

WSR 16-22-002
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 19, 2016, 2:58 p.m., effective November 19, 2016]

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

Purpose: The department is amending WAC 388-444-0035 Who is exempt from the ABAWD time limits and minimum work requirements?, to strike provisions pertaining to food assistance program (FAP) for legal immigrants that are inconsistent with state law for the Supplemental Nutrition Assistance Program (SNAP).

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0035.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.7.

Other Authority: The United States Department of Agriculture, Food and Nutrition Services enforces the provisions of the federal SNAP as enacted in the 2008 Food and Nutrition Act as amended and codified in the Code of Federal Regulations. DSHS incorporates regulations from the federal agencies, exercises state options, and implements approved waivers and demonstration projects by adoption [of] administrative rules for food assistance administered as the Washington basic food program and FAP for legal immigrants.

Adopted under notice filed as WSR 16-18-060 on September 1, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 19, 2016.

Katherine I. Vasquez
Rule Coordinator

AMENDATORY SECTION (Amending WSR 16-04-046, filed 1/27/16, effective 2/27/16)

WAC 388-444-0035 Who is exempt from ~~((the))~~ ABAWD time limits and minimum work requirements? Some ~~((persons receiving))~~ people who receive basic food are exempt from ~~((ABAWD))~~ able-bodied adult without dependents (ABAWD) time limits and minimum work requirements. You are exempt from ~~((the))~~ ABAWD time

limits and work requirements ~~((and time limits))~~ under WAC 388-444-0030 if you ~~((are))~~ meet any one or more of the following:

(1) You are under age eighteen or are age fifty ~~((years of age))~~ or older;

(2) ~~((Receiving))~~ You receive temporary or permanent disability benefits issued by a governmental or private source;

(3) You are obviously mentally or physically unfit for employment as determined by the department~~((:));~~ however, if the unfitness is not obvious, you must provide a statement that you are physically or mentally unfit for employment from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, ~~((a))~~ licensed or certified psychologist, ~~((a))~~ social worker, or any other medical personnel ~~((we determine is))~~ the department determines appropriate~~((, that you are physically or mentally unfit for employment.));~~

(4) You are an adult in a basic food assistance unit that has a family member who is under the age of eighteen;

(5) You are pregnant;

(6) ~~((Living))~~ You live in an area approved as exempt by U.S. Department of Agriculture (USDA);

(7) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(8) You are applying for or ~~((receiving))~~ currently receive unemployment compensation;

(9) You are a student enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) Training program; or

(c) Institution of higher education~~((A student enrolled in higher education must))~~ and you meet the requirements ~~((under))~~ of WAC 388-482-0005 ~~((in order to be eligible for Basic Food.))~~ regarding basic food eligibility;

(10) You are participating in a chemical dependency treatment and rehabilitation program;

(11) You are employed a minimum of thirty hours per week or ~~((receiving))~~ receive weekly earnings ~~((which))~~ that equal the federal minimum hourly rate multiplied by thirty hours;

(12) You are eligible for one of the ~~[[(-)]]~~ approved exemption slots under the ~~((USDA))~~ U.S. Department of Agriculture (USDA) fifteen percent exemption rule; or

(13) ~~((A recipient of the state-funded food assistance program (FAP) under WAC 388-400-0050; or~~

~~((14))~~ You are otherwise exempt from work requirements under WAC 388-444-0010.

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

WSR 16-22-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 19, 2016, 3:25 p.m., effective November 19, 2016]

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

Purpose: The department is amending WAC 388-444-0075 What are the penalties if I quit a job or reduce my work effort without good cause?, in order to reduce the penalty period for applying for basic food from sixty days to thirty days after voluntarily quitting a job or reducing work effort without good cause.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0075.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 7 C.F.R. 273.7.

Other Authority: DSHS incorporates regulations from federal agencies, exercises state options, and implements approved waivers and demonstration projects by adopting administrative rules for the federal supplemental nutrition assistance program administered as the Washington basic food program. DSHS adopts rules for cash assistance conforming to federal regulations under Title 45 C.F.R., Title IV-A of the Social Security Act, Title 74 RCW and the approved TANF state plan.

Adopted under notice filed as WSR 16-18-061 on September 1, 2016.

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

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

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

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

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

Date Adopted: October 19, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-056 and 13-21-126, filed 11/26/13 and 10/22/13, effective 12/27/13 and 11/22/13)

WAC 388-444-0075 What are the penalties if ((~~the~~)) you quit a job or reduce ((~~my~~)) your work effort without good cause? (1) If you have applied for basic food and have voluntarily quit a job or reduced your work effort as defined under WAC 388-444-0065 without good cause within ((~~sixty~~)) thirty days before applying for basic food, we will deny your application and ((~~you must have~~)) impose a pen-

alty period as described under subsection (3) of this section from the date of your application.

(2) If you already receive basic food and ((~~you~~)) quit your job or reduce your work effort without good cause, we will send you a letter notifying you that you will be disqualified from basic food. The disqualification in subsection (3) of this section begins the first of the month following ((~~the~~)) our notice of adverse action.

(3) You are disqualified for the following minimum periods of time and until the conditions in subsection (4) of this section are met:

(a) For the first quit or reduction of work effort, one benefit month;

(b) For the second quit or reduction of work effort, three benefit months; and

(c) For the third or subsequent quit or reduction of work effort, six benefit months.

(4) You may reestablish eligibility after serving the disqualification period if you comply with the work requirements under WAC 388-444-0005 and are otherwise eligible.

(5) If you become exempt from work registration under WAC 388-444-0010, we will end your disqualification for a job quit or reduction of work effort ((~~unless you are exempt because you are applying for or receiving unemployment compensation (UC), or participating in an employment and training program under TANF~~)).

(6) If you are exempt or requalify due to participation in unemployment compensation (UC) or temporary assistance for needy families (TANF), you must meet the work requirements in these programs to remain eligible for basic food.

(7) If you are disqualified, and move from the assistance unit, and join another assistance unit, we will continue to treat you as an ineligible member of the new assistance unit for the remainder of the disqualification period.

WSR 16-22-024
PERMANENT RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 24, 2016, 1:44 p.m., effective November 24, 2016]

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

Purpose: The agency is revising this rule to reference hair removal and electrolysis allowed under WAC 182-531-1675.

Citation of Existing Rules Affected by this Order: Amending WAC 182-501-0070.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-09-111 on April 20, 2016.

Changes Other than Editing from Proposed to Adopted Version: The following change was made to subsection (4)(o) as a result of public hearing comments: Prosthetic testicles not specifically allowed under WAC 182-531-1675.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 24, 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;~~

~~((k)) (l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;~~

~~((l)) (m) Nonmedical equipment;~~

~~((m)) (n) Penile implants;~~

~~((n)) (o) Prosthetic testicles not specifically allowed under WAC 182-531-1675;~~

~~((o)) (p) Psychiatric sleep therapy;~~

~~((p)) (q) Subcutaneous injection filling;~~

~~((q)) (r) Tattoo removal;~~

~~((r)) (s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;~~

~~((s)) (t) 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 non-covered 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 non-covered.

- (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.

Purpose: To establish a 2017 annual tariff for pilotage services in the Grays Harbor pilotage district.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-185.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 16-18-077 on September 6, 2016.

Changes Other than Editing from Proposed to Adopted Version: The proposed increase in the **Pension Charge** from \$463 to \$528 was adopted.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: October 20, 2016.

Peggy Larson
Executive Director

WSR 16-22-034
PERMANENT RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed October 26, 2016, 10:02 a.m., effective January 1, 2017]

Effective Date of Rule: January 1, 2017.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

AMENDATORY SECTION (Amending WSR 15-24-029, filed 11/20/15, effective 1/1/16)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours January 1, (~~2016~~) 2017, through 2400 hours December 31, (~~2016~~) 2017.

CLASSIFICATION

RATE

Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

Draft and Tonnage Charges:

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

Draft	\$114.97 per meter
	or
	\$35.04 per foot
Tonnage	\$0.329 per net registered ton
Minimum Net Registered Tonnage	\$1,152.00
Extra Vessel (in case of tow)	\$646.00

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$6,387.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.

Boarding Charge:

Per each boarding/deboarding from a boat or helicopter	\$1,092.00
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CLASSIFICATION	RATE
Harbor Shifts:	
For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage	\$803.00
Delays per hour	\$189.00
Cancellation charge (pilot only)	\$315.00
Cancellation charge (boat or helicopter only)	\$944.00

Two Pilots Required:

When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of \$803.00 and in addition, when a bridge is transited the bridge transit charge of \$346.00 shall apply.

Pension Charge:

Charge per pilotage assignment, including cancellations \$((~~463.00~~) 528.00)

Travel Allowance:

Transportation charge per assignment \$105.00

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$1,064.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:

Charge for each bridge transited \$346.00

Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$946.00

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

**WSR 16-22-043
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed October 28, 2016, 9:42 a.m., effective March 1, 2017]

Effective Date of Rule: March 1, 2017.

Purpose: WAC 246-970-0301 Pharmacy assistant fees and renewal cycle, adopting a new rule setting registration application and renewal fees for pharmacy assistants to implement SB 5549 (RCW 18.64A.030).

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: RCW 18.64A.030.

Adopted under notice filed as WSR 16-16-069 on July 28, 2016.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: October 28, 2016.

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-907-0301 Pharmacy assistant licensing periods and fees—Fees and renewal cycle. (1) Pharmacy assistant registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for pharmacy assistants:

Original fee	\$25.00
Renewal fee	\$25.00
Late renewal penalty	\$25.00
Expired license reissuance	\$25.00
Duplicate credential	\$10.00
Verification of credential	\$15.00

WSR 16-22-045**PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed October 28, 2016, 1:44 p.m., effective November 28, 2016]

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

Purpose: Repeal procedures for county elections administrators who received copies of campaign finance reports under former RCW 42.17.375.

Citation of Existing Rules Affected by this Order: Repealing WAC 390-13-100.

Statutory Authority for Adoption: RCW 42.17A.110.

Adopted under notice filed as WSR 16-17-102 on August 19, 2016.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 1.

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

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

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

Date Adopted: October 27, 2016.

Lori Anderson
Communications and
Training Officer

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-13-100 Duties of elections officials receiving copies of campaign finance reports.

WSR 16-22-046**PERMANENT RULES****PUBLIC DISCLOSURE COMMISSION**

[Filed October 28, 2016, 1:46 p.m., effective November 28, 2016]

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

Purpose: Repeal candidates' implied incumbency restrictions from political advertising rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 390-18-040(6).

Statutory Authority for Adoption: RCW 42.17A.110.

Adopted under notice filed as WSR 16-17-103 on August 19, 2016.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0 [1], Repealed 1 [0].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0 [1], Repealed 1 [0].

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

Date Adopted: October 27, 2016.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-18-040 Use of the terms "reelect," "retain," and "return." (1) The term "reelect" when used in an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in an advertisement by a nonincumbent candidate who has previously been elected to the office being sought provided that in the same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in an advertisement represents that the candidate is the incumbent but does not imply that the candidate attained the office by election.

(4) The term "return" in an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in an advertisement, use the term "reelect," "retain" or "return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

~~((6) Stating the office sought (e.g., "mayor") by a candidate in a political advertisement without expressly stating the candidate is seeking election to the office (e.g., "for mayor"; "Elect Smith Mayor") represents that the candidate presently holds that office.))~~

WSR 16-22-049**PERMANENT RULES****GAMBLING COMMISSION**

[Filed October 28, 2016, 2:45 p.m., effective November 28, 2016]

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

Purpose: 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 non-transferability 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. These rule changes will help staff know where group 12 amusement games are being operated and the gross receipts they are bringing in. The rule changes also address not commingling coupons, tickets, tokens or tokens on an electronic token card to other gambling related redemption systems to help ensure cash is not indirectly awarded as prizes.

Citation of Existing Rules Affected by this Order: Amending WAC 230-07-125, 230-13-005, 230-13-075, and 230-13-170.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0201.

Adopted under notice filed as WSR 16-17-141 on August 23, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: October 28, 2016.

Michelle Rancour
Acting 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 gambling receipts from each activity;
- (b) The gross gambling receipts from group 12 amusement games;

ment 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;

~~((f))~~ (e) A summary of all expenses related to each of the activities; and

~~((g))~~ (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 16-09-045, filed 4/15/16, effective 7/15/16)

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 group 1 through 11 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; and

(iii) An attendant accepts cash, check, tickets or scrip to play the amusement game. The tickets and scrip are not redeemable for cash and must show the name of the operator or sponsor; 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, cash, 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) Coupons, tickets, tokens or tokens on an electronic token card can be electronically stored for redemption under this section as long as the coupons, tickets, tokens or tokens on an electronic token card are:

(A) Deposited into, and tracked on, a separate amusement game accounting system; and

(B) Not commingled with any tracking, reward, or other gambling related redemption systems; and

(C) Redeemed only for merchandise prizes.

(5) Amusement games must not:

(a) Award additional plays as prizes; or

(b) Allow coupons, tickets, tokens or tokens on electronic token cards that are awarded to be replayed; or

(c) Result in any cash payment being awarded.

(6) Amusement games must only award merchandise prizes.

(a) Merchandise prizes mean noncash prizes including toys, novelties, retail items such as electronic goods, clothing, accessories, as well as food, beverages and other items sold by the operator as a normal part of their business in compliance with all other state laws and regulations, except as provided in (b) of this subsection.

(b) Pull-tabs and other gambling activities, gift certificates or gift cards do not constitute merchandise prizes.

(7) 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 ~~and~~ from:

(i) Group 1 through 11 amusement games; and

(ii) Group 12 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 nonprofit 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.

WSR 16-22-051

PERMANENT RULES

BOARD FOR VOLUNTEER

FIREFIGHTERS AND RESERVE OFFICERS

[Filed October 29, 2016, 3:22 p.m., effective November 29, 2016]

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

Purpose: Amending chapter 491-04 WAC to remove conflicting sections and more accurately reflect board processes.

Citation of Existing Rules Affected by this Order: Amending chapter 491-04 WAC.

Statutory Authority for Adoption: RCW 41.24.290(2).

Adopted under notice filed as WSR 16-18-011 on August 25, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 27, 2016.

Brigitte K. Smith
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-21-050, filed 10/11/13, effective 11/11/13)

WAC 491-04-190 What are the timing requirements for the filing of ~~((pre-hearing))~~ prehearing briefs and supporting evidence? You must file your ~~((pre-hearing))~~ pre-hearing brief, along with any evidence that you believe supports your position in accordance with the filing requirements set forth in WAC 491-04-060.

(1) A ~~((pre-hearing))~~ prehearing brief should be a summary of the points that you want to make regarding your case. Specific exhibits should be referenced to make it easier for the board to follow your case.

(2) Include all evidence you want the board to consider. This could include, but is not limited to, medical reports or accident reports for injury claims, or training records or response records for service credit claims. ~~((All evidence must meet the requirements in WAC 491-04-180.))~~

(3) Your ~~((pre-hearing))~~ prehearing brief and all evidence must be filed to the board and all parties to the action, no less than fourteen ~~((14))~~ days prior to the scheduled hearing date.

(4) All parties may, upon review of all evidence, file a response to a party's ~~((pre-hearing))~~ prehearing brief to the board and all parties involved no later than seven ~~((7))~~ days prior to the scheduled hearing date.

AMENDATORY SECTION (Amending WSR 13-21-050, filed 10/11/13, effective 11/11/13)

WAC 491-04-240 What is the role of the state board in an appeal? (1) The board chair, or his or her designee, shall have the authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 51.52.100;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Determine the total time allowed for both parties to present oral testimony and oral argument during hearing before the board;
- (h) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing; and
- ~~((h))~~ (i) Permit or require oral argument or briefs and determine the time limits for submission.

(2) All board members shall have the authority to:

(a) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter; and

(b) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 491-04-180 Can new evidence be submitted for the hearing?

WSR 16-22-052
PERMANENT RULES
BOARD FOR VOLUNTEER
FIREFIGHTERS AND RESERVE OFFICERS

[Filed October 29, 2016, 3:40 p.m., effective January 1, 2017]

Effective Date of Rule: January 1, 2017.

Purpose: Amending chapter 491-02 WAC to adopt new actuarial tables for use in calculating joint survivor pensions, survivor pensions, and lump sum settlements to reflect the latest actuarial study and the changes in mortality rates.

Citation of Existing Rules Affected by this Order: Amending chapter 491-02 WAC.

Statutory Authority for Adoption: RCW 41.24.290(2).

Adopted under notice filed as WSR 16-17-123 on August 23, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: October 27, 2016.

Brigette K. Smith
Executive Secretary

AMENDATORY SECTION (Amending WSR 09-24-026, filed 11/23/09, effective 12/24/09)

WAC 491-02-095 Actuarial tables, schedules, and factors. This chapter contains the tables, schedules, and factors adopted by the board for volunteer firefighters and reserve officers pursuant to the authority granted by RCW 41.24.185 for calculating optional retirement allowances of members of retirement systems administered by the board. These tables, schedules, and factors were adopted by the board upon the recommendation of and in light of the findings of the state actuary in his regular actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of such retirement systems. The tables, schedules, and factors contained in this chapter shall govern the retirement allowances only of members retiring during the period from January 1, ~~((2010))~~ 2017, until such time as these tables, schedules, and factors are amended by the board following the next actuarial investigation conducted by the state actuary. The retirement allowances of members retiring before January 1, ~~((2010))~~ 2017, shall continue to be governed by the tables, schedules, and factors in effect at the time of each member's retirement. Any new tables, schedules, and factors adopted by the board in the

future shall govern retirement allowances only of members retiring after the adoption of such new tables, schedules, and factors.

**Board for Volunteer Firefighters and Reserve Officers
Table #1
Joint/Survivor Pension
Option 2 (Joint and 100% Survivor Pension with Pop-up)
(WAC 415-02-380)**

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
(-20	0.937	0	0.835
-19	0.933	1	0.829
-18	0.929	2	0.823
-17	0.925	3	0.818
-16	0.921	4	0.812
-15	0.916	5	0.807
-14	0.912	6	0.801
-13	0.907	7	0.796
-12	0.902	8	0.791
-11	0.897	9	0.786
-10	0.892	10	0.781
-9	0.886	11	0.776
-8	0.881	12	0.771
-7	0.875	13	0.767
-6	0.870	14	0.762
-5	0.864	15	0.758
-4	0.858	16	0.754
-3	0.852	17	0.750
-2	0.847	18	0.746
-1	0.841	19	0.743
		20	0.739
		21	0.736
		22	0.733
		23	0.730
		24	0.727
		25	0.725
		26	0.722
		27	0.720
		28	0.717
		29	0.715
		30	0.713
		31	0.711
		32	0.709

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
		33	0.708
		34	0.706
		35	0.705
		36	0.703
		37	0.702
		38	0.700
		39	0.699
		40	0.698))
-20	0.941	0	0.850
-19	0.938	1	0.844
-18	0.934	2	0.839
-17	0.930	3	0.834
-16	0.926	4	0.829
-15	0.922	5	0.825
-14	0.918	6	0.820
-13	0.913	7	0.815
-12	0.909	8	0.811
-11	0.904	9	0.806
-10	0.900	10	0.802
-9	0.895	11	0.798
-8	0.890	12	0.794
-7	0.885	13	0.790
-6	0.880	14	0.786
-5	0.875	15	0.783
-4	0.870	16	0.779
-3	0.865	17	0.776
-2	0.860	18	0.773
-1	0.855	19	0.770
		20	0.767
		21	0.764
		22	0.762
		23	0.759
		24	0.757
		25	0.755
		26	0.753
		27	0.751
		28	0.749
		29	0.747
		30	0.746
		31	0.744
		32	0.743

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
		<u>33</u>	<u>0.742</u>
		<u>34</u>	<u>0.740</u>
		<u>35</u>	<u>0.739</u>
		<u>36</u>	<u>0.738</u>
		<u>37</u>	<u>0.737</u>
		<u>38</u>	<u>0.736</u>
		<u>39</u>	<u>0.735</u>
		<u>40</u>	<u>0.734</u>

Table #2
Survivor Pension
Early Retirement Factors
(WAC 415-02-320)

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
(0	1.0000	0.9922	0.9844	0.9766	0.9688	0.9610	0.9532	0.9454	0.9376	0.9298	0.9220	0.9142
1	0.9060	0.8991	0.8922	0.8853	0.8784	0.8715	0.8646	0.8577	0.8508	0.8439	0.8370	0.8301
2	0.8230	0.8168	0.8106	0.8044	0.7982	0.7920	0.7858	0.7796	0.7734	0.7672	0.7610	0.7548
3	0.7490	0.7435	0.7380	0.7325	0.7270	0.7215	0.7160	0.7105	0.7050	0.6995	0.6940	0.6885
4	0.6830	0.6781	0.6732	0.6683	0.6634	0.6585	0.6536	0.6487	0.6438	0.6389	0.6340	0.6291
5	0.6240	0.6195	0.6150	0.6105	0.6060	0.6015	0.5970	0.5925	0.5880	0.5835	0.5790	0.5745
6	0.5700	0.5660	0.5620	0.5580	0.5540	0.5500	0.5460	0.5420	0.5380	0.5340	0.5300	0.5260
7	0.5220	0.5184	0.5148	0.5112	0.5076	0.5040	0.5004	0.4968	0.4932	0.4896	0.4860	0.4824
8	0.4790	0.4758	0.4726	0.4694	0.4662	0.4630	0.4598	0.4566	0.4534	0.4502	0.4470	0.4438
9	0.4400	0.4371	0.4342	0.4313	0.4284	0.4225	0.4226	0.4197	0.4168	0.4139	0.4110	0.4081
10	0.4050	0.4023	0.3996	0.3969	0.3942	0.3915	0.3888	0.3861	0.3834	0.3807	0.3780	0.3753
11	0.3730	0.3705	0.3680	0.3655	0.3630	0.3605	0.3580	0.3555	0.3530	0.3505	0.3480	0.3455
12	0.3430	0.3408	0.3386	0.3364	0.3342	0.3320	0.3298	0.3276	0.3254	0.3232	0.3210	0.3188
13	0.3170	0.3149	0.3128	0.3107	0.3086	0.3065	0.3044	0.3023	0.3002	0.2981	0.2960	0.2939
14	0.2920	0.2902	0.2884	0.2866	0.2848	0.2830	0.2812	0.2794	0.2276	0.2758	0.2740	0.2722
15	0.2700	0.2683	0.2666	0.2649	0.2632	0.2615	0.2598	0.2581	0.2564	0.2547	0.2530	0.2513
16	0.2500	0.2484	0.2468	0.2452	0.2436	0.2420	0.2404	0.2388	0.2372	0.2356	0.2340	0.2324
17	0.2310	0.2296	0.2282	0.2268	0.2254	0.2240	0.2226	0.2212	0.2198	0.2184	0.2170	0.2156
18	0.2140	0.2127	0.2114	0.2101	0.2088	0.2075	0.2062	0.2049	0.2036	0.2023	0.2010	0.1997
19	0.1980	0.1968	0.1956	0.1944	0.1932	0.1920	0.1908	0.1896	0.1884	0.1872	0.1860	0.1848
20	0.1840	0.1828	0.1816	0.1804	0.1792	0.1780	0.1768	0.1756	0.1744	0.1732	0.1720	0.1708
21	0.1700	0.1690	0.1680	0.1670	0.1660	0.1650	0.1640	0.1630	0.1620	0.1610	0.1600	0.1590
22	0.1580	0.1571	0.1562	0.1553	0.1544	0.1535	0.1526	0.1517	0.1508	0.1499	0.1490	0.1481
23	0.1470	0.1461	0.1452	0.1443	0.1434	0.1425	0.1416	0.1407	0.1398	0.1389	0.1380	0.1371
24	0.1360	0.1352	0.1344	0.1336	0.1328	0.1320	0.1312	0.1304	0.1296	0.1288	0.1280	0.1272
25	0.1260	0.1253	0.1246	0.1239	0.1232	0.1225	0.1218	0.1211	0.1204	0.1197	0.1190	0.1183
26	0.1180	0.1173	0.1166	0.1159	0.1152	0.1145	0.1138	0.1131	0.1124	0.1117	0.1110	0.1103
27	0.1090	0.1084	0.1078	0.1072	0.1066	0.1060	0.1054	0.1048	0.1042	0.1036	0.1030	0.1024
28	0.1020	0.1018	0.1016	0.1014	0.1012	0.1010	0.1008	0.1006	0.1004	0.1002	0.1000	0.1000
29+	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000	0.1000))
0	<u>1.0000</u>	<u>.9926</u>	<u>.9852</u>	<u>.9778</u>	<u>.9704</u>	<u>.9630</u>	<u>.9557</u>	<u>.9483</u>	<u>.9409</u>	<u>.9335</u>	<u>.9261</u>	<u>.9187</u>
1	<u>.9113</u>	<u>.9047</u>	<u>.8981</u>	<u>.8915</u>	<u>.8849</u>	<u>.8783</u>	<u>.8717</u>	<u>.8651</u>	<u>.8585</u>	<u>.8519</u>	<u>.8453</u>	<u>.8387</u>

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
2	.8321	.8262	.8203	.8144	.8085	.8026	.7967	.7908	.7849	.7789	.7730	.7671
3	.7612	.7559	.7506	.7453	.7400	.7347	.7294	.7241	.7188	.7135	.7082	.7028
4	.6975	.6928	.6880	.6832	.6784	.6736	.6689	.6641	.6593	.6545	.6497	.6450
5	.6402	.6359	.6316	.6272	.6229	.6186	.6143	.6100	.6057	.6014	.5970	.5927
6	.5884	.5845	.5806	.5767	.5728	.5689	.5650	.5611	.5572	.5533	.5493	.5454
7	.5415	.5380	.5345	.5309	.5274	.5238	.5203	.5167	.5132	.5096	.5061	.5026
8	.4990	.4958	.4926	.4894	.4861	.4829	.4797	.4765	.4733	.4700	.4668	.4636
9	.4604	.4574	.4545	.4516	.4486	.4457	.4428	.4398	.4369	.4340	.4310	.4281
10	.4252	.4225	.4198	.4171	.4145	.4118	.4091	.4064	.4037	.4011	.3984	.3957
11	.3930	.3906	.3881	.3857	.3832	.3808	.3783	.3759	.3735	.3710	.3686	.3661
12	.3637	.3614	.3592	.3569	.3547	.3525	.3502	.3480	.3457	.3435	.3413	.3390
13	.3368	.3347	.3327	.3306	.3286	.3265	.3244	.3224	.3203	.3183	.3162	.3142
14	.3121	.3102	.3083	.3065	.3046	.3027	.3008	.2989	.2970	.2951	.2932	.2914
15	.2895	.2877	.2860	.2843	.2825	.2808	.2791	.2773	.2756	.2738	.2721	.2704
16	.2686	.2670	.2654	.2639	.2623	.2607	.2591	.2575	.2559	.2543	.2527	.2511
17	.2495	.2480	.2465	.2451	.2436	.2421	.2406	.2392	.2377	.2362	.2347	.2333
18	.2318	.2304	.2291	.2277	.2264	.2250	.2236	.2223	.2209	.2196	.2182	.2169
19	.2155	.2142	.2130	.2117	.2105	.2092	.2080	.2067	.2055	.2042	.2029	.2017
20	.2004	.1993	.1981	.1969	.1958	.1946	.1935	.1923	.1911	.1900	.1888	.1877
21	.1865	.1854	.1844	.1833	.1822	.1811	.1801	.1790	.1779	.1768	.1758	.1747
22	.1736	.1726	.1716	.1706	.1696	.1686	.1677	.1667	.1657	.1647	.1637	.1627
23	.1617	.1608	.1598	.1589	.1580	.1571	.1562	.1552	.1543	.1534	.1525	.1516
24	.1506	.1498	.1489	.1481	.1472	.1464	.1455	.1446	.1438	.1429	.1421	.1412
25	.1404	.1396	.1388	.1380	.1372	.1364	.1356	.1348	.1340	.1332	.1324	.1317
26	.1309	.1301	.1294	.1287	.1279	.1272	.1264	.1257	.1250	.1242	.1235	.1228
27	.1220	.1213	.1207	.1200	.1193	.1186	.1179	.1172	.1166	.1159	.1152	.1145
28	.1138	.1132	.1125	.1119	.1113	.1106	.1100	.1094	.1087	.1081	.1075	.1068
29	.1062	.1057	.1052	.1046	.1041	.1036	.1031	.1026	.1021	.1015	.1010	.1005
30+	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000

**Table #3
Lump-Sum Settlements**

Age	Factor	Age	Factor
34	13.9146	74	7.7574
35	13.8648	75	7.4768
36	13.8125	76	7.1936
37	13.7574	77	6.9075
38	13.6993	78	6.6205
39	13.6378	79	6.3331
40	13.5726	80	6.0460
41	13.5034	81	5.7603
42	13.4300	82	5.4770
43	13.3520	83	5.2000
44	13.2693	84	4.9276
45	13.1816	85	4.6629
46	13.0887	86	4.4045
47	12.9903	87	4.1524
48	12.8860	88	3.9110
49	12.7754	89	3.6829

Age	Factor	Age	Factor
<u>50</u>	<u>12.6582</u>	90	<u>3.4668</u>
<u>51</u>	<u>12.5339</u>	91	<u>3.2679</u>
<u>52</u>	<u>12.4021</u>	92	<u>3.0850</u>
<u>53</u>	<u>12.2638</u>	93	<u>2.9184</u>
<u>54</u>	<u>12.1178</u>	94	<u>2.7652</u>
<u>55</u>	<u>11.9639</u>	95	<u>2.6233</u>
<u>56</u>	<u>11.8019</u>	96	<u>2.4971</u>
<u>57</u>	<u>11.6327</u>	97	<u>2.3819</u>
<u>58</u>	<u>11.4573</u>	98	<u>2.2755</u>
<u>59</u>	<u>11.2742</u>	99	<u>2.1823))</u>
<u>20</u>	<u>14.4584</u>	<u>66</u>	<u>10.4052</u>
<u>21</u>	<u>14.4415</u>	<u>67</u>	<u>10.1797</u>
<u>22</u>	<u>14.4235</u>	<u>68</u>	<u>9.9469</u>
<u>23</u>	<u>14.4043</u>	<u>69</u>	<u>9.7055</u>
<u>24</u>	<u>14.3837</u>	<u>70</u>	<u>9.4569</u>
<u>25</u>	<u>14.3616</u>	<u>71</u>	<u>9.2012</u>
<u>26</u>	<u>14.3379</u>	<u>72</u>	<u>8.9402</u>
<u>27</u>	<u>14.3124</u>	<u>73</u>	<u>8.6725</u>
<u>28</u>	<u>14.2850</u>	<u>74</u>	<u>8.3989</u>
<u>29</u>	<u>14.2556</u>	<u>75</u>	<u>8.1204</u>
<u>30</u>	<u>14.2241</u>	<u>76</u>	<u>7.8378</u>
<u>31</u>	<u>14.1905</u>	<u>77</u>	<u>7.5519</u>
<u>32</u>	<u>14.1547</u>	<u>78</u>	<u>7.2629</u>
<u>33</u>	<u>14.1169</u>	<u>79</u>	<u>6.9712</u>
<u>34</u>	<u>14.0771</u>	<u>80</u>	<u>6.6771</u>
<u>35</u>	<u>14.0351</u>	<u>81</u>	<u>6.3812</u>
<u>36</u>	<u>13.9909</u>	<u>82</u>	<u>6.0844</u>
<u>37</u>	<u>13.9441</u>	<u>83</u>	<u>5.7894</u>
<u>38</u>	<u>13.8947</u>	<u>84</u>	<u>5.4967</u>
<u>39</u>	<u>13.8423</u>	<u>85</u>	<u>5.2068</u>
<u>40</u>	<u>13.7866</u>	<u>86</u>	<u>4.9196</u>
<u>41</u>	<u>13.7273</u>	<u>87</u>	<u>4.6359</u>
<u>42</u>	<u>13.6642</u>	<u>88</u>	<u>4.3627</u>
<u>43</u>	<u>13.5971</u>	<u>89</u>	<u>4.1017</u>
<u>44</u>	<u>13.5257</u>	<u>90</u>	<u>3.8552</u>
<u>45</u>	<u>13.4499</u>	<u>91</u>	<u>3.6261</u>
<u>46</u>	<u>13.3694</u>	<u>92</u>	<u>3.4160</u>
<u>47</u>	<u>13.2840</u>	<u>93</u>	<u>3.2225</u>
<u>48</u>	<u>13.1934</u>	<u>94</u>	<u>3.0459</u>
<u>49</u>	<u>13.0971</u>	<u>95</u>	<u>2.8863</u>
<u>50</u>	<u>12.9948</u>	<u>96</u>	<u>2.7439</u>
<u>51</u>	<u>12.8861</u>	<u>97</u>	<u>2.6189</u>
<u>52</u>	<u>12.7706</u>	<u>98</u>	<u>2.5100</u>

Age	Factor	Age	Factor
<u>53</u>	<u>12.6497</u>	<u>99</u>	<u>2.4068</u>
<u>54</u>	<u>12.5217</u>	<u>100</u>	<u>2.3177</u>
<u>55</u>	<u>12.3863</u>	<u>101</u>	<u>2.2325</u>
<u>56</u>	<u>12.2433</u>	<u>102</u>	<u>2.1606</u>
<u>57</u>	<u>12.0937</u>	<u>103</u>	<u>2.0940</u>
<u>58</u>	<u>11.9376</u>	<u>104</u>	<u>2.0445</u>
<u>59</u>	<u>11.7734</u>	<u>105</u>	<u>2.0036</u>
<u>60</u>	<u>11.6011</u>	<u>106</u>	<u>1.9836</u>
<u>61</u>	<u>11.4206</u>	<u>107</u>	<u>1.9718</u>
<u>61</u>	<u>11.2323</u>	<u>108</u>	<u>1.9636</u>
<u>62</u>	<u>11.0364</u>	<u>109</u>	<u>1.9558</u>
<u>64</u>	<u>10.8332</u>	<u>110</u>	<u>1.9481</u>
<u>65</u>	<u>10.6232</u>		

WSR 16-22-060
PERMANENT RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 31, 2016, 3:10 p.m., effective December 1, 2016]

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

Purpose: The agency amended these rules to clarify when coverage ends, and to clarify that the agency reinstates coverage if it does not meet the advance notice requirements in WAC 182-518-0025.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-504-0135; and amending WAC 182-518-0025 and 182-504-0130.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-17-084 on August 17, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- The agency revised WAC 182-518-0025 and 182-504-0130 in the "we/you" (second person) format.
- WAC 182-518-0025(2): **Exceptions to ten-day notice period.** We may send a notice fewer than ten days before the date of the action in the following circumstances.
- WAC 182-518-0025 (3)(c) and (d): (c) The facts and reason(s) for the action; (d) The specific regulation on which the action is based.
- WAC 182-518-0025 (3)(g): Information found in WAC 182-518-0005(4).
- WAC 182-518-0025(4): (b) If you are receiving medically needy coverage, you cannot receive reinstated coverage past the end of the certification period described in WAC 182-504-0020.
- WAC 182-518-0025(4): (c) We may end your coverage if a notice we mailed to you is returned with no forwarding address. We reinstate your coverage if we learn your new address and you meet eligibility requirements.

- WAC 182-504-0130(3): If your last day to request a hearing and still qualify for continued coverage falls on a Saturday, Sunday, or a designated holiday under WAC 357-31-005, you have until 5:00 p.m. on the end of the next business day to request the hearing.
- WAC 182-504-0130(5): You cannot receive continued coverage if the agency's adverse action was due solely to a change in statute, federal regulation, or administrative rule, unless there is a question about whether you are in the class of people affected by the change.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: October 31, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

WAC 182-504-0130 Washington apple health—Continued coverage pending an appeal. ~~((1) If you disagree with a Washington apple health (WAH) decision that we (the agency or its designee) made, you have the right to appeal under RCW 74.09.741. The appeal rules are found in chapter 182-526 WAC.~~

~~(2) If you appeal a WAH decision on or before the tenth day after the date the person receives the written notice of the WAH decision or before the effective date of the WAH decision, your WAH coverage will continue until the appeals process ends, unless otherwise specified in this section. This is called continued coverage.~~

~~(3) We will treat the fifth day after the date on the notice as the date you received the notice; however, if you show that you received the notice more than five days after the date on the notice, we will use the actual date you received the notice for counting the ten-day appeal period for the purpose of providing continued coverage. If the tenth day falls on a week-end or holiday, you have until the next business day to appeal and still be able to receive continued coverage.~~

~~(4) You receive continued coverage through the end of the month an administrative hearing decision is sent to you unless:~~

~~(a) An administrative law judge or our presiding officer serves an order ending continued coverage; or~~

~~(b) You:~~

~~(i) Tell us in writing that you do not want continued coverage; or~~

~~(ii) Withdraw your appeal in writing or at an administrative proceeding.~~

~~(5) You cannot get continued coverage when a change in your WAH coverage is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change. You may get continued coverage while appealing a change in your WAH coverage that is a result of a mass change if:~~

~~(a) There is a question about whether you are in the class of applicants or recipients being affected by the mass change; or~~

~~(b) The mass change is not the only reason for the change in your WAH coverage.~~

~~(6) If you are getting WAH medically needy coverage, then you are not eligible for continued coverage beyond the end of the original certification period described in WAC 182-504-0020.) (1) Continued coverage is when you continue to receive Washington apple health benefits while appealing a medicaid agency adverse action to terminate, suspend, or reduce your:~~

~~(a) Medicaid eligibility; or~~

~~(b) Authorization for a covered service.~~

~~(2) To qualify for continued coverage, you must request a hearing on the adverse action no later than:~~

~~(a) The tenth day after we (the medicaid agency or its designee) sent a notice of the action to you; or~~

~~(b) The last day of the month before the action takes effect.~~

~~(3) If your last day to request a hearing and still qualify for continued coverage falls on a Saturday, Sunday, or a designated holiday under WAC 357-31-005, you have until 5:00 p.m. on the next business day to request the hearing.~~

~~(4) Continued coverage ends when:~~

~~(a) You state in writing you no longer wish to receive continued coverage;~~

~~(b) You withdraw the appeal;~~

~~(c) You default and an order of dismissal is entered;~~

~~(d) An administrative law judge or a review judge issues an adverse ruling or written decision:~~

~~(i) Terminating your continued coverage; or~~

~~(ii) Ruling you do not qualify for benefits.~~

~~(5) You cannot receive continued coverage if the adverse action was due solely to a change in statute, federal regulation, or administrative rule, unless there is a question about whether you are in the class of people affected by the change.~~

~~(6) If you are receiving medically needy coverage, you cannot receive continued coverage past the end of the certification period described in WAC 182-504-0020.~~

~~(7) If you are receiving coverage under an alien medical program, you cannot receive continued coverage past the end of the certification period described in chapter 182-507 WAC.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-504-0135 Washington apple health—Reinstated coverage pending an appeal.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-518-0025 Washington apple health—Notice requirements—~~((Changes in and terminations of coverage))~~ **Actions to terminate, suspend, or reduce eligibility or authorization for a covered service.** ~~((+))~~ We send you written notice before your Washington apple health (WAH) coverage changes or ends. The notice includes:

- (a) The change in coverage;
- (b) The date your coverage will change or end;
- (c) Specific facts and reason(s) for the decision;
- (d) Specific rules the decision is based on; and
- (e) Information found in WAC 182-518-0005(4).

(2) Before we send any notices to end your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we determine if you are eligible for other health care coverage (including non-MAGI-based coverage) based on information you have provided, as described in WAC 182-504-0125.

(3) We notify you at least ten days before we change or end your health care coverage. The ten days start on the day we send you the notice and end on the tenth day. We are not required to give ten days' notice if:

- (a) You asked us to change or end your coverage;
- (b) We are changing or ending your coverage due to a change in law;
- (c) We are ending your coverage because everyone in your household either died or has been accepted to receive medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);
- (d) We are ending your coverage because mail we sent you was returned to us with no forwarding address and we do not have a more current address for you;
- (e) You are incarcerated and it is expected to last more than thirty days; or
- (f) We have facts indicating probable fraud by you, in which case we may notify you five days before we change or end your coverage.

(4) If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action described in the notice.

(5) You may request an appeal if you disagree with our decision to change or end your health care coverage and get continued coverage as described in WAC 182-504-0130.))

(1) General rule.

(a) We send written notice to you at least ten days before taking adverse action to terminate, suspend, or reduce your:

- (i) Medicaid eligibility; or
- (ii) Authorization for a covered service.

(b) The ten-day notice period starts on the day we sent the notice.

(2) Exceptions to ten-day notice period. We may send a notice fewer than ten days before the date of the action in the following circumstances.

(a) We send written notice to you at least five days before taking action to terminate, suspend, or reduce your medicaid eligibility or authorization for a covered service if:

(i) We have facts indicating fraud by you or on your behalf; and

(ii) We have verified the facts, if possible, through secondary sources.

(b) We send written notice to you no later than the date we took action to terminate, suspend, or reduce your medicaid eligibility or authorization for a covered service if:

(i) You requested the action;

(ii) A change in statute, federal regulation or administrative rule is the sole cause of the action;

(iii) You are incarcerated and expected to remain incarcerated at least thirty days;

(iv) Mail sent to you has been returned without a forwarding address, and we do not have a more current address for you; or

(v) We are terminating your eligibility because you:

(A) Died; or

(B) Began receiving medicaid from a jurisdiction other than Washington state.

(3) Notice contents. Written notice under this section states:

(a) The nature of the action;

(b) The effective date of the action;

(c) The facts and reason(s) for the action;

(d) The specific regulation on which the action is based;

(e) Your appeal rights, if any;

(f) Your right to continued coverage, if any; and

(g) Information found in WAC 182-518-0005(4).

(4) Reinstated coverage.

(a) If we do not meet the advance notice requirements under this section, we reinstate your coverage back to the date of the action. We may still take action once we meet notice requirements under this section.

(b) If you are receiving medically needy coverage, you cannot receive reinstated coverage past the end of the certification period described in WAC 182-504-0020.

(c) We may end your coverage if a notice we mailed to you is returned with no forwarding address. We reinstate your coverage if we learn your new address and you meet eligibility requirements.

(5) Hearing rights. If you do not agree with agency action under this section, you may request an administrative hearing under chapter 182-526 WAC, and you may be entitled to continued coverage under WAC 182-504-0130.

WSR 16-22-061**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed October 31, 2016, 4:54 p.m., effective December 1, 2016]

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

Purpose: This rule-making order amends chapter 16-167 WAC, Intrastate commerce in foods, by adopting federal reg-

ulations adopted under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. In response to congress passing the Food Safety Modernization Act (FSMA) in 2011, the United States Food and Drug Administration (FDA) released a number of revised and new federal regulations in late 2015 and again in 2016. These rule amendments are being adopted in order to remain uniform with the new federal regulations so that food produced in Washington may be freely shipped in intrastate, interstate, and international commerce and to ultimately protect consumers from contaminated, adulterated, or misbranded food.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-167-060; and amending WAC 16-167-010, 16-167-020, 16-167-030, 16-167-040, 16-167-050, and 16-167-900.

Statutory Authority for Adoption: RCW 69.04.740, 69.07.020, 69.10.055, 15.36.021, 69.22.020.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-17-011 on August 4, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 1.

Date Adopted: October 31, 2016.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 99-12-020, filed 5/24/99, effective 6/24/99)

WAC 16-167-010 ((Purpose and authority)) General. (1) Consistent with the concept of uniformity where possible with the federal regulations adopted under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq. ((the following federal regulations are specifically made applicable to all persons subject to chapters 69.04 and 69.07 RCW by virtue of RCW 69.04.392, 69.04.394, 69.04.396 and 69.04.398. Although those regulations are automatically applicable to all persons subject to chapters 69.04 and 69.07 RCW, the department is nevertheless adopting as its own rules the following existing regulations of the federal government published in the Code of Federal Regulations revised as of the dates stated in the rule.

(2) The purpose of this rule is to adopt the following portion of the federal regulations promulgated under Title 21 C.F.R., Title 40 C.F.R. and FDA Compliance Policy Guidelines as Washington standards for food safety to ensure uni-

formity with United States standards and to protect the consuming public from possible harm due to the purchase or consumption of adulterated or misbranded food.

(3) These rules are promulgated under authority of RCW 69.04.392, 69.04.394, 69.04.396, 69.04.398 and 69.07.020), this chapter adopts the version of the referenced federal rule current at the time this rule becomes effective.

(2) To promote continued uniformity with federal rules: amendments to the federal rules referenced in this chapter are hereby incorporated and enforceable under this chapter upon the effective date of the federal amendment provided:

(a) The director of the Washington state department of agriculture or his or her authorized representative (director) gives notice of the federal rule amendment at the time it is published as a final rule in the Federal Register;

(b) The notice is published, at a minimum, in the state register and on the agency's web site; and

(c) The director has not otherwise determined that the amendment should not be adopted as provided in subsection (3) of this section.

(3) If the director determines that a proposed amendment to a federal rule referenced in this chapter should not be adopted, the director shall initiate rule making under chapter 34.05 RCW to amend this chapter to reflect the version of the federal rule, if any, effective under this chapter.

AMENDATORY SECTION (Amending WSR 99-12-020, filed 5/24/99, effective 6/24/99)

WAC 16-167-020 Pesticide chemicals. The following federal regulations are adopted as Washington tolerances for pesticide chemicals: 40 C.F.R. ((Revised as of July 1, 1998.

((H)) Chapter I Part((s)) 180 - Tolerances and Exemptions ((from Tolerances)) for Pesticide Chemical((s in or on Raw Agricultural Commodities)) Residues in Food.

((A)) (1) Subpart A - Definitions and Interpretative Regulations.

((B)) (2) Subpart C - Specific Tolerances.

((2) Part 185 - Tolerances for Pesticides in Food.

((3) Part 186 - Tolerances for Pesticides in Animal Feeds.))

AMENDATORY SECTION (Amending WSR 99-12-020, filed 5/24/99, effective 6/24/99)

WAC 16-167-030 Food additives. The following federal regulations prescribing the conditions under which such food additives may safely be used are adopted as Washington food additive regulations. 21 C.F.R. Chapter ((1 Revised as of April 1, 1998)) I.

(1) Part 170 - Food Additives.

(2) Part 172 - Food Additives Permitted for Direct Addition to Food for Human Consumption.

(3) Part 173 - Secondary Direct Food Additives Permitted in Food for Human Consumption.

(4) Part 174 - Indirect Food Additives: General.

(5) Part 175 - Indirect Food Additives: Adhesives and Components of Coatings.

(6) Part 176 - Indirect Food Additives: Paper and Paperboard Components.

(7) Part 177 - Indirect Food Additives: Polymers.

(8) Part 178 - Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers.

(9) Part 179 - Irradiation in the Production, Processing and Handling of Food.

(10) Part 180 - Food Additives Permitted in Food (~~on an Interim Basis~~) or in Contact with Food on an Interim Basis Pending Additional Study.

(11) Part 181 - Prior-Sanctioned Food Ingredients.

(12) Part 182 - Substances Generally Recognized as Safe.

(13) Part 184 - Direct Food Substances Affirmed as Generally Recognized as Safe.

(14) Part 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe.

(15) Part 189 - Substances Prohibited From Use in Human Food.

AMENDATORY SECTION (Amending WSR 99-12-020, filed 5/24/99, effective 6/24/99)

WAC 16-167-040 Color additives. The following federal regulations prescribing the use or limited use of such color additives are adopted as Washington color additive regulations. 21 C.F.R. Chapter ~~((1-Subchapter A-General Revised as of April 1, 1998))~~ I.

(1) Part 70 - Color Additives.

(2) Part 73 - Listing of Color Additives Exempt From Certification.

(3) Part 74 - Listing of Color Additives Subject to Certification.

(4) Part 81 - General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs and Cosmetics.

(5) Part 82 - Listing of Certified Provisionally Listed Colors and Specifications.

AMENDATORY SECTION (Amending WSR 99-12-020, filed 5/24/99, effective 6/24/99)

WAC 16-167-050 General requirements. The following ~~((federal regulations concerning food))~~ provisions of 21 C.F.R. Chapter I are adopted as Washington requirements for regulating food in intrastate commerce.

(1) ~~((21 C.F.R. Chapter 1))~~ The following parts in Subchapter A-General ~~((Revised as of April 1, 1998))~~.

(a) Part 1 - General Enforcement Regulations.

(i) Subpart A General Provisions.

(ii) Subpart B General Labeling Requirements.

(iii) Subpart O Sanitary Transportation of Human and Animal Food.

(b) Part 2 - General Administrative Rulings and Decisions.

(i) Subpart A General Provisions.

(ii) Subpart B Human and Animal Foods.

(c) Part 7 - Enforcement Policy.

(2) ~~((21 C.F.R. Chapter 1))~~ All parts of Subchapter B-Food for Human Consumption, ~~((Revised as of Federal Register: July 8, 1998, (Volume 63, Number 130) Page 37030-37056.~~

~~(a) Part 100 - General.~~

~~(b) Part 101 - Food Labeling.~~

~~(c) Part 102 - Common or Usual Name for Nonstandardized Foods.~~

~~(d) Part 104 - Nutritional Quality Guidelines for Foods.~~

~~(e) Part 105 - Foods for Special Dietary Use.~~

~~(f) Part 106 - Infant Formula Quality Control Procedures.~~

~~(g) Part 107 - Infant Formula.~~

~~(h) Part 108 - Emergency Permit Control.~~

~~(i) Part 109 - Unavoidable Contaminants in Food for Human Consumption and Food Packaging Material.~~

~~(j) Part 110 - Current Good Manufacturing Practice in Manufacturing, Packing and Holding Human Food.~~

~~(k) Part 111 - Current Good Manufacturing Practices for Dietary Supplements.~~

~~(l) Part 113 - Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.~~

~~(m) Part 114 - Acidified Foods.~~

~~(n) Part 123 - Fish and Fishery Products.~~

~~(o) Part 129 - Processing and Bottling Bottled Drinking Water.~~

~~(p) Part 130 - Food Standards: General.~~

~~(q) Part 131 - Milk and Cream.~~

~~(r) Part 133 - Cheeses and Related Cheese Products.~~

~~(s) Part 135 - Frozen Desserts.~~

~~(t) Part 136 - Bakery Products.~~

~~(u) Part 137 - Cereal Flours and Related Products.~~

~~(v) Part 139 - Macaroni and Noodle Products.~~

~~(w) Part 145 - Canned Fruits.~~

~~(x) Part 146 - Canned Fruit Juices.~~

~~(y) Part 150 - Fruit Butters, Jellies, Preserves and Related Products.~~

~~(z) Part 152 - Fruit Pies.~~

~~(aa) Part 155 - Canned Vegetables.~~

~~(bb) Part 156 - Vegetable Juices.~~

~~(cc) Part 158 - Frozen Vegetables.~~

~~(dd) Part 160 - Eggs and Egg Products.~~

~~(ee) Part 161 - Fish and Shellfish.~~

~~(ff) Part 163 - Cacao Products.~~

~~(gg) Part 164 - Tree Nut and Peanut Products.~~

~~(hh) Part 165 - Beverages.~~

~~(ii) Part 166 - Margarine.~~

~~(jj) Part 168 - Sweeteners and Table Syrups.~~

~~(kk) Part 169 - Food Dressings and Flavorings))~~ except for Part 119.

AMENDATORY SECTION (Amending WSR 97-02-036, filed 12/26/96, effective 1/26/97)

WAC 16-167-900 ~~((Where can))~~ Access to publications adopted ~~((by WSDA))~~ under this chapter ~~((be obtained?)).~~ (1) ~~((Title 21 C.F.R. and Title 40 C.F.R. can be purchased from the Superintendent of Documents, U.S. Printing Office, Mail Stop SSOP, Washington D.C. 20402-9328.~~

~~(2) The compliance policy guidelines can be obtained by writing the Center for Food Safety and Applied Nutrition, Director, Office of Constituent Operations, Industry Activities Staff, HFS-S65-200 "C" Street SW, Washington D.C. 20204.~~

~~(3) Information can also be obtained from FDA's homepage at [HTTP://WWW.FDA.GOV/FDAHOMEPAGE.HTML](http://www.fda.gov/fdahomepage.html))~~ Elcc

tronic access to Titles 21 and 40 C.F.R. is available at <https://www.gpo.gov/fdsys/search/home.action>. Print copies of the titles can be purchased from the U.S. Government Bookstore online at <https://bookstore.gpo.gov/catalog/laws-regulations/code-federal-regulations-cfrs-print> or, if you do not have electronic access, contact the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000; phone 1-866-512-1800.

(2) Electronic access to the FDA's Manual of Compliance Policy Guides is available at <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/default.htm>. If you do not have electronic access, contact the Food and Drug Administration, 1093 New Hampshire Avenue, Silver Spring, MD 20993-0002; phone 1-888-463-6332.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-167-060 Compliance policy guidelines.

WSR 16-22-062
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed November 1, 2016, 8:50 a.m., effective December 2, 2016]

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

Purpose: Chapter 43.371 RCW directs the office of financial management (OFM) to establish a statewide all-payer health care claims data base (WA-APCD) to support transparent public reporting of health care information. RCW 43.371.050(2) and 43.371.070 (1)(d), (e) and (g) provides that the OFM director shall adopt rules necessary to implement this chapter and provides specific areas in which rules should be adopted.

These new rules provide the process for requests for data from the WA-APCD, reasons for the denial of a request and the process for administrative review and appeal of a denial of a request. The rules also provide additional definitions related to these new rules. This will begin to set the requirements necessary to allow requests to be submitted, reviewed and approved/denied so that data may be released.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 82-75-030].

Statutory Authority for Adoption: Chapter 43.371 RCW.

Adopted under notice filed as WSR 16-17-117 on August 23, 2016.

Changes Other than Editing from Proposed to Adopted Version: In response to comments received, one change was made to clarify what needs to be provided when requesting data. Specifically, WAC 82-75-210 (2)(a)(iii) was changed to add that a requester only needs to submit the IRB application "if applicable." This recognizes that not all requests will need to have an IRB approval.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 11, Amended 1, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 1, Repealed 0.

Date Adopted: November 1, 2016.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-068, filed 1/29/16, effective 2/29/16)

WAC 82-75-030 Additional definitions authorized by chapter 43.371 RCW. The following additional definitions apply throughout this chapter unless the context clearly indicates another meaning.

"Claim" means a request or demand on a carrier, third-party administrator, or the state labor and industries program for payment of a benefit.

"Coinsurance" means the percentage or amount an enrolled member pays towards the cost of a covered service.

"Copayment" means the fixed dollar amount a member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

"Data management plan" or "DMP" means a formal document that outlines how a data requestor will handle the WA-APCD data to ensure privacy and security both during and after the project.

"Data release committee" or "DRC" is the committee required by RCW 43.371.020 (5)(h) to establish a data release process and to provide advice regarding formal data release requests.

"Data submission guide" means the document that contains data submission requirements including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"Data use agreement" or "DUA" means the legally binding document signed by the lead organization and the data requestor that defines the terms and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Deductible" means the total dollar amount an enrolled member pays on an incurred claim toward the cost of specified covered services designated by the policy or plan over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

"Director" means the director of the office of financial management.

"Health benefits plan" or "health plan" has the same meaning as in RCW 48.43.005.

"Health care" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes, but is not limited to:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Lead organization" means the entity selected by the office of financial management to coordinate and manage the data base as provided in chapter 43.371 RCW.

"Member" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

"Office" means the Washington state office of financial management.

"PHI" means protected health information as defined in the Health Insurance Portability and Accountability Act (HIPAA). Incorporating this definition from HIPAA, does not, in any manner, intend or incorporate any other HIPAA rule not otherwise applicable to the WA-APCD.

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for coverage under an insurance policy or member of a health benefit plan.

"WA-APCD" means the statewide all payer health care claims data base authorized in chapter 43.371 RCW.

"Washington covered person" means any eligible member and all covered dependents where the state of Washington has primary jurisdiction, and whose laws, rules and regulations govern the members' and dependents' insurance policy or health benefit plan.

DATA REQUESTS AND RELEASE PROCEDURES

NEW SECTION

WAC 82-75-200 General data request and release procedures. (1) The lead organization must adopt clear policies and procedures for data requests and data release. At a minimum, the lead organization, in coordination with the data vendor, must develop procedures for making a request for data, how data requests will be reviewed, how decisions will be made on whether to grant or disapprove release of the requested data, and data release processes. The policies and procedures must be approved by the office.

(2) The lead organization should help data requestors identify the best ways to describe and tailor the data request, understand the privacy and security requirements, and understand the limitations on use and data products derived from the data released.

(3) The lead organization must maintain a log of all requests and action taken on each request. The log must include at a minimum the following information: Name of requestor, data requested, purpose of the request, whether the request was approved or denied, if approved the date and data released, and if denied the date and reason for the denial. The lead organization shall post the log on the WA-APCD web site that the lead organization is required to maintain.

NEW SECTION

WAC 82-75-210 Procedures for data requests. (1) The lead organization must use an application process for data requests.

(2) In addition to the requirements in RCW 43.371.050 (1), at a minimum, the application must require the following information:

(a) Detailed information about the project for which the data is being requested including, but not limited to:

(i) Purpose of the project and data being requested, and level of detail for the data requested.

(ii) Methodology for data analysis and timeline for the project.

(iii) If applicable, copy of an Institutional Review Board (IRB) protocol and approval or Exempt Determination and application for the IRB exemption for the project review. Researchers must use an IRB that has been registered with the United States Department of Health and Human Services Office of Human Research Protections. The IRB may however be located outside the state of Washington.

(iv) Staffing qualifications and resumes.

(v) Information on third-party organizations or individuals who may have access to the requested data as part of the project for which the data is requested. The information provided must include the same information required by the requestor, as applicable. Data cannot be shared with third parties except as approved in a data request.

(b) Information regarding whether the requestor has, within the three years prior to the data request date, violated a data use agreement, nondisclosure agreement or confidentiality agreement. Such information must include, but not be limited to, the facts surrounding the violation or data breach, the cause of the violation or data breach, and all steps taken to correct the violation or data breach and prevent a reoccurrence.

(c) Information regarding whether the requestor has, within the five years prior to the data request date, been subject to a state or federal regulatory action related to a data breach and has been found in violation and assessed a penalty, been a party to a criminal or civil action relating to a data breach and found guilty or liable for that breach, or had to take action to notify individuals due to a data breach for data maintained by the data requestor or for which the data requestor was responsible for maintaining in a secure environment.

(d) Submittal of the project's data management plan (DMP), which DMP must include the information required in WAC 82-75-220.

(e) Require all recipients of protected health information (PHI) to provide an attestation from an authorized individual

that the recipient of the requested data has data privacy and security policies and procedures in place on the date of the request and will maintain these policies and procedures for the project period, these policies and procedures comply with Washington state laws and rules, and meet the standards and guidelines required by the Washington state office of chief information officer. Data recipients must also attest that recipients will provide copies of the data privacy and security policies and procedures upon request by the lead organization.

NEW SECTION

WAC 82-75-220 Data management plan. (1)(a) The lead organization must require data requestors to submit data management plans with the data request application. Data management plans must comply with the Washington state office of chief security officer standards.

(b) Additional organizations that are involved in using the data in the data requestors' projects must also provide the information required in the data management plan for their organizations.

(2) Data management plans must provide detailed information including, but not limited to, the following:

(a) Physical possession and storage of the data files, including details about the third-party vendor and personnel handling the data; the facilities, hardware and software that will secure the data; and the physical, administrative and technical safeguards in place to ensure the privacy and security of the released data.

(b) Data sharing, electronic transmission and distribution, including the data requestor's policies and procedures for sharing, transmitting, distributing and tracking data files; physical removal and transport of data files; staff restriction to data access; and use of technical safeguards for data access (e.g., protocols for passwords, log-on/log-off, session time out and encryption for data in motion and at rest).

(c) Data reporting and publication, including who will have the main responsibility for notifying the lead organization of any suspected incidents where the security and privacy of the released data may have been compromised; how DMPs are reviewed and approved by the data requestor; and whether the DMPs will be subjected to periodic updates during the DUA period for the released data.

(d) Completion of project tasks and data destruction, including the data requestor's process to complete the certificate of destruction form and the policies and procedures to:

(i) Dispose of WA-APCD data files upon completion of its project.

(ii) Protect the WA-APCD data files when staff members of project teams (as well as collaborating organizations) terminate their participation in projects. This may include staff exit interviews and immediate termination of data access.

(iii) Inform the lead organization of project staffing changes, including when individual staff members' participation in projects is terminated, voluntarily or involuntarily, within twenty-one calendar days of the staffing change.

(iv) Ensure that the WA-APCD data and any derivatives or parts thereof are not used following the completion of the project.

NEW SECTION

WAC 82-75-230 Review of data requests. (1) The lead organization must establish a transparent process for the review of data requests, which includes a process for public review for specific requests. The process must include a timeline for processing requests, and notification procedures to keep the requestor updated on the progress of the review. The process must also include the ability for the public to comment on requests that include the release of protected health information or proprietary financial information or both. The office shall have final approval over the process and criteria used for review of data requests and all subsequent changes.

(2) The lead organization must post on the WA-APCD web site all requests that include the release of protected health information or proprietary financial information, and the schedule for the receipt of public comment on the request. The time frame for public comment should not be less than fourteen calendar days. The lead organization must post the final decision for the request within seven days after the decision is made.

(3) The lead organization has the responsibility to convene the DRC when needed to review data requests and make a recommendation to the lead organization as to whether to approve or deny a data request. The lead organization must establish an annual meeting schedule for DRC and post the schedule on the web site. The DRC must review requests for identifiable data and provide a recommendation regarding data release. The lead organization may request the DRC to review other data requests. The review must include a technical review of the data management plan by an expert on the DRC, staff from the office of chief information officer, or other technical expert. The DRC may recommend that the requestor provide additional information before a final decision can be rendered, approve the data release in whole or in part, or deny the release. For researchers who are required in RCW 43.371.050 (4)(a) to have IRB approval, the DRC may recommend provisional approval subject to the receipt of an IRB approval letter and protocol and submittal of a copy of the IRB letter to the lead organization.

(4) The lead organization may only deny a data request based on a reason set forth in WAC 82-75-280.

(5) The lead organization must notify the requestor of the final decision. The notification should include the process available for review or appeal of the decision.

(6) The lead organization must post all data requests and final decisions on the WA-APCD web site maintained by the lead organization.

NEW SECTION

WAC 82-75-240 Data release. (1) Upon approval of a request for data, the lead organization must provide notice to the requestor. The notice must include the following:

(a) The data use agreement (DUA). The DUA will include a confidentiality statement to which the requesting organization or individual must adhere.

(b) The confidentiality agreement that requestors and all other individuals who will have access to the released data, whether an employee of the requestor, subcontractor or other contractor or third-party vendor including data storage or

other information technology vendor, who will have access to or responsibility for the data must sign. At a minimum, the confidentiality agreement developed for recipients must meet the requirements of RCW 43.371.050 (4)(a).

(2) A person with authority to bind the requesting organization must sign the DUA; or in the case of an individual requesting data, the individual must sign the DUA.

(3) All employees or other persons who will be allowed access to the data must sign a confidentiality agreement.

(4) No data may be released until the lead organization receives a signed copy of the DUA from the data requestor and signed copies of the confidentiality agreement.

(5) The lead organization must maintain a record of all signed agreements and retain the documents for at least six years after the termination of the agreements.

(6) Data fees, if applicable, must be paid in full to the lead organization. Itemized data fees assessed for each data request are subject to public disclosure and should be included in the approval that is posted on the WA-APCD web site.

NEW SECTION

WAC 82-75-250 Data use agreement. (1) The lead organization must develop a standard data use agreement. The office must approve the final form of the DUA, and all substantial changes to the form.

(2) At a minimum, the DUA shall include the following provisions:

(a) A start date and end date. The end date must be no longer than the length of the project for which the data is requested. The DUA may provide for the ability to extend the end date of the agreement upon good cause shown.

(b) The application for data should be incorporated into the DUA and attached as an exhibit to the agreement. There should be an affirmative provision that data provided for one project cannot be used for any other project or purpose.

(c) Data can be used only for the purposes described in the request. The data recipient agrees not to use, disclose, market, release, show, sell, rent, lease, loan or otherwise grant access to the data files specified except as expressly permitted by the DUA, confidentiality agreement if any and the approval letter.

(d) With respect to analysis and displays of data, the data recipient must agree to abide by Washington state law and rules, and standards and guidelines provided by the lead organization.

(e) A requirement for completion of an attestation by an officer or otherwise authorized individual of the data requestor that the data requestor will adhere to the WA-APCD's rules and lead organization policies regarding the publication or presentation to anyone who is not an authorized user of the data.

(f) A requirement that all requestor employees and all other individuals who access the data will sign a confidentiality agreement prior to data release. The confidentiality requirements should be set out in the DUA and include the consequences for failure to comply with the agreement.

(g) A requirement that any new employee who joins the organization or project after the data requestor has received

the data and who will have access to the data must sign a confidentiality agreement prior and passed required privacy and security training prior to accessing the data.

(3) The office or lead organization may audit compliance with data use agreements and confidentiality agreements. The requestor must comply and assist, if requested, in any audit of these agreements.

(4) Breach of a data use agreement or confidentiality agreement may result in immediate termination of the data use agreement. The data requestor must immediately destroy all WA-APCD data in its possession upon termination of the data use agreement. Termination of the data use agreement is in addition to any other penalty or regulatory action taken or that may be taken as a result of the breach.

NEW SECTION

WAC 82-75-260 Confidentiality agreement. (1) The lead organization must develop a standard confidentiality agreement, as required, before data may be released. The office must approve the final form for confidentiality agreement, and all substantial changes to the form.

(2) The confidentiality agreement must be signed by all requestor employees and other third parties who may have access to the data.

(3) In addition to other penalties or regulatory actions that may be taken, including denial of future data requests, breach of a confidentiality agreement may result in immediate termination of the agreement. If an individual breaches the confidentiality agreement, the lead organization must review the circumstances and determine if the requestor's agreement should be terminated or only the agreement with the individual who caused the breach should be terminated. When an agreement is terminated for breach of the confidentiality agreement, the data requestor or individual whose agreement is terminated must immediately destroy all WA-APCD data in his or her possession and provide an attestation of the destruction to the lead organization within seven business days. Attestation of destruction should be in the form as prescribed by the lead organization. Failure to destroy data or provide attestation of the destruction may result in other penalties or regulatory actions.

NEW SECTION

WAC 82-75-270 Data procedures at the end of the project. (1) Upon the end of the project or the termination of the data use agreement, the data recipient shall destroy all WA-APCD data. The data recipient must provide to the lead organization an attestation that the data has been destroyed according to the required standards set forth in the DUA. The attestation shall account for all copies of the data being used by the requestor, its employees, subcontractors, and any other person provided access to the data. Attestation of destruction should be in the form as prescribed by the lead organization.

(2) The attestation of data destruction must be provided within ten business days from the end of the project or termination of the DUA or confidentiality agreement, whichever is sooner.

(3) Failure to destroy data or provide attestation of the destruction may result in other penalties or regulatory actions.

NEW SECTION

WAC 82-75-280 Reasons to decline a request for data. The lead organization may decline a request for data for any of the following reasons:

(1) The requestor has violated a data use agreement, non-disclosure agreement or confidentiality agreement within three years of the date of request.

(2) Any person, other than the requestor, who will have access to the data has violated a data use agreement, nondisclosure agreement or confidentiality agreement within three years of the date of request.

(3) The requestor or any person other than the requestor, who will have access to the data, within the five years prior to the data request date, been subject to a state or federal regulatory action related to a data breach and has been found in violation and assessed a penalty, been a party to a criminal or civil action relating to a data breach and found guilty or liable for that breach, or had to take action to notify individuals due to a data breach for data maintained by the data requestor or for which the data requestor was responsible for maintaining in a secure environment.

(4) The proposed privacy and security protections in the data management plan on the date the data is requested are not sufficient to meet Washington state standards. The protections must be in place on the date the data is requested. For out-of-state requestors, meeting the standards in the state where the requestor or data recipient is located is not acceptable if those standards do not meet those required in Washington state.

(5) The information provided is incomplete or not sufficient to approve the data request.

(6) The proposed purpose for accessing the data is not allowable under WA-APCD statutes, rules or policies, or other state or federal statutes, rules, regulations or federal agency policy or standards for example the Department of Justice Statements of Antitrust Enforcement Policy in Health Care.

(7) The proposed use of the requested data is for an unacceptable commercial use or purpose. An unacceptable commercial use or purpose includes, but is not limited to:

(a) A requestor using data to identify patients using a particular product or drug to develop a marketing campaign to directly contact those patients; or

(b) A requestor using data to directly contact patients for fund-raising purposes; or

(c) A requestor intends to contact an individual whose data is released; or

(d) Sells, gives, shares or intends to sell, give or share released data with another entity or individual not included in the original application for the data and for which approval was given.

NEW SECTION

WAC 82-75-290 Process to review a declined data request. (1) A data requestor may request an administrative

review of the lead organization's decision to deny a request for data.

(2) A request for an administrative review may be initiated by a written petition filed with the office and also provided to the lead organization within thirty calendar days after notice of the denial. The petition shall include the following information:

(a) Data requestor's name, address, telephone number, e-mail address and contact person.

(b) Information about the subject of the review including remedy requested.

(c) A detailed explanation as to the issue or area of dispute, and why the dispute should be decided in the data requestor's favor.

(3) The petition and all materials submitted will be reviewed by the director or director's designee. The reviewing official may request additional information or a conference with the data requestor. A decision from the reviewing official shall be provided in writing to the data requestor no later than thirty calendar days after receipt of the petition. A denial of the petition will include the reasons for the denial.

(4) The office will post the petition and final decision on the office web site. The lead organization will provide a link to the petition and decision from its WA-APCD web site.

NEW SECTION

WAC 82-75-300 Process to appeal of final denial of data request. (1) A data requestor may appeal the denial of its administrative review conducted in accordance with WAC 82-75-290.

(2) Request for an appeal must be submitted in writing to the office within fifteen calendar days after receipt of written notification of denial of its administrative review, with a copy provided to the lead organization.

(3) The lead organization must provide notice and a copy of the appeal request to affected data suppliers within five days of being served. Data suppliers may seek to intervene in an appeal by submitting a petition to intervene to the office of administrative hearings, and serving the petition to intervene on the office, lead organization and requestor within five days of being notified of the appeal.

(4) Within ten business days of receipt of a written notice of appeal, the office will transmit the request to the office of administrative hearings (OAH).

(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will

be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other office employees may attend a hearing, and the ALJ will notify the appellant when other office employees are attending. The appellant may appear in person or may be represented by an attorney.

(c) **Decisions.** The decision of the ALJ shall be considered a final decision. A petition for review of the final decision may be filed in the superior court. If no appeal is filed within the time period set by RCW 34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thirty days from service of the final decision.

WSR 16-22-065
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 1, 2016, 9:52 a.m., effective December 2, 2016]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule making is in direct response to a noncoverage determination made by the Washington state health technology clinical committee (HTCC). Pursuant to RCW 70.14.080 and 70.14.120 participating agencies including department of labor and industries (L&I) must comply with an HTCC determination.

Purpose: Lumbar fusion - structured intensive multidisciplinary program (SIMP) for chronic noncancer pain rule making. Repeal all SIMP WAC 296-20-12055, 296-20-12060, 296-20-12065, 296-20-12070, 296-20-12075, 296-20-12080, 296-20-12085, 296-20-12090, and 296-20-12095.

The purpose of this rule making is to bring L&I's rules into compliance with a recent noncoverage determination by HTCC that lumbar fusion for uncomplicated degenerative disc disease (UDDD) is no longer a covered procedure. A previous HTCC determination required lumbar fusion candidates with UDDD to attend a SIMP prior to having surgery. That coverage determination is contained within the SIMP rules and is now inconsistent with this new HTCC noncoverage determination. SIMP program requirements are currently also contained within L&I's fee schedules' payment policies and, other than removing the lumbar fusion for UDDD requirement, will remain in effect when the SIMP rules are repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-20-12055, 296-20-12060, 296-20-12065, 296-20-12070, 296-20-12075, 296-20-12080, 296-20-12085, 296-20-12090, and 296-20-12095.

Statutory Authority for Adoption: RCW 70.14.080, 70.14.120, 51.04.020, and 51.04.030.

Adopted under notice filed as WSR 16-15-075 on July 19, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 9.

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

Date Adopted: November 1, 2016.

Joel Sacks
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-20-12055 Structured intensive multidisciplinary program (SIMP) for chronic noncancer pain.
- WAC 296-20-12060 SIMP requirements for lumbar fusion and artificial disc replacement candidates.
- WAC 296-20-12065 SIMP definitions.
- WAC 296-20-12070 SIMP evaluation phase.
- WAC 296-20-12075 SIMP treatment phase.
- WAC 296-20-12080 SIMP follow-up phase.
- WAC 296-20-12085 Requirements the SIMP provider must meet.
- WAC 296-20-12090 Requirements the worker must meet for a SIMP.
- WAC 296-20-12095 SIMP referral and prior authorization requirements.

WSR 16-22-073
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 1, 2016, 11:40 a.m., effective December 2, 2016]

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

Purpose: The revisions made to this chapter update the regulations regarding transportation of students in foster care as required in the Elementary and Secondary Education Act (ESEA) section 1112 (c)(5)(B).

Citation of Existing Rules Affected by this Order: Amending WAC 392-141-310 and 392-141-320.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 16-19-081 on September 20, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: October 28, 2016.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-05-062, filed 2/12/16, effective 3/14/16)

WAC 392-141-310 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) "Charter school" means a public school operating under the provisions of chapter 28A.710 RCW.

(4) The definition of "school" includes learning centers or other agencies where educational services are provided.

(5) "Eligible student" means any student served by a district or charter school transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(6) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(7) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(8) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are enrolled in gifted or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary and Secondary Education Act (ESEA).

(9) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act or the foster care provisions in the ESEA Section 1112 (c)(5)(B); or

(e) Students who require special transportation to a district operated head start, district operated early childhood education assistance program, or other district operated early education program.

(10) "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

(11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

(12) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

(13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

(14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student counts for the determination of funding consist of the prorated basic program and special program student counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student counts are prorated based on the number of months in the respective report period. For a charter school in the first year of operation, the current year fall count shall be used as the prior year spring count to determine the combined student count.

(15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

(16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating.

(17) "Prorated number of destinations" is calculated by taking the number of learning centers a school district provides with home-to-school transportation service weighted by the number of months in the corresponding report period. The prorated number of destinations used in calculating district allocation consists of the prorated number of destinations from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter, and spring number of destinations are used for the determination of the efficiency rating.

(18) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent. For educational service districts, the land area value will be determined by the superintendent from the contiguous area provided with transportation service.

(19) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent. For educational service districts, the roadway mile value will be determined by the superintendent from the roadway miles within the contiguous area provided with transportation service.

(20) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

(21) "District car route" means to and from school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

(22) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for

the use of private motor vehicles in connection with state business in effect on September 1st of each year.

(23) A "low ridership district" is defined as a district with an annual student count less than two hundred eighteen students.

(24) A "nonhigh" district is defined as a district meeting the eligibility requirements for a nonhigh district as established by the superintendent of public instruction's school apportionment and financial services section.

(25) A "transportation cooperative" is defined as two or more districts sharing transportation operations administrative functions. An interdistrict agreement for the provision of maintenance services on school buses does not constitute a transportation cooperative for the purposes of this chapter, regardless if the agreement qualifies as a transportation cooperative under the provisions of chapter 392-346 WAC, unless shared operations administrative functions are also included in the interdistrict agreement. A transportation cooperative has the option of reporting as a single entity.

(26) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

(27) "Prior year expenditures" means the total of school district transportation operations costs for to-and-from transportation for the prior school year. All revenue reported in transportation except for the state allocation for transportation operations is deducted from reported costs, including in lieu of depreciation allocations under the provisions of WAC 392-142-245 for districts contracting transportation services. Any adjustments as a result of audits or other adjustments to prior year costs shall not be included unless those adjustments are correcting the actual cost of transportation operations for the prior year. The basis for the prior year expenditures shall be the district financial statement. School districts are only required to report adjustments not reflected in the annual financial statement.

(28) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation.

(29) "Adjusted allocation" means the expected allocation plus any alternate funding system, calendar, or legislative adjustments.

(30) For a district, "actual allocation" means the lesser of the prior year expenditures including adjustments by the legislature or the adjusted allocation. For a charter school, the actual allocation is a final amount to be allocated for transportation services using the process described in this chapter, plus any funding provided under chapter 392-142 WAC.

(31) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a school district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each school district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

(32) A district's "transportation funding percentage" is calculated by dividing the district's actual allocation by the district's prior year expenditures.

(33) The "state median percent funded" is determined by calculating each district's transportation funding percentage and taking the median value by sorting the total number of reporting districts in descending order and selecting the middle value. If there is an even number of districts, the bottom value in the top half shall be used.

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WAC 392-141-320 Reporting requirements. (1) Reports shall be submitted by each district or charter school to the superintendent no later than the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district or charter school shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

- (a) School bus route information;
- (b) Student count information; and
- (c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost. This report shall be considered part of the district's annual financial statement for the purposes of RCW 28A.160.170(2); and

(c) An annual report as required by RCW 28A.300.540 of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act and the foster care provisions in the ESEA Section 1112 (c)(5)(B) for the previous school year, and the total mileage and additional cost of such transportation. These costs may include, but are not limited to:

(i) Transportation service that serves only student(s) under McKinney-Vento and the foster care provisions in the ESEA Section 1112 (c)(5)(B). Districts may determine costs based upon route mileage and an average per mile cost for operation of the bus or vehicle. Driver time may be taken from actual driver costs records if such records are maintained, or may be determined using an average driver costs factor.

(ii) Incremental revisions in route at the start or end of a route to accommodate McKinney-Vento and foster care

transportation, if separately identified, may be included based upon route mileage and an average per mile cost for operation of the bus or vehicle.

(iii) Costs for public transportation or other contracted services for transporting McKinney-Vento and foster care student(s).

(iv) Nondriver transportation staff positions whose job duties are predominately overseeing or routing services to McKinney-Vento and foster care students. If the position duties encompass other non-McKinney-Vento and foster care areas, then only the costs directly related to McKinney-Vento and foster care transportation shall be included and such costs shall be determined using federal time and effort reporting procedures.

No indirect or allocated costs may be included in this reporting.

(4) In each report period, charter schools shall report student counts.