

**WSR 17-04-009**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Filed January 19, 2017, 2:27 p.m., effective February 19, 2017]

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

Purpose: The proposed changes would allow operators to offer gambling promotions that allow entry based on disclosed criteria; offer lottery tickets as a prize; add additional merchandise or cash prizes to licensed gambling activities; and allow card rooms to use a physical drawing, spinning a wheel or selection from a group of concealed items to award a prize. In addition, the changes would allow manufacturers, distributors, and service suppliers to provide prizes to operators for promotions, but such promotions require advance approval by the director if the cash or merchandise for a single promotion exceeds \$25,000.

Citation of Existing Rules Affected by this Order: Amending WAC 230-06-030 and 230-06-031.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 16-23-167 on November 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 12, 2017.

Michelle Rancour  
Acting Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-17-056, filed 8/15/14, effective 9/15/14)

**WAC 230-06-030 Restrictions and conditions for gambling promotions.** Licensees may conduct gambling promotions to encourage players to participate in ~~((#))~~ the gambling activity ~~((, but you must follow))~~ they are licensed to conduct without our review or approval under these restrictions and conditions:

(1) ~~((You must give all players an equal opportunity to participate; and~~

~~((2)))~~ You must establish ((standards)) rules and restrictions to determine how you will give promotional prizes and items to players~~((, You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game))~~; and

~~((3)))~~ (2) You must display all rules and restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(3) You must give all players eligible for the promotion an equal opportunity to participate; and

(4) Except for members-only progressive raffles conducted as authorized in WAC 230-11-091, you must not give another chance to participate in a gambling activity we regulate as a promotional item; and

~~((4))~~ You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

~~((5))~~ You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.)

(5) As part of a gambling promotion, you may add additional merchandise or cash prizes, including increasing payouts for gambling activities you are licensed to conduct; and

(6) Licensed manufacturers, distributors, and service suppliers may give cash or merchandise items to licensed operators to be used as promotional prizes as long as:

(a) The cash or merchandise is offered to all licensed operators; and

(b) The gambling promotion is approved by the director or director's designee when cash or merchandise provided to a licensed operator for a single promotion is over twenty-five thousand dollars; and

(7) In order for a licensed manufacturer, distributor, and service supplier to receive approval, the plan for the gambling promotion must be submitted to the director at least ninety days in advance of the intended start date. The promotion must include sufficient information for the director's approval, comply with all applicable federal and state laws, and include:

(a) The gambling promotion rules and restrictions; and

(b) How the operator will safeguard the prizes; and

(c) How the prizes will be given away; and

(d) The beginning and ending dates for the gambling promotion; and

(e) A detailed prize winner's record to be filled out upon completion of the promotion that includes the winner's name, prizes paid out, date the prize was awarded; and

(f) Any other information we request; and

(8) You must not give promotional prizes or items based on additional elements of chance except that:

(a) Licensed bingo operators are authorized to give promotional prizes or items as part of a bingo game; and

(b) Licensed card rooms are authorized to give promotional prizes or items as part of a physical drawing, spinning a wheel, or selecting from a group of concealed items; and

(9) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

**WAC 230-06-031 Using wheels in promotional contests of chance, fund-raising events, or gambling activities.**

**Promotional contests of chance (PCOCs)**

(1) Operators may use wheels specifically manufactured for a promotional contest of chance (PCOC), whether commercially made or home made.

(2) Operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in PCOCs unless they receive permission ahead of time from us.

**Fund-raising events**

(3) Operators may use commercially made wheels in gambling activities for fund-raising events.

**Separation of PCOCs from gambling activities and promotions**

(4) No wheel may be used in conjunction with their gambling activities by:

- (a) ~~Card room licensees; or~~  
(b) pull-tab licensees.

**Card rooms, pull-tabs, bingo, raffles**

(5) Licensees and operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in:

- (a) Bingo; or  
(b) Card games; or  
(c) Pull-tabs.

(6) Operators may use commercially made or home made wheels as part of drawings for prizes, good neighbor prizes, or second element of chance prizes as part of bingo games, as set out in WAC 230-10-280 or to award promotional prizes as set out in WAC 230-06-030.

(7) Raffle licensees and operators may use:

(a) Other types of wheels, such as paddle wheels, in raffles; and

(b) Commercially made or home made wheels in an alternative drawing format for determining the winner of a raffle. Alternative drawing formats are set out in WAC 230-11-055 and 230-11-060.

**WSR 17-04-010****PERMANENT RULES****GAMBLING COMMISSION**

[Filed January 19, 2017, 2:39 p.m., effective February 19, 2017]

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

Purpose: These rule changes will allow match play coupons to be awarded to eligible participants of card tournaments as a gambling promotion under certain restrictions (WAC 230-15-453) and will allow match play coupons to be awarded as promotional prizes in nonhouse-banked card games offered by Class F and house-banked card room licensees (WAC 230-15-353).

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-453.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 16-23-170 on November 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 1, Repealed 0.

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

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

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

Date Adopted: January 12, 2017.

Michelle Rancour  
Acting Rules Coordinator

**NEW SECTION**

**WAC 230-15-353 Using match play coupons in non-house-banked card games.** Match play coupons may be offered as gambling promotions in nonhouse-banked card games offered by Class F and house-banked licensees with the following restrictions:

(1) The coupons have no value and cannot be redeemed for cash.

(2) Match play coupons may be used as part of a player's wager. The dealer will exchange the match play coupon for the required amount of chips once the match play coupon is used as part of a player's wager and placed into the pot. Upon redemption, the coupon is no longer valid, it cannot be reused, and must be retained as part of the daily card game records.

(3) Restrictions on the use of coupons must be disclosed on the coupon.

(4) Expiration dates must be included on the coupon.

(5) Match play coupon promotions must be given to all players eligible for the promotion and may be awarded based on the outcome of a card game or tournament.

**AMENDATORY SECTION** (Amending WSR 08-11-044, filed 5/14/08, effective 7/1/08)

**WAC 230-15-453 Using match play or similar coupons in gambling promotions.** Match play coupons may be offered as gambling promotions with the following restrictions:

(1) The coupons have no value. Players cannot "double down" on the "match play" portion of the wager.

(2) Players may double down on the chip portion of the wager, not to exceed maximum wagering limits.

(3) A match play coupon is not considered part of the player's wager in determining the amount wagered. Match play coupons may be used by players who wager the maximum allowed.

(4) A match play coupon is itself a gambling promotion and cannot be awarded as a prize in a promotional contest of

chance, as authorized in RCW 9.46.0356(~~(, or as a prize on a card game)~~).

(5) Restrictions on the use of coupons must be disclosed on the coupon.

(6) Expiration dates must be included on the coupon.

(7) Match play and other similar type coupon promotions such as Lucky Bucks and Free Ace, etc., (~~(may)~~) must be given to ((participants in a card tournament as long as they are given to all participants and are not awarded based on the outcome of the tournament)) all players eligible for the promotion.

(8) Coupon promotions allowing free play must not be given out based upon the outcome of a card game or tournament.

### WSR 17-04-013

#### PERMANENT RULES

#### STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed January 20, 2017, 11:43 a.m., effective February 20, 2017]

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

Purpose: Rule changes are needed to accommodate our approval from the GED testing service to have our state's 1418 open doors program be a GED options program. The publisher of the high school equivalency tests does not allow students enrolled in any type of high school program to take the tests, unless it is a GED options program. Our current statute requires any student in a high school program to be released from the high school before testing, unless they meet certain criteria. The statute needs to reflect the change to allow students in 1418 open doors programs to test for the high school equivalency credential without having to be released from the school district as high school equivalency test preparation is a required component of the 1418 open doors program. Adding this criterion will allow students to remain in the program and test when they are ready instead of having to be released to take one or two tests, reenrolled to prepare for the remaining tests, and released again to finish testing.

Citation of Existing Rules Affected by this Order: Amending WAC 131-48-100 and 131-48-110.

Statutory Authority for Adoption: RCW 28B.50.912.

Adopted under notice filed as WSR 16-23-158 on November 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 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: January 19, 2017.

Beth Gordon  
Executive Assistant  
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-039, filed 9/12/13, effective 10/13/13)

**WAC 131-48-100 Eligibility to take the high school equivalency test.** The following individuals shall be eligible to take the high school equivalency test in official high school equivalency testing centers, provided that they are not enrolled in public, private, or home-based instruction of high school or a high school completion program at the time the test is administered:

(1) Any person age nineteen or over who has not graduated from a public or private high school.

(2) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school and who has been adjudged by a school district in accordance with rules of the state board of education to have a substantial and warranted reason for leaving the regular high school education program.

(3) Any student age sixteen or over who has completed an education center individual student program in accordance with the provisions of chapter 392-185 WAC.

(4) Any person between the ages of sixteen and twenty-one who has not graduated from public or private high school and is currently enrolled in the state options (open doors 1418) program.

(5) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school, and who has completed a program of home-based instruction in compliance with RCW 28A.225.010(4) as certified by the written and notarized statement of the parent(s) or legal guardian(s) who provided the home-based instruction.

~~((5))~~ (6) Any person who is an active member of the military, national guard, or reserves and has not received a high school diploma.

~~((6))~~ (7) Adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities while enrolled in school if so ordered by a court or officer of the court.

AMENDATORY SECTION (Amending WSR 13-19-039, filed 9/12/13, effective 10/13/13)

**WAC 131-48-110 Eligibility for award of high school equivalency certificate.** The high school equivalency certificate shall be awarded jointly by the state board for community and technical colleges and the superintendent of public instruction to persons who achieve the minimum proficiency level on the high school equivalency test and who meet the following:

(1) Are residents of Washington state; and

(2) Are nineteen years of age or older on the date of issuance; or

(3) Have been adjudged by a district as possessing a substantial and warranted reason for leaving the regular high school education program(=); or

(4) Are currently enrolled in the state options (open doors 1418) program; or

(5) Have completed a program of home-based instruction in compliance with RCW 28A.225.010(4) and chapter 28A.220 RCW(=

~~(5))~~; or

(6) Are active members of the military, national guard, or reserves(=

~~(6))~~; or

(7) Are adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities and so ordered by a court or officer of the court.

### WSR 17-04-023

#### PERMANENT RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed January 23, 2017, 1:09 p.m., effective February 23, 2017]

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

Purpose: The proposal gives authority to tow truck drivers to haul disabled vehicles from the place where they became disabled to the nearest appropriate repair facility expediting the move.

Reasons for Supporting Proposal: To comply with federal requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 468-38-265(6).

Statutory Authority for Adoption: RCW 46.44.090, 46.44.0941.

Adopted under notice filed as WSR 16-23-137 on November 22, 2016.

Changes Other than Editing from Proposed to Adopted Version: Language was added to the initial proposal to require the carrier to check their route for restrictions prior to movement. The operator shall [shall] check the restrictions on Washington state department of transportation's (WSDOT) commercial vehicle services web site prior to each movement. The load bearing axle(s) of the combination [combination] shall not exceed: (A) Six hundred pounds per inch width of tire; (B) twenty-two thousand pounds per single axle; (C) forty-three thousand pounds per tandem axle set; (D) weight limits for axle groups per formula in RCW 46.44.091; and (E) posted limits and restrictions listed on WSDOT's commercial vehicle services web site on the route travelled.

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

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

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

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

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

Date Adopted: January 5, 2017.

Kara Larson  
Director of Risk Management  
and Legal Services

AMENDATORY SECTION (Amending WSR 04-16-060, filed 7/30/04, effective 8/30/04)

#### WAC 468-38-265 Tow trucks—Permitting for over-size/overweight. (1) What classes of tow trucks are eligible for special permits?

Special permits may be issued to Class B and Class C tow trucks, including Class E tow trucks with either a Class B or Class C rating.

#### (2) What is the duration of a special permit issued to tow trucks?

The special permit issued specifically to tow trucks is an annual permit from date of purchase.

#### (3) Are there size and weight limitations and/or requirements to the special permit for tow trucks?

Permit limits and/or requirements are categorized as follows:

(a) **Weight of tow truck:** Maximum weights for tow trucks are as follows:

(i) All classes of tow trucks must conform to RCW 46.44.041 when towing a disabled unit by draw bar or tow chain method.

(ii) When any portion of the weight of the disabled unit rests upon a Class B, C or E (with B or C rating) tow truck; the weight must not exceed:

(A) Six hundred pounds per inch width of tire up to twenty-two thousand pounds per single axle; or

(B) Forty-three thousand pounds per tandem axle set; or

(C) The weight allowed for axle groups per formula in RCW 46.44.091(1).

(iii) The tow truck steer axle must carry sufficient weight to maintain safe operation.

(iv) A Class B tow truck steer axle must carry a minimum of three thousand pounds at all times.

(v) A Class C tow vehicle steer axle must carry a minimum of three thousand five hundred pounds at all times.

(vi) A Class E tow truck with B or C rating must meet the requirement for minimum steer axle load for the rating.

(vii) The special permit does not allow a tow truck to exceed legal weight limits when not in tow or haul status.

(b) **Weight of disabled unit:** Maximum weight for disabled units towed under an annual special permit are as follows:

(i) When being towed by a Class B, C or E (with B or C rating) tow truck, using a draw bar or tow chain method, the weight of the disabled unit must conform with weight limits in RCW 46.44.041, or to the limits of any special permit issued to the disabled unit.

(ii) When a Class B, C or E (with B or C rating) tow truck carries a portion of the weight of the disabled unit, the first load bearing axle(s) of the disabled unit must not exceed:

- (A) Six hundred pounds per inch width of tire;
- (B) Twenty-two thousand pounds per single axle;
- (C) Forty-three thousand pounds per tandem axle set;

and

(D) Weight limits for axle groups per formula in RCW 46.44.091.

(iii) A load recovery vehicle configured as a truck-tractor/semi-trailer, or solo vehicle may carry either a divisible or nondivisible load. The recovery vehicle is limited to weight limits in RCW 46.44.041 when carrying divisible loads, or to the weight limits in (a)(ii) of this subsection when carrying nondivisible loads. The recovery vehicle must be rated as either a Class B or Class C tow truck in order to be issued the annual special permit.

(c) **Height and width:** No disabled unit, including load, shall exceed fourteen feet in height or eight feet six inches in width, except:

(i) When the disabled unit is authorized under a special permit allowing a greater height or width. The allowances granted under the special permit shall apply only to the route identified on the special permit; or

(ii) Where an accident or collision has caused a disfigurement of the disabled unit resulting in a width greater than eight feet six inches, but not exceeding ten feet in width. In this event, during daylight hours the disabled unit must be flagged per WAC 468-38-155, and during the hours of darkness the extreme width must have clearance lights that comply with the requirements of *Code of Federal Regulation*, 49 C.F.R. 393.11.

(iii) Rear view mirrors may exceed the width authorized in the special permit to a point that allows the driver a view to the rear along both sides of the vehicle(s) in conformance with *Federal National Safety Standard 111* (49 C.F.R. 571.111).

(d) **Length:** All classes of single unit tow vehicles may not exceed forty feet in length. The length of the disabled unit shall not exceed the length for such vehicle established in statute or as allowed by a special permit issued to the disabled unit. The towing of a vehicle combination (i.e., tractor/trailer or truck/trailer) is not authorized, except during an emergent situation when directed by the state patrol or the department to remove the disabled combination to the nearest safe location off the highway.

(e) **Restrictions and postings:** An annual special permit must not be used to exceed published road and bridge restrictions, or posted bridges. Restrictions and postings should be reviewed online daily for changes, each permit will contain this instruction. It is the operator's responsibility to remain current with bridge restriction and posting information.

(f) **Exceptions:** Exceptions to the rules provided in this section will be handled on an individual basis by separate special permit, after the disabled unit has been moved to the nearest safe location.

**(4) Is there ever a time when a Class A or D tow truck is authorized to exceed legal weight?**

Class A and D tow trucks are not eligible for special permits. In an emergent situation, when no other class of truck is

available, either class truck may make or assist in making short moves, at the direction of the state patrol or the department, to the nearest safe location off the highway.

**(5) What constitutes an emergent situation?**

An emergent situation, for purposes of this section, is defined as a disabled vehicle on any public highway, including shoulders and access ramps.

**(6) Is there ever a time when a heavy duty tow truck can move in combination exceeding legal weights without a permit?**

When a heavy duty tow truck weighs the same or greater than the disabled vehicle, a permit is not required to move the disabled vehicle from the place where the vehicle became disabled to the nearest appropriate repair facility. The operator shall check the restrictions on WSDOT's commercial vehicle web site prior to each movement. The load bearing axle(s) of the combination shall not exceed:

- (a) Six hundred pounds per inch width of tire;
- (b) Twenty-two thousand pounds per single axle;
- (c) Forty-three thousand pounds per tandem axle set;
- (d) Weight limits for axle groups per formula in RCW 46.44.091; and

(e) Posted limits and restrictions listed on WSDOT's

commercial vehicle services web site on the route traveled.

#### WSR 17-04-027

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed January 24, 2017, 9:21 a.m., effective March 1, 2017]

Effective Date of Rule: March 1, 2017.

Purpose: WAC 246-901-080 Pharmacy assistant registration, the adopted rule is consistent with legislatively mandated amendments to chapter 18.64A RCW, by removing language regarding the timing of pharmacy assistant registration renewals and removing reference to the fees being included in the pharmacy ancillary personnel fee.

Citation of Existing Rules Affected by this Order: Amending WAC 246-901-080.

Statutory Authority for Adoption: Chapter 18.64A RCW.

Other Authority: SB 5549 (chapter 4, Laws of 2016).

Adopted under notice filed as WSR 16-22-044 on October 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 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: January 5, 2017.

Tim Lynch, PharmD, MS, Chair  
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 00-15-081, filed 7/19/00, effective 8/19/00)

**WAC 246-901-080 Pharmacy assistant registration.**

(1) Training. No formal training or educational program will be required by the board, and there will be no age or educational restrictions. The supervising pharmacist shall thoroughly instruct the pharmacy assistant in the limitations of the functions he or she may perform.

(2) Registration of pharmacy assistants. Any person desiring registration as a pharmacy assistant shall apply to the board for registration on forms to be supplied by the board. ~~((The fee for registration will be included in the fee for authorization to utilize the services of pharmacy ancillary personnel.))~~

(3) It is the responsibility of the pharmacy assistant to maintain a current mailing address with the board as required by chapter 246-12 WAC. Pharmacy assistants shall notify the board of any change of mailing address within thirty days of the change.

(4) A pharmacy assistant registration must be renewed ~~((every two years on the assistant's birthdate. The fee for renewal is included in the fee the pharmacy pays to utilize pharmacy ancillary personnel.))~~ in accordance with WAC 246-907-0301.

**WSR 17-04-038  
PERMANENT RULES  
LIQUOR AND CANNABIS  
BOARD**

[Filed January 25, 2017, 10:18 a.m., effective February 25, 2017]

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

Purpose: The purpose of this proposal is to implement the application process, review process, and requirements for the marijuana research license as established in RCW 69.50.-372. RCW 69.50.372 gives the Washington state liquor and cannabis board authority to adopt rules related to the implementation of the marijuana research license in RCW 69.50.-372(5), including application requirements and administrative provisions relating to the license. These rules are needed to fully implement and issue the license.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, and 69.50.372.

Adopted under notice filed as WSR 16-23-105 on November 17, 2016.

Changes Other than Editing from Proposed to Adopted Version: Minor adjustments were made to the proposed rules prior to requesting adoption. These changes address that research license applicants are not subject to the prioritization

requirements for other marijuana licensees, and clarify that research licensees may use funds sourced from outside Washington state for research efforts.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 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: January 25, 2017.

Jane Rushford  
Chair

NEW SECTION

**WAC 314-55-073 Marijuana research license.** A marijuana research license allows a holder of the license to produce, process, and possess marijuana for the limited research purposes provided in RCW 69.50.372. The WSLCB designates a scientific reviewer (reviewer) to review research applications and make recommendations for the approval or denial of research projects and to assess licensed research activities. The following provisions are in addition to the requirements for marijuana research licensees provided in RCW 69.50.372.

(1) **Eligibility and continuing requirements for research license applications, prohibitions and restrictions.**

(a) Other than the restrictions listed in this subsection, any person, organization, agency, or business entity may apply for a marijuana research license.

(b) Other marijuana licensees may apply for a research license. Facilities at which the research is conducted must be wholly separate and distinct from the marijuana business, except:

(i) Licensed producers with a research license and approved research project may grow marijuana plants or possess marijuana for research purposes at the producer's licensed premises. However, all marijuana grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to marijuana grown for commercial purposes or purposes other than those related to the research project; and

(ii) Licensed processors with a research license and approved research project may possess marijuana for research purposes at the processors licensed premises. However, all marijuana possessed for research purposes must be kept wholly separated and distinct from all marijuana pos-

essed for commercial purposes or purposes other than those related to the research project and must not be comingled with or diverted to marijuana possessed for commercial purposes or purposes other than those related to the research project. Licensed processors who do not also hold a producer license may not grow marijuana plants for the purposes of research under a research license at the processor's licensed location.

(c) Labs certified to perform quality assurance testing on marijuana and marijuana products by the WSLCB may apply for a research license. Certified labs with a research license and approved research project must ensure that all marijuana possessed for research purposes is wholly separated from and is not comingled with marijuana possessed for state required testing purposes for licensed producers or processors or marijuana possessed for any reason other than research purposes.

(d) All research license applicants and persons conducting research under the research license must be twenty-one years of age or older.

(e) All research license applicants and those persons that have managing control over an organization, agency, or business entity must pass a criminal background check and financial investigation prior to being eligible to receive a research license.

(f) Except as otherwise provided by chapter 69.50 RCW and agency rule, no applicant for a research license may possess any marijuana plants or marijuana for research purposes unless and until the research project is approved and the applicant is notified that the research license is approved in writing by the WSLCB.

(g) No research licensee may conduct research unless and until the research project is approved by the reviewer and the WSLCB in writing.

## (2) Initial applications.

### (a) Application made with business licensing services (BLS).

(i) Applicants for a research license must apply through BLS to begin the application process for a research license.

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the WSLCB directing the applicant to submit the additional application materials directly to the WSLCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within thirty days of the date of the application letter from the WSLCB or by the date indicated on the application letter. It is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

(B) Incomplete or incorrect additional application materials, materials that do not adhere to the content requirements in this section, or materials not received by the reviewer by 5:00 p.m. on the 30th day or the application date as indicated on the letter from the WSLCB will not be considered by the reviewer and the WSLCB will withdraw the application after receiving notice in writing from the reviewer.

### (b) Additional application materials requirements.

(i) Application materials that do not adhere to the content requirements in this section or incomplete or incorrect applications will be withdrawn.

(ii) The applicant is responsible for ensuring that no information is included in the research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection. All application documents must be submitted by a person who has the legal authority to represent the entity if the applicant is an entity other than an individual person.

(iii) All documents must be submitted to the reviewer in a legible PDF format.

(iv) All of the following information and documents are required for each initial application:

(A) A completed cover page form, marijuana research license application form, and signature page form created by the WSLCB and available at the WSLCB's web site at [www.lcb.wa.gov](http://www.lcb.wa.gov).

(B) A research plan limited to four pages that includes the following information:

(I) Purpose and goal(s) of the proposed research project(s);

(II) Key milestones and timelines for the research project(s);

(III) Background and preliminary studies;

(IV) Amount of marijuana to be grown, if applicable, including the justification with respect to milestone tasks;

(V) Anticipated cost of the proposed research project(s) and funding available for the work;

(VI) Key personnel and organizations, including names and roles;

(VII) Facilities, equipment, and other resources required and available for conducting the proposed research project(s).

(C) A biosketch for each individual involved in executing the proposed research project limited to two pages per individual performing technical and administrative functions essential to performing the proposed research, including proof that the individual is twenty-one years of age or older. Biosketches must be prepared using the National Institutes of Health (NIH) biographical sketch format, available at <http://grants.nih.gov/grants/forms/new-renewal-revisions.htm>.

(D) Letters of support limited to two pages per letter confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project. Letters of support are required to confirm the commitment of time and resources from personnel involved in the proposed research project(s) who are not employed at the applicant organization. Letters of support must include specific details regarding the type(s) and magnitude of the time and resources being committed to the proposed research project(s) and must be signed by individuals having the authority to make such commitments.

(E) For all project(s) involving human or animal subjects, documentation of all required institutional review board (IRB) or institutional animal care and use committee (IACUC) approvals. Documents must be provided on IRB or

IACUC letterhead and be signed by authorized officials of those regulatory bodies.

(v) Documents that do not conform to the requirements in subsection (b) of this section may be withdrawn. All non-form documents must conform to the following requirements:

(A) Eight and one-half by 11-inch portrait-oriented page dimensions;

(B) Single-spaced with all margins measuring at least one inch; and

(C) At least 12-point font in Times New Roman or Arial, not proportionately reduced.

**(c) Review by the WSLCB's designated scientific reviewer.**

(i) If the applicant submits application materials to the reviewer by the required deadline specified by the WSLCB's application letter and the reviewer determines the additional application materials are complete and meet the document requirements specified in this section, the reviewer will proceed with reviewing the research project to evaluate whether the project complies with the provisions of RCW 69.50.372 (1) and (2).

(ii) When evaluating research projects, the reviewer must:

(A) Ensure confidentiality; and

(B) Screen members of the reviewer panel for any conflicts of interest and take appropriate measures if a conflict of interest is identified.

(iii) The reviewer will assess fees for the review of the research project proposal directly to the applicant pursuant to RCW 69.50.372(7). The reviewer will not recommend approval of an application for any research license for which an unpaid balance of fees to the reviewer is due regardless of the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the reviewer will notify the WSLCB in writing and the WSLCB will withdraw the application.

(v) The reviewer will supply a written evaluation to the WSLCB in writing after completing review of the research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation. The WSLCB will provide written evaluations to applicants following completion of the review process by the reviewer along with the WSLCB's approval or denial of the research license.

**(d) WSLCB requirements and licensing process.** If the reviewer indicates the application for a research license should be approved, the following requirements must be met prior to final approval of the license by the WSLCB.

(i) The WSLCB will request criminal background and financial information from the research license applicant and evaluate the applicant(s) pursuant to the standards and requirements established in WAC 314-55-020 except that research license applicants are not subject to prioritization under subsection (3) of that section;

(ii) Funding of the proposed research must be disclosed by the applicant(s) in amount, timing and source(s). Funding

sources may include organizational resources and individuals and organizations that are not part of the person, organization, agency, or business entity applying for the research license. Out-of-state resources may be included, but must be identified;

(iii) The applicant(s) must adhere to the notice posting requirements under WAC 314-55-020;

(iv) The applicant must demonstrate access to and proficiency with the traceability system; and

(v) The applicant must meet facility security requirements as provided in WAC 314-55-083 prior to being granted a license.

**(3) Research license withdrawal and denials.**

(a) The WSLCB will withdraw an application if:

(i) The application or additional application materials are determined incomplete or incorrect by the WSLCB or its designated reviewer;

(ii) The additional application materials are not timely received by the reviewer as provided in this section; or

(iii) The applicant(s) request withdrawal of a research license application at any time in the application process. The applicant must request the withdrawal in writing and is responsible for any review costs due to the reviewer. The voluntary withdrawal of a research license application does not result in a hearing right.

(b) The WSLCB will deny a research license if:

(i) The scientific reviewer does not recommend approval of the license after reviewing the research proposal for compliance with this section or RCW 69.50.372;

(ii) The applicant does not meet the requirements for a license under this section or RCW 69.50.372; or

(iii) The applicant provides false or misleading information in any of the materials it submits to the WSLCB or the reviewer.

(c) If the WSLCB denies a research application for the reasons provided in (b)(iii) of this subsection or for failing to meet criminal history or administrative violations requirements under this section, the applicant(s) is prohibited from reapplying for a research license for one calendar year from the date of the WSLCB's denial of the license.

(d) A person or entity that has outstanding unpaid review fees owing to the scientific reviewer is prohibited from reapplying for a research license until all review fees are paid to the scientific reviewer.

**(4) Reporting required.**

(a) The WSLCB or the WSLCB's designated reviewer may require reporting by or auditing of research licensees as necessary.

(b) The WSLCB's designated reviewer must submit an annual status report of all completed and ongoing research projects for the previous year to the WSLCB by December 31st of each calendar year.

(c) The licensee must adhere to the reporting requirements in the traceability system under WAC 314-55-083.

(d) The reviewer must immediately notify the WSLCB if it receives information indicating that a research licensee is operating outside the scope of the projects approved under a research license.



**(5) Adding an additional research project or changing existing approved research project process (after licensure).**

(a) A research licensee is restricted to only those research activities under a research project that has been reviewed and approved by reviewer.

(b) Applications to add a new project or change an existing approved project is the same as what is required for initial application except that a new license application through BLS is not required. To apply to add a new research project or change an existing approved project, a research licensee must submit all materials to the reviewer as required under subsection (2)(b) of this section. Incomplete project applications will not be considered.

(c) The reviewer will review the application for a new research project or change to an existing approved research project pursuant to subsection (2)(c) of this section. The reviewer will supply a written evaluation to the WSLCB and the licensee in writing after completing review of the application for a new research project or a change to an existing approved research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation.

**(6) Research license renewals.**

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The WSLCB will notify the licensee and reviewer ninety days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research project will end within thirty days prior to or after the renewal date. The status report or application must be received by the reviewer within thirty days of the ninety-day renewal notice from the WSLCB or the license will not be renewed.

(b) The reviewer will notify the WSLCB in writing if the licensee meets the requirements for renewal not later than fifteen days prior to the licensee's renewal date.

(c) If the reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for a proposed new project, the reviewer will recommend the WSLCB not renew the license.

(d) The WSLCB will review the licensee's violation history and criminal background check prior to renewal. If the violation history or criminal records disqualifies the licensee from eligibility for a research license under WAC 314-55-050, the WSLCB will not renew the license.

**(7) License revocation.**

(a) The WSLCB may revoke an application for the following reasons:

(i) The WSLCB has reason to believe that marijuana is being diverted from the research licensee;

(ii) The research licensee operates outside the scope of the research project(s) approved under the license issued to the licensee;

(iii) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the WSLCB during the application process or any subsequent investigation after a license has been issued;

(iv) The WSLCB finds that the licensee possesses marijuana plants, marijuana, or marijuana products that are not accounted for in the traceability system;

(v) The research licensee makes changes to their operating plan, entity structure, or location without prior approval from the WSLCB;

(vi) The research licensee fails to maintain security requirements for the licensed research facility; or

(vii) The licensee violates any provision of chapter 69.50 RCW or this chapter.

(b) A licensee may request voluntary cancellation of a license at any time. The licensee must request cancellation of a research license to the WSLCB in writing. The voluntary cancellation of a research license does not result in a hearing right.

**(8) Marijuana disposal requirements.**

(a) Licensees must dispose of marijuana as provided in WAC 314-55-097.

(b) Licensees must dispose of marijuana if the research license is discontinued for any reason. A licensee may transfer plants to another marijuana research licensee. A licensee may work with the WSLCB to dispose of marijuana or marijuana plants.

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.

**WSR 17-04-039**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed January 25, 2017, 10:21 a.m., effective February 25, 2017]

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

Purpose: The agency is amending these rules to correct agency names and WAC citations for programs formerly administered by the department of social and health services that are now administered by the health care authority.

Citation of Existing Rules Affected by this Order: Amending WAC 182-531-0300, 182-531-0400, 182-531-0650, 182-531-1100, 182-531-1450, 182-531-1700, 182-531-1750, 182-531-1800, and 182-531-1850.





bursement for all covered surgeries includes all of the following:

- (a) The operation itself;
  - (b) Postoperative dressing changes, including:
    - (i) Local incision care and removal of operative packs;
    - (ii) Removal of cutaneous sutures, staples, lines, wire, tubes, drains, and splints;
    - (iii) Insertion, irrigation, and removal of urinary catheters, routine peripheral intravenous lines, nasogastric and rectal tubes; or
    - (iv) Change and removal of tracheostomy tubes.
  - (c) All additional medical or surgical services required because of complications that do not require additional operating room procedures.
- (2) The ~~((department's))~~ agency's global surgical reimbursement for major surgeries, includes all of the following:
- (a) Preoperative visits, in or out of the hospital, beginning on the day before surgery; and
  - (b) Services by the primary surgeon, in or out of the hospital, during a standard ninety-day postoperative period.
- (3) The ~~((department's))~~ agency's global surgical reimbursement for minor surgeries includes all of the following:
- (a) Preoperative visits beginning on the day of surgery; and
  - (b) Follow-up care for zero or ten days, depending on the procedure.
- (4) When a second physician provides follow-up services for minor procedures performed in hospital emergency departments, the ~~((department))~~ agency does not include these services in the global surgical reimbursement. The physician may bill these services separately.
- (5) The ~~((department's))~~ agency's global surgical reimbursement for multiple surgical procedures is as follows:
- (a) Payment for multiple surgeries performed on the same client on the same day equals one hundred percent of the ~~((department's))~~ agency's allowed fee for the highest value procedure. Then,
  - (b) For additional surgical procedures, payment equals fifty percent of the ~~((department's))~~ agency's allowed fee for each procedure.
  - (6) The ~~((department))~~ agency allows separate reimbursement for any of the following:
    - (a) The initial evaluation or consultation;
    - (b) Preoperative visits more than one day before the surgery;
    - (c) Postoperative visits for problems unrelated to the surgery; and
    - (d) Postoperative visits for services that are not included in the normal course of treatment for the surgery.
- (7) The ~~((department's))~~ agency's reimbursement for endoscopy is as follows:
- (a) The global surgical reimbursement fee includes follow-up care for zero or ten days, depending on the procedure.
  - (b) Multiple surgery rules apply when a provider bills multiple endoscopies from different endoscopy groups. See subsection (4) of this section.
  - (c) When a physician performs more than one endoscopy procedure from the same group on the same day, the ~~((department))~~ agency pays the full amount of the procedure with the highest maximum allowable fee.

(d) The ~~((department))~~ agency pays the procedure with the second highest maximum allowable fee at the maximum allowable fee minus the base diagnostic endoscopy procedure's maximum allowed amount.

(e) The ~~((department))~~ agency does not pay when payment for other codes within an endoscopy group is less than the base code.

(8) The ~~((department))~~ agency restricts reimbursement for surgery assists to selected procedures as follows:

(a) The ~~((department))~~ agency applies multiple surgery reimbursement rules for surgery assists (~~(apply)~~). See subsection (4) of this section.

(b) Surgery assists are reimbursed at twenty percent of the maximum allowable fee for the surgical procedure.

(c) A surgical assist fee for a registered nurse first assistant (RNFA) is reimbursed if the nurse has been assigned a provider number.

(d) A provider must use a modifier on the claim with the procedure code to identify surgery assist.

(9) The ~~((department))~~ agency bases payment splits between preoperative, intraoperative, and postoperative services on medicare determinations for given surgical procedures or range of procedures. The ~~((department))~~ agency pays any procedure that does not have an established medicare payment split according to a split of ten percent - eighty percent - ten percent respectively.

(10) For preoperative and postoperative critical care services provided during a global period refer to WAC ~~((388-531-0450))~~ 182-531-0450.

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

**WAC 182-531-1750 Transplant coverage for physician-related services.** The ~~((department))~~ medicaid agency covers transplants when performed in ~~((a department-approved))~~ an agency-approved center of excellence. See WAC ~~((388-550-1900))~~ 182-550-1900 for information regarding transplant coverage.

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

**WAC 182-531-1800 Transplant coverage—Medical criteria to receive transplants.** See WAC ~~((388-550-2000))~~ 182-550-2000 for information about medical criteria to receive transplants.

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

**WAC 182-531-1850 Payment methodology for physician-related services—General and billing modifiers.**  
GENERAL PAYMENT METHODOLOGY

(l) The ~~((department))~~ medicaid agency bases the payment methodology for most physician-related services on medicare's RBRVS. The ~~((department))~~ agency obtains information used to update the ~~((department's))~~ agency's RBRVS from the MPFSPS.



qualify for an exemption to real estate excise tax when real property is transferred. The department is proposing revisions to Rules 61A-202 and 61A-210 that include:

- Adding the following definitions:
  - Heir.
  - Lack of probate affidavit.
  - Nonpro rata distribution.
- Clarifying the types of documents required when real property transfers through a devise by will or inheritance.
- Reorganizing subsections and examples for readability purposes.

Citation of Existing Rules Affected by this Order:  
Amending WAC 458-61A-202 and 458-61A-210.

Statutory Authority for Adoption: RCW 82.45.150 and 82.01.060(2).

Adopted under notice filed as WSR 16-23-055 on November 10, 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 2, 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: January 25, 2017.

Kevin Dixon  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-02-018, filed 12/29/14, effective 1/29/15)

**WAC 458-61A-202 Inheritance or devise.** (1) **Introduction.** Transfers of real property (~~by inheritance or~~) through a devise by will or inheritance are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Heir" means a person, including the surviving spouse or surviving domestic partner, who is entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate;

(b) "Lack of probate affidavit" means a signed and notarized document declaring that the affiant or affiants are the rightful heir or heirs to the property and containing the following information:

(i) The names of the affiant or affiants;

(ii) The relationship of the affiant or affiants to the decedent;

(iii) The names of all other heirs of the decedent living at the time of the decedent's death;

(iv) A description of the real property;

(v) Whether the decedent left a will that includes a devise of real property; and

(vi) Any other information the department may require.

(c) "Nonpro rata distribution" is a distribution in which the transfer of real property to the heirs or devisees may not be in proportion to their interests.

(3) Examples. This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(4) Nonpro rata distributions. A nonpro rata distribution (~~is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.~~)

(3)) made by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if:

(a) The transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15); and

(b) If no consideration is given to the personal representative or the trustee for the transfer.

For the purpose of this rule, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(c) Example 1. Aunt Mary wills her entire estate equally to her three nieces, Meg, Beth, and Jo. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo.

**(5) Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. ~~((Examples:))~~

(a) **Example 2.** Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and real estate excise tax is due based upon the full sales price of \$50,000.

(b) **Example 3.** Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Real estate excise tax is due on the \$100,000.

(c) **Example 4.** Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home, but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Real estate excise tax is due on the total of \$120,000 paid for the property.

~~((4))~~ **(6) Exemptions and required documentation.** A transfer of real property through a devise by will or inheritance is exempt from the real estate excise tax for the following types of transfers. Refer to WAC 458-61A-303 (Affidavit) to determine if a real estate excise tax affidavit is required to document the exempt transfers. Additional documentation may be required to substantiate each exemption, and must be provided to the county treasurer of the county in which the real property is located and recorded with the county auditor:

**(a) Community property agreement or right of survivorship.** If the transfer of real property to a surviving spouse or surviving domestic partner is in accordance with a community property agreement or ((a survivorship clause is not subject to real estate excise tax.

~~(5))~~ right of survivorship clause, copies of the recorded agreement and a certified copy of the death certificate are required.

**(b) Joint tenants with rights of survivorship and remainder interests.** ~~((The transfer of))~~ If real property is transferred upon the death of a joint tenant to the remaining joint tenants under right of survivorship ((is not subject to the real estate excise tax.

~~(6))~~, a certified copy of the death certificate is required.

**(c) Life estates and remainder interests.** The transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. ~~((For example,))~~

**Example 5.** Nate and Libby convey their property to their son, Rex, and retain a life estate. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, while retaining a life estate, and Rex pays any consideration for his future interest, the transaction is taxable. Real estate excise tax is due on the total consideration paid.

~~((7))~~ **(d) Transfer on death deeds.** If the transfer of real property is pursuant to a previously recorded transfer on

death deed, upon the death of the transferor to the beneficiary(ies) named in the transfer on death deed ((occurs upon the death of the transferor and is generally not subject to the real estate excise tax)), a certified copy of the death certificate is required. However, if the transfer of real property pursuant to a transfer on death deed satisfies a contractual obligation of the transferor owed to the beneficiary(ies) designated in the transfer on death deed, real estate excise tax is due on the transfer.

~~((8))~~ **Documentation.** In order to claim this exemption, the following documentation must be provided:

**(a) Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

**(b) Trusts.** If property is being transferred under the terms of a trust instrument, a certified copy of the death certificate, and a copy of the trust instrument showing the authority of the grantor;

~~(e))~~ **(e) Trusts.** If real property is transferred under the terms of a trust instrument, a certified copy of the death certificate and a copy of that portion of the trust instrument showing the authority of the grantor are required. For additional information on the application of real estate excise tax to transfers of real property under the terms of a trust, see WAC 458-61A-210 (Irrevocable trusts) and WAC 458-61A-211 (Mere change in identity or form—Family corporations and partnerships).

**(f) Probate.** ~~((In the case of))~~ For real property transferred under a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator(;

~~(d)~~ **Joint tenants with rights of survivorship and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

~~(e))~~ is required.

**(g) Court order.** ~~((the))~~ real property is ((being)) transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property(;) and confirming that the grantor is required to do so under the terms of the order(;

**(f) Transfer on death deeds.** If the property is being transferred pursuant to a transfer on death deed, the beneficiary(ies) of the transfer on death deed must record a certified copy of the death certificate to perfect title.

~~(g)~~ **Other.)** is required.

**(h) Community property interest.** If the community property interest of the decedent is ((being)) transferred to a surviving spouse or surviving domestic partner absent the documentation ((set forth in (a) through (f))) described in (a), (b), (e), (f), or (g) of this subsection, a certified copy of the death certificate and a signed lack of probate affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir ((of)) to the property are required. Refer to the department's web site at [dor.wa.gov](http://dor.wa.gov) for an example of the lack of probate affidavit that may be used.





Adopted under notice filed as WSR 17-01-030 on December 12, 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 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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: January 25, 2017.

Tracy Guerin  
Director

**NEW SECTION**

**WAC 415-02-325 2008 Early retirement factors. (1)**

**What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system (SERS); and teachers' retirement system (TRS). The 2008 ERFs provide a higher retirement benefit than the three percent ERFs, but impose stricter return to work rules.

**(2) If I retire before age sixty-five using the 2008 ERFs, how will my benefit be calculated?** Your normal (age sixty-five) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

**(3) Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered member-

ship prior to May 1, 2013, must be at least age fifty-five and have at least thirty service credit years to be eligible for retirement using the 2008 ERFs.

**(4) What are the return to work rules if I retire under the 2008 ERFs?** The legislation that created the 2008 ERFs also established restrictions on retirees who return to an employer after selecting the 2008 ERF option. The 2008 ERF return to work restrictions are a broad prohibition to avoid incentives for early retirement while the member continues to collect payments from a public employer before reaching full retirement age. A retiree's benefit will stop if they retire under the 2008 ERFs and return to a DRS-covered employer, in any capacity for which they receive compensation, before age sixty-five.

**(5) What organizations are DRS-covered employers?** For the purpose of this section, a DRS-covered employer is any organization that employs one or more members of any retirement system administered by DRS. This includes, but is not limited to, public agencies, boards and commissions, counties, cities and towns, public schools and educational service districts, higher education institutions, libraries and utilities throughout the state. It also includes first class cities that maintain separate retirement systems but also employ members of the law enforcement officers' and fire fighters' retirement system.

**(6) What types of compensation impact my benefit if I retire under the 2008 ERFs and return to work before age sixty-five?** The legislature defines "employment with an employer" for purposes of the 2008 ERF return to work restrictions as including "any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer." The phrase "any other similar compensated relationship with any employer" includes both employment with a DRS-covered employer and any other type of compensated relationship with a DRS-covered employer.

**Example:**

**Bob, an attorney for the city of Olympia, retires using the 2008 ERFs. Can Bob receive his pension if he subsequently provides legal services to Spokane County?** It depends on whether Bob's compensated relationship with Spokane County meets the definition of "employment with an employer." Below are examples of the different types of potential compensated relationships Bob could have, and whether those relationships would be considered "employment with an employer."

**Personal service contract.** If Bob has a personal service contract with Spokane County to provide legal services, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he provides this compensated service to Spokane County.

**Sole proprietorship or partnership. 2008 ERF retiree is sole proprietor or partner.** If Bob is a sole proprietor or a partner of a law firm; the firm contracts with Spokane County to provide services; and Bob or any other employee of the law firm provides legal services to Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the

statute. Bob's monthly benefit would be suspended for any month in which he or his firm provides service to Spokane County under the contract.

**Corporation. 2008 ERF retiree is a shareholder of a publicly traded corporation.** If Bob is a shareholder of a publicly traded corporation and the corporation contracts with Spokane County to provide services, then Bob would not be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

**Corporation. ERF retiree is an employee of the corporation.** If Bob is working for the corporation solely on matters unrelated to the corporation's contract with Spokane County, Bob is not in a "similar compensated relationship" with Spokane County. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

If Bob is working for the corporation on matters that are related to the corporation's contract with Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer."

(7) **What is considered compensation?** Compensation is financial consideration for work performed, regardless of whether that consideration is paid as a salary, hourly amount, or flat dollar amount. A reimbursement is not considered compensation.

**Examples:**

**Basketball referee** - A TRS Plan 2 member retires using the 2008 ERFs at age 62. He receives a \$2,500 monthly pension payment. When he is 64, he referees one high school basketball game. He receives a flat dollar amount of \$50 for refereeing the game. Under the 2008 ERF return to work restrictions, he has returned to the employment of an employer and received compensation. Therefore, his \$2,500 pension benefit is forfeited for the month he earned the \$50 payment.

**Board/commission** - A PERS Plan 3 member retires using the 2008 ERFs at age 60. She receives a \$1,200 monthly pension payment. When she is 62, she is elected as a member of the local school board. As a school board member she does not receive a salary; however, she does receive reimbursements for travel and food. Under the 2008 ERF

return to work restrictions, she is able to continue to receive her pension while receiving those reimbursements.

(8) **What are a DRS employer's responsibilities for determining whether an employee is a 2008 ERF retiree?** RCW 41.50.139 requires DRS employers to obtain, in writing, the retirement status of all new employees. If the employer fails to report a 2008 ERF retiree's retirement status to the department, the employer is liable for any overpayments that may occur.

(9) **What are a DRS employer's responsibilities for determining whether a contractor's employees are 2008 ERF retirees?** DRS employers who hire a contractor to perform services for their organization will need to inquire with the contractor and confirm with DRS to determine if any of the workers providing services to the DRS employer through the contractor retired using the 2008 ERFs, or if the company is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended.

**WSR 17-04-062**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed January 27, 2017, 5:30 p.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: Chapter 246-310 WAC, Certificate of need, the adopted rules revise and update current criteria, standards, and need methodology for kidney dialysis treatment centers. The adopted rules repeal WAC 246-310-280 through 246-310-289, and establish new WAC 246-310-800 through 246-310-833.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-310-280, 246-310-282, 246-310-284, 246-310-286, 246-310-287, 246-310-288 and 246-310-289.

Statutory Authority for Adoption: RCW 70.38.135.

Adopted under notice filed as WSR 16-19-038 on September 14, 2016.

Changes Other than Editing from Proposed to Adopted Version:

**Table of Changes From Proposed to Adopted Version of Rule  
December 1, 2016**

WAC	Edit/Change	Reason
WAC 246-310-800(2)	Removed "first day of the application submission period" and added "letter of intent submission date."	Edited for clarity and consistency.
WAC 246-310-800(5)	Removed "provides" and added "facilitates comparison of."	Edited to complete sentence and correctly identify purpose of dialysis facility report; provides clarity and consistency.
WAC 246-310-800(10)	Removed "to persons who have end stage renal disease."	Edited for clarity and consistency.
WAC 246-310-800 (11)(b)	Add language, "as defined in subsection (14) of this section;"	Edited for clarity and consistency.

WAC	Edit/Change	Reason
WAC 246-310-800(14)	Added word "station" to definition of permanent bed.	Edited for clarity and consistency.
WAC 246-310-800(15)	Restructured sentence to remove "and" between concepts.	Edited for clarity and consistency.
WAC 246-310-800(17)	Added "quality incentive program" to definition of QIP.	Changed to define acronym for clarity and consistency.
WAC 246-310-800(17)	Corrected misspelled word (publicly).	Edited for clarity and consistency.
WAC 246-310-803(1)	Removed "Between the first working day of February and the last working day of February of each year" and added "By February 15 <sup>th</sup> or the first working day thereafter of each year" to introductory language.	Edited for clarity and consistency in response to public comment. The date identifies the deadline by which the information must be submitted. This clarifies the deadline and nothing precludes the provider from submitting the required data before the February 15 <sup>th</sup> deadline. The previous wording suggested that there was only a window of opportunity provided.
WAC 246-310-803(1)	Add language "pursuant to WAC 246-310-827" at conclusion of section.	Edited for clarity and consistency.
WAC 246-310-806	Change word "cycle" to ["]cycles" in section title. Added to end of sentence, "... unless the application was submitted as described in subsection (9) of this section."	Edited for clarity and consistency.
WAC 246-310-806(6)	Remove word "kidney."	Edited for clarity and consistency.
WAC 246-310-806(9)	Added language, "Pending certificate of need applications. Kidney dialysis facility applications submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the applications were received."	Language added for clarity and to address transition period between old and new rules.
WAC 246-310-812(2)	Removed "first day of the application submission period" and added "letter of intent submission date."	Edited for clarity and consistency in response to public comment.
WAC 246-310-812 (5)(b)	Added sentence, "If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order."	Language added for clarity and consistency in response to public comment.
WAC 246-310-812(6)	Added sentence, "If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order."	Edited for clarity and consistency in response to public comment.
WAC 246-310-818 (1)(a)	Removed "date of application" and added "letter of intent submission date."	Edited for clarity and consistency in response to public comment.
WAC 246-310-818 (1)(b)	Removed "date of application" and added "letter of intent submission date."	Edited for clarity and consistency in response to public comment.
WAC 246-310-818(5)	Removed "date of application" and added "letter of intent submission date."	Edited for clarity and consistency in response to public comment.
WAC 246-310-818(6)	Removed "date of application" and added "letter of intent submission date."	Edited for clarity and consistency in response to public comment.

WAC	Edit/Change	Reason
WAC 246-310-818(11)	Added two sentences: "Special circumstances applications are evaluated independently of one another and accordingly without reference to the superiority criteria set forth in WAC 246-310-827. Therefore, multiple special circumstances applications may be approved in the same planning area during the same concurrent review cycle."	Language added for clarity and consistency in response to public comment.
WAC 246-310-824 (3)(b)	Removed "application" and added "letter of intent."	Edited for clarity and consistency in response to public comment.
WAC 246-310-827(3)	Added "Washington facilities must be used to determine comparables as follows:" and removed "... the applicant's closest existing Washington kidney dialysis facilities should be used as comparables (comparables) as follows:"	Edited for clarity and consistency.
WAC 246-310-827 (3)(a)	Removed parenthesis at "(comparables)" and added "as."	Edited for clarity and consistency.
WAC 246-310-827 (3)(b)	Removed word "(comparables)" and added "as comparables."	Edited for clarity and consistency.
WAC 246-310-827 (3)(d)	Removed word "included" and added word "used."	Edited for clarity and consistency in response to public comment.
WAC 246-310-827(7)	Removed words "first working day in April" and added words "March 15 or the first working day thereafter."	Edited for clarity and consistency.
WAC 246-310-827(7)	Removed words "until the last working day in April" and added words "for seven calendar days."	Edited for clarity and consistency in response to public comment.
WAC 246-310-827 (7)(c)	Removed words, "March 15 or the first working day thereafter" and added words, "the first working day in April."	Edited for clarity and consistency in response to public comment.
WAC 246-310-830(5)	Removed "application" and added "letter of intent."	Edited for clarity and consistency in response to public comment.
WAC 246-310-830(6)	Removed "application" and added "letter of intent."	Edited for clarity and consistency in response to public comment.

A final cost-benefit analysis is available by contacting Katherine Hoffman, Washington State Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2979, fax (360) 236-2321, email katherine.hoffman@doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 0, Repealed 7.

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 12, Amended 0, Repealed 7.

Date Adopted: January 27, 2017.

John Wiesman, DrPH, MPH  
Secretary

**NEW SECTION**

**WAC 246-310-800 Kidney disease treatment centers**—**Definitions.** The definitions in this section apply to WAC 246-310-800 through 246-310-833, unless the context clearly indicates otherwise:

(1) "Affiliate" or "affiliated" means:

(a) Having at least a ten percent but less than one hundred percent ownership in a kidney dialysis facility;

(b) Having at least a ten percent but less than one hundred percent financial interest in a kidney dialysis facility; or

(c) Three years or more operational management responsibilities for a kidney dialysis facility.

(2) "Base year" means the most recent calendar year for which December 31 data is available as of the letter of intent

submission date from the *Northwest Renal Network's Modality Report*.

(3) "Capital expenditures," as defined by *Generally Accepted Accounting Principles* (GAAP), means expenditures made to acquire tangible long-lived assets. Long-lived assets represent property and equipment used in a company's operations that have an estimated useful life greater than one year. Acquired long-lived assets are recorded at acquisition cost and include all costs incurred necessary to bring the asset to working order. Capital expenditure includes:

(a) A force account expenditure or acquisition (i.e., an expenditure for a construction project undertaken by a facility as its own contractor).

(b) The costs of any site planning services (architect or other site planning consultant) including, but not limited to, studies, surveys, designs, plans, working drawings, specifications, and other activities (including applicant staff payroll and employee benefit costs, consulting and other services which, under GAAP or Financial Accounting Standards Board (FASB) may be chargeable as an operating or nonoperating expense).

(c) Construction cost of shelled space.

(d) Building owner tenant improvements including, but not limited to: Asbestos removal, paving, concrete, contractor's general conditions, contractor's overhead and profit, electrical, heating, ventilation and air conditioning systems (HVAC), plumbing, flooring, rough and finish carpentry and millwork and associated labor and materials, and utility fees.

(e) Donations of equipment or facilities to a facility.

(f) Capital expenditures do not include routine repairs and maintenance costs that do not add to the utility of useful life of the asset.

(4) "Concurrent review" means the process by which applications competing to provide services in the same planning area are reviewed simultaneously by the department.

(5) "Dialysis facility report (DFR)" means the kidney dialysis facility reports produced annually for Centers for Medicare and Medicaid Services (CMS). The DFR is provided to individual dialysis facilities and contains summary data on each facility compiled from multiple sources. The DFR facilitates comparison of patient characteristics, treatment patterns, transplantation rates, hospitalization rates, and mortality rates to local and national averages.

(6) "Dialysis facility compare (DFC) report" means the kidney dialysis facility compare quarterly report that is produced by CMS and posted on the medicare DFC web site. This report provides information about statistically measurable practice patterns in kidney disease treatment facilities including, but not limited to, mortality, hospitalization, late shifts, and availability of home training.

(7) "End-of-year data" means data contained in the fourth quarter modality report or successor report from the Northwest Renal Network.

(8) "End-of-year in-center patients" means the number of in-center hemodialysis (HD) and self-dialysis training patients receiving in-center kidney dialysis at the end of the calendar year based on end-of-year data.

(9) "Exempt isolation station" means one certificate of need approved certified station per facility dedicated to patients requiring medically necessary isolation. This station

may not be used for nonisolation treatments. This one approved station is included in the kidney dialysis facility's total CMS certified station count. However, for purposes of certificate of need, this one isolation station is not included in the facility's station count for projecting future station need or in calculating existing station use. Providers may operate more than one isolation station, but only one is excluded from the facility's station count for purposes of projecting future station need and in calculating existing station use.

(10) "Kidney disease treatment center" or "kidney dialysis facility" means any place, institution, building or agency or a distinct part thereof equipped and operated to provide services, including outpatient dialysis. In no case will all stations at a given kidney disease treatment center or kidney dialysis facility be designated as self-dialysis training stations. For purposes of these rules, kidney disease treatment center and kidney dialysis facility have the same meaning.

(11) "Maximum treatment floor area square footage" means the sum of (a), (b), (c), and (d) of this subsection:

(a) One hundred fifty square feet multiplied for each general use in-center station and each nonisolation station;

(b) Two hundred square feet multiplied for each isolation station and each permanent bed station as defined in subsection (14) of this section;

(c) Three hundred square feet for future expansion of two in-center treatment stations; and

(d) Other treatment floor space is seventy-five percent of the sum of (a), (b), and (c) of this subsection.

As of the effective date of these rules, maximum treatment floor area square footage identified in a successful application cannot be used for future station expansion, except as provided in (c) of this subsection. For example, the applicant may use the maximum allowable treatment floor area square footage. The number of stations may include one isolation station, one permanent bed station, eight general use in-center stations, two future expansion stations, and maximum other treatment floor space. In this example, the total maximum treatment floor area square footage in this example would equal three thousand three hundred twenty-five square feet.

(12) "Operational" means the date when the kidney dialysis facility provides its first dialysis treatment in newly approved certificate of need stations, including relocated stations.

(13) "Patients per station" means the reported number of in-center patients at the kidney dialysis facility divided by counted certificate of need approved stations. The results are not rounded up. For example, 4.49 is not rounded to 4.5.

(14) "Permanent bed station" means a bed that would commonly be used in a health care setting.

(15) "Planning area" or "service area" means an individual geographic area designated by the department for which kidney dialysis station need projections are calculated. For purposes of kidney dialysis projects, planning area and service area have the same meaning. Each county is considered a separate planning area, except for the planning subareas identified for King, Snohomish, Pierce, and Spokane counties. If the United States Postal Service (USPS) changes zip codes in the defined planning areas, the department will update areas to reflect the revisions to the zip codes to be



(d) Spokane County is divided into two planning areas as follows:

SPOKANE ONE	SPOKANE TWO
99001 Airway Heights	99003 Chattaroy
99004 Cheney	99005 Colbert
99011 Fairchild Air Force Base	99006 Deer Park
99012 Fairfield	99009 Elk
99016 Greenacres	99021 Mead
99018 Latah	99025 Newman Lake
99019 Liberty Lake	99026 Nine Mile Falls
99022 Medical Lake	99027 Otis Orchards
99023 Mica	99205 Spokane
99030 Rockford	99207 Spokane
99031 Spangle	99208 Spokane
99036 Valleyford	99217 Spokane
99037 Veradale	99218 Spokane
99201 Spokane	99251 Spokane
99202 Spokane	
99203 Spokane	
99204 Spokane	
99206 Spokane Valley	
99212 Spokane Valley	
99216 Spokane/Spokane Valley	
99223 Spokane	
99224 Spokane	

(16) "Projection year" means the fifth calendar year after the base year. For example, reviews using 2015 end-of-year data as the base year will use 2020 as the projection year.

(17) "Quality incentive program" or "QIP" means the end-stage renal disease (ESRD) quality incentive program (QIP) administered by the Centers for Medicare and Medicaid Services (CMS). The QIP measures kidney dialysis facility performance based on outcomes assessed through specific performance and quality measures that are combined to create a total performance score (TPS). The QIP and TPS are updated annually and are publicly available on the CMS DFC web site.

(18) "Quintile" means any of five groups into which a population can be divided according to the distribution of values of a particular variable.

(19) "Resident in-center patients" means in-center hemodialysis (HD) patients who reside within the planning area. If more than fifty percent of a kidney dialysis facility's patients reside outside Washington state, these out-of-state patients would be considered resident in-center patients.

(20) "Shelled space" means space that is constructed to meet future needs; it is a space enclosed by a building shell but otherwise unfinished inside unless the space designated for future needs is part of an existing, finished building prior to an applicant's proposed project. In that case, there is no requirement to degrade the space. The shelled space may include:

- (a) Electrical and plumbing that will support future needs;
- (b) Insulation;

(c) Sheet rock that is taped or other similar wall coverings that are otherwise unfinished; and

(d) Heating, ventilation, and air conditioning.

(21) "Training services" means services provided by a kidney dialysis facility to train patients for home dialysis. Home training spaces are not used to provide in-center dialysis treatments. Spaces used for training are not included in the facility's station count for projecting future station need or in calculating existing station use. Stations previously designated as "training stations" may be used as in-center dialysis stations and will continue to be included in the facility's current station count for projecting future station need or in calculating existing station use. For the purpose of awarding the point for home training in the superiority criteria section (WAC 246-310-823), training services include the following:

- (a) Home peritoneal dialysis (HPD); and
- (b) Home hemodialysis (HHD).

NEW SECTION

**WAC 246-310-803 Kidney disease treatment facilities—Data reporting requirements.** (1) By February 15th or the first working day thereafter of each year, each provider will electronically submit the following data elements for each of its kidney dialysis facilities in the state of Washington and each out-of-state kidney dialysis facility that might be used in an application review during the next year (an out-of-state kidney dialysis facility may be used as one of the three closest facilities for a future project during the next year pursuant to WAC 246-310-827):

(a) Cost report data for the most recent calendar or fiscal year reporting period for which data is available reported to the Centers for Medicare and Medicaid Services (CMS) that is used to calculate net revenue per treatment; and

(b) Data reported to providers by CMS for the most recent calendar or fiscal year reporting period for which data is available to identify the percentage of nursing home patients and the average number of comorbid conditions.

(2) A provider's failure to submit complete data elements identified in subsection (1)(a) and (b) of this section in the format identified by the department for a facility by the deadline in subsection (1) of this section or whose data for a facility is not complete on the DFC report or QIP report (medicare web site) will result in automatic rejection of concurrent review applications for that provider until the following year's data report deadline unless an exemption is granted pursuant to subsection (3) of this section. Corrections to the DFC report, as noted in WAC 246-310-827(7) do not require the filing on an exemption.

(3) A provider may request an exemption from subsection (2) of this section in writing by the first working day in March. The exemption request must demonstrate that reasonable efforts were made to timely submit the required data elements in subsection (1)(a) and (b) of this section. An exemption request based on missing data in the DFC report or QIP report should demonstrate the absence of data is not the result of failure to report to medicare. The department has sole discretion to grant these exemptions. The department will review all submitted exemption requests and respond with a decision by the first working day in April.

(4) Within ten working days, providers must report to the department the date that kidney dialysis stations first became operational for the following:

- (a) New kidney dialysis facility;
  - (b) Stations added to an existing kidney dialysis facility;
- or
- (c) Relocated stations of a kidney dialysis facility.

(5) The department will confirm it has received the required data in subsections (1) and (4) of this section as well as any exemption requests in subsection (3) of this section via e-mail within ten working days of receipt.

(6) The department will publish on its web site the date that the stations in subsection (4) of this section became operational.

NEW SECTION

**WAC 246-310-806 Kidney disease treatment facilities—Concurrent review cycles.** The department will review kidney dialysis facility applications using the concurrent review cycles described in this section, unless the application was submitted as described in subsection (9) of this section. There are four concurrent review cycles each year.

(1) Applicants must submit applications for review according to the following table:

Concurrent Review Cycle	Letters of Intent Due	Application Submission Period			Department Action	Application Review Period		
		Receipt of Initial Application	End of Screening Period	Applicant Response		Public Comment Period (includes public hearing if requested)	Rebuttal Period	Exparte Period
Special Circumstances 1	First working day of <b>April</b> of each year.	First working day of <b>May</b> of each year.	<b>May 15</b> or the first working day thereafter.	<b>June 15</b> or the first working day thereafter.	<b>June 22</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing). Begins <b>June 23</b> or the first working day thereafter.	<b>7-Day</b> Rebuttal period. Applicant and affected party response to public comment.	<b>15-Day</b> Exparte period. Department evaluation and decision.
Nonspecial Circumstance Cycle 1	First working day of <b>May</b> of each year.	First working day of <b>June</b> of each year.	Last working day of <b>June</b> .	Last working day of <b>July</b> .	<b>August 5</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing). Begins <b>August 6</b> or the first working day thereafter.	<b>30-Day</b> Rebuttal period. Applicant and affected party response to public comment.	<b>75-Day</b> Exparte period. Department evaluation and decision.
Special Circumstances 2	First working day of <b>October</b> of each year.	First working day of <b>November</b> of each year.	<b>November 15</b> or the first working day thereafter.	<b>December 15</b> or the first working day thereafter.	<b>December 22</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing). Begins <b>December 23</b> or the first working day thereafter.	<b>7-Day</b> Rebuttal period. Applicant and affected party response to public comment.	<b>15-Day</b> Exparte period. Department evaluation and decision.
Nonspecial Circumstances Cycle 2	First working day of <b>November</b> of each year.	First working day of <b>December</b> of each year.	Last working day of <b>December</b> .	Last working day of <b>January</b> .	<b>February 5</b> or the first working day thereafter.	<b>30-Day</b> Public comment period (including public hearing). Begins <b>February 6</b> or the first working day thereafter.	<b>30-Day</b> Rebuttal period. Applicant and affected party response to public comment.	<b>75-Day</b> Exparte period. Department evaluation and decision.



(2) The department should complete a nonspecial circumstance concurrent review cycle within nine months, which begins the first day after letters of intent are due for that particular review cycle. The department should complete the regular review process within six months, which begins the first day after the letters of intent are due for that particular review cycle.

(3) The department will notify applicants fifteen days prior to the scheduled decision date if it is unable to meet the decision deadline on the applications. In that event, the department will establish and commit to a new decision date.

(4) When two or more applications are submitted for the same planning area, the department will first evaluate each application independently for meeting the applicable standards described in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. If two or more applications independently meet those four standards, the department will apply the superiority criteria in WAC 246-310-827 to determine the superior application under WAC 246-310-240(1).

(5) An applicant receiving points for the purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) may only apply for station need in one planning area per review cycle.

(6) An applicant receiving points for purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) must operate the newly awarded stations for a period of time long enough to have a full year of data reporting medicare cost report worksheets and a full year of data reporting the dialysis facility report prior to any future applications.

(7) The department will not accept new nonspecial circumstance applications for a planning area if there are any nonspecial circumstance applications for which the certificate of need program has not made a decision in that planning area filed under a previous concurrent review cycle. This restriction does not apply if the department has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review. This restriction also does not apply to special circumstance applications.

(8) The department may convert the review of a nonspecial circumstance application that was initially submitted under a concurrent review cycle to a regular review process if the department determines that the nonspecial circumstance application does not compete with another nonspecial circumstance application.

(9) Pending certificate of need applications. Kidney dialysis facility applications submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the applications were received.

#### NEW SECTION

**WAC 246-310-809 One-time exempt isolation station reconciliation.** (1) The department will identify each certificate of need approved kidney dialysis facility and the total number of certificate of need approved stations as of the effective date of these rules.

(2) The department will make a one-time administrative station adjustment to each kidney dialysis facility to add one

station as an approved exempt isolation station for those facilities that were approved prior to the effective date of these rules.

(3) The department will notify each kidney dialysis facility of its adjusted certificate of need approved station count.

#### NEW SECTION

**WAC 246-310-812 Kidney disease treatment facilities—Methodology.** A kidney dialysis facility that provides hemodialysis or peritoneal dialysis, training, or backup must meet the following standards in addition to applicable review criteria in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240.

(1) Applications for new stations may only address projected station need in the planning area in which the facility is to be located.

(a) If there is no existing facility in an adjacent planning area, the application may also address the projected station need in that planning area.

(b) Station need projections must be calculated separately for each planning area within the application.

(2) Data used to project station need must be the most recent five-year resident end-of-year in-center patient data available from the Northwest Renal Network as of the letter of intent submission date, concluding with the base year at the time of application.

(3) Projected station need must be based on 4.8 resident in-center patients per station (4.8 planning area) for all planning areas except Adams, Columbia, Douglas, Ferry, Garfield, Jefferson, Kittitas, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum, and Whitman counties. The projected station need for these exception planning areas must be based on 3.2 resident in-center patients per station (3.2 planning area).

(4) The number of dialysis stations projected as needed in a planning area will be determined by using the following methodology:

(a) Determine the type of regression analysis to be used to project resident in-center station need by calculating the annual growth rate in the planning area using the end-of-year number of resident in-center patients for each of the previous six consecutive years, concluding with the base year.

(i) If the planning area has experienced less than six percent growth in any of the previous five annual changes calculations, use linear regression to project station need; or

(ii) If the planning area has experienced six percent or greater growth in each of the previous five annual changes, use nonlinear (exponential) regression to project station need.

(b) Project the number of resident in-center patients in the projection year using the regression type determined in (a) of this subsection. When performing the regression analysis use the previous five consecutive years of end-of-year data concluding with the base year. For example, if the base year is 2015, use end-of-year data for 2011 through 2015 to perform the regression analysis.

(c) Determine the number of dialysis stations needed to serve resident in-center patients in the planning area in the projection year by dividing the result of (b) of this subsection by the appropriate resident in-center patient per station num-

ber from subsection (3) of this section. In order to assure access, fractional numbers are rounded up to the nearest whole number. For example, 5.1 would be rounded to 6.0. Rounding to a whole number is only allowed for determining the number of stations needed.

(d) To determine the net station need for a planning area, subtract the number calculated in (c) of this subsection from the total number of certificate of need approved stations located in the planning area. This number does not include the one department recognized exempt isolation station defined in WAC 246-310-800(9). For example, a kidney dialysis facility that is certificate of need approved and certified for eleven stations would subtract the one exempt isolation station and use ten stations for the methodology calculations.

(5) Before the department approves new in-center kidney dialysis stations in a 4.8 planning area, all certificate of need counted stations at each facility in the planning area must be operating at 4.5 in-center patients per station. However, when a planning area has one or more facilities with stations not meeting the in-center patients per stations standard, the department will consider the 4.5 in-center patients per station standard met for those facilities when:

(a) All stations for a facility have been in operation for at least three years; or

(b) Certificate of need approved stations for a facility have not become operational within the timeline as represented in the approved application. For example, an applicant states the stations will be operational within eight months following the date of the certificate of need approval. The eight months would start from the date of an uncontested certificate of need approval. If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order. However, the department, at its sole discretion, may approve a one-time modification of the timeline for purposes of this subsection upon submission of documentation that the applicant was prevented from meeting the initial timeline due to circumstances beyond its control.

Both resident and nonresident patients using the kidney dialysis facility are included in this calculation. Data used to make this calculation must be from the most recent quarterly modality report from the Northwest Renal Network as of the letter of intent submission date.

(6) Before the department approves new in-center kidney dialysis stations in a 3.2 planning area, all certificate of need counted stations at each facility in the planning area must be operating at or above 3.2 in-center patients per station. If the certificate of need approval is contested, the eight months would start from the date of the final department or judicial order. However, when a planning area has facilities with stations not meeting the in-center patients per station standard, the department will consider the 3.2 in-center patients per station standard met for those facilities when:

(a) All stations for a facility have been in operation for at least three years; or

(b) Certificate of need approved stations for a facility have not become operational within the timeline as represented in the approved application. For example, an applicant states the stations will be operational within eight months following the date of the certificate of need approval. The eight

months would start from the date of an uncontested certificate of need approval. However, the department, at its sole discretion, may approve a one-time modification of the timeline for the purposes of this subsection upon submission of documentation that the applicant was prevented from meeting the initial timeline due to circumstances beyond its control.

Both resident and nonresident patients using the kidney dialysis facility are included in this calculation. Data used to make this calculation must be from the most recent quarterly modality report from the Northwest Renal Network as of the letter of intent submission date.

(7) When there are relocated stations within a planning area pursuant to WAC 246-310-830(3) and data is not available for the relocated stations, the department will use the station use rate from the previous location as reported on the last quarterly modality report from Northwest Renal Network.

(8) If a provider, including any affiliates, submits multiple applications for projected need in a planning area, the department will use the following process:

(a) Each application will be scored as an individual application to determine superiority.

(b) The sum of the stations requested in the applications cannot exceed the projected need at the time of applications in the planning area.

#### NEW SECTION

**WAC 246-310-815 Kidney disease treatment facilities—Financial feasibility.** (1) The kidney dialysis facility must demonstrate positive net income by the third full year of operation.

(a) The calculation of net income is subtraction of all operating and nonoperating expenses, including appropriate allocated and overhead expenses, amortization and depreciation of capital expenditures from total revenue generated by the kidney dialysis facility.

(b) Existing facilities. Revenue and expense projections for existing facilities must be based on that facility's current payor mix and current expenses.

(c) New facilities.

(i) Revenue projections must be based on the net revenue per treatment of the applicant's three closest dialysis facilities.

(ii) Known expenses must be used in the pro forma income statement. Known expenses may include, but are not limited to, rent, medical director agreement, and other types of contracted services.

(iii) All other expenses not known must be based on the applicant's three closest dialysis facilities.

(iv) If an applicant has no experience operating kidney dialysis facilities, the department will use its experience in determining the reasonableness of the pro forma financial statements provided in the application.

(v) If an applicant has one or two kidney dialysis facilities, revenue projections and unknown expenses must be based on the applicant's operational facilities.

(2) An applicant proposing to construct finished treatment floor area square footage that exceeds the maximum treatment floor area square footage defined in WAC 246-

310-800(11) will be determined to have an unreasonable impact on costs and charges and the application will be denied. This does not preclude an applicant from constructing shelled space.

#### NEW SECTION

**WAC 246-310-818 Special circumstances one- or two-station expansion—Eligibility criteria and application process.** (1) The department will approve one or two additional special circumstance stations for an existing kidney dialysis facility (facility) if it meets the following criteria, regardless of whether the need methodology in WAC 246-310-812 projects a need for additional stations in the planning area:

(a) For 4.8 planning areas, the facility has operated at or above an average of 5.0 patients per station for the most recent six consecutive month period preceding the letter of intent submission date for which data is available. Data used to determine patients per station must be obtained from the Northwest Renal Network; or

(b) For 3.2 planning areas, the facility has operated at or above an average of 3.5 patients per station for the most recent six consecutive month period preceding the letter of intent submission date for which data is available. Data used to determine patients per station must be obtained from the Northwest Renal Network; and

(c) The facility can accommodate one or two additional stations within its existing building, which may include shelled space. If renovation is needed to accommodate the additional station(s), renovation must be within the existing building.

(2) The department may approve special circumstance station expansions even if other kidney dialysis facilities not owned or affiliated with the applicant in the planning area are below the minimum patients per station operating thresholds set by WAC 246-310-812 (5) or (6).

(3) A facility approved for two special circumstance stations under subsection (1) of this section is not eligible for further special circumstance expansions under this subsection until the department awards additional nonspecial circumstances kidney dialysis stations in the planning area.

(4) As of the effective date of these rules, a facility that has relocated all or part of its stations may not request a special circumstance one- or two-station expansion until three years have lapsed from the date the stations become operational. The three-year prohibition applies to any new kidney dialysis facility or facilities whose station count is changed by the relocation of stations. The three-year prohibition will be retrospectively applied only to kidney dialysis facilities that were approved for partial or complete relocation after January 1, 2015.

(5) For 4.8 planning areas, a facility is ineligible for a special circumstance one- or two-station expansion if the owner or affiliate has approved certificate of need stations in the planning area that have operated below an average of 4.5 patients per station for the most recent six consecutive month period preceding the letter of intent submission date. Data used to calculate patients per station must be obtained from the Northwest Renal Network.

(6) For 3.2 planning areas, a facility is ineligible for a special circumstance one- or two-station expansion if the owner or affiliate has approved certificate of need stations in the planning area that have operated below an average of 3.2 patients per station for the most recent six consecutive month period preceding the letter of intent submission date. Data used to calculate patients per station must be obtained from the Northwest Renal Network.

(7) For 4.8 planning areas, a special circumstance one- or two-station expansion will not be approved if, with the requested new station(s), the applicant's kidney dialysis facility would fall below a calculated 4.5 patients per station. Data used to make this calculation is the average patients per station from subsection (1)(a) of this section.

(8) For 3.2 planning areas, a special circumstance one- or two-station expansion will not be approved if, with the requested new stations(s), the applicant's kidney dialysis facility would fall below a calculated 3.0 patient per station. Data used to make this calculation is the average patients per station from subsection (1)(b) of this section.

(9) If a provider operates one or more kidney dialysis facilities within a planning area and applies for a special circumstance one- or two-station expansion in the planning area the department will not accept a letter of intent from that provider for additional stations to meet projected planning area need in the next nonspecial circumstance concurrent review cycle.

(10) Station(s) approved under this section must be operational within six months of approval, otherwise the approval is revoked.

(11) The department will provide a special circumstance one- or two-station expansion application form that incorporates the criteria for certificate of need approval. The application will not be approved unless the criteria are met. Special circumstances applications are evaluated independently of one another and accordingly without reference to the superiority criteria set forth in WAC 246-310-827. Therefore, multiple special circumstances applications may be approved in the same planning area during the same concurrent review cycle.

(12) Applicants must submit special circumstance one- or two-station expansion applications according to the schedule set forth in WAC 246-310-806(1).

(13) Special circumstance station applications will be treated as approved and will reduce net station need in the planning area when no nonspecial circumstance applications decisions are pending within the planning area. Special circumstance application approvals will not result in a reduction of net station need in the planning area when nonspecial circumstance application approvals decisions are pending within the planning area.

#### NEW SECTION

**WAC 246-310-821 Kidney disease treatment facilities—Standards for planning areas without an existing facility.** (1) Columbia, Ferry, Garfield, Klickitat, Lincoln, Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum, and Whitman counties do not have an existing kidney dialysis facility as of the effective date of these rules. The department

will award the first project proposing to establish a facility in each of these planning areas as follows:

(a) A minimum of four stations, provided the project meets applicable review criteria and standards; and

(b) The facility must be projected to operate at 3.2 in-center patients per station by the third full year of operation. For purposes of this subsection, the applicant may supplement data obtained from the Northwest Renal Network with other documented demographic and utilization data to demonstrate station need.

(2) Once a county no longer qualifies under subsection (1) of this section, the county remains a 3.2 in-center patient per station county. As of the effective date of these rules, Adams, Douglas, Jefferson, Kittitas, Okanogan, Pacific, and Stevens counties are also identified as 3.2 in-center patient per station counties.

#### NEW SECTION

**WAC 246-310-824 Kidney disease treatment centers—Exceptions.** The department will not approve new stations in a planning area if the projections in WAC 246-310-812(4) show no net need, and will not approve more than the number of stations projected as needed unless:

(1) The proposed project qualifies under WAC 246-310-818 for special circumstances one- or two-station expansions; or

(2) All other applicable review criteria and standards have been met; and

(3) One or more of the following have been met:

(a) The department finds the additional stations are needed to be located reasonably close to the people they serve; or

(b) Existing dialysis stations in the kidney dialysis facility requesting the exception are operating at 5.5 patients for a 4.8 planning area or, 3.7 patients per station for the 3.2 planning areas. Data used to make this calculation must be from the most recent quarterly modality report from the Northwest Renal Network as of the letter of intent submission date; or

(c) The applicant documents a significant change in ESRD treatment practice has occurred, affecting dialysis station use in the planning area; and

(4) The department finds that exceptional circumstances exist within the planning area and explains the approval of additional stations in writing.

#### NEW SECTION

**WAC 246-310-827 Kidney disease treatment facilities—Superiority criteria.** For purposes of determining which of the competing applications should be approved, the criteria in this section will be used as the only means for comparing two or more applications to each other. No other criteria or measures will be used in comparing two or more applications to each other under any of the applicable subcriteria within WAC 246-310-210, 246-310-220, 246-310-230 or 246-310-240.

(1) An application will be denied if it fails to meet any criteria under WAC 246-310-210, 246-310-220, 246-310-230, or 246-310-240 (2) or (3).

(2) An application will be denied if the applicant has one or more kidney dialysis facilities in the planning area not meeting the 4.5 or 3.2 in-center patients per station standards required in WAC 246-310-812 (5) or (6) as of the most recent quarterly report from the Northwest Renal Network as of the date of the letter of intent.

(3) When available, Washington facilities must be used as comparables, as follows:

(a) For existing kidney dialysis facilities proposing to expand, use data for the existing facility plus the next two closest Washington facilities as comparables owned by or affiliated with the applicant as measured by a straight line. Straight lines will be calculated using "Google Maps" or equivalent mapping software (mileage calculated out to two decimal points, no rounding).

(b) For new kidney dialysis facilities, use data for the next three closest facilities as comparables owned by or affiliated with the applicant as measured by a straight line from the proposed new kidney dialysis facility location. Straight lines will be calculated using "Google Maps" or equivalent mapping software (mileage calculated out to two decimal points, no rounding).

(c) The number of applications per concurrent review cycle that rely on the same three comparables is limited to two.

(d) If complete medicare data is not available for any of the kidney dialysis facilities and a facility has been granted a department exemption in WAC 246-310-803(3), then that facility will not be used as a comparable and the next closest facility should be used as a comparable.

(e) If the applicant currently does not own or is not affiliated with any kidney dialysis facility, the department will assign the following points:

(i) The median quintile points for those superiority measures using quintiles (excluding net revenue per treatment);

(ii) Two points for standardized mortality ratio (SMR);

(iii) Two points for standardized hospitalization ratio (SHR); and

(iv) Any remaining points for other measures will be based on the representations made in the application.

(f) If the applicant owns or is affiliated with one existing kidney dialysis facility in total, the department will assign the facility's actual points as follows:

(i) The actual quintile points for those superiority measures using quintiles;

(ii) The actual points for SMR;

(iii) The actual points for SHR; and

(iv) Any remaining points for other measures will be based on the representations made in the application.

(g) If the applicant owns or is affiliated with two existing kidney dialysis facilities in total, the department will average the facility's scores as follows:

(i) The average quintile points for those superiority measures using quintiles;

(ii) The average points for SMR;

(iii) The average points for SHR; and

(iv) The average of the remaining points for other measures will be based on the representations made in the applications.

(4) The following table identifies the data measures and the data sources:

Data Item	Source
Home peritoneal dialysis and home hemodialysis training (Yes or No)	DFC report
Shift beginning after 5:00 p.m.? (Yes or No)	DFC report
Nursing home residents percentage (quintile)	Dialysis facility report (DFR)
Average number of comorbidities claimed (quintile)	Dialysis facility report (DFR)
Standardized mortality ratio performance (SMR)(better than expected, as expected, worse than expected)	DFC report - 4 year
Standardized hospitalization ratio performance (SHR) (better than expected, as expected, worse than expected)	DFC report - 1 year
Medicare total performance score (quintile)	QIP report
Net revenue per treatment (quintile)	Department calculation from medicare cost report. Divide total revenue by total treatments.

(5) The department will obtain the medicare QIP total performance scores (QIP Report) and the kidney dialysis facility compare reports (DFC Report) from the medicare web site on the first working day in February.

(6) The department will determine the quintile scores and nonquintile scores. The department will calculate the quintile scores using the following process for each quintile measure:

(a) For all kidney dialysis facilities for which data is available, sort the facilities from most favorable to least favorable according to the identified data.

(b) Use the percent rank formula using Excel to create the percentile ranking for each kidney dialysis facility in the data set. The array used in the formula is the data set of available facility data identified for that measure.

(c) Assign quintile and nonquintile scores using the following methods:

(i) Quintile measures. For nursing home resident percentage, number of comorbidities, and QIP total performance score measures, the department will determine the quintile scores using the following process:

(A) Dialysis facilities with a percentile ranking of eighty percent or higher get five points.

(B) Dialysis facilities with a percentile ranking less than eighty percent and greater than or equal to sixty percent get four points.

(C) Dialysis facilities with a percentile ranking less than sixty percent and greater than or equal to forty percent get three points.

(D) Dialysis facilities with a percentile ranking less than forty percent and greater than or equal to twenty percent get two points.

(E) Dialysis facilities with a percentile ranking below twenty percent get one point.

(ii) Quintile measure. For the net revenue per treatment measure, the department will determine the quintile scores using the following process:

(A) Dialysis facilities with a percentile ranking of eighty percent or higher get one point.

(B) Dialysis facilities with a percentile ranking less than eighty percent and greater than or equal to sixty percent get two points.

(C) Dialysis facilities with a percentile ranking less than sixty percent and greater than or equal to forty percent get three points.

(D) Dialysis facilities with a percentile ranking less than forty percent and greater than or equal to twenty percent get four points.

(E) Dialysis facilities with a percentile ranking below twenty percent get five points.

(F) Hospitals that do not have a cost report may submit net revenue per treatment actuals from the previous year. Hospitals must also submit a signed attestation stating the net revenue per treatment data is accurate.

(iii) Nonquintile measures. The department will determine the nonquintile scores using the following process:

(A) Dialysis facilities that offer training services are given one point.

(B) Dialysis facilities that offer a shift that begins after 5 p.m. are given one point.

(C) The department will determine SMR points for dialysis facilities as follows:

(I) "Better than expected" get four points.

(II) "As expected" get two points.

(III) "Worse than expected" get 0 points.

(D) The department will determine SHR points for dialysis facilities as follows:

(I) "Better than expected" get four points.

(II) "As expected" get two points.

(III) "Worse than expected" get 0 points.

(E) The department will assign two points for an "as expected" score for dialysis facilities missing only SMR data from the DFC report, provided the facility was granted an exception under WAC 246-310-803(3).

(7) The department will publish the data set including resulting scores and quintiles for all kidney dialysis facilities for review no later than March 15th or the first working day thereafter. The data set, including resulting scores and quintiles, will remain open for review and any person may propose the correction of data to the department for seven calendar days. Correction of data may be proposed as follows:

(a) Training services (HPD and HHD): The department will accept a copy of a medicare certification for training services (HPD and HHD) as evidence that a kidney dialysis facility provides these services, regardless of what is represented in the DFC report.

(b) Data related to a shift beginning after 5 p.m.: The department will accept an attestation that a facility either operates a shift beginning after 5 p.m. or will operate that shift if there is a need, regardless of what is represented in the DFC report.

(c) The department will publish the final data set, including resulting scores and quintiles, no later than the first working day in April.

(8) The department will do the following analysis in order to determine the superior application:

(a) Create the comparable kidney dialysis facility set for each application per subsection (3) of this section.

(b) Determine the individual measure scores for each application by taking the simple average of the comparable scores for each measure.

(c) Determine the total score in the following manner according to the table below:

Data Items:	Calculation of Points	Score
Home training	The average score of comparable facilities rounded up to two decimal places.	
Shift beginning after 5 p.m.	The average score of comparable facilities rounded up to two decimal places.	
Nursing home residents	Average quintile score of comparable facilities rounded up to two decimal places.	
Average number of comorbid conditions	Average quintile score of comparable facilities multiplied by 1.25 and rounded up to two decimal places.	
Standardized mortality ratio	Average score of comparable facilities rounded up to two decimal places.	
Standardized hospitalization ratio	Average score of comparable facilities rounded up to two decimal places.	
QIP total performance score	Average quintile score of comparable facilities multiplied by 2.0 and rounded up to two decimal places.	
Net revenue per treatment	Average quintile score of comparable facilities rounded down to two decimal places.	

Data Items:	Calculation of Points	Score
Total score	Sum each of these individual average scores to arrive at total score.	

(9) The application with the highest total score will be the superior alternative for the purpose of meeting WAC 246-310-240(1).

(10) After applying the superiority criterion in this section, if applications are tied, the department will use the following process to determine the superior alternative:

(a) An applicant that was assigned points under subsection (3)(e) of this section in the superiority analysis will be considered the superior alternative; if no applicant was assigned points under subsection (3)(e) of this section, apply (b) of this subsection:

(b) The applicant with the highest average QIP total performance score will be considered the superior alternative;

(c) If applications have the same average QIP total performance score, the applicant with the lowest average net revenue per treatment will be considered the superior alternative.

**NEW SECTION**

**WAC 246-310-830 Kidney disease treatment facilities—Relocation of facilities.** (1) When an existing facility proposes to relocate any of its stations to another planning area, a new health care facility is considered to be established under WAC 246-310-020 (1)(a).

(2) When an existing kidney dialysis facility proposes to relocate a portion but not all of its stations within the same planning area, a new health care facility is considered to be established under WAC 246-310-020 (1)(a).

(3) When an existing kidney dialysis facility proposes to relocate a portion but not all of its stations to an existing facility, it will be considered a station addition under WAC 246-310-020 (1)(e).

(4) When an entire existing kidney dialysis facility proposes to relocate all of its stations within the same planning area, a new health care facility is not considered to be established under WAC 246-310-020 (1)(a) if:

(a) The existing kidney dialysis facility ceases operation after the relocation;

(b) No new stations are added to the replacement kidney dialysis facility. The maximum treatment floor area square footage as defined in WAC 246-310-800 (11)(a) is limited to the number of certificate of need stations that were approved at the existing facility;

(c) There is no break in service between the closure of the existing kidney dialysis facility and the operation of the replacement facility;

(d) The existing facility has been in operation for at least five years at its present location; and

(e) The existing kidney dialysis facility has not been purchased, sold, or leased within the past five years.

(5) Station use rates at new facilities created by the total relocation of an existing facility or the partial relocation of an existing facility should not be a barrier to the addition of new

stations projected as needed for the planning area. In 4.8 planning areas, the station use rate will be counted as 4.5 in-center patients per station. If the department has had to count the station use at 4.5 under the need methodology described in WAC 246-310-812(5), the facility may not request additional stations at the new facility for three years from the date the stations become operational or the facility meets the 4.5 station use standard, whichever comes first. Data used to make this determination will be the most recent Northwest Renal Network quarterly modality report available as of the letter of intent submission date.

(6) Station use rates at new facilities created by the total relocation of an existing facility or the partial relocation of an existing facility should not be a barrier to the addition of new stations projected as needed for the planning area. In 3.2 planning areas, the station use rate will be counted as 3.2 in-center patients per station. If the department has had to count the station use at 3.2 under the need methodology described in WAC 246-310-812(6), the facility may not request additional stations at the new facility for three years from the date the stations become operational or the facility meets the 3.2 station use standard, whichever comes first. Data used to make this determination will be the most recent Northwest Renal Network quarterly modality report available as of the letter of intent submission date.

#### NEW SECTION

**WAC 246-310-833 One-time state border kidney dialysis facility station relocation.** (1) When an existing owner-operator of a Washington state kidney dialysis facility is also the owner-operator of a kidney dialysis facility in a contiguous Idaho or Oregon county, the department will not consider a facility that combines the Washington facility and the out-of-state facility to be a new health care facility under WAC 246-310-020(1) provided all of the following criteria are satisfied:

(a) The Washington state kidney dialysis facility is located in Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pend Oreille, Skamania, Wahkiakum, Walla Walla, or Whitman counties;

(b) The kidney dialysis facility is the sole provider of dialysis services in the Washington state county;

(c) The kidney dialysis facility is the sole provider of dialysis services in the contiguous Idaho or Oregon county;

(d) The replacement kidney dialysis facility will be located in the same county or planning area as the current Washington state facility;

(e) Both existing kidney dialysis facilities cease operation;

(f) There is no break in service between the closure of the existing kidney dialysis facilities and the operation of the replacement facility;

(g) There has been no change in ownership of either the Washington kidney dialysis facility or out-of-state kidney dialysis facility for at least five years prior to applying for the exemption under this section;

(h) Each existing kidney dialysis facility has been operated by the current provider for a minimum of five years prior to applying for the exemption under this section;

(i) Each existing kidney dialysis facility has been operating at its current location for a minimum of five years prior to applying for the exemption under this section;

(j) The department has not granted a previous exemption under the provisions of this section; and

(k) The number of stations at the replacement kidney dialysis facility does not exceed the total of:

(i) All stations from the Washington state kidney dialysis facility; and

(ii) Using the 4.8 patients per station standard, the stations necessary for the number of patients receiving dialysis at the out-of-state kidney dialysis facility as reported on the most recent Northwest Renal Network quarterly modality report.

(2) Once a Washington state provider has requested and received its one-time exemption under the provisions of this section, the kidney dialysis facility's "resident in-center patient" will have the same meaning as all patients at the facility.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-310-280 Kidney disease treatment centers—Definitions.

WAC 246-310-282 Kidney disease treatment centers—Concurrent review cycle.

WAC 246-310-284 Kidney disease treatment centers—Methodology.

WAC 246-310-286 Kidney disease treatment centers—Standards for planning areas without an existing facility.

WAC 246-310-287 Kidney disease treatment centers—Exceptions.

WAC 246-310-288 Kidney disease treatment centers—Tie-breakers.

WAC 246-310-289 Kidney disease treatment centers—Relocation of facilities.

#### **WSR 17-04-090**

##### **PERMANENT RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed January 31, 2017, 1:55 p.m., effective March 3, 2017]

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

Purpose: The rules have been amended to change "five days" to "five working days" in order to clarify the number of days available to respond to a request for information from the department.

Citation of Existing Rules Affected by this Order: Amending WAC 192-120-030, 192-120-035, 192-130-050, 192-130-080, 192-220-010, and 192-220-080.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 16-23-058 on November 10, 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 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: January 26, 2017.

Dale Peinecke  
Commissioner

**AMENDATORY SECTION** (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-120-030 Will I be told if my eligibility for benefits is questioned?** Whenever we have a question regarding whether you (the claimant) are eligible for benefits, we will give you adequate notice before making a decision. "Adequate notice" means we will tell you:

- (1) Why we question your eligibility for benefits;
- (2) That you have the right to a fact-finding interview about your eligibility for benefits and that the interview will be conducted by telephone except:
  - (a) When you specifically ask to be interviewed in person; or
  - (b) In unusual circumstances where we decide an in-person interview is necessary.
- (3) That you can have someone, including an attorney, assist you at the interview;
- (4) That you can have witnesses on your behalf, provide evidence, and cross-examine other witnesses or parties;
- (5) That, prior to the interview, you may ask for copies of any records or documents we have that we will consider in making a decision about your eligibility for benefits;
- (6) The date by which you must reply to the notice (which will be no earlier than five working days plus reasonable mailing time, if any); and
- (7) That if you do not respond to the notice by the date shown, your benefits may be denied and you may have to repay any benefits already paid to you.

**AMENDATORY SECTION** (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-120-035 How will adequate notice be provided?** When you file your weekly claim for benefits by telephone, you will receive a verbal notice if there is a question about your eligibility for benefits. When you file your weekly claim for benefits by using the department's online services, a

statement will be displayed online that there is a question about your eligibility for benefits. You will be provided a minimum of five working days, plus reasonable mailing time, if any, to respond to the notice or statement.

**AMENDATORY SECTION** (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-130-050 Notice of filing of application—RCW 50.20.150.** Whenever an individual files an initial application for unemployment benefits, or reopens a claim after subsequent employment, a notice will be sent to the applicant's most recent employer as stated by the applicant. Any employer who receives such a notice and has information which might make the applicant ineligible for benefits must report this information to the department as indicated on the notice. The information must be reported within five working days, plus reasonable mailing time, if any, beginning on the date the notice was sent. If the employer does not reply within this time frame, the department may allow benefits to the individual, if he or she is otherwise eligible.

**AMENDATORY SECTION** (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-130-080 Procedure—Separation issues.**

- (1) The department will not make a decision on a separation issue (RCW 50.20.050 or 50.20.066) until both the employer and the claimant have had an opportunity to present information and rebuttal, if necessary and appropriate, about the separation.
  - (2) If an employer does not respond to the notice within five working days, plus reasonable mailing time, if any, as required by WAC 192-130-060, the department may make a decision at that time based on available information.
  - (3) If the employer sends separation information to the department after the end of the response period, but before the decision has been made, the department will consider that information before making a decision.
  - (4) If the employer sends separation information to the department within thirty days after a decision has been sent, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.
  - (5) Any information received within thirty days of the date the notice required by WAC 192-130-060 was sent will be considered a request for relief of benefit charges under RCW 50.29.021.

**AMENDATORY SECTION** (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-220-010 Will I be notified about a potential overpayment?** (1) If a potential overpayment exists, the department will provide you with a written overpayment advice of rights explaining the following:

- (a) The reasons you may have been overpaid;
- (b) The amount of the possible overpayment as of the date the notice is sent;
- (c) The fact that the department will collect overpayments as provided in WAC 192-230-100;



(d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;

(e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, possible sale of real and personal properties, and garnishment of salaries;

(f) An explanation that if you are not at fault, you may request a waiver of the overpayment; and

(g) A statement that you have five working days plus reasonable mailing time, if any, to submit information about the possible overpayment and whether you are at fault. If you do not provide the information within this time frame, the department will make a decision based on available information about the overpayment and your eligibility for waiver.

(2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

**WAC 192-220-080 How do I obtain a waiver? (1)**

When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the response deadline indicated in the notice, which will be no less than five working days plus reasonable mailing time, if any. If you do not provide the information by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.