725-1000), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 25, 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, fax (360) 586-9727, by 5:00 p.m. on May 24, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by May 20, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is making changes to update eligibility programs, provider types, and existing policies, and to incorporate specific state plan language.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Heather Weiher, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1293.

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.

April 19, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-12-075, filed 5/29/15, effective 7/1/15)

WAC 182-533-0320 Maternity support services—Client eligibility. (1) To receive maternity support services (MSS), a client must:

(a) Be covered under the alternative benefit plan, categorically needy, medically needy, or state-funded medical programs under Washington apple health; and

(b) Be within the eligibility period of a maternity cycle as defined in WAC 182-533-0315.

(2) Clients who do not agree with an eligibility decision for MSS have a right to a fair hearing under chapter 182-526 WAC.

AMENDATORY SECTION (Amending WSR 15-12-075, filed 5/29/15, effective 7/1/15)

WAC 182-533-0325 Maternity support services—Provider requirements. Maternity support service providers may include community clinics, federally qualified health centers, local health departments, hospitals, nonprofit organizations, and private clinics.

(1) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, a provider must:

(a) Be enrolled as an eligible provider with the medicaid agency (see WAC 182-502-0010).

(b) Be currently approved as an MSS/ICM provider by the medicaid agency.

(c) Meet the requirements in this chapter, chapter 182-502 WAC and the medicaid agency's current billing instructions.

(d) Ensure that professional staff providing services:

(i) Meet the minimum regulatory and educational qualifications for the scope of services provided under WAC 182-533-0327; and

(ii) Follow the requirements in this chapter and the medicaid agency's current billing instructions.

(e) Screen each client for risk factors using the agency's designated MSS screening tool, located on the agency's web site under forms. Agency approval is required for a provider to use an alternate MSS screening tool.

(f) Screen clients for ICM eligibility.

(g) Conduct case conferences under WAC 182-533-0327(2).

(h) Develop and implement an individualized care plan for each client.

(i) Initiate and participate in care coordination activities throughout the maternity cycle with at least MSS interdisciplinary team members, the client's prenatal care provider, and the Women, Infants, and Children (WIC) Nutrition Program.

(j) Comply with Section 1902 (a)(23) of the Social Security Act regarding the client's freedom to choose a provider.

(k) Comply with Section 1915 (g)(1) of the Social Security Act regarding the client's voluntary receipt of services.

(2) MSS providers may provide services in any of the following locations:

(a) A provider's office or clinic.

(b) The client's residence.

(c) An alternate site that is not the client's residence. (The reason for using an alternate site for visitation instead of the home must be documented in the client's record.)

(3) An individual or service organization that has a written contractual agreement with a qualified MSS provider also may provide MSS and ICM services to eligible clients. ~~((+))~~ The provider must:

~~((+))~~ (a) Keep a copy of the written subcontractor agreement on file;

~~((+))~~ (b) Ensure that an individual or service organization staff member providing MSS/ICM services (the subcontractor) meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

~~((+))~~ (c) Ensure that the subcontractor provides MSS/ICM services under the requirements of this chapter; ~~(and~~

~~(+))~~ (d) Maintain professional, financial, and administrative responsibility for the subcontractor(~~-~~

~~(b) The provider must:~~

~~(+))~~;

(e) Bill for services using the provider's national provider identifier and MSS/ICM taxonomy; and

~~((+))~~ (f) Reimburse the subcontractor for MSS/ICM services provided under the written agreement.

(4) Providers must obtain agency approval of all MSS/ICM outreach-related materials, including web sites and publications, prior to making those materials available to clients.

AMENDATORY SECTION (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

WAC 182-533-0327 Maternity support services—Professional staff qualifications and interdisciplinary team. (1) MSS providers must use qualified professionals, as specified in this section.

(a) Behavioral health specialists who are currently credentialed or licensed in Washington by the department of health under chapters 246-809, 246-810, and 246-924 WAC as one of the following:

- (i) Licensed mental health counselor.
- (ii) Licensed independent clinical social worker.
- (iii) Licensed social worker.
- (iv) Licensed marriage and family therapist.
- (v) Licensed psychologist.
- (vi) Associate mental health counselor.
- (vii) Associate independent clinical social worker.
- (viii) Associate social worker.
- (ix) Associate marriage and family therapist.
- (x) Certified counselor.
- (xi) Certified chemical dependency professional.

(b) Certified (~~dietitians~~) dietitians who are currently registered with the commission on dietetic registration and certified by the Washington state department of health under chapter 246-822 WAC.

(c) Community health nurses who are currently licensed as registered nurses in the state of Washington by the department of health under chapter 246-840 WAC.

(d) Community health workers (CHWs) who have a high school diploma or the equivalent and:

- (i) Have a minimum of one year of health care and/or social services experience.
- (ii) Carry out all activities under the direction and supervision of a professional member or supervisor of the MSS interdisciplinary team.
- (iii) Complete a training plan developed by their provider.

(2) The provider's qualified staff must participate in an MSS interdisciplinary team consisting of at least a community health nurse, a certified registered dietitian, a behavioral health specialist, and, at the discretion of the provider, a community health worker.

(a) The interdisciplinary team must work together to address risk factors identified in a client's care plan.

(b) Each qualified staff member acting within her/his area of expertise must address the variety of client needs identified during the maternity cycle.

(c) An MSS interdisciplinary team case conference is required at least once prenatally for clients who are entering MSS during pregnancy, and are eligible for the maximum level of service. Using clinical judgment and the client's risk factors, the provider may decide which interdisciplinary team members to include in case conferencing.

(3) All Indian health programs, tribes, and any MSS provider within a county with fewer than fifty-five medicaid births per year are (~~not~~) required to have (~~an~~) at least one MSS interdisciplinary team (~~(, although they must meet all the other requirements in this chapter. Instead of the interdisciplinary team, these counties and tribes must have at least one~~

~~of the following qualified professionals~~) member, as described in subsection (1) of this section:

- (a) A behavioral health specialist;
- (b) A registered (~~dietician~~) dietitian; or
- (c) A community health nurse.

AMENDATORY SECTION (Amending WSR 14-09-061, filed 4/16/14, effective 5/17/14)

WAC 182-533-0375 Infant case management—Provider requirements. (1) Infant case management (ICM) services may be provided only by a qualified infant case manager who is employed by a provider meeting the requirements in WAC 182-533-0325.

(2) The infant case manager must meet at least one of the following qualifications under (a), (b), or (c) of this subsection:

(a) Be a current member of the maternity support services (MSS) interdisciplinary team under WAC 182-533-0327 (1)(a), (b), or (c).

(b) Have a bachelor of arts, bachelor of science, or higher degree in a social service-related field, such as social work, behavioral sciences, psychology, child development, or mental health, plus at least one year of full-time experience working in one or more of the following areas:

- (i) Community services;
- (ii) Social services;
- (iii) Public health services;
- (iv) Crisis intervention;
- (v) Outreach and referral programs; or
- (vi) Other related fields.

(c) Have an associate of arts degree, or an associate's degree in a social service-related field, such as social work, behavioral sciences, psychology, child development, or mental health, plus at least two years of full-time experience working in one or more of the following areas:

- (i) Community services;
- (ii) Social services;
- (iii) Public health services;
- (iv) Crisis intervention;
- (v) Outreach and referral programs;
- (vi) Other related fields.

(3) The medicaid agency requires any staff person qualifying under subsection (2)(c) of this section to be under the supervision of a clinical staff person meeting the criteria in subsection (2)(a) or (b) of this section. Clinical supervision may include face-to-face meetings and/or chart reviews.

WSR 16-09-082

PROPOSED RULES

TRANSPORTATION COMMISSION

[Filed April 19, 2016, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-020.

Title of Rule and Other Identifying Information: I-405 express toll lane tolling policies.

Hearing Location(s): WSDOT Headquarters Building, Nisqually Conference Room, 310 Maple Park Avenue S.E., Olympia, WA 98501, on July 19, 2016, at 1:00 p.m.

Date of Intended Adoption: July 19, 2016.

Submit Written Comments to: Reema Griffith, P.O. Box 47308, Olympia, WA 9804-7308 [98504-7308], e-mail transe@wstc.wa.gov, fax (360) 705-6802, by July 12, 2016.

Assistance for Persons with Disabilities: Contact Reema Griffith by July 12, 2016, at (360) 705-7070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is required to establish toll rates and exemptions for vehicles using the I-405 express toll lanes that are adequate to cover costs and obligations described in RCW 47.56.850 and 47.56.880. The purpose of the proposed rules is to amend transportation commission administrative codes:

1. Amend WAC 468-270-077 What are the toll rates for the I-405 express toll lanes?, reflects the revised hours when tolling is in effect and procedure for when dynamic toll rates cannot be displayed due to a power outage, etc.

2. Create WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes?, reduces the hours when tolling is in effect to weekdays only, 5 a.m. to 7 p.m., excluding six major federal holidays.

3. Amend WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes?, reflects the revised hours when tolling is in effect.

4. Amend WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes?, reflects the revised hours when tolling is in effect.

Reasons Supporting Proposal: The transportation commission's proposed revised hours when tolling is in effect for vehicles using the I-405 express toll lanes.

Statutory Authority for Adoption: RCW 47.56.850.

Statute Being Implemented: RCW 47.56.880.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Reema Griffith, Olympia, Washington, (360) 705-7070; Implementation and Enforcement: Patty Rubstello, Seattle, Washington, (206) 464-1299.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not apply to "business in an industry," as described in RCW 19.85.030 (1)(a), but rather the rules apply to vehicles using the I-405 express toll lanes.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to subsection (5) of RCW 34.05.328, RCW 34.05.328 does not apply to the transportation commission and it is not required to develop a cost-benefit analysis.

April 19, 2016
Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-077 What are the toll rates for the I-405 express toll lanes? When tolling is in effect on the I-405 express toll lanes (~~(are in operation)~~), the *Good To Go!*TM toll rate schedule shall be a minimum toll rate of \$0.75 and a maximum toll rate of \$10.00. *Good To Go!*TM Pass toll rates shall vary in amount by time of day and level of traffic congestion, and will automatically adjust within the established toll schedule using dynamic tolling to ensure average vehicle speeds in the lanes above forty-five miles per hour at least ninety percent of the time during peak hours. In the event there is a disruption in the ability to set tolls dynamically, the department may, on a temporary basis, adjust toll rates by time of day and level of traffic congestion within the range set forth in this section.

The commission shall periodically review the *Good To Go!*TM toll rate schedule against traffic performance of all lanes in the I-405 express toll lanes corridor, as outlined in RCW 47.56.880 to determine if the *Good To Go!*TM toll rates are effectively maintaining travel time, speed, and reliability(~~(, and)~~) for all lanes. Based on this review, the commission shall adjust the toll rate schedule as needed (~~(to maintain performance standards)~~).

The toll rate for a Pay By Mail transaction is equal to the *Good To Go!*TM Pass toll rate plus \$2.00.

NEW SECTION

WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes? Tolling will be in effect on the I-405 express toll lanes weekdays, Monday through Friday, from 5:00 a.m. to 7:00 p.m. (excluding the weekdays on which holidaysⁱ are observed).

When tolling is not in effect on the I-405 express toll lanes, including on weekends and holidaysⁱ, the lanes are open to all vehicles regardless of occupancy, and a transponder is not needed to travel toll-free.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes? (~~(Except)~~) When tolling is in effect on the I-405 express toll lanes, as provided herein, all vehicles using the I-405 express toll lanes must pay the required toll. Only qualified vehicles may be exempt from paying tolls. The registered owner and operator of the qualified vehicle must comply with the requirements of the department in order to obtain the exemption. The following vehicles shall qualify for exemption:

- (1) Transit buses and vanpools as specified in RCW 47.56.880;
- (2) Carpools, as defined for the facility in WAC 468-270-120;
- (3) Motorcycles;
- (4) Washington state patrol vehicles directly providing service to the express toll lane facility;

(5) Department maintenance vehicles directly involved in roadway maintenance on the I-405 express toll lanes, including the department's incident response vehicles responding to incidents and WSDOT tow trucks;

(6) Authorized emergency vehicles on bona fide emergencies; and

(7) Tow trucks authorized by Washington state patrol responding to clear blocking vehicles from the toll facility.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes? Between 5 a.m. to 9 a.m. and 3 p.m. to 7 p.m., Monday through Friday, (excluding the ~~((days))~~ weekdays on which holidaysⁱ are observed) you must have three or more occupants in your vehicle to qualify as a toll-free carpool. At all other times when tolling is in effect on the I-405 express toll lanes, you must have two or more occupants in your vehicle to qualify as a toll-free carpool. Occupancy requirements do not apply to vehicles that are otherwise exempt from tolls pursuant to WAC 468-270-110 or authorized as an HOV vehicle as defined in chapter 468-510 WAC.

ⁱ New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

WSR 16-09-088
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 19, 2016, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-097.

Title of Rule and Other Identifying Information: Chapter 296-16 WAC, Employer—Worker reemployment incentives.

Hearing Location(s): Labor and Industries (L&I), 7273 Linderson Way S.W., Room(s) S117, S118, Tumwater, WA 98501, on May 24, 2016, at 1:00 p.m.

Date of Intended Adoption: June 21, 2016.

Submit Written Comments to: Laurinda Grytness, P.O. Box 44329, Olympia, WA 98504-4329, e-mail laurinda.grytness@lni.wa.gov, fax (360) 902-5035, by May 24, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact L&I's return to work partnerships program by May 10, 2016, TTY (360) 902-5797 or (360) 902-6741.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules, if adopted, will describe the new preferred worker eligibility requirements and explain the expanded incentives available to eligible employers. The proposed rules will enable eligible employers participating in the preferred worker program to receive financial incentives similar to the existing stay at work program, plus a new continuous

employment bonus. The proposed rules also extend the incentives to include the employer of injury.

Reasons Supporting Proposal: Rule making is needed to implement chapter 137, Laws of 2015 (SHB 1496).

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, chapter 137, Laws of 2015 (SHB 1496).

Statute Being Implemented: Chapter 137, Laws of 2015 (SHB 1496),

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

Name of Proponent: [L&I], governmental.

Name of Agency Personnel Responsible for Drafting: Laurinda Grytness, Tumwater, Washington, (360) 902-6362; Implementation: Mike Ratko, Tumwater, Washington, (360) 902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule is interpretative and adopts and incorporates without material change chapter 137, Laws of 2015 (SHB 1496).

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the rule is interpretative and adopts and incorporates without material change chapter 137, Laws of 2015 (SHB 1496).

April 19, 2016

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-100 What is the department's ~~((=))~~ preferred worker~~((=))~~ program? The department's ~~((=))~~ preferred worker~~((=))~~ program provides eligible employers with financial incentives to hire certified ~~((=))~~ preferred workers~~((=))~~ and to reemploy certified "preferred workers" with ~~developmental disabilities~~.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-110 Who may be certified as a ~~((=))~~ preferred worker~~((=))~~? ~~(1) A worker may be certified as a ~~((=))~~ preferred worker~~((=))~~ if he or she, in the sole discretion of the supervisor or supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that~~((=~~~~

~~(1) Prevents the worker from returning to work with the employer of record, and substantially impairs the likelihood of the worker's reemployment with a different employer; or~~

~~(2) Has resulted in payment of time loss compensation benefits for a period of at least fourteen consecutive days, if the worker has a developmental disability as defined by RCW 71A.10.020-;) results in a permanent disability which may be a substantial obstacle to employment.~~

(2) For purposes of subsection (1) of this section, permanent disability is defined as:

(a) A permanent loss of physical or mental function, causally related to the industrial injury or occupational disease, from which, within the limits of medical probability, further recovery is not expected; and

(b) The injured worker's health care provider has permanently restricted the worker from returning to the job of injury; and

(c) The work restrictions in (b) of this subsection are supported by medical findings appropriate to the worker's physical or mental condition.

(3) For purposes of subsection (1) of this section, "substantial obstacle to employment" means one or more of the following limitations apply:

(a) The worker is unable to perform at least one of the essential functions of the job of injury;

(b) The department finds the worker eligible for vocational retraining;

(c) The worker is permanently restricted to a lighter category of physical work demands; for example, a worker previously able to perform heavy work is permanently restricted to sedentary or light work.

(4) The preferred worker certification is assigned to the worker, and the preferred worker incentives are available to any qualified employer who may hire the worker during the preferred worker certification period.

NEW SECTION

WAC 296-16-113 What are the preferred worker certification requirements for a worker with developmental disabilities as defined by RCW 71A.10.020? (1) A worker with a developmental disability may be certified as a preferred worker, in the sole discretion of the supervisor or supervisor's designee, if the worker has an open state fund insured claim for an industrial injury or occupational disease, or a closed state fund claim where the closure is not final, that results in payment of time-loss compensation benefits for a period of at least fourteen consecutive days.

(2) A worker with developmental disabilities does not need to apply for preferred worker certification. The department will evaluate the worker's eligibility for certification after receiving the employer's documentation described in WAC 296-16-160(3).

(3) If the health care provider has released the worker without restrictions and the worker is returning to the job of record, a job analysis or job description is not needed.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-120 Who certifies industrially injured or ill workers as ((^u))preferred workers((^u))? Only a department employee with authority to do so may certify a worker as a ((^u))preferred worker((^u)).

NEW SECTION

WAC 296-16-125 Can a worker's preferred worker certification be revoked? The department can revoke the

preferred worker certification when the worker no longer meets the certification requirements outlined in WAC 296-16-110.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-130 How long does a worker's ((^u))preferred worker((^u)) certification last? (1) A worker's ((^u))preferred worker((^u)) certification lasts for thirty-six consecutive months of employment at medically approved work, and will not be extended.

(Exception: The department may interrupt the certification period if:
(1) Medical documentation shows that the worker is unable to work or look for work, due to the industrial injury or occupational disease for which the "preferred worker" certification was granted; and
(2) The worker's claim for the same injury or disease is still open.)

The thirty-six consecutive month period begins the first date the certified preferred worker actually returns to work at a medically approved job, but ends no later than five years after claim closure.

(2) The department may interrupt the certification period if medical documentation shows the worker is unable to work due to the industrial injury or occupational disease in:

(a) The open claim in which preferred worker certification was granted; or

(b) A new, accepted claim for a condition or conditions sustained while performing medically approved work as a certified preferred worker.

(3) If the department interrupts the certification period, and when the worker is again able to work ((~~or look for work~~)), the certification period will resume. ((~~The period of interruption does not count toward the thirty-six month total.~~))

AMENDATORY SECTION (Amending WSR 05-17-040, filed 8/9/05, effective 9/15/05)

WAC 296-16-135 Will the department grant a worker ((^u))preferred worker((^u)) certification under multiple open claims at the same time? No. While a worker may have multiple open claims at the same time, the department will not grant the worker ((^u))preferred worker((^u)) certification under more than one of these claims at the same time.

(1) If the worker still has ((^u))preferred worker((^u)) certification time remaining from a previous claim, and also applies for ((^u))preferred worker((^u)) certification under a subsequent claim, the department will not grant the worker additional certification. In order to seek employment as a certified ((^u))preferred worker,((^u)) the worker must use the certification time remaining from the previous claim.

(2) If the worker received ((^u))preferred worker((^u)) certification under a prior claim, and the thirty-six months of that certification has ended, the worker may be eligible for ((^u))preferred worker((^u)) certification under a subsequent ((~~or new open~~)) claim.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-140 Which employers are eligible to benefit from the ~~((s))~~preferred worker~~((s))~~ program? ~~((When an employer offers the worker a medically appropriate job, the employer is eligible to benefit from the "preferred worker" program if:~~

~~(1) The employer is the employer of record who reemploys their own worker, and the worker:~~

~~(a) Has a developmental disability as defined by RCW 71A.10.020; and~~

~~(b) Under the open claim with that employer, has received payment of time loss compensation for a period of at least fourteen consecutive days; or~~

~~(2) The employer is NOT the employer of record, and the employer hires a certified preferred worker.)) The following employers may be eligible to benefit from the preferred worker program if they employ a certified preferred worker in a job approved by the injured worker's health care provider and the department's credentialed vocational rehabilitation professional:~~

~~(1) A Washington state fund employer with an industrial insurance account in good standing with the department, as outlined in WAC 296-17-31004(4); or~~

~~(2) A self-insured employer who employs a worker who is certified as a preferred worker under a state fund claim.~~

NEW SECTION

WAC 296-16-145 Who must confirm the worker has returned to work that is consistent with the worker's limitations and physical restrictions? (1) Preferred worker benefits are only available when the offered job is approved by:

(a) A credentialed vocational rehabilitation professional who meets the qualifications in WAC 296-19A-210; and

(b) The injured worker's health care provider.

(2) For the purposes of chapter 296-16 WAC, the injured worker's health care provider is defined as:

(a) The attending provider; or

(b) The current primary care provider; or

(c) In cases of diagnosed and accepted mental health conditions, the treating psychiatrist or psychiatric advanced registered nurse practitioner or, if there is no treating psychiatrist or psychiatric advanced registered nurse practitioner, the treating psychologist.

(3) The final determination in subsection (1) of this section must be made by the department's credentialed vocational rehabilitation professional, who may make a referral to an independent credentialed vocational rehabilitation professional for an on-site job analysis or other evaluation that may be necessary to confirm the job is appropriate for the worker's restrictions.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-150 What benefits ~~((s))~~ can an eligible employer~~((s))~~ receive from the ~~((s))~~preferred worker~~((s))~~ program? ~~((1) Eligible employers insured with the state~~

~~fund who hire a certified "preferred worker," or who reemploy a certified "preferred worker" with developmental disabilities:~~

~~(a) Do not pay accident fund and medical aid fund premiums for that worker during the "preferred worker" certification period; and~~

~~(b) Will not have the cost of any new claim filed by that worker charged to their experience rating, if the claim is for a new injury sustained or an occupational disease diagnosed during the "preferred worker" certification period.~~

~~(2) Eligible self-insured employers who hire a certified "preferred worker," or who reemploy a certified "preferred worker" with developmental disabilities, will receive reimbursement from the second injury fund for all benefits paid on any new claim filed by that worker, if the claim is for a new injury sustained or an occupational disease diagnosed during the "preferred worker" certification period.)) (1) In the sole discretion of the supervisor or supervisor's designee, an eligible employer, insured through the state fund or self-insured, may receive benefits shown in the table below:~~

<u>A preferred worker certified on or after January 1, 2016, who is hired by:</u>		
<u>Employer</u>	<u>State Fund employer (pays premiums to L&I)</u>	<u>Self-insured employer</u>
<u>(a) Wage, clothing, and equipment reimbursements specified in subsection (2) of this section.</u>	<u>X</u>	<u>X</u>
<u>(b) Continuous employment incentive specified in subsection (3) of this section.</u>		
<u>(c) Does not pay accident fund and medical aid fund premiums for hours worked by the preferred worker.</u>	<u>X</u>	
<u>(d) Will not have the cost of any new claim filed by that preferred worker charged to their experience rating.</u>		
<u>(e) Receives reimbursement from the second injury fund for all benefits paid on any new claim filed by that worker during the certification period.</u>		<u>X</u>

~~((2) An eligible employer, insured through the state fund or self-insured, may be reimbursed for the following expenses actually incurred while employing a preferred~~

worker who was certified on or after January 1, 2016, at work approved under WAC 296-16-145, performed during the worker's certification period:

(a) Fifty percent of basic gross wages paid to the worker for the work actually performed, for up to sixty-six days in a twenty-four month period and a maximum of ten thousand dollars per worker certification period.

(i) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(ii) A partial day worked counts as one day. Example: The worker works a four-hour shift. This counts as one day out of the sixty-six.

(iii) If the worker's single shift spans two calendar days, that shift counts as one day. Example: The worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the sixty-six.

(iv) The sixty-six days do not have to be consecutive.

(v) If the worker's medically approved job lasts more than sixty-six days, the employer may choose which sixty-six days to seek reimbursement for.

(vi) The employer cannot be reimbursed for dates the employer employed the worker that are more than twenty-four months after the earliest day the department has already reimbursed on the claim. Example: The first work date for which the employer was reimbursed was February 1, 2016. The twenty-four month eligibility period ends January 31, 2018.

(vii) The employer must submit the request for reimbursement within one year of the date the work was performed.

(viii) The employer must submit to the department documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(b) Clothing the employer purchased for the worker, necessary to perform the medically approved work, up to four hundred dollars per worker certification period.

(i) The department will not reimburse the employer for any clothing the employer provided to the worker that the employer normally provides to its workers.

(ii) When the work ends, the clothing belongs to the worker.

(iii) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(c) Tools and equipment the employer purchased to enable the worker to perform the medically approved work, up to two thousand five hundred dollars per worker certification period.

(i) The department will not reimburse the employer for any tools and equipment the employer provided to the worker that the employer normally provides to its workers.

(ii) When the work ends, the tools and equipment belong to the employer.

(iii) The employer must submit the request for reimbursement within one year of the date of purchase, and include itemized receipts.

(3) An eligible employer who continuously employs a certified preferred worker at the medically approved job without reduction in base wages for at least twelve consecutive months, beginning on or after January 1, 2016, may receive a one-time continuous employment incentive payment at the sole discretion of the supervisor or supervisor's designee.

(a) The twelve months begins the date all required and completed documents described in WAC 296-16-160 are received in the department for the approved employment.

(b) For purposes of this section, "continuous employment" is defined as maintaining the same work pattern as the medically approved job date of hire. "Same work pattern" generally refers to the number of hours worked per week and the worker's primary shift, for example, days, swing, or graveyard shift, as long as total hours are not reduced. For example, a farm laborer returns to approved work as an employee in the farm's retail outlet, Monday through Thursday, 8:00 a.m. to 4:00 p.m., thirty-two hours per week. A month later, the schedule changes to Tuesday through Friday, 8:00 a.m. to 4:00 p.m., thirty-two hours per week. The work pattern is the same as the medically approved job date of hire. However, a change to shift hours that are 4:00 p.m. to midnight may be a change in work pattern.

(c) "Without reduction" means the worker receives the same base wage or greater from the date of hire throughout the twelve-month period. In addition, the employer must continue any health care benefits the certified preferred worker had at the time of hire, unless these benefits are inconsistent with the employer's current benefit program for workers.

(d) The one-time payment is equal to the lesser of ten percent of the worker's wages or ten thousand dollars. Wages for the one-time payment include commissions and bonuses paid, but do not include tips, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(e) Only one continuous employment incentive is payable per worker certification period.

(f) The employer must submit the request for the continuous employment incentive within one year of the date the twelve months ended.

(4) If the department receives a valid reimbursement or incentive request from different employers for the same claim, the requests will be paid in the order received by the department up to the limits described.

(5) The employer cannot be reimbursed under both the stay at work and preferred worker programs for the same dates worked or expenses incurred.

AMENDATORY SECTION (Amending WSR 05-01-105, filed 12/15/04, effective 1/15/05)

WAC 296-16-160 What must an employer do to qualify for benefits when hiring or reemploying a ((~~U~~))preferred worker((~~U~~))? ((An employer must complete an *Intent to Hire Preferred Worker* form. The employer must return the completed form to the department within sixty days from the "preferred worker's" first day of:))

(1) Employment, if the employer is a subsequent or new employer. In these situations, the employer must also provide the department a description of the job offered to the worker.

(2) Reemployment, if the employer is the employer of record and the worker has a developmental disability as defined by RCW 71A.10.020. In these situations, if the doctor has released the worker without restrictions and the worker is returning to the job of record, a job description is not needed:)) (1) An employer must employ the certified preferred worker in a job that:

(a) Will continue to be available into the foreseeable future; and

(b) Is confirmed as consistent with the worker's permanent work restrictions as outlined in WAC 296-16-145; and

(c) Addresses a business need or provides economic value to the employer.

(2) The employer will not be eligible for preferred worker incentives if the offered job is any of the following:

(a) The job of injury with minor or no modifications;

(b) Work that is beyond the worker's medical restrictions;

(c) Work which requires training beyond the usual and customary training provided by the employer to similar employees;

(d) On-the-job training.

(3) Except for tools and equipment as described in WAC 296-16-150 (2)(c), in no case will the employer receive any preferred worker benefits for dates worked prior to the department's receipt of all required documentation. The employer must submit to the department:

(a) A copy of the completed job analysis or department's job description form, approved by the worker's health care provider; and

(b) The job offer, signed by the worker; and

(c) The preferred worker request form, available on the department's web site, completed and signed by the employer.

(d) Once all appropriately completed documents described in (a) through (c) of this subsection have been received by the department, the employer can be reimbursed for the cost of any tools and equipment as described in WAC 296-16-150 (2)(c) if purchased within sixty days of the first date of the preferred worker's employment.

(4) After the offered job is approved by the department's credentialed vocational rehabilitation professional, preferred worker benefits can be granted. The benefit start date will be no earlier than the first workday after the department receives the employer's completed documentation.

(5) If the job is offered after the preferred worker's claim is closed, the worker's restrictions at time of claim closure will apply.

NEW SECTION

WAC 296-16-180 Can a denial decision about preferred worker certification or employer incentive eligibility be protested or appealed? Yes, the employer, injured worker, or health care provider can send a written protest to the department or appeal to the board of industrial insurance

appeals within sixty days from the date the decision is communicated.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-16-112 For purposes of the "preferred worker" program, who is the "employer of record"?

WAC 296-16-115 How does a worker apply for "preferred worker" certification?

WAC 296-16-170 Where may an employer obtain an *Intent to Hire Preferred Worker* form?

WSR 16-09-095

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 19, 2016, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-05-040.

Title of Rule and Other Identifying Information: Chapter 308-77 WAC, Special fuel tax rules and regulations.

Hearing Location(s): Department of Licensing, Prorate and Fuel Tax, 405 Black Lake Boulevard, Room 2105, Olympia, WA 98507, on May 25, 2016, at 2:00 p.m.

Date of Intended Adoption: May 26, 2016.

Submit Written Comments to: Paul Johnson, Department of Licensing, Prorate and Fuel Tax, P.O. Box 9228, Olympia, WA 98507, e-mail pajohnson@dol.wa.gov, fax (360) 570-7839, by May 24, 2016.

Assistance for Persons with Disabilities: Contact Paul Johnson by May 24, 2016, TTY 711 or (360) 664-1844.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement the provisions of SHB 1883, Laws of 2013 and to update or remove obsolete language and provisions in chapter 308-77 WAC. SHB 1883 merges motor fuel and special fuel.

Title: Changed to "Fuel Tax Rules and Regulations"; amending WAC 308-77-005, 308-77-015, 308-77-035, 308-77-075, 308-77-102, 308-77-103, 308-77-104, 308-77-109, 308-77-112, 308-77-114, 308-77-116, 308-77-240, 308-77-265 and 308-77-280, updated and removed obsolete language; WAC 308-77-04401, will be renumbered, updated and removed obsolete language and WAC 308-77-099, updated and removed obsolete language, inserted "billed" gallons; and new WAC 308-77-048, clarified information about "Collateral requirements in lieu of surety bonds," 308-77-108, clarified information about "Special rules and requirements for fuel tax refunds," and 308-77-121, clarified information about "Tax computation in the absence of records."

Reasons Supporting Proposal: Updated information and compliance with RCW implementation effective July 1, 2016.

Statutory Authority for Adoption: RCW 82.38.260.

Statute Being Implemented: Chapters 82.36, 82.38 RCW.

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

Name of Proponent: Department of licensing, prorate and fuel tax, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Johnson, (360) 664-1844 or Alexandra Porter, (360) 664-1876, 405 Black Lake Boulevard, Olympia, WA 98507; and Enforcement: Alexandra Porter, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1876.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implemented changes will not impact small businesses currently or in the future conducting fuel business. The proposals listed are to clearly state intent of enforcing and enacting the changes impacted by chapter 82.38 RCW. An economic impact statement criteria is not needed.

A cost-benefit analysis is not required under RCW 34.05.328. No costs are associated with amendments in this proposal.

April 19, 2016
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-005 Definitions. (1) (~~"Special fuel" as defined in RCW 82.38.020(23) includes diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways except fuel that is subject to the tax imposed by chapter 82.36 RCW.~~

(2)) "Biodiesel" a nonpetroleum-based diesel fuel consisting of short chain alkyl (methyl or ethyl) esters, made by transesterification of vegetable oil or animal fat (tallow), which can be used alone, or blended with conventional petrodiesel in unmodified diesel-engine vehicles.

(~~(3) "Publicly owned firefighting equipment" means equipment owned and used for firefighting by any agency or political subdivision of the state of Washington and will include fire engines, aid cars, ambulances, and vehicles used to transport firefighting personnel.~~) (2) "Billed gallons" a gallon of fuel, whether net or gross as billed to the purchaser.

(3) "Ethanol" an anhydrous denatured aliphatic alcohol intended for gasoline blending.

(4) "Export" means to obtain (~~special~~) fuel in this state for sale or distribution outside this state. To be considered an "export" and qualify for exemption from the (~~special~~) fuel tax, (~~special~~) fuel obtained outside the bulk transfer terminal system must be physically off-loaded in the destination state, province, or foreign country. The exporter must be licensed or registered, if required, in the state, province, or country of destination.

(5) (~~"Invoice" means any document, paper or electronic, evidencing the transfer of ownership of special fuel.~~) "Gasoline

line" means finished gasoline and gasoline blendstocks as defined in Code of Federal Regulations (C.F.R.) 48.4081. Finished gasoline means all products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as motor vehicle fuel. The product must have an octane rating of 75 or more.

(6) "~~(Net)~~ Gross gallons" a standard gallon unit of petroleum of 231 cubic inches ((at 60 degrees Fahrenheit (U.S. petroleum gallon))) as measured at the terminal rack.

(7) "Invoice" means any document, paper or electronic, proving the ownership transfer of fuel.

(8) "Motor vehicle fuel" is any product sold as gasoline and fuel ethanol. The blending of any products or chemicals with gasoline or any other flammable liquid when the resultant product is sold or used for the propulsion of motor vehicles is considered a motor vehicle fuel subject to the provisions of chapter 82.38 RCW.

(9) "Net gallons" a standard gallon unit of petroleum of 231 cubic inches at 60 degrees Fahrenheit (U.S. petroleum gallon).

(10) "Publicly owned firefighting equipment" means equipment owned and used for firefighting by any agency or political subdivision of the state of Washington and will include fire engines, aid cars, ambulances, and vehicles used to transport firefighting personnel.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-015 Incidental use or exemptions. (1) **When is the incidental operation of a nonlicensed vehicle exempt the (~~special~~) fuel tax?** Fuel is exempt the (~~special~~) fuel tax if (~~the~~) used in a vehicle which is not licensed or required to be licensed under chapter 46.16 or 46.87 RCW and is operated between two pieces of private property for a distance not exceeding (~~fifteen~~) twenty-five miles. The movement of the vehicle must be incidental to the primary use of the vehicle.

(2) **When is off-highway fuel use taxable?** If special fuel is used in a continuous trip, which is partly on and partly off the highway, the tax applies to all the fuel used when the total distance traveled off the highway does not exceed one mile.

A continuous trip involves the use of a highway for the transportation of persons or property from one place to another; or, in a round trip, from the origin to the destination and return to the origin.

(3) **Are cash sales to qualified foreign diplomats and consular missions tax exempt?** No, only credit card purchases are exempt.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-035 Cancellation, suspension, or revocation of (~~special~~) fuel licenses. What happens when my license is canceled, suspended, or revoked? The department will (~~notify all special fuel~~) post information about these changes in license status for all licensees, except for IFTA(, of the change in license status).

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-04401 Waiving of bond requirements.

(1) **Can the department waive the requirement to maintain a fuel tax bond?** Yes, if the department determines ~~((that the))~~ a licensed distributor has sufficient financial assets to cover any Washington state fuel tax liability, including penalties and interest.

(2) **What is considered a financial asset?**

(a) A line of credit with a financial institution or supplier covering the cost of product and fuel tax liability; or

(b) United States dollars, bonds, or other obligations of the United States, the state, or any county of the state, deposited with the state treasurer.

(3) **How can I qualify to have my bonding requirement waived?**

(a) By filing a notarized statement with the department stating that your lines of credit with your financial institutions and your fuel suppliers ~~((is at a))~~ are sufficient ~~((amount to include))~~ to cover product cost and state fuel taxes. You must list the name of ~~((the))~~ each financial institution~~((s))~~, the account numbers and dollar value of your lines of credit, and the names of your fuel suppliers. You must authorize the department to access this information with your financial institutions and suppliers; or

(b) ~~((Depositing in a financial institution))~~ Deposit an amount equal to the estimated monthly fuel tax ~~((payments and assigning))~~ liability in a financial institution and assign this deposit to the department as security for performance under chapter 82.38 RCW; and

(c) ~~((Providing))~~ Provide the department with ~~((satisfactory))~~ documentation indicating that the suppliers will not allow the licensed distributor to incur a liability, including fuel tax, in excess of the lines of credit.

(4) **What if the department denies my request for a waiver of the bond requirement?** You can appeal this decision as provided in chapters 82.38 RCW and 308-77 WAC.

(5) **What if I no longer maintain a line of credit or financial asset?** You must provide a surety bond to the department in the amount required by chapter 82.38 RCW, with a coverage beginning on or before the date the line of credit or financial asset became insufficient.

NEW SECTION

WAC 308-77-048 Collateral requirements in lieu of surety bonds. (1) **What other forms of collateral will the department accept in lieu of a surety bond?** The department will accept cash or certificates of deposit in U.S. dollars in any of the following forms:

(a) Automatically renewable certificates of deposit insured by the Federal Deposit Insurance Corporation, made in the name of the licensee of applicant for the license, payable to or assigned to the Washington state treasurer;

(b) Certificates of deposit or share account issued by a savings and loan association insured by the federal savings and loan corporation. Evidence of the insured account, in the form of either a certificate of deposit or passbook must be filed with the department along with a properly executed

assignment form where the fund on deposit is assigned to the Washington state treasurer;

(c) Certificates of deposit of share account, issued by a credit union doing business in the state of Washington and insured by the Washington credit union share guaranty association. Evidence of the insured account, in the form of either a certificate of deposit or passbook, must be filed with the department along with a properly executed assignment form where the fund on deposit is assigned to the Washington state treasurer; or

(d) Cash deposits with the department, however no interest will accrue or be paid to the licensee.

(2) **Do I earn interest on my certificates of deposit?** Yes, the assignment forms will contain the provision that interest earned will be payable to the depositor.

(3) **How is an assignment canceled?** Assignments may only be canceled with written authorization by the department.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-075 Payment due dates for ~~((special))~~ fuel ~~((taxes))~~ tax not paid by electronic funds. What if my payment due date falls on a Saturday, Sunday, or state legal holiday? Payment is due on the next state business day. For example, if the payment due date falls on Saturday, the payment must be postmarked by Monday.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-099 Invoices issued by licensees. (1) **When is an invoice issued?** Every licensee must issue an invoice at the time of sale. ~~((If an electronic invoice is issued, a paper copy of the invoice is required to support a refund claim.))~~

(2) **What information is required on an invoice?**

(a) The name and address of the seller;

(b) The name~~((s))~~ and address~~((, and special fuel tax license number, if applicable.))~~ of the purchaser;

(c) The date of delivery month, day, and year;

(d) The location of the point of shipment. Alphanumeric codes are allowed if the definition keys are provided to the department;

(e) The physical address of the fuel delivery or exchange, if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are allowed if the definition keys are provided to the department;

(f) In the case of a delivery into a federally recognized Indian reservation or onto Indian country, the invoice must identify the state, U.S. possession, or Canadian Province ~~((in which))~~ where the delivery took place;

(g) Name of carrier transporting fuel;

(h) Name of product sold;

(i) The number of U.S. gallons of product sold in ~~((net or gross))~~ billed gallons;

(j) The price per gallon and total amount charged; and

(k) A statement on the invoice indicating if the fuel has been sold without the Washington state fuel tax.

(3) **What happens if a purchaser's invoice is lost or destroyed?** The seller can issue a duplicate or copy containing all information on the original invoice, if requested by the purchaser. The copies must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

AMENDATORY SECTION (Amending WSR 01-22-073, filed 11/1/01, effective 12/2/01)

WAC 308-77-102 Appeals. (1) **What are the appeal procedures?** Any person having been issued a notice of assessment for taxes, penalties, ~~((and/or interest who wishes to contest such notice may petition))~~ or interest may contest the notice by petitioning the department for an informal hearing in lieu of proceeding directly to a formal hearing. ~~((A))~~ This written petition ~~((for a hearing must be in writing and))~~ must be received by the department within thirty days ~~((after the receipt))~~ of the mailing date of the notice of assessment ~~((A petition shall set forth))~~ and list the specific reasons ~~((why reassessment is sought and))~~ for reassessment. Include the amount of tax, interest, ~~((and/or penalties which you believe))~~ or penalties believed to be due.

(2) **What happens after the department receives the petition 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 you by mail at least ten days prior to the scheduled date. If you are unable to attend the hearing on the date or time scheduled, you may request that the department ~~((to))~~ reschedule the hearing.

(3) **What happens if I fail to appear for my informal hearing without prior notification?** Failure to appear may result in the loss of your informal administrative appeal rights.

(4) **What happens following my informal hearing?** The department will make a determination in accordance with the Revised Code of Washington, administrative 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 the mailing of the determination, appeal in writing and request a formal hearing by an administrative law judge. The appeal ~~((shall))~~ must indicate the portions of the determination you feel are in error and ~~((set forth))~~ list the reasons for believing the decision should be amended. The department will establish a time and place for a formal hearing and give you at least ten days' notice.

(6) **When does my reassessment become final?** The decision of the department upon a petition for reassessment shall become final, due and payable thirty days after service upon you unless you appeal further.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-103 Mitigation of penalties and interest. (1) **What fee, penalty or interest may be mitigated or**

reduced? The department may mitigate fees, penalties, ~~((dye special fuel penalties,))~~ or interest from:

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage;
- License reinstatement fees;
- Assessments; or
- Unlawful use of dyed special fuel.

(2) **How will the department make the decision?** The department may review records, account history, or other information.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-104 Filing of refund claims for non-licensees. (1) **How do I apply for a refund?** Contact the department for a refund permit application and instructions or sign up electronically.

(2) **What time period can I file for a refund claim?** You must file within thirteen months of the fuel purchase date. The department will use the postmark date to determine ~~((the thirteen-month time frame))~~ eligibility. We will not accept multiple refund claims for the same month. For example, if you ~~((have))~~ made a claim for purchases in June you ~~((cannot))~~ could not claim additional purchases for June on another claim form.

(3) **What do I need to send with my refund claim?** You must ~~((send in))~~ include your fuel purchase invoices, schedules, and other documents listed on the refund claim form. ~~((If electronic invoices were issued, you must provide paper copies.))~~

(4) **How do I account for my inventory?** Any fuel on hand by physical measurement at the end of the claim period, should be reported as ending inventory. This figure ~~((should))~~ must be reported as the beginning inventory on your next claim form.

(5) ~~((What does a licensed distributor send with their refund claim? Summary schedules must be provided and the department may request invoices.))~~

~~((The following))~~ Who can sign a refund claim form ~~((?))~~?

- (a) Individuals - Permit holder;
- (b) Partnership - Any one of the partners;
- (c) Business firm or corporation - Owner, corporate officer or other authorized agent.

~~((7))~~ Can invoices have a different name than what is on the claim form? (6) Can I claim a refund using another person's fuel invoices? No.

~~((8))~~ (7) Can I request that my refund be assigned to another person? Yes ~~((if we receive a letter stating whom))~~. You must submit a written request naming the person you would like ~~((the claim assigned))~~ to receive the refund.

~~((9))~~ (8) How long will it take ((until I receive)) to process my refund? Within thirty business days after we receive a properly ~~((completed))~~ submitted claim.

~~((10))~~ (9) How long do I maintain my refund records? Keep them for five years after submitting your claim.

NEW SECTION

WAC 308-77-108 Special rules and requirements for fuel tax refunds. Can I claim a refund for motor vehicle fuel used in my unlicensed off-road vehicles, alterrain vehicles, and snowmobiles? Yes, only if the motor vehicle fuel is used for nonrecreational purposes such as farming, logging, and construction. An off-road vehicle (ORV) permit is considered a license. Off-road vehicles, alterrain vehicles, and snowmobiles are defined in RCW 46.09.310 and 46.10.300.

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

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-109 Invoice requirements for refund to nonlicensees and IFTA licensees. (1) What is a valid invoice? A ~~((separate invoice must be issued for each fuel purchase. A single invoice may list multiple deliveries of fuel purchases made during a calendar month.~~

~~((2) The following information must be included on the invoice))~~ valid invoice must include:

- (a) Name and address of the seller;
- (b) The type of fuel and number of gallons purchased;
- (c) Complete date of sale including month, day, and year;
- (d) Price per gallon; and
- (e) Total amount of sale.

(2) A separate invoice must be issued for each fuel purchase. A single invoice may list multiple deliveries of fuel purchases made during a calendar month.

(3) The department will not accept invoices with altered, corrected, or erased information.

~~((4) What happens if the seller issues an electronic invoice? A paper copy must be submitted with your refund claim.~~

~~((5))~~ **(5) What happens if I get an incorrect invoice?** The seller must issue a new invoice marked "correction" and reference the original.

~~((6))~~ **(5) What happens if I lose or destroy my invoice?** The seller may issue a copy. The copies must be plainly marked "copy" or "duplicate."

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-112 Power take-off (PTO) use. (1) What is PTO use? It is fuel used in a motor vehicle engine to operate auxiliary equipment. ~~The ((fuel must be supplied from))~~ equipment must be fueled by the propulsion tank of the motor vehicle.

(2) What is not considered auxiliary equipment? Equipment such as air conditioning, power steering, generator, etc., that ~~((is))~~ are considered ~~((an))~~ integral ~~((part of))~~ to the operation of the vehicle.

(3) What formula does the department use in determining PTO usage? The tax exemption is calculated as a percentage of the total Washington taxable fuel:

Cement mixer	25%
Fire trucks (private)	25%
Mobile cranes	25%
Garbage trucks (with load compactor)	25%
Sewer cleaning truck/jet vactor	25%
Super suckers	25%
Line truck with digger/derrick or aerial lift	20%
Log truck with self loader	20%
Refrigeration trucks	20%
Sweeper trucks (must be motor vehicle)	20%
Boom truck/block boom	15%
Bulk feed truck	15%
Dump trailers	15%
Dump trucks	15%
Hot asphalt distribution truck	15%
Leaf truck	15%
Lime spreader	15%
Pneumatic tank truck	15%
Salt spreader on dump truck	15%
Seeder truck	15%
Semiwrecker	15%
Service truck with jack hammer/drill	15%
Snow plow	15%
Spray truck	15%
Tank transport	15%
Tank trucks	15%
Truck with PTO hydraulic winch	15%
Wrecker	15%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
Others	7.5%

(4) What if my fuel consumption is greater than the percentages indicated above? If you can provide satisfactory documentation and records to show that the fuel consumed by the PTO is greater than the percentages indicated, the department may grant the higher percentage on a case-by-case basis.

(5) What documents must accompany the refund claims? All claims must be accompanied by valid purchase invoices to cover the total gallons of ~~((special))~~ fuel purchased, except that invoices for ~~((special))~~ fuel used in fuel oil delivery trucks or when measured by a metering device need only be equal to or greater than the gallons claimed as refundable. A support schedule for Washington PTO and power pumping credits must accompany each claim for refund.

(6) What records do I need to keep? All individual vehicle mileage and fuel records that reflect total mileage.

total fuel, Washington taxable mileage, and Washington taxable fuel by vehicle.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-114 Unauthorized use of dyed diesel.

(1) ~~((Is there any dye concentration in diesel fuel that the department cannot assess penalties for unlawful use? No.))~~ **What is the minimum dye concentration allowed for on-road use? None.** The department may assess on any dye concentration found in licensed vehicles, vehicles required to be licensed, or in bulk storage tanks used to fuel licensed or required to be licensed vehicles.

(2) **Who can be assessed a penalty for unlawful use of dyed diesel or dyed biodiesel?**

- (a) The operator of the vehicle;
- (b) The registered owners of the vehicle;
- (c) Any person responsible for the operation, maintenance, or fueling of the vehicle.

(3) **If dyed diesel or dyed biodiesel is discovered in the fuel supply tanks of a vehicle, when must the fuel be removed? The dyed ((diesel)) fuel must be removed from the vehicles within twenty-four hours from the time of discovery. Detection of dyed ((diesel)) fuel in the same vehicles after the twenty-four-hour period will be ((considered)) treated as a separate violation.**

(4) **Will I be assessed ((dyed diesel)) penalties ((on the)) for dyed fuel in bulk storage tanks? Yes, if any dyed ((diesel)) fuel from the bulk storage tanks has been used for unlawful purposes.**

(5) **How is the dyed ((diesel)) fuel in a bulk storage tank assessed? The assessment is based on the capacity or estimated quantity of dyed ((diesel)) fuel in the bulk storage tanks without regard to how this fuel will be used.**

(6) **What if I refuse the department or authorized representative access to inspect the vehicles or bulk storage tanks? The penalty in RCW ((82.38.170(13))) 82.38.072 (2) will be calculated on the capacity of the bulk storage tanks and the number of vehicles subject to the refusal.**

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-116 Records. (1) **What ((special)) fuel records must be kept? Every person licensed or required to be licensed must maintain a complete monthly stock summary of the gallons of ((special)) fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary must be supported by:**

- (a) Physical inventories of bulk storage plants taken at the close of each calendar month.
- (b) Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.
- (c) A record of fuel receipts, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.
- (d) A record of fuel disbursements, invoices, bills of lading and other documents relative to the disbursement of fuel.

(2) **If I am a licensed dyed fuel user or someone who is required to be licensed, do I keep the same records? Yes.**

NEW SECTION

WAC 308-77-121 Tax computation in the absence of records. In the absence of records showing the number of miles operated per gallon of fuel consumed, fuel consumption will be calculated by the department. The department may adopt a mileage per gallon basis for determining the taxable use of fuel used in motor vehicles which travel on and off the highways within the state of Washington.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-240 Refund records. What records do I need to keep to claim a refund of fuel taxes?

- All ((special)) fuel receipts;
- The gallons of fuel used in each piece of equipment, both refundable and nonrefundable;
- Fuel inventory in bulk storage;
- Detailed fuel records for all withdrawals from bulk storage;
- Fuel purchased in small containers (ten gallons or less) for nonhighway use must show the type of equipment being used, i.e., boats, tractors, power saws, etc.

Each claimant using special fuel must also keep on-highway and off-highway mileage records for each licensed vehicle.

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-265 Tax exempt losses. (1) ~~((What is acceptable proof of loss))~~ **How can I document lost fuel for a credit or refund of fuel tax paid?**

(a) A notarized affidavit by a person having actual knowledge of the circumstances of the loss explaining the origin and destination of the shipment, the circumstances surrounding the quantity of fuel lost, fuel salvaged, disposition of the salvaged fuel, and procedures used in the determination of the quantity of fuel lost; or

- (b) A signed statement by a federal, state, local or provincial official who has authority to investigate fuel loss; and
- (c) A bill of lading or other shipping documents; and
- (d) A statement by the licensee establishing ownership of the fuel at time of loss.

(2) **Are deductions for losses from bulk storage allowed? Yes, ((special)) fuel that has been proven lost or destroyed, prior to distribution from a licensee's bulk storage facility outside of the bulk transfer terminal system may be considered a tax exempt loss.**

(3) **How long do I retain my evidence substantiating my loss? Five years from date of claim.**

(4) **May I claim a deduction for stolen fuel? No.**

AMENDATORY SECTION (Amending WSR 09-07-075, filed 3/16/09, effective 4/16/09)

WAC 308-77-280 Natural gas, propane decal as evidence of payment of annual license fees. ~~((1) Do I pay fuel tax when I purchase natural gas or liquefied petroleum gas (propane) for my licensed vehicle?~~ No, once you have licensed your vehicle as being powered by natural gas or propane, you will pay an annual license fee in lieu of the fuel tax.

~~(2) What proof is required to purchase natural gas or propane for my vehicle?~~ A decal will be issued that must be displayed on your vehicle that allows the purchase of natural gas or propane. This decal must be displayed in plain view on the vehicle near the fuel supply tank.

~~(3) What)~~ **Am I required to buy a decal if my vehicle operates with both motor fuel gasoline and natural gas or propane?** ~~((You will))~~ Yes, you must pay fuel tax on the gasoline purchases as well as purchasing a decal.

NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
308-77-04401	308-77-046

WSR 16-09-096

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 19, 2016, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-05-039.

Title of Rule and Other Identifying Information: Chapter 308-78 WAC, Aircraft fuel tax.

Hearing Location(s): Department of Licensing, Prorate and Fuel Tax, 405 Black Lake Boulevard, Room 2105, Olympia, WA 98507-9649, on May 25, 2016, at 2:00 p.m.

Date of Intended Adoption: May 26, 2016.

Submit Written Comments to: Paul Johnson, Department of Licensing, Prorate and Fuel Tax, P.O. Box 9228, Olympia, WA 98507, e-mail pajohnson@dol.wa.gov, fax (360) 570-7839, by May 24, 2016.

Assistance for Persons with Disabilities: Contact Paul Johnson by May 24, 2016, TTY 711 or (360) 664-1844.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement the provisions of SHB 1883, Laws of 2013 and to update or remove obsolete language and provisions in chapter 308-78 WAC. WAC 308-78-010, 308-78-020, 308-78-030, 308-78-035, 308-78-045, 308-78-070, 308-78-075, 308-78-080, 308-78-090 and 308-78-100, updated and removed obsolete language; and repealing WAC 308-78-040 Tax exempt sales by licensed distributors, as this information is obsolete and contained in RCW 82.42.068, 82.42.070.

Reasons Supporting Proposal: Updated information and compliance with RCW implementation effective July 1, 2016.

Statutory Authority for Adoption: RCW 82.42.130.

Statute Being Implemented: Chapter 82.42 RCW.

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

Name of Proponent: Department of licensing, prorate and fuel tax, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Johnson, (360) 664-1844 or Alexandra Porter, (360) 664-1876, 405 Black Lake Boulevard, Olympia, WA 98507; and Enforcement: Alexandra Porter, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1876.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implemented changes will not impact small businesses currently or in the future conducting fuel business. The proposals listed are to clearly state intent of enforcing and enacting the changes impacted by chapter 82.42 RCW. An economic impact statement criteria is not needed as it does not meet the criteria listed in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. No costs are associated with amendments in this proposal.

April 19, 2016

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-010 Definitions. (1) "Certified user" means any person other than a distributor who ~~((is certified to acquire))~~ holds an Aircraft Bulk Fuel Exemption certificate to purchase aircraft fuel without payment of the aircraft fuel tax ~~((at time of acquisition))~~.

(2) "Private, nonstate funded airfield" means an airport not eligible to receive state funding under chapter 47.68 RCW.

(3) "Emergency medical air transport entities" means entities that own or lease, and operate aircraft used solely for air ambulance services.

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-020 Bond requirements and collection.

(1) **Are bonds required for aircraft fuel distributors?** Yes, every aircraft fuel distributor must be bonded as provided in ~~((chapter 82.36 RCW and))~~ chapter 82.42 RCW.

(2) **What action can the department take to collect ~~((on bonds for))~~ unpaid aircraft fuel ~~((taxes))~~ tax?** ~~((Yes:))~~ The department may:

- Issue a notice of assessment;
- Revoke license;
- File tax liens or warrant;

• Execute bonds on file under the provisions of chapter ~~(s 82.36 and)~~ 82.42 RCW ~~((for unpaid aircraft fuel taxes)).~~

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-030 ~~((Required reports.))~~ Agencies sharing tax return information. ~~(((1) What reports are required by the department for aircraft fuel tax and when are they due? Every licensed distributor of aircraft fuel will submit signed tax returns and schedules to the department, on or before the 25th day of each month, or as required by the department. Forms will be furnished or approved by the department.~~

~~(2) What if the payment due date falls on a Saturday, Sunday, or state legal holiday? Payment is due by the state business day immediately preceding the due date. For example, if the payment due date falls on Saturday, you must transfer the funds by Friday.~~

~~(3) Is a report due if I have no activity for the month? Yes, a report must be filed with the department for each calendar month.~~

~~(4) Can) Will tax return information be ~~((made available to))~~ shared with other government agencies? Yes, the department routinely ~~((furnishes))~~ provides copies of schedules to government agencies or foreign jurisdictions.~~

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-035 What is the minimum ~~((payment or))~~ refund ~~((:))~~ amount? ~~(((1) What is the minimum payment or refund for licensed accounts? Ten dollars or less will not be owed or refunded.~~

~~(2) What is the minimum refund for unlicensed refund claims? Claims for less than twenty dollars will not be refunded.)) The minimum refund amount for both licensed and unlicensed accounts is twenty dollars.~~

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-045 Tax exempt use and circumstances. (1) ~~(((What are the conditions under which a))~~ **When can an aircraft fuel tax refund ~~((of aircraft fuel tax can))~~ be claimed? When fuel is:**

(a) ~~(((Operation of aircraft))~~ Used by air carriers, supplemental air carriers, and foreign flag carriers, operating under the Federal Aviation Administration Regulations, and local service commuters.

(b) Used for testing and experimental purposes in the manufacture or ~~((remanufacture))~~ repair of aircraft ~~((and for))~~, including flight operations ~~((or experimental testing following manufacture, repair prior to delivery to a customer, or experimental testing of another aircraft)).~~

(c) Used in aircraft crew training in Washington state for certified air carriers.

(d) ~~(((When applying))~~ Used to apply pesticides, herbicides, or other agricultural chemicals ~~((under conditions defined in RCW 82.42.020)).~~

(e) ~~(((Exportation of fuel))~~ Exported from this state for use outside this state ~~((under the same conditions as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW)).~~

(f) ~~(((Use of fuel))~~ Used in nonhighway equipment, other than aircraft ~~((, as provided for the refund of motor vehicle fuel in chapter 82.36 RCW and special fuel in chapter 82.38 RCW)).~~

(g) ~~(((Sales to the United States or foreign government agencies by a distributor who has paid the aircraft fuel tax. The distributor will file an exemption certificate provided by the department. This certificate will contain an assignment to the distributor of the purchaser's right to a refund.))~~ Sold with taxes to the United States or foreign government agencies.

(h) ~~(((Users of aircraft fuel placed into))~~ In helicopters or ~~((the wing tanks of))~~ aircraft that are used solely for air ambulance services ~~((are eligible for a refund of the aircraft fuel tax. Aircraft fuel consumed during))~~ or for training activities directly related to ~~((providing air ambulance))~~ these services ~~((is considered to be exempt from the aircraft fuel tax)). For aircraft, the fuel must be placed directly into the wing tanks.~~

(2) **What records must be kept when claiming an exemption of aircraft fuel tax?** Each person must keep records of each flight or series of flights for which tax exempt use is claimed. Records will include:

- (a) Flight or block time of each flight or series of flights;
- (b) Type of aircraft;
- (c) Purpose of each flight or series of flights;
- (d) Dates; and
- (e) Gallons consumed for each flight or series of flights.

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-070 Records. ~~(((1) What aircraft fuel records must be kept? Every person licensed or required to be licensed must maintain a complete monthly stock summary of the gallons of aircraft fuel reflecting inventories, receipts, sales, use, other distribution, and loss or gain. The stock summary must be supported by:~~

(a) ~~Physical inventories of bulk storage plants taken at the close of each calendar month.~~

(b) ~~Meter readings taken at the close of each calendar month for pumps through which fuel is dispensed.~~

(c) ~~A record of fuel receipts, invoices, bills of lading, transfer documents, yield reports, and other documents relative to the acquisition of fuel.~~

(d) ~~A record of fuel disbursements, invoices, bills of lading and other documents relative to the disbursement of fuel.~~

~~(2))~~ **How long must I ~~((retain))~~ keep my records?** ~~(((Records will be maintained and kept for a period of not less than five years in their original form. The department may make such examinations of the records, facilities, equipment, and aircraft of distributors, certified users and consumers of aircraft fuel as necessary in carrying out the provisions of this chapter.))~~ Licensees must keep records for at least five years from the reporting period. Refund claimants must keep records for at least five years from the filing date.

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-075 Invoices issued by licensees. (1) **When is an invoice issued?** Every licensee must issue an invoice at the time of sale. ~~((If an electronic invoice is issued, a paper copy of the invoice is required to support a refund claim.))~~

(2) **What information is required on an invoice?**

(a) The name and address of the seller;

(b) The name~~(;)~~ and address~~(, and aircraft fuel tax number, if applicable,))~~ of the purchaser ~~((for all deliveries other than those made directly into the aircraft fuel tanks of unlicensed exempt carriers));~~

(c) The date of delivery, month, day, and year;

(d) The location of the point of shipment. Alphanumeric codes are ~~((not))~~ allowed if the definition keys are provided to the department;

(e) The physical address of the fuel delivery or exchange if different than the purchaser address, including the name of the state, Canadian Province, or foreign country. Alphanumeric codes are not allowed;

(f) In the case of a delivery onto a federally recognized Indian reservation or into Indian country, the invoice must identify the state, U.S. possession, or Canadian Province ~~((in which))~~ where the delivery took place;

(g) Name of carrier transporting fuel;

(h) Name of product sold;

(i) The number of U.S. gallons of product sold in ~~((net or gross))~~ billed gallons;

(j) The price per gallon and the total amount charged; and

(k) A statement on the invoice indicating if the fuel has been sold without the Washington state fuel tax.

(3) **What happens if a purchaser's invoice is lost or destroyed?** The seller can issue a duplicate or copy containing all information on the original invoice, if requested by the purchaser. The copies must be plainly marked "copy" or "duplicate."

(4) **What happens if an incorrect invoice is issued to the purchaser?** The seller must issue a corrected invoice to the purchaser. The invoice must clearly indicate that it is a corrected invoice and reference the original invoice.

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-080 Filing of refund claims for non-licensees. (1) **How do I apply for a refund ~~((for aircraft fuel))~~?** Contact the department for a refund permit application and instructions or sign up electronically.

(2) **What time period can I file for a refund?** You must file within thirteen months of the fuel purchase date. The department will use the postmark date to determine ~~((the thirteen-month time frame))~~ eligibility. We will not accept multiple refund claims for the same month. For example, if you ~~((have))~~ made a claim for purchases in June you ~~((cannot))~~ could not claim additional purchases for June on another claim form.

(3) **What do I need to send with my refund claim?** You must ~~((send in))~~ include your fuel purchase invoices,

schedules, and other documents listed on the refund claim form. ~~((If electronic invoices were issued, you must provide paper copies.))~~

(4) **How do I account for my inventory?** Any fuel on hand~~(;)~~ by physical measurement~~(;)~~ at the end of the claim period, should be reported as ending inventory. This figure ~~((should))~~ must be reported as the beginning inventory on your next claim form.

~~((5))~~ ~~((What does a licensed distributor send with their refund claim?))~~ Summary schedules must be provided and the department may request invoices.

~~((6))~~ ~~((The following))~~ Who can sign a refund claim form~~(;)~~?

(a) Individuals - Permit holder;

(b) Partnership - Any one of the partners;

(c) Business firm or corporation - Owner, corporate officer, or other authorized agent.

~~((7))~~ ~~((6))~~ Can ~~((invoices have a different name than what is on the claim form))~~ I claim a refund using another person's invoices? No.

~~((8))~~ ~~((7))~~ Can I request that my refund be assigned to another person? Yes~~(, if we receive a letter stating whom).~~ You must submit a written request naming the person you would like ~~((the claim assigned))~~ to receive the refund.

~~((9))~~ ~~((8))~~ How long will it take ~~((until I receive))~~ to process my refund? Within thirty business days after we receive a properly ~~((completed))~~ submitted claim.

(9) How long do I maintain my refund records? Keep them for five years after submitting your claim.

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-090 Mitigation of penalties and interest. (1) **What fee, penalty or interest may be mitigated or reduced?** The department may mitigate fees, penalties, or interest from:

- Late or missing fuel tax returns;
- Unpaid or underpaid taxes;
- Incomplete records to support reported fuel usage;
- License reinstatement fee; or
- Assessments.

(2) **How will the department make the decision?** The department may review records, account history, or other information.

AMENDATORY SECTION (Amending WSR 09-07-077, filed 3/16/09, effective 4/16/09)

WAC 308-78-100 Dishonored checks. (1) **What will happen if my check is dishonored?** The department will take collection action to recover any amounts owing and require all subsequent payments to be made in ~~((guaranteed funds, such as))~~ cash, cashier's check, or money order.

(2) **Are there any additional fees charged for a dishonored check?** Yes, a handling fee will be charged by the department for each dishonored check.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-78-040 Tax exempt sales by licensed distributors.

WSR 16-09-097**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH**

[Filed April 19, 2016, 12:01 p.m.]

The department of health (department) is withdrawing the CR-102 for WAC 246-830-037, which was filed November 2, 2015, and published in WSR 15-22-076.

The department is withdrawing this CR-102 because the 2016 legislature passed HB 2781, which was signed by the governor on March 29, 2016, and is effective June 9, 2016. HB 2781 requires the board of massage (board) to write rules to allow board approved massage programs to establish transfer programs to accept an individual's prior education in a program that has not been approved by the board.

The purpose of the proposed rule was to clarify that all applicants for massage practitioner licensure must successfully complete an entire course of study from a board approved program. With the passage of HB 2781, the current CR-102 proposed rule conflicts with the statute and the language is no longer valid.

The board intends to file a new CR-102 with proposed rule language this year.

Individuals requiring information should contact Megan Brown, program manager, at (360) 236-4945.

Tami Thompson
Regulatory Affairs Manager

WSR 16-09-098**PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed April 19, 2016, 1:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-153.

Title of Rule and Other Identifying Information: Chapter 246-12 WAC, department of health is proposing to add a new Part 14 and new sections to establish minimum standards for suicide prevention trainings for health care professionals.

Hearing Location(s): Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on May 25, 2016, at 9:30 a.m.

Date of Intended Adoption: June 1, 2016.

Submit Written Comments to: Karyn Brownson, Department of Health, P.O. Box 47853, Olympia, WA 98504, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2830, by May 25, 2016.

Assistance for Persons with Disabilities: Contact Karyn Brownson by May 20, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to establish minimum standards for suicide assessment, treatment, and management trainings, required to be taken by certain health care professionals. In 2014, ESHB 2315, codified as RCW 43.70.442, was enacted requiring certain health care professionals to complete training in suicide assessment, treatment, and management to help in the identification, referral, or management of patients at risk for suicide. In 2015, ESHB 1424 amended RCW 43.70.442, requiring the department of health to develop minimum standards for the suicide prevention training programs for health care professionals. Training programs that meet the minimum standards will be published on a model list. The proposed rule includes requirements for trainings to include information on veterans and issues related to imminent harm via lethal means or self-injurious behaviors.

Reasons Supporting Proposal: Suicide is a serious public health problem in Washington. The state's suicide rate is almost fifteen per one hundred thousand population, eleven percent higher than the national rate. The proposed rules are necessary to comply with RCW 43.70.442, which requires the department to adopt rules by June 30, 2016, that establish minimum standards for the training programs that will be included on the model list.

Statutory Authority for Adoption: RCW 43.70.442.

Statute Being Implemented: RCW 43.70.442.

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: Karyn Brownson, 111 Israel Road S.E., Tumwater, WA 98504-7853, (360) 236-2803; Implementation and Enforcement: Kathy Schmitt, 111 Israel Road S.E., Tumwater, WA 98504-7853, (360) 236-2985.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

Suicide is a serious public health problem in Washington state. The state's suicide rate is almost fifteen per one hundred thousand population, eleven percent higher than the national rate. On average, three people die by suicide every day, and Washington families and communities are grieving the loss of over five thousand people to suicide from 2010 to 2014. In an average week, there are sixty-five hospitalizations from self-inflicted injury. Recent survey data tell us that more than four percent of adults and twenty percent of tenth graders in Washington seriously considered suicide in the past year.¹ In 2013 and 2014, the legislature enacted laws, codified as RCW 43.70.442, requiring certain health professionals to

complete training in suicide assessment, treatment and management to help them identify patients at risk for suicide. In 2015, the legislature enacted ESHB 1424 (chapter 249, Laws of 2015), which amended RCW 43.70.442. ESHB 1424 requires the department of health (department) to develop minimum standards for the suicide prevention training programs for health care professionals required to complete suicide prevention training. Training programs that meet the minimum standards will be published on a model list, by July 1, 2017. After July 1, 2017, health care professionals must select a training program from the model list.

¹ Washington state department of health: Death Certificate Data; Hospital Discharge Data; Comprehensive Hospitalization Abstract Reporting System (CHARS) data. Substance Abuse and Mental Health Services Administration. Behavioral Health Barometer: Washington, 2014. HHS Publication No. SMA-15-4895WA. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015. Looking Glass Analytics (2015). Healthy Youth Survey 2014 Report of Results: Statewide Results, Grade 10. <http://www.askhys.net/library/2014/StateGr10.pdf>.

Rule making is necessary to comply with ESHB 1424, which requires the department to adopt rules by June 30, 2016, establishing minimum standards for the training programs that will be included on the model list. It will ensure a basic level of consistency and quality in the trainings on suicide taken by health professionals.

In addition, appropriate training for health professionals on suicide assessment, treatment and management will prevent suicide. A study examining a large body of research found that forty-five percent of people who died by suicide had seen a primary care provider within the month before their death, seventy-seven percent within the year before, and thirty percent had received mental health care during the last year of life.² The London School of Economics found a high return on investment from suicide intervention training for health professionals because of cost savings from prevented suicides.³

² American Foundation for Suicide Prevention. (2015). *Key Research Findings*. <https://www.afsp.org/understanding-suicide/key-research-findings>.

³ Knapp M, McDaid D and Parsonage M (eds.). *Mental Health Promotion and Prevention: The Economic Case*. Personal Social Services Research Unit, London School of Economics and Political Science. 2011. <http://www.lse.ac.uk/businessAndConsultancy/LSEEnterprise/pdf/PSSRUFeb2011.pdf>.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

Table A:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll
611430	Professional and Management Development Training	202	3,642.57
611699	All Other Miscellaneous Schools and Instruction	250	2,131.16

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll
813319	Other Social Advocacy Organizations	161	1,883.91

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The proposed rules apply only to training providers who choose to provide training on suicide that complies with RCW 43.74.442. Department analysis shows that training providers are more likely to gain than to lose revenue because of these rules over time. Individuals and businesses could choose to create a training in line with the minimum standards in these rules in pursuit of financial gain from the large pool of health professionals required to get training. Training providers who do not choose to follow these minimum standards will be unable to provide training to designated health professionals that will meet the requirements of RCW 43.70.442 after July 1, 2017. However, they will still be able to provide training for other appropriate audiences.

After talking with training developers of several types (large business, small business, small nonprofit and individual expert consultant), we have estimated that revising an existing training to comply with the minimum standards would take one hundred hours of staff time and creating a new training would take one thousand hours of staff time. At an approximate wage of \$50 per hour, the development of a new training would cost \$50,000 and revision of an existing training would cost \$5,000. We expect significantly more training providers to revise or add to existing trainings than to create entirely new trainings.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

The costs to affected businesses for revising or creating trainings is estimated at \$5,000 to revise current program up to \$50,000 to create a new training program. This would impose costs above the one percent of average annual payroll threshold of \$1,883.91 - 3,642.57.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

Complying with the minimum standards in these rules may be more costly for training providers that are large or lucrative businesses. The high cost is due to having a larger and more highly-compensated staff to develop the materials, and a greater quantity to [of] materials to print. On the other hand, the cost of developing a new training may be more burdensome for less-resourced businesses. Whether to create or alter a training for compliance with the minimum standards is a business decision.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

We have made an effort to mitigate the cost of developing or revising training by making an agreement with the department of veterans affairs to provide free content on veterans that suicide prevention trainings must include under RCW 43.70.442. The content will be accessible by training providers if they choose to use it. Additionally, training providers who choose to comply with these minimum standards will financially benefit from charging contract trainers to attend a training of trainers, and charging health professionals to attend training.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

We held three group meetings with stakeholders, two in person and one via GoToMeeting. We also communicated with stakeholders by phone and e-mail between meetings. Small businesses involved in suicide prevention training participated in these stakeholder meetings and were in contact with us throughout the project. Those who participated gave positive feedback on the draft rules and did not respond when we asked stakeholders to contact us with major objections to the content. Stakeholder input contributed very significantly to the content of the rule.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The department's analysis concluded that there may be jobs created by this rule. Compliance will allow trainers to make significant revenue by training a portion of the approximately one hundred seventy-five thousand health professional[s] currently required to take training on suicide assessment, treatment and management.

A copy of the statement may be obtained by contacting Karyn Brownson, Department of Health, P.O. Box 47853, Olympia, WA 98504, phone (360) 236-2803, fax (360) 236-2830, e-mail karyn.brownson@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Karyn Brownson, Department of Health, P.O. Box 47853, Olympia, WA 98504, phone (360) 236-2803, fax (360) 236-2830, e-mail karyn.brownson@doh.wa.gov.

April 19, 2016

John Wiesman, DrPH, MPH
Secretary

PART 14

MINIMUM STANDARDS FOR SUICIDE PREVENTION TRAINING FOR HEALTH CARE PROFESSIONALS

NEW SECTION

WAC 246-12-601 Purpose. The purpose of WAC 246-12-610 through 246-12-650 is to set minimum standards for

suicide prevention trainings for health care professionals to be included on a model list of department of health-approved trainings. Both trainers and health care professions may set standards for trainings that exceed these standards. Training specific to a profession must comply with that profession's rules for continuing education.

NEW SECTION

WAC 246-12-610 Definitions. The definitions in this section apply throughout WAC 246-12-601 through 246-12-650 unless the context clearly requires otherwise.

(1) "Department" means the Washington state department of health.

(2) "Health professional" means an individual licensed or holding a retired active license in one of the health professions listed in RCW 43.70.442 as required to take training in suicide assessment, including screening and referral, suicide treatment, and suicide management.

(3) "Model list" means the list of trainings that meet minimum standards established by the department of health pursuant to RCW 43.70.442.

(4) "Referral" means facilitating a client or patient's linkage to other resources.

(5) "Screening" means asking questions to identify a person at risk of suicide and to determine the need for further risk assessment or referral. Screening may be the first step of suicide risk assessment.

(6) "Secretary" means the secretary of the department of health or the secretary's designee.

(7) "Suicide assessment" or "suicide risk assessment" means a structured process to gather accurate information from a client or patient to determine risk of suicide.

(8) "Suicide treatment and management" means engagement and collaboration between a health professional or team and client or patient to resolve suicide risk by addressing the factors contributing to risk, and ongoing monitoring and adjustment of treatment and safety plans.

(9) "Training in suicide assessment, treatment, and management" means empirically supported training approved by the appropriate disciplining authority that contains the following elements: Suicide assessment, including screening and referral, suicide treatment, and suicide management.

NEW SECTION

WAC 246-12-620 Training delivery. Minimum standards for training delivery:

(1) Training must be provided using a modality and number of sessions in accordance with each health profession's rules for continuing education and suicide prevention training.

(2) Trainings must include opportunities for skill practice through group activities or self-guided exercises.

(3) Trainings must meet the standards for content identified in WAC 246-12-630 and 246-12-640.

(4) Trainers must meet the qualifications identified in WAC 246-12-640.

NEW SECTION

WAC 246-12-630 Training content. Minimum standards for training content:

(1) Training content must be based on current empirical research and known best practices.

(2) Training must reflect sensitivity and relevance to the cultures and backgrounds of the relevant client or patient populations.

(3) Content for six-hour trainings must include the following. These are minimum time requirements for each of these content areas. Additional time or content must be added to total at least six hours.

(a) A minimum of ninety minutes on suicide assessment. Content must include:

(i) How to structure an interview to gather information from a client or patient on suicide risk and protective factors and warning signs, including substance abuse;

(ii) How to use the information referenced in (a)(i) of this subsection to understand the risk of suicide;

(iii) Appropriate actions and referrals for various levels of risk; and

(iv) How to appropriately document suicide risk assessment.

(b) A minimum of sixty minutes on treatment and management of suicide risk. Content must include:

(i) Available evidence-based treatments for patients and clients at risk of suicide, including counseling and medical interventions such as psychiatric medication and substance abuse care;

(ii) Strategies for safety planning and monitoring use of the safety plan;

(iii) Engagement of supportive third parties in maintaining patient or client safety;

(iv) Reducing access to lethal means for clients or patients in crisis; and

(v) Continuity of care through care transitions such as discharge and referral.

(c) A minimum of thirty minutes on veteran populations.

(i) Content must include population-specific data, risk and protective factors, and intervention strategies.

(ii) Training providers shall use the module developed by the department of veterans affairs or a resource with comparable content.

(d) A minimum of thirty minutes on risk of imminent harm through self-injurious behaviors or lethal means.

(i) Content on self-injurious behaviors must include how to recognize nonsuicidal self-injury and other self-injurious behaviors and assess the intent of self-injury through suicide risk assessment.

(ii) Content on lethal means must include:

(A) Objects, substances and actions commonly used in suicide attempts and impulsivity and lethality of means;

(B) Communication strategies for talking with patients and their support people about lethal means; and

(C) How screening for and restricting access to lethal means effectively prevents suicide.

(4) Content for three-hour trainings must include the following. These are minimum time requirements for each of these topics. Additional time or content must be added to total three hours.

(a) A minimum of seventy minutes on screening for suicide risk. Content must include:

(i) When and how to screen a client or patient for acute and chronic suicide risk and protective factors against suicide;

(ii) Appropriate screening tools, tailored for specific ages and populations if applicable; and

(iii) Strategies for screening and appropriate use of information gained through screening.

(b) A minimum of thirty minutes on referral. Content shall include:

(i) How to identify and select an appropriate resource;

(ii) Best practices for connecting a client or patient to a referral; and

(iii) Continuity of care when making referrals.

NEW SECTION

WAC 246-12-640 Training quality. Minimum standards for training quality:

(1) For the purpose of continuing improvement, trainees shall be offered an evaluation assessing training quality and participant learning. Completed evaluations will be returned to the trainer or publisher of the training.

(2) Trainers and training developers must have demonstrated knowledge and experience related to suicide prevention and:

(a) An active license to practice as a health care professional; or

(b) A bachelor's degree or higher in public health, social science, education or a related field from an accredited college or university; or

(c) At least three years of experience delivering training in suicide prevention.

(3) Data referenced in the training must be current within four years, and research referenced in the training must be based on current empirical research and known best practices.

NEW SECTION

WAC 246-12-650 Training approval processes. (1) The secretary will approve suicide prevention training programs that meet the requirements outlined in this chapter.

(2) The secretary shall determine a process to evaluate and approve trainings.

(3) Approved trainings will be published on the model list beginning January 1, 2017.

(4) If the secretary notifies a training program of the secretary's intent to deny approval and inclusion on the model list, the training program, through its authorized representative, may request an adjudicative proceeding pursuant to the appeal process in chapter 246-10 WAC. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the date the department mailed the adverse notice. The authorized representative of the training program may submit a new application for the secretary's consideration.

(5) If the secretary notifies an approved training program of the secretary's intent to revoke approval, the training program, through its authorized representative, may request an adjudicative proceeding pursuant to the appeal process in chapter 246-10 WAC. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within twenty-eight days of the applicant's or license holder's receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within twenty-eight days of the date the department mailed the adverse notice, the secretary's decision is final. The authorized representative of the training program must provide proof that the deficiencies which resulted in withdrawal of the secretary's approval have been corrected before requesting reapproval.

WSR 16-09-100
PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed April 19, 2016, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-081.

Title of Rule and Other Identifying Information: WAC 246-817-510, 246-817-520, 246-817-525, 246-817-540 and 246-817-545, amending rules on dentist delegation of duties to dental assistants and expanded function dental auxiliaries.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on June 3, 2016, at 8:05 a.m.

Date of Intended Adoption: June 3, 2016.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98501, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by May 27, 2016.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by May 27, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments update the scope of practice for registered dental assistants and licensed expanded function dental auxiliaries (EFDA). Proposed rules amend the allowable and prohibited task lists to current practice standards eliminating confusion for dental professionals and the public receiving dental care.

Reasons Supporting Proposal: The scope of practice for registered dental assistants and licensed EFDAs has been an area of confusion for dental professionals as the current rules are not specific enough. Proposed rule amendments clarify what tasks dentists are currently delegating in dental facilities.

Statutory Authority for Adoption: RCW 18.260.040 and 18.260.070.

Statute Being Implemented: Chapter 18.260 RCW.

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

Name of Proponent: 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 98501, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

April 19, 2016

Charles Hall, D.D.S., Chair

Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 09-15-075, filed 7/13/09, effective 8/13/09)

WAC 246-817-510 Definitions (~~for WAC 246-817-501 through 246-817-570~~). The definitions in this section apply throughout WAC 246-817-501 through 246-817-570 unless the context clearly requires otherwise.

(1) **"Close supervision"** means that a ~~((licensed))~~ supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. ~~((A))~~ The supervising dentist ~~((shall be))~~ is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. Close supervision does not require a supervising dentist to be physically present in the operator ~~((; however, an attending dentist must be in the treatment facility and be capable of responding immediately in the event of an emergency)).~~

(2) **"Coronal polishing"** means a procedure limited to the removal of plaque and stain from exposed tooth surfaces, ~~((utilizing))~~ using an appropriate instrument and polishing agent.

This procedure ~~((shall))~~ is not ~~((be))~~ intended or interpreted ~~((as))~~ to be an oral prophylaxis as defined in ~~((WAC 246-817-510))~~ subsection (8) of this section a procedure specifically reserved to ~~((performance))~~ be performed by a licensed dentist or dental hygienist. Coronal polishing may, however, be ~~((performed by dental assistants under close supervision as))~~ a portion of the oral prophylaxis procedure. ~~((In all instances, however, a licensed dentist shall determine that the teeth need to be polished and are free of calculus or other extraneous material prior to performance of coronal polishing by a dental assistant.))~~

(3) **"Debridement at the periodontal surgical site"** means curettage or root planing after reflection of a flap by the supervising dentist. This does not include cutting of osseous tissues.

(4) **"Elevating soft tissues"** ~~((is defined as))~~ means part of a surgical procedure involving the use of the periosteal elevator to raise flaps of soft tissues. Elevating soft tissue is not a separate and distinct procedure in and of itself.

(5) **"General supervision"** means ~~((supervision of dental procedures based on examination and diagnosis of))~~ that a supervising dentist has examined and diagnosed the patient and provided subsequent instructions ((given by a licensed dentist but not requiring the physical presence of the supervising dentist in the treatment facility during the performance of those procedures)) to be performed by the assistive personnel, but does not require that the dentist be physically present in the treatment facility.

(6) **"Incising"** ~~((is defined as))~~ means part of the surgical procedure of which the end result is removal of oral tissue. Incising, or the making of an incision, is not a separate and distinct procedure in and of itself.

(7) **"Luxation"** ~~((is defined as))~~ means an integral part of the surgical procedure of which the end result is extraction of a tooth. ((Luxation is not a distinct procedure in and of itself.)) It is the dislocation or displacement of a tooth or of the temporomandibular articulation.

(8) **"Oral prophylaxis"** means the preventive dental procedure of scaling and polishing which includes complete removal of calculus, soft deposits, plaque, stains and the smoothing of unattached tooth surfaces. The objective of this treatment ~~((shall be creation of))~~ is to create an environment in which hard and soft tissues can be maintained in good health by the patient.

(9) **"Periodontal soft tissue curettage"** means the closed removal of tissue lining the periodontal pocket, not involving the reflection of a flap.

(10) **"Root planing"** means the process of instrumentation by which the unattached surfaces of the root are made smooth by the removal of calculus or deposits.

(11) **"Supportive services"** means services that are related to clinical functions in direct relationship to treating a patient.

(12) **"Suturing"** is defined as the readaption of soft tissue by use of stitches as a phase of an oral surgery procedure. ~~((Suturing is not a separate and distinct procedure in and of itself.))~~

(13) **"Treatment facility"** means a dental office or connecting suite of offices, dental clinic, room or area with equipment to provide dental treatment, or the immediately adjacent rooms or areas. A treatment facility does not extend to any other area of a building in which the treatment facility is located.

(14) ~~((**"Noncredentialed person"** means a person who is not a dentist licensed under chapter 18.32 RCW; dental hygienist licensed under chapter 18.29 RCW; expanded function dental auxiliary licensed under chapter 18.260 RCW; or a dental assistant registered under chapter 18.260 RCW.~~

~~((15))~~ **"Volunteer dental assistant"** means an individual who, without compensation, provides the supportive services ~~((set forth in))~~ under WAC 246-817-520 in a charitable dental clinic.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-520 Supportive services that may be performed by registered dental assistants. ~~((A dentist may~~

~~allow registered dental assistants to perform the following supportive services under the dentist's close supervision:))~~

~~(1) A supervising dentist may delegate the supportive services in subsection (4) of this section under the dentist's close supervision, provided the registered dental assistant has demonstrated skills necessary to perform each task competently.~~

~~(2) Delegation of supportive services not in subsection (4) of this section may be subject to disciplinary action.~~

~~(3) In addition to supportive services in subsection (4) of this section, registered dental assistants may perform non-clinical tasks.~~

~~(4) Supportive services allowed under close supervision:~~

~~(a) Oral inspection, with no diagnosis.~~

~~((2) Patient education in oral hygiene.~~

~~(3) Place and remove the rubber dam.~~

~~(4) Hold in place and remove impression materials after the dentist has placed them.~~

~~(5) Take impressions solely for diagnostic and opposing models.~~

~~(6) Take impressions and wax bites solely for study casts.~~

~~(7) Take impressions, fabricate, and deliver bleaching and fluoride trays.~~

~~(8) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.~~

~~(9) Perform coronal polish.~~

~~(10) Give fluoride treatments.~~

~~(11) Place periodontal packs.~~

~~(12) Remove periodontal packs or sutures.~~

~~(13) Place a matrix and wedge for a metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.~~

~~(14) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist.~~

~~(15) Apply tooth separators as for placement for Class III gold foil.~~

~~(16) Fabricate, place, and remove temporary crowns or temporary bridges.~~

~~(17) Pack and medicate extraction areas.~~

~~(18) Deliver an oral sedative drug to patient.~~

~~(19) Place topical anesthetics.~~

~~(20) Place retraction cord.~~

~~(21) Polish restorations at a subsequent appointment.~~

~~(22) Select denture shade and mold.~~

~~(23) Acid etch.~~

~~(24) Apply sealants.~~

~~(25) Place dental X-ray film and expose and develop the films.~~

~~(26) Take intra-oral and extra-oral photographs.~~

~~(27) Take health histories.~~

~~(28) Take and record blood pressure and vital signs.~~

~~(29) Give preoperative and postoperative instructions.~~

~~(30) Assist in the administration of inhalation minimal sedation (nitrous oxide) analgesia or sedation.~~

~~(31) Select orthodontic bands for size.~~

~~(32) Place and remove orthodontic separators.~~

~~(33) Prepare teeth for the bonding or orthodontic appliances.~~

- (34) Fit and adjust headgear.
- (35) Remove fixed orthodontic appliances.
- (36) Remove and replace archwires and orthodontic wires.
- (37) Take a facebow transfer for mounting study casts.
- (38) Take impressions for temporary oral devices, such as but not limited to space maintainers, orthodontic retainers, and occlusal guards.) (b) Take and record blood pressure and vital signs.
- (c) Place, expose, and process radiographs.
- (d) Take intra-oral and extra-oral photographs.
- (e) Perform coronal polish. A licensed dentist shall determine the teeth are free of calculus or other extraneous material prior to dismissing the patient.
- (f) Give fluoride treatments.
- (g) Give patient education in oral hygiene.
- (h) Give preoperative and postoperative instructions.
- (i) Deliver an oral sedative drug to patient.
- (j) Assist in the administration of inhalation minimal sedation (nitrous oxide) analgesia, including starting and stopping the flow as directed by the supervising dentist.
- (k) Place topical anesthetics.
- (l) Place and remove the rubber dam.
- (m) Apply tooth separators as for placement for Class III gold foil.
- (n) Apply sealants.
- (o) Place a matrix and wedge for a direct restorative material after the dentist has prepared the cavity.
- (p) Place cavity liners and bases.
- (q) Perform acid etch and apply bonding agents.
- (r) Polish restorations.
- (s) Sterilize equipment and disinfect operatories.
- (t) Place retraction cord.
- (u) Hold in place and remove impression materials after the dentist has placed them.
- (v) Take impressions, bite registrations, or digital scans of the teeth and jaws for:
 - (i) Diagnostic and opposing models;
 - (ii) Temporary oral devices including, but not limited to, space maintainers, orthodontic retainers, occlusal guards, bleaching trays, and fluoride trays; and
 - (iii) Temporary indirect restorations such as temporary crowns.
- (w) Take digital scans of prepared teeth for fabrication of permanent indirect restorations.
- (x) Take a facebow transfer for mounting study casts.
- (y) Fabricate and deliver bleaching and fluoride trays.
- (z) Fabricate, cement, and remove temporary crowns or temporary bridges.
- (aa) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.
- (bb) Place a temporary filling (as zinc oxide-eugenol (ZOE)) after diagnosis and examination by the dentist.
- (cc) Pack and medicate extraction areas.
- (dd) Place periodontal packs.
- (ee) Remove periodontal packs or sutures.
- (ff) Select denture shade and mold.
- (gg) Place and remove orthodontic separators.

- (hh) Select and fit orthodontic bands, try in fixed or removable orthodontic appliances prior to the dentist cementing or checking the appliance.
- (ii) Prepare teeth for the bonding of orthodontic appliances.
- (jj) Bond attachments for clear removable orthodontic aligners.
- (kk) Remove and replace archwires and orthodontic wires.
- (ll) Fit and adjust headgear.
- (mm) Remove fixed orthodontic appliances, orthodontic cement, and orthodontic bonded resin material.

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-525 Supportive services that may be performed by expanded function dental auxiliaries (EFDAs). ~~((1) A dentist may allow EFDAs to perform the following supportive services under the dentist's close supervision:~~

- ~~(a) Oral inspection, with no diagnosis.~~
- ~~(b) Place and remove the rubber dam.~~
- ~~(c) Take preliminary and final impressions and bite registrations, to include computer-assisted design and computer-assisted manufacture applications.~~
- ~~(d) Take impressions, fabricate, and deliver bleaching and fluoride trays.~~
- ~~(e) Remove the excess cement after the dentist has placed a permanent or temporary inlay, crown, bridge or appliance, or around orthodontic bands.~~
- ~~(f) Place periodontal packs.~~
- ~~(g) Remove periodontal packs or sutures.~~
- ~~(h) Place a matrix and wedge for a metallic and nonmetallic direct restorative material after the dentist has prepared the cavity.~~
- ~~(i) Place a temporary filling (as zinc oxide eugenol (ZOE)) after diagnosis and examination by the dentist.~~
- ~~(j) Apply tooth separators as for placement for Class III gold foil.~~
- ~~(k) Fabricate, place, and remove temporary crowns or temporary bridges.~~
- ~~(l) Pack and medicate extraction areas.~~
- ~~(m) Deliver an oral sedative drug to patient.~~
- ~~(n) Place topical anesthetics.~~
- ~~(o) Place retraction cord.~~
- ~~(p) Polish restorations.~~
- ~~(q) Select denture shade and mold.~~
- ~~(r) Acid etch.~~
- ~~(s) Take intra-oral and extra-oral photographs.~~
- ~~(t) Take health histories.~~
- ~~(u) Take and record blood pressure and vital signs.~~
- ~~(v) Give preoperative and postoperative instructions.~~
- ~~(w) Assist in the administration of inhalation minimal sedation (nitrous oxide) analgesia or sedation.~~
- ~~(x) Select orthodontic bands for size.~~
- ~~(y) Place and remove orthodontic separators.~~
- ~~(z) Prepare teeth for the bonding or orthodontic appliances.~~
- ~~(aa) Fit and adjust headgear.~~

~~(bb) Remove fixed orthodontic appliances.~~

~~(cc) Remove and replace archwires and orthodontic wires.~~

~~(dd) Take a facebow transfer for mounting study casts.~~

~~(ee) Place and carve direct restorations.~~

~~(ff) Take impressions for temporary oral devices, such as but not limited to space maintainers, orthodontic retainers, and occlusal guards.~~

~~(2) A dentist may allow EFDAs to perform the following supportive services under the dentist's general supervision:~~

~~(a) Perform coronal polishing.~~

~~(b) Give fluoride treatments.~~

~~(c) Apply sealants.~~

~~(d) Place dental X-ray film and exposing and developing the films.) (1) A supervising dentist may delegate the supportive services in subsection (5) of this section under the dentist's close supervision, provided the EFDA has demonstrated skills necessary to perform each task competently.~~

~~(2) A dentist may delegate the supportive services in subsection (6) of this section under the dentist's general supervision, provided the EFDA has demonstrated skills necessary to perform each task.~~

~~(3) Delegation of supportive services not in subsection (5) or (6) of this section may be subject to disciplinary action.~~

~~(4) In addition to supportive services in subsections (5) and (6) of this section, licensed EFDAs may perform nonclinical tasks.~~

~~(5) Supportive services allowed under close supervision:~~

~~(a) Supportive services under WAC 246-817-520(4), except for supportive services in subsection (6) of this section.~~

~~(b) Place and carve direct restorations.~~

~~(c) Take preliminary and final impressions and bite registrations, to include computer assisted design and computer assisted manufacture applications.~~

~~(6) Supportive services allowed under general supervision are:~~

~~(a) Perform coronal polishing.~~

~~(b) Give fluoride treatments.~~

~~(c) Apply sealants.~~

~~(d) Place, expose, and process radiographs.~~

~~(e) Give patient oral health instructions.~~

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-540 Acts that may not be performed by registered dental assistants (~~or noncredentialed persons~~). ~~((No dentist shall))~~ This list is not all inclusive. Delegation of procedures not in subsections (1) through (22) of this section should not be assumed to be allowed. Supportive services approved for delegation to registered dental assistants are under WAC 246-817-520. A dentist may not allow registered dental assistants (~~or noncredentialed persons~~) who are in his or her employ or are acting under his or her supervision or direction to perform any of the following procedures:

(1) Any removal of or addition to the hard or soft natural tissue of the oral cavity.

(2) Any placing of permanent or semi-permanent restorations in natural teeth.

(3) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure.

(4) Any administration of general or local anesthetic, including intravenous sedation.

(5) Any oral prophylaxis, except coronal polishing as a part of oral prophylaxis as defined ~~((in))~~ under WAC 246-817-510 and 246-817-520~~((8))~~ (4)(e).

(6) Any scaling procedure.

(7) The taking of any impressions of the teeth or jaws, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliances, or prosthesis~~((Not prohibited are the taking of impressions solely for diagnostic and opposing models or taking wax bites solely for study casts)), other than impressions allowed as a delegated task under WAC 246-817-520.~~

(8) Intra-orally adjust ~~((occlusal of inlays, crowns, and bridges.~~

~~(9) Intra-orally finish margins of inlays, crowns, and bridges.~~

~~(10)) and finish permanent restorations.~~

~~(9) Cement or recement, permanently, any cast restoration or stainless steel crown.~~

~~((11)) (10) Incise gingiva or other soft tissue.~~

~~((12)) (11) Elevate soft tissue flap.~~

~~((13)) (12) Luxate teeth.~~

~~((14)) (13) Curette to sever epithelial attachment.~~

~~((15)) (14) Suture.~~

~~((16)) (15) Establish occlusal vertical dimension for dentures.~~

~~((17)) (16) Try-in of dentures set in wax.~~

~~((18)) (17) Insertion and post-insertion adjustments of dentures.~~

~~((19)) (18) Endodontic treatment~~((—))~~ - Open, extirpate pulp, ream and file canals, establish length of tooth, and fill root canal.~~

~~((20)) (19) Use of any light or electronic device for invasive procedures.~~

~~((21)) (20) Intra-oral air abrasion or mechanical etching devices.~~

~~((22)) (21) Place direct pulp caps.~~

~~((23)) (22) Fit and adjust occlusal guards.~~

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-545 Acts that may not be performed by expanded function dental auxiliaries (EFDAs) (~~or noncredentialed persons~~). ~~((No dentist shall))~~ This list is not all inclusive. Delegation of procedures not in subsections (1) through (20) of this section should not be assumed to be allowed. Supportive services approved for delegation to licensed expanded function dental auxiliaries are under WAC 246-817-525. A dentist may not allow EFDAs (~~or noncredentialed persons~~) who are in his or her employ or are acting under his or her supervision or direction to perform any of the following procedures:

(1) Any removal of or addition to the hard or soft natural tissue of the oral cavity except for placing and carving direct restorations ~~((by an EFDA)).~~

(2) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure.

(3) Any administration of general or local anesthetic, including intravenous sedation.

(4) Any oral prophylaxis, except coronal polishing as a part of oral prophylaxis as defined ~~((in))~~ under WAC 246-817-510 and 246-817-520(8).

(5) Any scaling procedure.

(6) Intra-orally adjust ~~((occlusal of))~~ and finish permanent inlays, crowns, and bridges.

(7) ~~((Intra-orally finish margins of inlays, crowns, and bridges.~~

~~((8)))~~ Cement or recement, permanently, any cast restoration or stainless steel crown.

~~((9)))~~ (8) Incise gingiva or other soft tissue.

~~((10)))~~ (9) Elevate soft tissue flap.

~~((11)))~~ (10) Luxate teeth.

~~((12)))~~ (11) Curette to sever epithelial attachment.

~~((13)))~~ (12) Suture.

~~((14)))~~ (13) Establish occlusal vertical dimension for dentures.

~~((15)))~~ (14) Try-in of dentures set in wax.

~~((16)))~~ (15) Insertion and postinsertion adjustments of dentures.

~~((17)))~~ (16) Endodontic treatment~~((—))~~—Open, extirpate pulp, ream and file canals, establish length of tooth, and fill root canal.

~~((18)))~~ (17) Use of any light or electronic device for invasive procedures.

~~((19)))~~ (18) Intra-oral air abrasion or mechanical etching devices.

~~((20)))~~ (19) Place direct pulp caps.

~~((21)))~~ (20) Fit and adjust occlusal guards.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98501, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 27, 2016.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by May 27, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule eliminates conflict with RCW 18.32.215 by eliminating reference to clinical examination requirement. The proposed rule provides all license requirements in a single rule to eliminate confusion with the current three rules. Additionally, the proposed rule defines "state," "currently engaged in the practice of dentistry," removes the unnecessary requirements, and adds two standard licensure requirements.

Reasons Supporting Proposal: Current rules required verification of a clinical examination but RCW 18.32.215 allows a dentist currently engaged in practice in another state to be granted a license without examination. The commission is proposing this modification to clearly identify license requirements for dentists licensed in another state who apply for a Washington state dentist license.

Statutory Authority for Adoption: RCW 18.32.0365.

Statute Being Implemented: RCW 18.32.215.

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 98501, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

April 19, 2016

Charles Hall, D.D.S., Chair

Dental Quality Assurance Commission

WSR 16-09-101

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed April 19, 2016, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-23-004.

Title of Rule and Other Identifying Information: WAC 246-817-130, 246-817-135 and 246-817-140, license without examination for dentist[s] licensed in another state who apply for Washington state licensure. The proposed rule repeals WAC 246-817-130 and 246-817-140, and combines and modifies duplicated license requirements in WAC 246-817-130 and 246-817-135 into WAC 246-817-135.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on June 3, 2016, at 8:05 a.m.

Date of Intended Adoption: June 3, 2016.

AMENDATORY SECTION (Amending WSR 08-23-017, filed 11/6/08, effective 12/7/08)

WAC 246-817-135 Dental licensure without examination ~~((for dentists))~~—Eligibility and application ~~((procedure))~~ requirements. ~~((The applicant is responsible for obtaining and furnishing to the DQAC all materials required to establish eligibility for a))~~ For individuals holding a dentist credential in another U.S. state or territory, to be eligible for Washington state dental license without examination~~((—In addition to the requirements defined in WAC 246-817-110 the following documentation must be provided)),~~ the applicant must provide:

(1) ~~((A statement by the applicant as to whether the applicant has been the subject of any disciplinary action in the state(s) of licensure and whether the applicant has~~

~~engaged in unprofessional conduct as defined in RCW 18.130.180.~~

~~(2) A statement by the applicant that they are not an impaired practitioner as defined in RCW 18.130.170.)~~ A completed application on forms provided by the secretary:

~~(2) Applicable fees under WAC 246-817-990:~~

~~(3) A ((certification by the state board(s))) verification by a U.S. state or territory board of dentistry (or equivalent authority) ((that the applicant was issued a license, registration, certificate or privilege)) of an active credential to practice dentistry, without restrictions, and whether the applicant has been the subject of final or pending disciplinary action((-):~~

~~(4) ((Documentation to substantiate that standards defined in WAC 246-817-140 have been met.))~~ Proof of graduation from an approved dental school under WAC 246-817-110 (2)(a):

(a) The only acceptable proof is an official, posted transcript sent directly from such school:

(b) Graduates of nonapproved dental schools must meet the requirements under RCW 18.32.215 (1)(b).

~~(5) Proof that the applicant is currently engaged in the practice of dentistry((- in another state as demonstrated by the following information:~~

~~(a) Address of practice location(s);~~

~~(b) Length of time at the location(s);~~

~~(c) A letter from all malpractice insurance carrier(s) defining years when insured and any claims history;~~

~~(d) Federal or state tax numbers;~~

~~(e) DEA numbers if any:);~~

~~(a) Dentists serving in the United States federal services as described in RCW 18.32.030(2)((- for the period of such service, need not provide (a) through (e) of this subsection, but)) must provide documentation from their commanding officer regarding length of service, duties and responsibilities ((including)), and any adverse actions or restrictions((-Such dental service, including service within the state of Washington, shall be credited toward the dental practice requirement.));~~

~~(b) Dentists employed by a dental school ((approved by the DQAC for the period of such dental practice, need not provide (a) through (e) of this subsection, but)) approved under WAC 246-817-110 (2)(a) must provide documentation from the dean or appropriate administrator of the institution regarding the length and terms of employment ((and their)), duties and responsibilities, and any adverse actions or restrictions((-Such dental practice, including practice within the state of Washington, shall be credited toward the dental practice requirement. Dental practice within a residency program shall be credited toward the dental practice requirement. A license may be revoked upon evidence of misinformation or substantial omission.~~

~~All information must be completed and received within one hundred eighty days of receipt of the initial application. Only completed applications will be reviewed by the DQAC, or its designee(s) at the next scheduled DQAC meeting or at other intervals as determined by the DQAC.));~~

(c) Dentists in a dental residency program must provide documentation from the director or appropriate administrator of the residency program regarding length of residency,

duties and responsibilities, and any adverse actions or restrictions; or

(d) Dentists practicing dentistry for a minimum of twenty hours per week for the four consecutive years preceding application, in another U.S. state or territory must provide:

(i) Address of practice location(s);

(ii) Length of time at the location(s);

(iii) A letter from all malpractice insurance carrier(s) defining years when insured and any claims history;

(iv) Federal or state tax numbers; and

(v) DEA numbers if any.

(6) Proof of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8;

(7) Proof of successful completion of a commission approved written jurisprudence examination;

(8) A recent 2" x 2" photograph, signed, dated, and attached to the application; and

(9) Authorization for background inquiries to other sources may include, but are not limited to, the national practitioner data bank and drug enforcement agency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-817-130 Licensure without examination for dentists—Eligibility.

WAC 246-817-140 Licensure without examination for dentists—Licensing examination standards.

WSR 16-09-102 PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 19, 2016, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-13-121.

Title of Rule and Other Identifying Information: New chapter 392-725 WAC, College in the high school program.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington Street, Olympia, WA 98501, on May 24, 2016, at 1:00 p.m.

Date of Intended Adoption: May 26, 2016.

Submit Written Comments to: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by May 24, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by May 17, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SHB 1546, sec-

tion 3 pertaining to college in the high school programs specifies that "the superintendent of public instruction shall adopt rules for the administration of this section." Additionally, E2SHB 1546, section 3 requires that "the rules must outline quality and eligibility standards that are informed by nationally recognized standards or models. In addition, the rules must encourage the maximum use of the program and may not narrow or limit the enrollment options." E2SHB 1546, section 3 provides that the "rules shall be jointly developed by the superintendent of public instruction, the state board of community and technical colleges, the student achievement council, and the public baccalaureate institutions. The Association of Washington School Principals must be consulted during the rules development."

OSPI convened a workgroup of all the required agencies with the Council of Presidents representing the public baccalaureate institutions and jointly developed the new rules for chapter 392-725 WAC, which align the standards for this program with the National Alliance of Concurrent Enrollment Partnerships (NACEP), and provide rules for (1) developing agreements between school districts or tribal schools with colleges, (2) awarding credit, (3) claiming enrollment for state basic education funding, and (4) detailing the college in the high school state-funded subsidies.

Statutory Authority for Adoption: RCW 28A.600.290.

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

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

April 19, 2016
Randy Dorn
State Superintendent
of Public Instruction

Chapter 392-725 WAC

COLLEGE IN THE HIGH SCHOOL RULES

NEW SECTION

WAC 392-725-005 Authority. The authority for this chapter is RCW 28A.600.290, which authorizes the superintendent of public instruction to adopt rules governing RCW 28A.600.290, with the state board of community and technical colleges, the student achievement council, and the public baccalaureate institutions to jointly develop rules, and with the association of Washington school principals to be con-

sulted. The rules set forth in this chapter have been jointly developed and agreed upon by the four organizations with the council of presidents representing the public baccalaureate institutions. The rules may be modified only by agreement of the superintendent of public instruction, state board of community and technical colleges, the student achievement council, and an organization representing the interest of the public baccalaureate institutions.

NEW SECTION

WAC 392-725-010 Purpose. The purpose of this chapter is to set forth rules governing the college in the high school program.

NEW SECTION

WAC 392-725-015 Definitions. The following definitions in this section apply throughout this chapter.

(1) **"College in the high school course"** means a dual credit course provided on a high school campus or in a high school environment in which an eligible student is given the opportunity to earn high school credit to be awarded by a district, charter school, or tribal compact school and college credit awarded by the participating institution of higher education by completing a college level course with a passing grade. College in the high school courses may be either academic or career and technical (vocational) education.

(2) **"Eligible student"** means any student who meets the following conditions:

(a) The student meets the definition of an enrolled student pursuant to WAC 392-121-106.

(b) The student under the grade placement policies of the district, charter school, or tribal compact school through which the high school credits will be awarded has been deemed to be a tenth, eleventh, or twelfth grade student.

(c) The student has met the student standards pursuant to WAC 392-725-130 and the general requirements and conditions pursuant to WAC 392-725-225(2).

(3) **"Participating institution of higher education"** means an institution of higher education that:

(a) A district, charter school, or tribal compact school has contracted with to provide the college in the high school courses;

(b) Meets the definition in RCW 28B.10.016, is authorized or exempt under the requirements of chapter 28B.85 RCW, or is a public tribal college located in Washington as noted in RCW 28A.600.290 (7)(a);

(c) Meets the college in the high school program standards outlined within this chapter; and

(d) Is accredited by National Alliance of Concurrent Enrollment Partnerships or meets the annual reporting of evidence requirement outlined in WAC 392-725-120.

(4) **"National Alliance of Concurrent Enrollment Partnerships"** is the professional organization that works to ensure that college in the high school courses are as rigorous as courses offered on the sponsoring college campuses. National Alliance of Concurrent Enrollment Partnerships has defined a set of quality standards that is the basis of their accreditation process.

(5) "Fees."

(a) "Dual credit fees" means the per credit fee charged by the participating institution of higher education for the award of the college credit.

(i) The maximum dual credit fee shall not exceed the college in the high school state-funded subsidies allocated in the current Omnibus Appropriations Act.

(ii) The dual credit fee may be less than the college in the high school state-funded subsidies allocation.

(b) "Other associated college in the high school fees" means additional fees required to fully participate in the college in the high school course charged by the participating institution of higher education such as registration fees and fees for consumables.

(6) "College in the high school state-funded subsidies" means the amount provided in the Omnibus Appropriations Act that pays the dual credit fee for specific eligible eleventh or twelfth grade students pursuant to RCW 28A.600.290 (1)(b)(i) only and for the limited amount provided in WAC 392-725-325(2).

NEW SECTION

WAC 392-725-050 Interlocal agreement requirement. Prior to the start of the college in the high school course(s), an interlocal agreement between the district, charter school, or tribal compact school and the participating institution of higher education must be developed and in place. The agreement shall be for no more than one school year, meet the district, charter school, or tribal compact school's board policies and the policies of the institution of higher education regarding contracting agreements, and address the following requirements:

(1) List of college in the high school courses.

(2) College in the high school student standards pursuant to WAC 392-725-130 will be met.

(3) College in the high school curriculum and assessment standards pursuant to WAC 392-725-140 will be met.

(4) College in the high school faculty standards pursuant to WAC 392-725-150 will be met.

(5) College in the high school evaluation standards pursuant to WAC 392-725-160 will be met.

(6) Award of high school credits pursuant to WAC 392-725-200 will be met.

(7) District, charter school, or tribal compact school's responsibilities for offering college in the high school course.

(8) Institution of higher education's dual credit fee amount per college credit and a description and amount of other associated college in the high school fees.

(9) Course materials including, but not limited to, textbooks for each college in the high school course and which party will be responsible to provide.

(10) For any compensation paid to the instructor by the institution of higher education for work performed beyond the district, charter school, or tribal compact school contract, explanation of how the compensation will be calculated and provided and details of what duties the compensation represents.

(11) Method and collection of dual credit fee and other associated college in the high school fees.

(12) Districts, charter schools, tribal compact schools, and institutions of higher education shall as necessary assure compliance with their respective duties under federal and state law.

NEW SECTION

WAC 392-725-120 Demonstration and reporting of evidence of required college in the high school standards.

(1) Participating institutions of higher education shall provide evidence that they meet the most recent National Alliance of Concurrent Enrollment Partnerships student standards, curriculum and assessment standards, faculty standards and evaluation standards unless recommended differently in WAC 392-725-130 through 392-725-160. National Alliance of Concurrent Enrollment Partnerships accreditation is recommended.

(2) As a condition of eligibility pursuant to WAC 392-725-015(3), after the college in the high school course concludes, institutions of higher education shall provide an annual report consisting of evidence that the required standards were met. The annual report shall be submitted no later than July 1st for review by the college in the high school standards report review committee. Participating institutions of higher education that are accredited by the National Alliance of Concurrent Enrollment Partnerships for the current year of enrollment will be exempt from this requirement.

(3) The office of superintendent of public instruction shall convene a college in the high school standards report review committee. This review committee will consist of a representative of the state board of community and technical colleges, a representative of an organization representing the interest of the public baccalaureate institutions, a representative of the student achievement council, and a representative from the office of superintendent of public instruction. Additional members may be included at the discretion of college in the high school standards report review committee.

(4) If the review committee finds that the institution of higher education's evidence of meeting the required standards is not satisfactory, the institution of higher education will have six months to provide satisfactory evidence.

(5) If after review of the additional evidence, the review committee deems that the standards are not being met, then the institution of higher education may not offer the college in the high school program for the following school year.

(6) The review committee will review the National Alliance of Concurrent Enrollment Partnerships standards every three years and update the college in the high school standards in WAC 392-725-130 through 392-725-160 as informed by the current National Alliance of Concurrent Enrollment Partnerships standards and feedback from participating school districts, charter schools, tribal compact schools, and institutions of higher education.

NEW SECTION

WAC 392-725-130 College in the high school student standards. (1) Participating institutions of higher education shall:

(a) Ensure students meet the course prerequisites of the institution of higher education.

(b) Officially register or admit students as degree-seeking, nondegree-seeking, or nonmatriculated students of the institution of higher education and record courses administered through college in the high school program on official institution of higher education transcripts.

(c) Provide students and high schools with a comprehensive publication that outlines the rights and responsibilities of enrolled students.

(2) Participating institutions of higher education, not accredited by the National Alliance of Concurrent Enrollment Partnerships for the current year of enrollment, shall provide evidence of meeting the required student standards of this section.

NEW SECTION

WAC 392-725-140 College in the high school curriculum and assessment standards. (1) Participating institutions of higher education shall require that:

(a) College in the high school courses are catalogued courses with the same departmental designations, course descriptions, numbers, titles, and credits as sections offered on campus.

(b) College in the high school courses reflect the pedagogical, theoretical and philosophical orientation of the participating institution of higher education departments.

(c) Faculty site visits ensure that courses offered through the college in the high school program are the same as the courses offered on campus.

(d) Students are held to the same standards of achievement as those expected of students in on-campus sections.

(e) Students are held to the same grading standards as those expected of students in on-campus sections.

(2) Participating institutions of higher education are recommended to ensure students are assessed using the same methods (examples: Papers, portfolios, quizzes, labs, etc.) as students in on-campus sections. Participating institutions of higher education, not accredited by National Alliance of Concurrent Enrollment Partnerships for the current year of enrollment, shall provide evidence of meeting the required curriculum and assessment standards of this section.

NEW SECTION

WAC 392-725-150 College in the high school faculty standards. (1) Participating institutions of higher education shall require that:

(a) Instructors providing the college in the high school instruction in the high school classroom must be approved by the participating institution of higher education's respective academic department and meet the same institution's requirements for teaching the college course at the institution of higher education campus.

(b) New instructors are provided with discipline-specific training and orientation regarding, but not limited to, course curriculum, assessment criteria, pedagogy, course philosophy and administrative responsibilities and procedures prior to the instructor teaching the college in the high school course.

(c) Procedures address instructor noncompliance with the institution of higher education's expectations for courses offered through the institution.

(d) Noncompliance issues will be addressed in consultation with the district, charter school, or tribal compact school.

(2) Participating institutions of higher education are recommended to provide annual discipline-specific professional development activities and ongoing collegial interaction to address course content, course delivery, assessment, evaluation, and/or research and development in the field. Participating institutions of higher education, not accredited by National Alliance of Concurrent Enrollment Partnerships for the current year of enrollment, shall provide the evidence of meeting the required faculty standards of this section.

(3) Any compensation paid to the instructor by the institution of higher education must be for work performed beyond their contract with the district, charter school, or tribal compact school.

NEW SECTION

WAC 392-725-160 College in the high school evaluation standards. (1) Participating institutions of higher education shall:

(a) Conduct an end-of-term student course evaluation for each college in the high school course section offered through the institution of higher education.

(b) Conduct surveys of participating high school instructors, principals, and guidance counselors at least once every three years. Surveys shall include the following as outlined in the most current National Alliance of Concurrent Enrollment Partnerships survey guide:

(i) National Alliance of Concurrent Enrollment Partnerships essential questions (additional questions may be used);

(ii) One follow-up contact with nonrespondents within the methodology; and

(iii) Collaboration of a qualified institutional evaluator or researcher in the development of the survey and data analysis.

(2) Participating institutions of higher education are recommended to conduct an annual survey of alumni who are one year out of high school and who are four years out of high school, at least once every three years. Surveys shall include the following as outlined in the most current National Alliance of Concurrent Enrollment Partnerships survey guide:

(a) National Alliance of Concurrent Enrollment Partnerships essential questions (additional questions may be used);

(b) One follow-up contact with nonrespondents within the methodology; and

(c) Collaboration of a qualified institutional evaluator or researcher in the development of the survey and data analysis.

(3) Participating institutions of higher education, not accredited by National Alliance of Concurrent Enrollment Partnerships for the current year of enrollment, shall provide the evidence of meeting the evaluation required standards of this section.

NEW SECTION

WAC 392-725-200 Prior confirmation of high school credit. As a condition to an eligible student's enrollment in college courses, the eligibility of the college in the high school courses which the student intends to take for the award of high school credit and the amount of such credit shall first be established, as follows:

(1) The district, charter school, or tribal compact school shall establish on a course by course basis the amount of high school required or elective credit, or combination thereof, that shall be awarded for each college in the high school course successfully completed by the student based upon the conversion rate set forth in WAC 180-51-050.

(2) If a college in the high school course is not comparable to a district, charter school, or tribal compact school course required for high school graduation, the district, charter school, or tribal compact school superintendent shall determine the amount of required high school credit which shall be awarded following consultation with a representative of the institution of higher education designated for that purpose. The difference between the amount of required credit and the amount of credit earned at the conversion rate set forth in WAC 180-51-050 shall be awarded as elective credit.

(3) Within five school days of a student's request for confirmation of credit, the district, charter school, or tribal compact school superintendent or other designated representative shall confirm in writing the amount of high school required or elective credit, or combination thereof, which shall be awarded upon successful completion of the courses.

(4) Upon confirmation by an institution of higher education of a student's successful completion of college in the high school courses under this chapter, the district, charter school, or tribal compact school shall record on the student's secondary school records and transcript the high school credit previously confirmed under the section with a notation that the courses were taken at an institution of higher education pursuant to WAC 392-415-070.

(5) Each district, charter school, or tribal compact school and institution of higher education shall independently have and exercise exclusive jurisdiction over academic and discipline matters involving a student's enrollment and participation in courses of, and the receipt of services and benefits from the district, charter school, tribal compact school or the institution of higher education.

NEW SECTION

WAC 392-725-225 College in the high school general requirements. (1) Participating districts, charter schools, or tribal compact schools must provide general information about the college in the high school program to all students in grades nine through twelve and to the parents and guardians of those students.

(2) The enrollment of a student who meets the definition of WAC 392-725-015(2) in the college in the high school program shall be governed as follows:

(a) An eligible student is responsible for enrolling into an institution of higher education on or before the deadline established by the institution of higher education.

(b) An eligible student is entitled to enroll in an institution of higher education for college in the high school program purposes subject to each of the following conditions and limitations:

(i) Enrollment is limited to college level courses.

(ii) Prior confirmation pursuant to WAC 392-725-200 by the district, charter school, or tribal compact school of the amount of high school credit to be awarded for a college in the high school course on or before the deadline for enrollment established by the institution of higher education.

(iii) Acceptance of the student by the institution of higher education subject to enrollment requirements and limitations established by the institution, including a determination that the student is competent to profit from the college level course(s) in which the student seeks to enroll.

NEW SECTION

WAC 392-725-250 Transferability of college credit.

(1) College in the high school programs may include both academic and career and technical education. The college credit shall be applied at institutions of higher education toward:

(a) General education requirements; or

(b) Degree requirements.

(2) A college in the high school course has the same transferability as its equivalent course on the college campus. Some courses including career and technical education courses may not meet specific general education and/or degree requirements.

NEW SECTION

WAC 392-725-300 Finance. (1) Districts, charter schools, and tribal compact schools claim the college in the high school courses for basic education funding based on the course's average enrolled weekly minutes pursuant to WAC 392-121-122.

(2) The participating institution of higher education receives dual credit fees as defined in WAC 392-725-015 (5)(a) and other associated college in the high school fees for eligible students as defined in WAC 392-725-015 (5)(b). The amount and method of collection of these fees shall be outlined in interlocal agreement.

(3) For college in the high school courses that qualify for state funded subsidies as defined in WAC 392-725-015(6) and based on the per student limitations provided in WAC 392-725-325(2), these subsidies are provided in lieu of dual credit fees as defined in WAC 392-725-015 (5)(a).

NEW SECTION

WAC 392-725-325 College in the high school state funded subsidies. Pursuant to RCW 28A.600.290 and subject to the amount provided in the Omnibus Appropriations Act, state funded subsidies may be available to pay the cost of college in the high school fees for specific eligible eleventh or twelfth grade students only enrolled in college in the high school courses provided by institutions of higher education that meet the definition in RCW 28B.10.016, or a public tribal college located in Washington as noted in RCW

28A.600.290 (7)(a), and for the limited amount provided in subsection (2) of this section. Public institutions of higher education that are outside of the state of Washington or private institutions of higher education do not qualify for the state funded subsidies.

(1) Prioritization of the available college in the high school state-funded subsidies will be allocated in the following method:

(a) High schools that are and students that reside twenty driving miles or more as measured by the most direct route from the nearest institution of higher education offering running start.

(b) High schools who receive small high school funding enhancement as provided in the Omnibus Appropriations Act.

(c) For the remaining high schools, eligible students who qualify for the new school year for free and reduced price lunch.

(2) Limitation of college in the high school state-funded subsidies are as follows:

(a) For each eligible eleventh and twelfth grade student, the annual credit amounts for subsection (1)(a) through (b) of this section are limited to the annual credit amounts provided in the Omnibus Appropriations Act but may not exceed ten credits for any school year.

(b) The annual credit amounts for subsection (1)(c) of this section are limited to the annual credit amounts provided in the Omnibus Appropriations Act but may not exceed five credits for any school year.

(3) The office of superintendent of public instruction will provide an application process that districts, charter schools, and tribal compact schools will use to apply annually for the college in the high school state-funded subsidies.

(a) Districts, charter schools, and tribal compact schools will apply by July 1st for the new school year's subsidies.

(b) The office of superintendent of public instruction will notify districts, charter schools, and tribal compact schools by September 1st the amount of subsidies awarded for the new school year.

(c) Through the application process, districts, charter schools, and tribal compact schools will provide a list of college in the high school courses per high school for the new school year. The award of subsidies will be limited to the courses provided in the application process.

(d) The list of college in the high school courses will contain the amount of college quarter credits awarded for each course. For this section only, college semester credits will be converted into quarter credits by multiplying the semester credits by 1.5 and rounding up to the nearest whole credit.

(e) Districts, charter schools, and tribal compact schools will provide an estimate of eligible students expected to receive the subsidies within the per student credit limitation provided in the Omnibus Appropriations Act.

(i) For high schools that qualify for the priorities according to subsection (1)(a) and (b) of this section, applicant will provide an estimate of eligible eleventh and twelfth grade students.

(ii) For high schools that qualify for the priorities according to subsection (1)(b) and (c) of this section, applicant will

provide an estimate of eligible eleventh and twelfth grade students that live more than twenty miles from a college offering running start.

(ii) For high schools that qualify for subsection (1)(c) of this section, applicant will provide an estimate of eligible eleventh and twelfth grade students that are expected to qualify for free and reduced price lunch.

(4) Reimbursement of the college in the high school state-funded subsidies will occur as follows:

(a) Beginning with the 2015-16 school year, the college in the high school state-funded subsidies for college in the high school will be allocated at minimum sixty-five dollars per quarter credits.

(b) Starting with the 2017 calendar year, and for every four years after, the funding level for the college in the high school state-funded subsidies will be reviewed by the office of superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the council of president representing the public baccalaureate institutions and make recommendation to the legislature for an increase to the funding level of the college in the high school state funded subsidies.

(c) The college in the high school state-funded subsidies will be reimbursed after the completion of the course.

(d) Districts, charter schools, and tribal compact schools with high schools eligible for the college in the high school state-funded subsidies will submit a request for payment of subsidies form to the office of the superintendent of public instruction. The request for payment will include the actual number of completed credits for eligible eleventh and twelfth grade students who have not exceeded the credit limitation pursuant to subsection (2) of this section.

(e) The office of the superintendent of public instruction will review the request for payment of subsidies form and fund the reporting district, charter school, and tribal compact school one hundred percent of the approved college in the high school subsidies on the following monthly apportionment payment.

(f) One hundred percent of the subsidies generated will be forwarded to the participating institution of higher education.

WSR 16-09-106

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed April 19, 2016, 2:06 p.m.]

WAC 388-71-0515, proposed by the department of social and health services in WSR 15-20-112, appearing in issue 15-20 of the Washington State Register, which was distributed on October 21, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-09-111
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed April 20, 2016, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-06-103.

Title of Rule and Other Identifying Information: WAC 182-501-0070 Noncovered services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Pear Conference Room 107, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 25, 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, fax (360) 586-9727, by 5:00 p.m. on May 24, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by May 20, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to reference hair removal and electrolysis allowed under WAC 182-531-1675.

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: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Tonja Nichols, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1658.

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.

April 20, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-084, filed 7/31/15, effective 8/31/15)

WAC 182-501-0070 Health care coverage—Noncovered services. (1) The medicaid agency or its designee does

not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or its designee does not pay for any ancillary health care service(s) provided in association with a non-covered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4) or 182-531-1675;

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Hair transplants(~~(, epilation (hair removal), and electrolysis~~));

(j) Epilation (hair removal) and electrolysis not specifically allowed under WAC 182-531-1675;

(k) Marital counseling;

~~((l))~~ (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

~~((m))~~ (m) Nonmedical equipment;

~~((n))~~ (n) Penile implants;

~~((o))~~ (o) Prosthetic testicles;

~~((p))~~ (p) Psychiatric sleep therapy;

~~((q))~~ (q) Subcutaneous injection filling;

~~((r))~~ (r) Tattoo removal;

~~((s))~~ (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

~~((s))~~ (i) Upright magnetic resonance imaging (MRI); and

~~((t))~~ (u) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care hardware for clients twenty years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the agency's or its designee's action was taken; and

(ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR);

(v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

WSR 16-09-123

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF AGRICULTURE

[Filed April 20, 2016, 8:53 a.m.]

The Washington state department of agriculture is providing notice of withdrawal of WSR 16-08-128 that was filed on April 6, 2016, regarding amendments to WAC 16-301-490 through 16-301-580 (crucifer seed quarantine).

Jason Ferrante
Assistant Director
Commodity Inspection Division

WSR 16-09-124

PROPOSED RULES DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed April 20, 2016, 6:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-107.

Title of Rule and Other Identifying Information: WAC 246-860-100 Sexual misconduct, the pharmacy quality assurance commission (commission) is proposing amendment to sexual misconduct standards to clarify what forcible or non-consensual acts are within the definition of sexual misconduct by a pharmacist, or pharmacy intern, technician or assistant.

Hearing Location(s): Comfort Inn Tumwater, 1602 74th Avenue S.W., Tumwater, WA 98501, on May 26, 2016, at 9:15 a.m.

Date of Intended Adoption: May 26, 2016.

Submit Written Comments to: Brett Lorentson, Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2260, by May 19, 2016.

Assistance for Persons with Disabilities: Contact Brett Lorentson by May 12, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing to update the sexual misconduct rule to establish clearer standards of conduct for pharmacy health care providers. The proposed rule clarifies what forcible or nonconsensual acts are within the definition of sexual misconduct. The proposed rule also updates and establishes clearer standards of conduct for pharmacy health care providers by adding to the existing rules [about] sexual contact with any person, including people who are not clients or key parties that involves force, intimidation, lack of consent, or a conviction of a sex offense listed in RCW 9.94A.030.

Reasons Supporting Proposal: Experience with investigating and enforcing the current rule has raised the need to clarify what acts constitute sexual misconduct. By establishing clearer standards of conduct for providers, the proposal will help the consistent enforcement of sexual misconduct rules to more fully comply with RCW 18.130.062 and Executive Order 06-03. The proposal makes the commission's rule

consistent with recent amendments of the secretary's sexual misconduct rule and rules of other boards and commissions.

Statutory Authority for Adoption: RCW 18.64.005, 18.130.062, and 18.130.050.

Statute Being Implemented: RCW 18.64.005, 18.130.062, and 18.130.050.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brett Lorentson, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4611; Implementation and Enforcement: Doreen Beebe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only clarify the language of a rule without changing its effect.

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 (5)(b)(iv). Rule making that only clarifiers [clarifies] the language of a rule without changing its effect does not require [a] cost-benefit analysis.

April 19, 2016
Tim Lynch, PharmD, MS
Chair

AMENDATORY SECTION (Amending WSR 07-08-040, filed 3/28/07, effective 4/28/07)

WAC 246-860-100 Sexual misconduct. (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice within the health care practitioner's scope of practice;
- (c) Rubbing against a patient or client or key party for sexual gratification;
- (d) Kissing;
- (e) Hugging, touching, fondling or caressing of a romantic or sexual nature;
- (f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;
- (g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;
- (h) Dressing or undressing in the presence of the patient, client or key party;
- (i) Removing patient's or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;
- (j) Encouraging masturbation or other sex act in the presence of the health care provider;

(k) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(l) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client or key party;

(o) Discussing the sexual history, preferences or fantasies of the health care provider;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(r) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; ~~(and)~~

(t) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes; and

(u) Sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(2) A health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

(3) A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client, or key party if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(4) When evaluating whether a health care provider engaged, or attempted to engage, in sexual misconduct, the ~~(board)~~ commission will consider factors ~~(-)~~ including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the health care provider;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(5) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(6) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.