

**WSR 18-08-033**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed March 27, 2018, 11:16 a.m., effective April 27, 2018]

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

Purpose: The department is creating new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for medicaid alternative care (MAC) and tailored supports for older adults (TSOA) as part of Washington's medicaid transformation demonstration.

Citation of Rules Affected by this Order: New WAC 388-106-1900, 388-106-1905, 388-106-1910, 388-106-1915, 388-106-1920, 388-106-1921, 388-106-1925, 388-106-1930, 388-106-1931, 388-106-1932, 388-106-1933, 388-106-1935, 388-106-1940, 388-106-1945, 388-106-1950, 388-106-1955, 388-106-1960, 388-106-1965, 388-106-1970, 388-106-1975, 388-106-1980, 388-106-1985, and 388-106-1990.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 17-24-128 on December 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-106-1900:

- In the definition of "caregiver phases," the five phases were listed.
- The definition of "GetCare" was modified to include the use of GetCare system.

WAC 388-106-1910:

- The modifier "full" was added to 388-106-1910 (2)(a)(ii) so it would mirror the language in WAC 388-106-1905 (2)(a)(i).

WAC 388-106-1915:

- Language was added to clarify that TCARE assessment recommends services but caregiver and care receiver may select any service from the list of services.
- Language was added to clarify that the GetCare assessment does not recommend or restrict the services available to the care receiver.

WAC 388-106-1985:

- Language was added to clarify that there is no right to an administrative hearing for presumptive eligibility determinations described in WAC 388-106-1905(2) and 388-106-1910(2).

WAC 388-106-1920:

- The maximum amount of step three services was edited to clarify when the maximum amount changes.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 23, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.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 23, Amended 0, Repealed 0.

Date Adopted: March 26, 2018.

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 Rules Coordinator

**MAC AND TSOA SERVICES**

NEW SECTION

**WAC 388-106-1900 What definitions apply to MAC and TSOA services?** The following definitions apply to MAC and TSOA services:

"**Care plan**" means the plan developed by the department in TCARE or GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

"**Care receiver**" means an adult age fifty-five and over who has been authorized for MAC or TSOA services.

"**Caregiver**" means a spouse, relative, or friend (age eighteen and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

"**Caregiver assistance services**" are services that take the place of those typically performed by an unpaid caregiver in support of the care receiver's unmet needs for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

"**Caregiver phases**" means the phases a caregiver experiences as the needs of the care receiver change, which in turn changes the responsibilities and tasks of caregiving. The change in responsibilities and tasks impacts the relationship between the caregiver and the care receiver. There are five phases showing the change in relationship roles from primarily family member to primarily caregiver. The five phases are:

- (1) Phase one—acting as a relative/friend almost all of the time;
- (2) Phase two—acting most often as a relative/friend, but sometimes as a caretaker;
- (3) Phase three—acting equally as a relative/friend and as a caregiver;
- (4) Phase four—acting most often as a caregiver, but sometimes you are still a relative/friend; and
- (5) Phase five—acting as a caregiver almost all of the time.

"**Family caregiver**" means the same as "caregiver."

"**GetCare**" means a statewide web-based information system that includes a client management component that includes screening and assessment tools for use by area agencies on aging (AAA) and other aging and disability network partners.

**"GetCare assessment"** is a process during which the department gathers information for an individual without a caregiver in the following areas: functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

**"GetCare screening"** is a process during which the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: function needs, fall risk, availability of informal help, memory and decision-making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

**"Health maintenance and therapies"** are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

**"Identity discrepancy"** means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

**"MAC"** means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community-based services.

**"Medicaid transformation demonstration"** refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This waiver is a five year demonstration to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

**"Personal assistance services"** are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

**"RDAD"** means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping caregivers provide assistance to the person.

**"Service provider"** means an agency or organization contracted with the department.

**"Specialized medical equipment and supplies"** are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

**"TCARE"** means tailored caregiver assessment and referral, which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabili-

ties. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving. TCARE was developed by a research team at the University of Wisconsin-Milwaukee led by Dr. Rhonda Montgomery in collaboration with over thirty organizations serving family caregivers. The TCARE process is licensed for use by Tailored Care Enterprises, Inc.

**"TCARE assessment"** is a part of the TCARE process during which the department assessors gather responses to all of the TCARE screening questions and additional questions focused on both the caregiver's experience and the care receiver's situation, such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

**"TCARE screening"** is a part of the TCARE process during which the department gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

**"Training and education"** are services and supports to help caregivers gain skills and knowledge to implement services and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

**"TSOA"** means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

- (1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and
- (2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

#### NEW SECTION

##### **WAC 388-106-1905 Am I eligible for MAC services?**

- (1) You are eligible to receive MAC services if you, as a care receiver, meet the following criteria:
  - (a) Are age fifty-five or older;
  - (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
  - (c) Meet medicaid financial eligibility requirements as defined in WAC 182-513-1605;
  - (d) Have an unpaid caregiver who:
    - (i) Is age eighteen or older;
    - (ii) Has participated in the following:
      - (A) Care plan for step one services;
      - (B) TCARE screening and care plan for step two services; or
      - (C) TCARE assessment and care plan for step three services;
    - (e) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
    - (f) Do not receive any other medicaid funded long-term services and supports (LTSS) while receiving MAC services.
  - (2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility cri-

teria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The date you were confirmed not to meet full functional eligibility criteria; or

(ii) The last day of the month following the month when your MAC services were first authorized.

(b) In the event the department implements a wait list under WAC 388-106-1970 for MAC services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

#### NEW SECTION

##### **WAC 388-106-1910 Am I eligible for TSOA services?**

(1) You are eligible to receive TSOA services if you, as a care receiver, meet the following criteria:

(a) Are age fifty-five or older;

(b) Meet nursing facility level of care as defined in WAC 388-106-0355;

(c) Meet financial eligibility requirements defined in WAC 182-513-1615 or 182-513-1620;

(d) Live in a private residence (such as your own home or a family member's home) and choose to receive community-based services; and

(e) Meet the criteria in either (e)(i) or (ii) of this subsection:

(i) Have an unpaid caregiver who is age eighteen or older and has participated in the following:

(A) A care plan for step one services;

(B) A TCARE screening and care plan for step two services; or

(C) A TCARE assessment and care plan for step three services; or

(ii) You do not have an available caregiver and have participated in the following:

(A) A care plan for step one services;

(B) A GetCare screening and care plan for step two services; or

(C) A GetCare assessment and care plan for step three services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The day the decision was made on your TSOA application;

(ii) The date you were confirmed not to meet full functional eligibility criteria; or

(iii) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your TSOA application.

(b) In the event the department implements a wait list under WAC 388-106-1970 for TSOA services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

(d) Under presumptive eligibility, you may receive services as described in WAC 388-106-1915.

#### NEW SECTION

**WAC 388-106-1915 What services may I receive in MAC and TSOA?** MAC and TSOA services include the following three benefit levels referred to as steps in subsections (1) through (3) of this section. You and your caregiver may receive services under any of the three steps depending upon your requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, you may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

(a) Information and referrals to family caregiver or community resources;

(b) A selection of the following services up to a one time limit of two hundred and fifty dollars:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment; and

(C) Assistive technology;

(iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and

(iv) Health maintenance and therapy supports, which may include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to caregiving role.

(2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:

- (a) Information and referrals to family caregiver or community resources;
- (b) The following services up to an annual limit of five hundred dollars minus any expenditures for step one services:
  - (i) Training and education, which includes but is not limited to:
    - (A) Support groups;
    - (B) Group training;
    - (C) Caregiver coping and skill building training;
    - (D) Consultation on supported decision making;
    - (E) Caregiver training to meet the needs of the care receiver;
    - (F) Financial or legal consultation; and
    - (G) Health and wellness consultation;
  - (ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:
    - (A) Supplies;
    - (B) Specialized medical equipment, which includes durable medical equipment;
    - (C) Assistive technology; and
    - (D) Personal emergency response system (PERS);
  - (iii) Caregiver assistance services, which include but are not limited to:
    - (A) Short-term respite to allow the caregiver to attend an educational event or training series;
    - (B) Home delivered meals for the care receiver and caregiver;
    - (C) Minor home modifications and repairs to the care receiver's home;
    - (D) Home safety evaluation of the care receiver's home; and
    - (E) Transportation, only in conjunction with the delivery of a service; and
    - (F) Bath aide;
  - (iv) Health maintenance and therapy supports, which include but are not limited to:
    - (A) Adult day health;

- (B) RDAD and evidence based exercise programs;
- (C) Health promotion and wellness services such as massage therapy and acupuncture therapy; and
- (D) Counseling related to the caregiving role; and
- (v) Personal assistance services for the TSOA without an unpaid caregiver, as described in WAC 388-106-1910(e)(ii), which include but are not limited to:
  - (A) Adult day care;
  - (B) Transportation, only in conjunction with the delivery of a service;
  - (C) Home delivered meals;
  - (D) Home safety evaluation of the care receiver's home; and
  - (E) Minor home modifications and repairs to the care receiver's home.
- (3) Step three:
  - (a) For MAC and TSOA care receivers with caregivers:
    - (i) You may receive information and referrals to family caregiver or community resources.
    - (ii) After the department has obtained your demographics and approved your program eligibility, your caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores or one high score for the TCARE measures described in WAC 388-106-1932. TCARE uses an evidence-based algorithm to identify a primary goal based on your caregiver's answers to the TCARE assessment questions. The department will assist you to develop an individualized care plan containing the services chosen by you and your caregiver up to the limits established in WAC 388-106-1920.
    - (iii) The table below lists the available step three services. The Xs in the table indicate the services that may be recommended by the TCARE strategies, defined in WAC 388-106-1930, from your caregiver's assessment. You may request services in this step that the TCARE assessment does not list as a recommendation.

Services	Strategies				
	A	B	C	D	E
<b><i>Training and education</i></b>					
Group training		X			
Caregiver coping and skill building training	X	X	X	X	
Consultation on supported decision making	X	X	X		
Caregiver training to meet needs of care receiver	X	X	X		
Financial or legal consultation		X			
Health and wellness consultation		X			
Support groups	X	X	X		
<b><i>Specialized medical equipment and supplies</i></b>					
Supplies		X			
Specialized medical equipment		X			
Assistive technology		X			
Personal emergency response system		X			
<b><i>Caregiver assistance services</i></b>					

Services	Strategies				
	A	B	C	D	E
Home delivered meals		X			
Minor home modifications and repairs		X			
Housework/errands and yard work		X			
In-home respite, including a bath aide		X			
OT/PT evaluation	X	X		X	
Home safety evaluation		X			
Out-of-home respite		X			
Transportation		X			
<b><i>Health maintenance and therapy supports</i></b>					
Adult day health		X			
RDAD and evidence based exercise programs		X		X	
Health promotion and wellness services such as acupuncture and massage therapy				X	X
Counseling related to the caregiver role	X		X	X	

(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the GetCare screening must result in a risk score of moderate or high as described in WAC 388-106-1933. The department will assist you to develop an individualized care plan that includes the services you have chosen up to the limits established in WAC 388-106-1920.

(iii) The services available include any step one and step two services noted in subsections (1) and (2) of this section (except for respite) and the following personal assistance services:

- (A) Personal care;
- (B) Nurse delegation; and
- (C) Housework/errands and yard work.

NEW SECTION

**WAC 388-106-1920 What is the maximum amount of step three services I may receive a month?** (1) Unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001, the maximum amount of step three services you and your caregiver may receive in MAC and TSOA:

(a) From January 1, 2018 through June 30, 2018 is an average of five hundred and fifty-eight dollars per month not to exceed three thousand three hundred and forty-five dollars in a six month period.

(b) Beginning July 1, 2018 is an average of five hundred and seventy-three dollars per month not to exceed three thousand four hundred and thirty-eight dollars in a six month period.

(2) If you are a care receiver who does not have an available unpaid caregiver, you are receiving TSOA personal assistance services, and the department has not authorized additional funds through an exception to rule under WAC 388-440-0001, the maximum amount of step three services you may receive:

(a) From January 1, 2018 through June 30, 2018 is five hundred and fifty-eight dollars per month.

(b) Beginning July 1, 2018 is five hundred and seventy-three dollars per month.

NEW SECTION

**WAC 388-106-1921 How does the TCARE assessment determine what step three services are recommended to my caregiver?** (1) The TCARE assessment process gathers the following information reflecting the current status of both you and your caregiver in order to recommend services for your caregiver:

(a) TCARE screening scores from the five measures described in WAC 388-106-1931;

(b) Caregiver obligations;

(c) Caregiver's phase in the caregiving journey;

(d) Potential risk of out-of-home placement;

(e) Care receiver's need for assistance with activities of daily living and instrumental activities of daily living;

(f) Care receiver's memory status, physical health conditions, and behavioral support needs; and

(g) Caregiver's understanding of the care receiver's level of need and the ability to safely provide care with the assistance of available resources/services.

(2) Based upon the information gathered during the TCARE assessment process described in subsection (1) of this section, one of three primary goals, as defined in WAC 388-106-1925, is established for your caregiver with at least one strategy identified for meeting that goal. One or more of the five strategies described in WAC 388-106-1930, which are linked to recommended services and supports that have

the most potential to help your caregiver continue providing care safely while also addressing their needs as a caregiver, may be recommended to reach the established goal.

#### NEW SECTION

##### **WAC 388-106-1925 What are the goals in TCARE?**

The three primary goals for caregivers identified in TCARE are:

(1) **Maintain current identity:** The goal appropriate for caregivers who experience modest levels of identity discrepancy and stress and are willing and able to continue in their current role. Suggested support services will help caregivers make small adjustments in their personal norms and the manner in which they undertake their caregiving responsibilities.

(2) **Embrace caregiver identity:** The goal appropriate for caregivers who are likely to benefit from embracing a stronger identity as a caregiver and releasing, to some degree, their commitment to a familial identity. Suggested support services will encourage the caregiver to accept a greater identity with the caregiver role.

(3) **Reduce caregiver identity:** The goal appropriate for caregivers who are engaged in a level of caregiving that requires emotional or physical resources beyond their capability. Suggested support services will encourage caregivers to explore ways to reduce workload and stress related to their caregiving role.

#### NEW SECTION

**WAC 388-106-1930 What is the purpose of the TCARE assessment?** The purpose of the TCARE assessment is to gather critical information about the caregiving context, identity, strengths, problems and concerns. These data are used to identify strategies and goals to address your caregiver's needs. Program limits are established in WAC 388-106-1915.

(1) The five strategies in TCARE are:

(a) **Strategy A:** Change personal rules for care, which entails encouraging and helping your caregiver to change or adjust their personal rules or norms.

(b) **Strategy B:** Reduce or minimize work load, which focuses on reducing the amount or intensity of your caregiver's work load and therefore aligns your caregiver's behaviors with their expectations.

(c) **Strategy C:** Support positive self-appraisal, which focuses on offering positive affirmation and assuring your caregiver that the behaviors that they must engage in as a caregiver are consistent with their norms.

(d) **Strategy D:** Reduce generalized stress, which focuses on giving your caregiver tools and skills to cope with daily stresses of caregiving.

(e) **Strategy E:** Improve overall health, which encourages your caregiver to seek appropriate health services.

(2) Each service is mapped to a strategy(s) that may support your caregiver's needs. A service may be mapped to more than one strategy.

(3) Assessors assist you and your caregiver to understand the evidence based strategies and recommended services, choose the services to meet the identified goals, and create an individualized care plan.

#### NEW SECTION

**WAC 388-106-1931 What are the TCARE screening measures?** The following six TCARE screening measures and response options will be presented to your caregiver in order to receive step two services and to determine whether a TCARE assessment is needed for step three services:

(1) **Identity discrepancy:** How much do you agree or disagree with each statement:

(a) The things I am responsible for do not fit very well with what I want to do.

(b) I am not always able to be the person I want to be when I am with my care receiver.

(c) It is difficult for me to accept all the responsibility for my care receiver.

(d) I am having trouble accepting the way I relate to my care receiver.

(e) I am not sure that I can accept any more responsibility than I have right now.

(f) It is difficult for me to accept the responsibilities that I now have to assume.

(2) **Relationship burden:** Have your caregiving responsibilities:

(a) Caused conflicts with your care receiver?

(b) Increased the number of unreasonable requests made by your care receiver?

(c) Caused you to feel that your care receiver makes demands over and above what they need?

(d) Made you feel you were being taken advantage of by your care receiver?

(e) Increased attempts by your care receiver to manipulate you?

(3) **Objective burden:** Have your caregiving responsibilities:

(a) Decreased time you have to yourself?

(b) Kept you from recreational activities?

(c) Caused your social life to suffer?

(d) Changed your routine?

(e) Given you little time for friends and relatives?

(f) Left you with almost no time to relax?

(4) **Stress burden:** Have your caregiving responsibilities:

(a) Created a feeling of hopelessness?

(b) Made you nervous?

(c) Depressed you?

(d) Made you anxious?

(e) Caused you to worry?

(5) **Depression:** How often have you felt this way during the past week?

(a) I was bothered by things that usually don't bother me.

(b) I had trouble keeping my mind on what I was doing.

(c) I felt depressed.

(d) I felt that everything I did was an effort.

(e) I felt hopeful about the future.

(f) I felt fearful.

(g) My sleep was restless.

(h) I was happy.

(i) I felt lonely.

(j) I could not "get going."

(6) **Uplifts:** Have your caregiving responsibilities:

(a) Given your life meaning?

(b) Made you more satisfied with your relationship?

- (c) Given you a sense of fulfillment?
- (d) Left you feeling good?
- (e) Made you enjoy being with your care receiver more?
- (f) Made you cherish your time with your care receiver?

**NEW SECTION**

**WAC 388-106-1932 How is the TCARE screening scored to determine if my caregiver is eligible for a TCARE assessment and related step three services.** (1) The TCARE screening measures are scored with a number value of one through six for the measure on identity discrepancy or one through five for the remaining measures based upon the caregiver's responses. Ranges for each measure determine whether the measure score is high, medium, or low. One high or three medium scores from the table in this subsection, except for the uplifts measure, will make a caregiver eligible for a TCARE assessment and step three services as described in WAC 388-106-1915 (3)(a)(ii). The following table indicates the score ranges for each measure:

	High	Medium	Low
Identity discrepancy	22-36	14-21	6-13
Relationship burden	13-25	8-12	5-7
Objective burden	24-30	18-23	6-17
Stress burden	17-25	12-16	5-11
Uplifts	19-30	13-18	6-12
Depression-CESD	26-40	19-25	10-18

- (2) The scale used to score the responses within the identity discrepancy measure is:
- (a) Strongly disagree = one;
  - (b) Disagree = two;
  - (c) Disagree a little = three;
  - (d) Agree a little = four;
  - (e) Agree = five; and
  - (f) Agree strongly = six.
- (3) The scale used to score the responses to the relationship, objective, stress, and uplift measures are:
- (a) Not at all = one;
  - (b) A little = two;

- (c) Moderately = three;
  - (d) A lot = four; and
  - (e) A great deal = five.
- (4) The scale used to score the responses within the depression measures in WAC 388-106-1931 (5)(a), (b), (c), (d), (f), (g), (i) and (j) are:
- (a) Rarely or none of the time (less than one day in the last week) = one;
  - (b) Some or a little of the time (one to two days in the last week) = two;
  - (c) Occasionally or a moderate amount of time (three to four days in the last week) = three; and
  - (d) All of the time (five to seven days in the last week) = four.
- (5) The scale used to score the responses within the depression measures in WAC 388-106-1931 (5)(e) and (h) are:
- (a) Rarely or none of the time (less than one day in the last week) = four;
  - (b) Some or a little of the time (one to two days in the last week) = three;
  - (c) Occasionally or a moderate amount of time (three to four days in the last week) = two; and
  - (d) All of the time (five to seven days in the last week) = one.

**NEW SECTION**

**WAC 388-106-1933 How is the GetCare screening scored to determine if I am eligible for a GetCare assessment and related step three services?** (1) For TSOA individuals who do not have an unpaid caregiver to support and are seeking step three TSOA services, the GetCare TSOA individual without a caregiver screening must result in a risk score of moderate or high to be eligible for a GetCare assessment, care plan, and associated step three services as described in WAC 388-106-1915 (3)(b)(ii).

- (2) There are eight TSOA individual without a caregiver screening questions. The following table indicates the risk score allocated to each potential response to the eight screening questions:

No.	Question	Scoring					
		Response	Score	Response	Score	Response	Score
1	Do you need help to do the following? Bathing Bed mobility Medication management Transferring Ambulating Eating Toileting	Zero to two selected	Zero	Three or more selected	Two		
2	During the last six months, have you had a fall that caused injuries?	No	Zero	Yes	Two		
3	Do you have a family member/friend to give you help when you need it?	No	Zero	Yes	Two		

No.	Question	Scoring					
		Response	Score	Response	Score	Response	Score
4	Have you thought about moving to other housing?	No	Zero	Yes	Two		
5	Do you live alone?	No	Zero	Yes	Two		
6	Do you or your family have concerns about your memory, thinking, ability to make decisions, or remembering to pay your bills?	No	Zero	Yes, somewhat concerned	One	Yes, very concerned	Two
7	Do you need help turning and repositioning?	No	Zero	Yes	Two		
8	Do you or your family have concerns about your mental or emotional well-being?	No	Zero	Yes, somewhat concerned	One	Yes, very concerned	Two

(3) The risk level is calculated by totaling the eight point scores determined by responses to the screening questions in subsection (2) of this section to determine the following risk categories:

Risk level	Point totals
Low risk	1-5
Moderate risk	6-10
High risk	11-16

NEW SECTION

**WAC 388-106-1935 Where may I receive MAC and TSOA services?** You may receive MAC and TSOA services:

- (1) In your own home; and
- (2) In the community setting where the authorized service occurs:
  - (a) Within the state of Washington; or
  - (b) In a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

**WAC 388-106-1940 When will my MAC or TSOA services be authorized?** Your MAC or TSOA services will be authorized when you:

- (1) Have completed initial requirements for intake including but not limited to screenings and assessments;
- (2) Are found to be at least presumptively eligible, both financially and functionally;
- (3) Have chosen a provider(s) qualified for payment; and
- (4) Have given consent for services and approved your care plan.

NEW SECTION

**WAC 388-106-1945 When do my MAC or TSOA services begin?** Your MAC or TSOA services may begin as early as the date authorized by the department.

NEW SECTION

**WAC 388-106-1950 How do I remain eligible for MAC and TSOA services?** (1) In order to remain eligible for MAC and TSOA services, you, as the care receiver must:

- (a) Remain functionally eligible as defined in WAC 388-106-0355 and financially eligible as defined in WAC 182-513-1605, 182-513-1615, and 182-513-1620; and
- (b) Have your functional and financial eligibility reviewed at least annually.

(2) If eligibility laws, regulations, or rules change, and if you as the caregiver or the care receiver do not meet the changed eligibility requirements, the department will terminate services, even if your circumstances have not changed. You will receive advance notice of any termination or change in your services and an opportunity to appeal.

NEW SECTION

**WAC 388-106-1955 What do I pay for if I receive MAC or TSOA services?** You, as a caregiver or a care receiver, will not be required to pay toward the cost of your MAC or TSOA services. This means that neither estate recovery nor participation towards cost of care are required.

NEW SECTION

**WAC 388-106-1960 May I be employed and receive MAC or TSOA services?** You, as the care receiver may be employed and receive MAC or TSOA services. Your caregiver may be employed in roles other than caregiving and receive services under MAC or TSOA.

NEW SECTION

**WAC 388-106-1965 Are there limits to the services I may receive?** The services you may receive under MAC or TSOA will not include the following:

- (1) Rent or mortgage;
- (2) Groceries;
- (3) Car repairs;
- (4) Utility bills;
- (5) Household appliances;
- (6) Vacation expenses;



- (7) Entertainment items such as TVs, radios, computers, cell phones;
- (8) Pet care items;
- (9) Gift cards;
- (10) Any services not defined in WAC 388-106-1915; and
- (11) Any services covered under your medicaid state plan coverage, medicare, private insurance, or other federal or state programs.

NEW SECTION

**WAC 388-106-1970 Who may provide MAC and TSOA services?** The following providers may provide MAC and TSOA services:

- (1) Durable medical equipment vendors and adult day health providers that have a core provider agreement with the health care authority; and
- (2) Providers who are contracted with the department to provide goods and services.

NEW SECTION

**WAC 388-106-1975 Will there be a wait list for MAC and TSOA?** (1) The department will implement a statewide wait list if program expenditures or enrollment exceeds availability of demonstration funding.

(2) If the department implements a wait list for new MAC and TSOA applicants:

- (a) We will stop conducting presumptive eligibility determinations and financial and functional eligibility assessments.
- (b) We may reduce benefit limits for step one, two, and three to maintain department spending within available demonstration funding. If we reduce benefit limits, individuals currently receiving benefits will maintain their current benefit level, including those with approved presumptive eligibility.
- (c) If additional funding becomes available, applicants on a wait list for MAC or TSOA services will be considered on a first come first serve basis based upon their request date for MAC or TSOA services.

NEW SECTION

**WAC 388-106-1980 When may the department terminate or deny MAC or TSOA services?** (1) The department will deny or terminate MAC or TSOA services if you are not eligible for services pursuant to WAC 388-106-1905, 388-106-1910, and 388-106-1945.

(2) The department may deny or terminate your MAC or TSOA services if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol that must include an attempt to reasonably accommodate your disability or disabilities, one or more of the following conditions exist:

- (a) Your rights and responsibilities as a client of the department are reviewed with you by a department representative under WAC 388-106-1300 and 388-106-1303, and you refuse to accept those services identified in your care plan that are vital to your health, welfare, or safety.

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

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

- (i) Threatening, uncontrolled animals (such as dogs);
  - (ii) The manufacture, sale, or use of illegal drugs;
  - (iii) The presence of hazardous materials (such as exposed sewage, evidence of a methamphetamine lab).
- (3) The department may terminate services if the department does not receive consent of the care plan within sixty days of the completion of your care plan. Written consent for step one and step two care plans may be provided by secure email or other electronic means.

NEW SECTION

**WAC 388-106-1985 Do I have the right to an administrative hearing regarding MAC or TSOA services?** Yes, you may request an administrative hearing based on the rules outlined in WAC 388-106-1305 to contest the department's decisions regarding MAC or TSOA services except for presumptive eligibility determinations described in WAC 388-106-1905(2) and 388-106-1910(2).

NEW SECTION

**WAC 388-106-1990 May I choose to receive traditional medicaid long term services and supports instead of services under the MAC program?** Yes. You, as the care receiver, may choose to apply for traditional medicaid long term services and supports such as community first choice, community option program entry system (COPES), new freedom, and residential support waiver, instead of services under the MAC program. You must contact your case manager who will assist you with this process. You may only receive services that you are eligible for under the applicable rules. You may not receive services under MAC and a traditional medicaid long term services and supports program at the same time.

**WSR 18-09-007**

**PERMANENT RULES  
COMMUNITY COLLEGES  
OF SPOKANE**

[Filed April 6, 2018, 11:33 a.m., effective May 7, 2018]

Effective Date of Rule: Thirty-one days after filing.  
Purpose: Amend chapter 132Q-276 WAC, Public records.

Citation of Rules Affected by this Order: Amending chapter 132Q-276 WAC.

Statutory Authority for Adoption: RCW 25B.50.140 [28B.50.140].

Adopted under notice filed as WSR 18-03-149 on January 22, 2018.

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 9, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: March 20, 2018.

John O'Rourke  
Grants and Contracts Manager

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

**WAC 132Q-276-010 Purpose.** The purpose of this chapter shall be to insure compliance by Washington Community College District 17 with the provisions of chapter ~~((42.17)) 42.56~~ RCW, ~~((Disclosure Campaign finance Lobbying Records: And, in particular, with RCW 42.17.250—42.17.340 dealing with public records))~~ the Public Records Act.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

**WAC 132Q-276-020 Definitions.** (1) **"Public record"** includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(2) **"Writing"** means handwriting, typewriting, printing, photocopying, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings and other documents including existing data compilations from which information may be obtained or translated.

(3) **"Washington State Community College District 17"** is a state agency created and organized by statute pursuant to RCW 28B.50.040, and shall hereinafter be referred to as the "district." Where appropriate, the term "district" shall also refer to college personnel and board of trustees of the district.

(4) **"District facilities"** of Washington State Community College District 17 include any or all real property

owned, operated or maintained by the board of trustees of Community Colleges of Spokane, and shall include all buildings and appurtenances affixed thereon or attached thereto.

AMENDATORY SECTION (Amending WSR 13-15-154, filed 7/23/13, effective 8/23/13)

**WAC 132Q-276-030 Central and field organization.** Washington State Community College District 17 is a community college district organized under RCW 28B.50.040. The administrative office of the district and its staff is located at 501 North Riverpoint Boulevard, P.O. Box 6000, Spokane, Washington, 99217-6000. The district operates two colleges, Spokane Community College, located at ~~((2000)) 1810~~ North Greene Street, Spokane, Washington, ~~((99217-5499)) 99217-5399~~; and Spokane Falls Community College, located at 3410 West Fort George Wright Drive, Spokane, Washington, 99224-5288. The district also delivers instructional programming in the counties of Ferry, Lincoln (except Consolidated School District 105-157-166J and the Lincoln County portion of Common School District 167-202), Pend Oreille, Spokane, Stevens, and Whitman.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

**WAC 132Q-276-040 Operations and procedures.** Washington State Community College District 17 is established under RCW 28B.50.040 to implement the educational purposes established by RCW 28B.50.020. District 17 is operated under the supervision and control of a board of trustees appointed by the governor as provided in RCW 28B.50-100. The chief administrative officer of the district is the chancellor/chief executive officer, who also serves as secretary to the board of trustees. The day-to-day operation of the district, pursuant to policy established and approved by the board of trustees, is implemented through the office of the chancellor/chief executive officer or designee.

The board of trustees meets the third Tuesday of each month at 8:30 a.m. ~~((in the board room of the Spokane Community College administrative offices located at 2000 North Greene Street, Spokane, Washington, 99217-5499))~~ at the Lodge Building, 3305 West Fort George Wright Drive, Spokane, Washington, 99224, unless public notice is given of a special meeting. At such time, the trustees exercise the powers and duties granted to the board by RCW 28B.50.140.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

**WAC 132Q-276-050 Public records available.** All public records of the district, as defined in WAC 132Q-276-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ~~((42.17.310)) 42.56.210~~ and WAC 132Q-276-100.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

**WAC 132Q-276-060 Public records officer.** ~~((The district's public records shall be in the charge and control of the~~

public records officer designated by the district president. The person so designated shall be located in the administrative office of the district. The public records officer shall be responsible for implementing the district's rules and regulations regarding release of public records, coordinating the staff of the district in this regard, and generally insuring compliance by the staff with the public records disclosure of chapter 42.17 RCW.) (1) Any person wishing to request access to public records of District 17, or seeking assistance in making such a request should contact the public records officer of District 17. Throughout this chapter, references to the public records officer shall mean the public records officer or his/her designee.

(2) Contact information:

Public Records Officer  
Community Colleges of Spokane  
P.O. Box 6000  
Spokane, WA 99217-6000  
Phone: 509-434-5275  
Fax: 509-434-5279  
Email: publicrecords@ccs.spokane.edu

(3) Information is also available at the Community Colleges of Spokane web site at <http://www.ccs.spokane.edu/getdoc/696748c1-fee0-4f18-8777-a3ac9ea1cb95/prr.aspx>.

(4) The public records officer and District 17 shall assist requestors, comply with chapter 42.56 RCW, the Public Records Act, and provide public records training and assistance to college employees.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

**WAC 132Q-276-080 Requests for public records.** In accordance with requirements of RCW (~~42.17.290~~) 42.56.100, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the district which shall be available at its administrative office and online at <http://www.ccs.spokane.edu/getdoc/f7dfbca0-8837-4866-af04-da9b18477a8c/ccs.2136-1.aspx>. The form shall be presented to the public records officer or to any member of the district's administrative staff, if the public records officer is not available, at the district office during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the records;
- (b) The address of the person requesting the records;
- (c) Other contact information, including telephone number and any email address;
- (d) Adequate identification of the public records for the public records office to locate the records;
- (e) The date and time of day ((and calendar date on which the request was made;
- (e) The nature of the request;

(d) The matter requested as referenced within the current index maintained by the records officer, or if the matter is not identifiable by reference in the district's current index, an appropriate description of the record requested)) of the request.

(f) A verification that the records requested shall not be used to compile a commercial sales list.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or other staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 04-10-065, filed 4/30/04, effective 5/31/04)

**WAC 132Q-276-090 ((Copying)) Costs of providing copies of public records.** ~~(No fee shall be charged for the inspection of public records of Washington State Community College District 17. The district may charge a fee per page for providing copies of public records, for use of the district's copy equipment and postage. This charge shall be an amount necessary to reimburse the district for its actual costs directly incident to such copying.)~~ (1) The following copy fees and payment procedures apply to public records requests made after the effective date of this rule.

(2) Pursuant to RCW 42.56.120 (2)(b), District 17 is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

- (a) The district does not have the resources to conduct a study to determine all its actual copying costs;
- (b) It is difficult to calculate all costs directly incident to copying records; and
- (c) To conduct such a study would interfere with other essential district functions.

(3) Costs of copies. No fees shall be charged for the inspection of public records of Washington State Community College District 17. The district will charge for copies of public records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The district will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the district may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The district may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the district are summarized in the fee schedule available on the district's web site at <http://www.ccs.spokane.edu/getdoc/696748c1-fee0-4f18-8777-a3ac9ea1cb95/prr.aspx>.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

- (a) It is within the discretion of the public records officer to waive copying fees when: (i) All of the records responsive to an entire request are paper copies only and are twenty or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of twenty pages. If that email for any reason is not deliverable, records will be produced in accordance with this rule.

(b) Fee waivers are not applicable to records requested in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The district will notify the requestor when payment is due.

(7) Payment should be made by check, credit card, or money order to the Community Colleges of Spokane. The district prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The district will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 83-10-004, filed 4/22/83)

**WAC 132Q-276-100 Exemptions.** (1) The district reserves the right to determine that the public record requested in accordance with the procedures outlined in WAC 132Q-276-080 is exempt under the provisions of chapter ~~((42-17))~~ 42.56 RCW.

(2) In addition, pursuant to RCW ~~((42-17-260))~~ 42.56-070, the district reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ~~((42-17))~~ 42.56 RCW. The public records officer shall fully justify any such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

## WSR 18-09-012

### PERMANENT RULES

### DEPARTMENT OF ECOLOGY

[Order 17-02—Filed April 9, 2018, 10:03 a.m., effective May 10, 2018]

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

Purpose: The Washington state department of ecology (ecology) is adopting a new rule, Vessel sewage no discharge zones (chapter 173-228 WAC). This rule establishes the puget sound as a no discharge zone, which prohibits the release of sewage (black water) from vessels, whether treated or not.

The Puget Sound no discharge zone covers approximately two thousand three hundred square miles of marine waters of Washington state inward from the line between New Dungeness Lighthouse and the Discovery Island Lighthouse to the Canadian border, and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.

Citation of Rules Affected by this Order: New chapter 173-228 WAC.

Statutory Authority for Adoption: RCW 90.48.030, 90.48.035, 90.48.260, 33 U.S.C. § 1322.

Adopted under notice filed as WSR 17-20-107 on October 4, 2017.

Changes Other than Editing from Proposed to Adopted Version: The following content describes the changes and ecology's reasons for making them:

#### **WAC 173-228-040 Vessel sewage management in no discharge zones.**

- Clarified Code of Federal Regulations (C.F.R.) reference for vessels with installed and operable toilets.
- Specified which subsection of 33 C.F.R. that pertains to this rule.

Below are the edits to the rule language. The strike-through text was removed from the language, and the underlined text was added to the language.

#### **WAC 173-228-040 Vessel sewage management in no discharge zones.**

Vessel sewage must be managed in no discharge zones.

(1) Vessels with installed and operable toilets must ~~have a Type III marine sanitation device to allow for complete and adequate sewage holding capacity~~ be in compliance with 40 C.F.R Part 140 with the ability to hold or stop discharges of sewage while in a no discharge zone.

(2) Vessels with marine sanitation devices must secure the devices to prohibit the discharge of sewage per 33 C.F.R. 159.7**(b)** while in no discharge zone waters.

A final cost-benefit analysis is available by contacting Kasia Patora, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-407-6184, TTY 877-833-6341, email kasia.patora@ecy.wa.gov, web site [www.ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-228-Jul17](http://www.ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-228-Jul17).

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, 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: April 9, 2018.

Maia D. Bellon  
Director

## Chapter 173-228 WAC

## VESSEL SEWAGE NO DISCHARGE ZONES

NEW SECTION

**WAC 173-228-010 Purpose.** The purpose of this chapter is to establish no discharge zones for vessel sewage.

NEW SECTION

**WAC 173-228-020 Definitions.** For purposes of this chapter, the following definitions are applicable:

(1) "**Commercial fishing vessels**" means any vessel which is documented under the laws of the United States or, if under five net tons, registered under the laws of any state, and used for commercial fishing or activities directly related to commercial fishing.

(2) "**National Oceanic and Atmospheric Administration (NOAA) research and survey vessels**" means NOAA vessels used for research and survey purposes.

(3) "**No Discharge Zone**" means an area where federal approval has been received to allow a state to completely prohibit the discharge from all vessels of any sewage whether treated or untreated.

(4) "**Public vessels**" means a vessel owned or bareboat chartered and operated by the United States, by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(5) "**Small commercial passenger vessels**," also referred to as "small cruise ships" are commercial passenger vessels that provide overnight accommodations for less than two hundred forty-nine overnight passengers for hire, determined with reference to the number of lower berths.

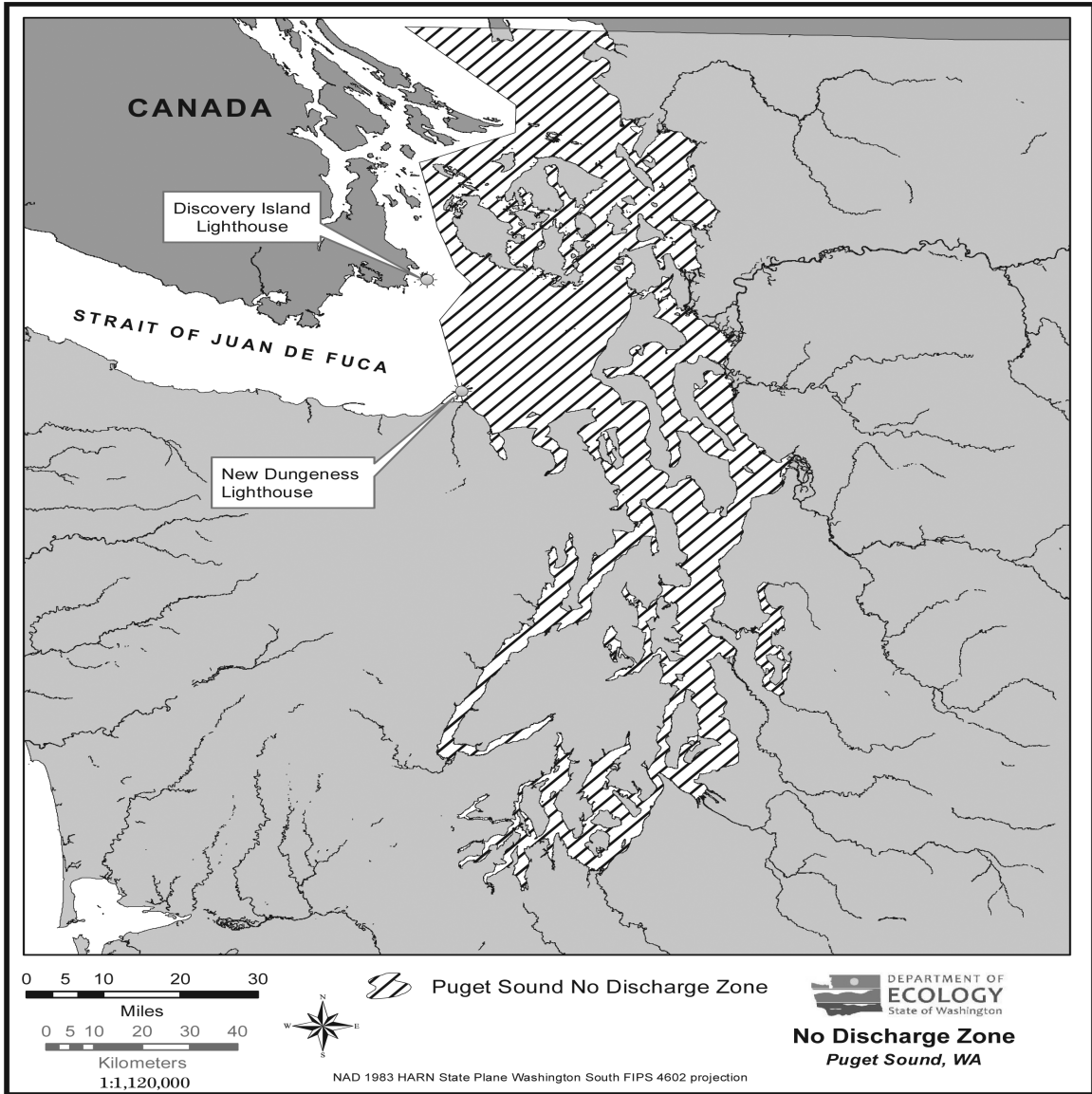
(6) "**Sewage**," also known as blackwater, means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

(7) "**Tug boats**," "**towing vessel**" or "**tugboat**" is a commercial vessel that is engaged in or intending to engage in pulling, pushing, hauling alongside, or a combination thereof.

NEW SECTION

**WAC 173-228-030 Designated no discharge zones.** The following are designated no discharge zones where all sewage, whether treated or not, from all vessels is prohibited:

**Puget Sound No Discharge Zone:** All the marine waters of Washington state inward from the line between New Dungeness Lighthouse (N 48°10'54.454", 123°06'37.004" W) and the Discovery Island Lighthouse (N 48°25'26.456", 123°13'29.554" W) to the Canadian border (intersecting at: N 48°20'05.782", 123°11'58.636" W), and fresh waters of Lake Washington, Lake Union, and connecting waters between and to Puget Sound.



NEW SECTION

**WAC 173-228-040 Vessel sewage management in no discharge zones.** Vessel sewage must be managed in no discharge zones.

(1) Vessels with installed and operable toilets must be in compliance with 40 C.F.R. Part 140 with the ability to hold or stop discharges of sewage while in a no discharge zone.

(2) Vessels with marine sanitation devices must secure the devices to prohibit the discharge of sewage per 33 C.F.R. 159.7(b) while in no discharge zone waters.

(3) Vessels without installed toilets must dispose of any collected sewage from portable toilets or other containment devices at facilities in a manner that complies with state law.

NEW SECTION

**WAC 173-228-050 Effective.** The Puget Sound No Discharge Zone applies to all vessels on the effective date of this rule except for:

(1) Tug boats, commercial fishing vessels, small commercial passenger vessels, and National Oceanic and Atmospheric Administration (NOAA) research and survey vessels, which have a delayed implementation lasting five years from the effective date for this rule in the Puget Sound No Discharge Zone. The vessels would still be required to comply with existing state and federal discharge regulations in the interim.

(2) Public vessels actively involved in emergency, safety, security, or related contingency operations where it would not be possible to comply with the no discharge zone.

NEW SECTION

**WAC 173-228-060 Enforcement.** Ecology may enforce this chapter by using any of the enforcement provisions in chapter 90.48 RCW. In addition, other federal, state and local agencies may provide enforcement, as authorized.

**WSR 18-09-014**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**ENTERPRISE SERVICES**

[Filed April 9, 2018, 5:22 a.m., effective May 10, 2018]

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

Purpose: The purpose of this rule change is to allow the department to use the statutory fee schedule when providing public records and to allow the department to use its discretion to waive charges for providing public records.

Citation of Rules Affected by this Order: Amending WAC 200-01-075 Costs of providing public records.

Statutory Authority for Adoption: RCW 43.19.011 Director—Powers and duties.

Other Authority: RCW 42.56.120 Duty to publish procedures.

Adopted under notice filed as WSR 17-22-139 on November 1, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 15, 2018.

Jack Zeigler  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 12-02-004, filed 12/22/11, effective 1/22/12)

**WAC 200-01-075 Costs of providing public records.**

(1) There is no fee for inspecting public records. DES may ~~((impose a))~~ charge for providing public records ~~((-DES))~~ or waive charges for providing public records. DES will charge using the fees listed under RCW 42.56.120 and will maintain a fee schedule on its web site.

(2) ~~((The charge for providing public records may be the actual cost incident to providing the records.~~

~~((a) The charge may include the actual cost of the postage or delivery, including the cost of the shipping container, cost~~

~~of duplicating tape recordings, videotapes, photographs, slides, disks or similar media.~~

~~((b))~~ There will be no charge for emailing electronic records to a requestor, unless another cost applies.

(3) ~~((If determining the actual cost is too burdensome or if the cost cannot be determined, DES may charge fifteen cents for each page, however produced.))~~ DES has determined calculating the actual costs for providing public records is unduly burdensome for the following reasons:

(a) The level of effort, supplies, and shipping costs incurred by DES vary widely for each records request and are unique to each records request;

(b) Recordkeeping needed to capture all allowed costs unnecessarily increases DES's administrative overhead; and

(c) Determining actual costs for each records request within the statutory response time frame requires a greater than normal level of administrative resources.

(4) Before beginning to copy public records, the public records officer may require:

(a) A deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor;

(b) The payment of the remainder of the copying costs before providing all the records; or

(c) The payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(5) Payment may be made by cash in the exact amount charged, check, or money order to the department of enterprise services.

**WSR 18-09-015**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed April 10, 2018, 9:18 a.m., effective May 11, 2018]

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

Purpose: The purpose of the chapter is to have uniform statewide standards for agencies and organizations that provide domestic violence victim services and prevention efforts funded by DSHS. The standards address issues such as eligibility for funding, supportive services, emergency shelter, prevention efforts, and administrative requirements for contractors and staff. A crosswalk table of existing and new WAC sections is available upon request.

Citation of Rules Affected by this Order: New WAC 388-61A-1000, 388-61A-1005, 388-61A-1010, 388-61A-1015, 388-61A-1020, 388-61A-1025, 388-61A-1030, 388-61A-1035, 388-61A-1040, 388-61A-1045, 388-61A-1050, 388-61A-1055, 388-61A-1060, 388-61A-1065, 388-61A-1070, 388-61A-1075, 388-61A-1080, 388-61A-1085, 388-61A-1090, 388-61A-1095, 388-61A-1100, 388-61A-1105, 388-61A-1110, 388-61A-1115, 388-61A-1120, 388-61A-1125, 388-61A-1130, 388-61A-1135, 388-61A-1140, 388-61A-1145, 388-61A-1150, 388-61A-1155, 388-61A-1160, 388-61A-1165, 388-61A-1170, 388-61A-1175, 388-61A-1180, 388-61A-1185, 388-61A-1190, 388-61A-1195, 388-

61A-1200, 388-61A-1205, 388-61A-1210, 388-61A-1215, 388-61A-1220 and 388-61A-1225; and repealing WAC 388-61A-0200, 388-61A-0210, 388-61A-0220, 388-61A-0230, 388-61A-0240, 388-61A-0250, 388-61A-0260, 388-61A-0270, 388-61A-0280, 388-61A-0290, 388-61A-0300, 388-61A-0310, 388-61A-0320, 388-61A-0330, 388-61A-0340, 388-61A-0350, 388-61A-0360, 388-61A-0370, 388-61A-0380, 388-61A-0390, 388-61A-0400, 388-61A-0410, 388-61A-0420, 388-61A-0430, 388-61A-0440, 388-61A-0450, 388-61A-0460, 388-61A-0470, 388-61A-0480, 388-61A-0490, 388-61A-0500, 388-61A-0510, 388-61A-0520, 388-61A-0530, 388-61A-0540, 388-61A-0550, 388-61A-0560, 388-61A-0570, 388-61A-0580, 388-61A-0590, 388-61A-0600, 388-61A-0620, 388-61A-0630, 388-61A-0640, 388-61A-0650, 388-61A-0660, and 388-61A-0670.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Adopted under notice filed as WSR 18-03-150 on January 22, 2018.

A final cost-benefit analysis is available by contacting Susan Hannibal, P.O. Box 45710, Olympia, WA 98504-5710, phone 360-902-8493, email [hsus300@dshs.wa.gov](mailto:hsus300@dshs.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 46, Amended 0, Repealed 47.

Number of Sections Adopted at the Request of a Non-governmental 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 46, Amended 0, Repealed 47.

Date Adopted: April 6, 2018.

Cheryl Strange  
Secretary

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-10 issue of the Register.

**WSR 18-09-017**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed April 10, 2018, 9:47 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: The department is amending WAC 388-450-0162 and 388-418-0005 to repeal means testing for income eligibility for child-only temporary assistance for needy families assistance units per the 2017-2019 operating budget and 2ESSB 5890 (chapter 20, Laws of 2017) effective July 1, 2018.

Citation of Rules Affected by this Order: Amending WAC 388-418-0005 and 388-450-0162.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010, 74.08A.250.

Other Authority: Chapter 20, Laws of 2017.

Adopted under notice filed as WSR 18-05-059 on February 15, 2018.

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 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 2, Repealed 0.

Date Adopted: April 9, 2018.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-09-036, filed 4/9/15, effective 5/10/15)

**WAC 388-418-0005 How will I know what changes to report?** (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(a) If you receive **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than four thousand dollars; or

(v) You have a change in employment((-)), you need to tell us if ((you)):

(A) You get a job or change employers;

(B) ((Change)) Your schedule changes from part-time to full-time or full-time to part-time;

(C) You have a change in your hourly wage rate or salary; or

(D) You stop working((-or)).

(b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;



(ii) The child you are caring for moves out of the home;  
 (iii) Anyone related to ~~((you or to))~~ the child you are caring for moves into or out of the home;

(iv) ~~((There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).~~

~~((v))~~ There is a change in the recipient child's earned or unearned income ~~((see))~~ unless they are in school full-time as described in WAC 388-450-0070 ~~((for how we count the earned income of a child))~~;

~~((vi))~~ (v) The recipient child has liquid resources more than four thousand dollars;

~~((vii))~~ (vi) A recipient child in the home becomes a foster child; or

~~((viii))~~ (vii) You legally adopt the recipient child.

(2) If you do not receive cash assistance but you do receive benefits from basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, and tell us if:

(a) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

(b) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.

AMENDATORY SECTION (Amending WSR 14-20-042, filed 9/24/14, effective 11/1/14)

**WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits?** (1) Countable income is all income your assistance unit (AU) ~~((or your child-only means-testing AU))~~ has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170, 388-450-0177, and 388-450-0178;

(c) ~~((For child-only means testing AUs only, the department will disregard fifty percent of all countable unearned income, in addition to the deductions in WAC 388-450-0170;~~

~~((d))~~ For **basic food**, deductions allowed under WAC 388-450-0185; and

~~((e))~~ (d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

~~((3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.)~~

~~((a) ((Child-only means-testing applies when you are a nonparental relative or unrelated caregiver applying for or~~

~~receiving a nonneed-based TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child-welfare agency and it is an open child-welfare case.~~

~~((b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.~~

~~((c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.~~

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%
Between 201% and 225% of FPL	80%
Between 226% and 250% of FPL	60%
Between 251% and 275% of FPL	40%
Between 276% and 300% of FPL	20%
Over 300% of the FPL	The children in your care are not eligible for a TANF/SFA grant.

~~((d))~~ If the children in your care qualify for a TANF/SFA grant ~~((once the child-only means test is applied))~~, the child's income is budgeted against the child-only ~~((means-tested))~~ payment standard amount.

~~((e))~~ (b) If the children in your care do not qualify for a TANF/SFA grant, they may still qualify for medical assistance ~~((For Washington apple health coverage (medical assistance), go to Washington healthplanfinder to apply or see))~~ under WAC 182-505-0210 ~~((for information regarding eligibility for children for Washington apple health)).~~

~~((4))~~ (3) For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 ~~((or, for child-only means-tested cases,))~~ to the payment standard amount in subsection (3) of this section.

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

~~((5))~~ (4) For **basic food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supple-

mental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for basic food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for basic food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for basic food.

(b) How we calculate your AU's monthly basic food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

**WSR 18-09-018**  
**PERMANENT RULES**  
**OFFICE OF**

**FINANCIAL MANAGEMENT**

[Filed April 10, 2018, 12:25 p.m., effective May 11, 2018]

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

Purpose: The office of financial management (OFM) proposes amendments to chapter 82-48 WAC because significant changes to the Public Records Act and OFM's organizational structure have occurred since these rules were last updated. The proposed changes will ensure consistency with current law, and with OFM's current organizational structure and practices.

Citation of Rules Affected by this Order: Repealing WAC 82-48-130 and 82-48-170; and amending WAC 82-48-010, 82-48-020, 82-48-030, 82-48-040, 82-48-050, 82-48-060, 82-48-080, 82-48-090, 82-48-100, 82-48-110, 82-48-120, 82-48-140, 82-48-150, and 82-48-160.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120 and 42.56.520; and chapter 304, Laws of 2017.

Adopted under notice filed as WSR 18-04-095 on February 6, 2018.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule inadvertently retained one reference to the "office of program planning and fiscal management," an outdated name for the agency. The text of the rule as adopted makes a technical change to refer instead to the "office of financial management."

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 the Request of a Non-governmental 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 14, Repealed 2.

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: April 6, 2018.

Roselyn Marcus  
Assistant Director for  
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-010 Purpose.** The purpose of this chapter is to provide rules for the office of financial management to implement the provisions of chapter ((42.17)) 42.56 RCW relating to public records.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-020 Definitions.** The definitions set forth in RCW ((42.17.020)) 42.56.010 shall apply to this chapter.

(1) "OFM" or agency means the office of financial management. Where appropriate, OFM or agency also refers to the staff and employees of the office of financial management.

(2) "Director" means the director of the office of financial management.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-030 Description of the office of ((~~program planning and fiscal~~)) financial management.** OFM is the state agency having decision-making and operational responsibilities for the financial ((~~and~~)) management, and human resources affairs of state government in accordance with chapters 43.41 and 43.88 RCW. It is organized into a budget division, an accounting division, ((~~labor relations~~)) a state human resources division, ((~~executive policy division~~))

~~and a contracting-)) and a forecasting and ((risk manage- ment)) research division along with other divisions which support and augment these activities. OFM also provides administrative support for the governor's policy office, results Washington, serve Washington, and the office of regulatory and innovation assistance. OFM's central office is located at 302 Sid Snyder Avenue S.W. (Insurance Building on the Washington state capitol campus), Olympia, Washington. OFM has other offices also located in Olympia at 128 10th Avenue S. (the Raad building); 106 11th Avenue S.W. (the Helen Sommers building); and 1011 Plum Street S.E., Building 4.~~

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-040 Responsibilities.** The responsibilities of OFM include preparation of the governor's budget for presentation to the legislature and budget implementation monitoring ~~((through the operation of the budget and allotment systems)), development and maintenance of the statewide financial and administrative systems central books of account ((containing timely records of changes in the)), preparation of statewide financial ((status of the state and other financial databases)) reports, as well as budget and policy research and development of legislation to support the governor's policy goals. OFM also provides technical assistance to the governor and legislature by preparing notes and recommendations, based on information it has obtained, concerning needs and policies recommended for meeting these needs through state programs. In addition, OFM ~~((oversees statewide personal services contracting activities, provides a comprehensive risk management program for all state agencies)) provides population estimates, monitors changes in the state economy and labor force, and plays a critical role in statewide human resources and public employee labor management relations. Finally, the Revised Code of Washington contains statutes that assign specific duties of an advisory, supervisory, regulatory or similar nature to the agency. All of these relate either directly or indirectly to the financial affairs of the state and its agencies ~~((thereof)).~~~~~~

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-050 Method of operation.** In carrying out its responsibilities, OFM receives information about the management and operation of state agencies and their programs. This information includes, but is not limited to: Budget proposals, short and long-range goals and the plans developed to meet them, present and projected workloads, capital and operating resource requirements, detailed and summary reports of current expenditures, financial commitments, etc. This information is obtained both on a routine basis and in response to requests from the executive and legislative branches. It is recorded and evaluated by OFM and becomes the basis for reports, recommendations, approval of expenditures and, in certain cases, for the establishment of firm criteria for the disbursement of state funds. ~~((An example of the latter use is the annual determination of the population of all cities and towns in the state, required by RCW 43.62.030,~~

~~which is the basis for distribution of tax revenues to these communities.))~~

In obtaining the necessary data to perform these functions, OFM employs numerous methods of communication including, but not limited to: Reports submitted by state agencies, meetings with agency representatives, memoranda and informal contacts between its personnel and that of respondent agencies.

When necessary for the timely and uniform execution of its duties, OFM exercises its statutory power to place standardized reporting requirements upon other agencies of state government.

OFM has published and currently maintains the *State Administrative and Accounting Manual*, which contains policies ~~((regulations)) and guidance for state agencies in ~~((fiscally related)) fiscally related matters.~~~~

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-060 Public records available.** All public records of this agency, as defined in RCW ~~((42.17.020)) 42.56.010, are available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter ~~((42.17)) 42.56~~ RCW, any other laws and these rules.~~

OFM's records are also available on the OFM web site at <http://ofm.wa.gov>. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-080 Public records officer.** The public records officer ~~((designated)) is appointed by the director ~~((s)) and shall be in charge of the agency's public records. The ~~((person so designated shall be)) public records officer is located in the office of the director. Any person wishing to request access to public records of OFM, or seeking assistance in making such a request, should contact OFM's public records officer:~~~~~~

Public Records Officer  
Office of Financial Management  
302 Sid Snyder Avenue S.W.  
P.O. Box 43113  
Olympia, WA 98504-3113  
[publicdisclosure@ofm.wa.gov](mailto:publicdisclosure@ofm.wa.gov)

Information is also available at OFM's web site at <http://www.ofm.wa.gov/publicrecords/default.asp>.

The public records officer shall be responsible for implementation of the agency's rules ~~((and regulations)) regarding release of public records for inspection and copying, coordinating the staff of the agency in this regard, and generally ensuring compliance by the staff with the public records disclosure requirements of chapter ~~((42.17)) 42.56~~ RCW. The public records officer may choose a designee, as may be necessary, to act in his or her absence to carry out the above-described responsibilities.~~

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-090** (~~(Availability of records.)~~) **Processing of public records requests—General.** ((Public records of OFM shall be available for inspection and the preparation of requested copies in the office of the director or other agency location as applicable, during normal office hours. For the purposes of this chapter, normal office hours of OFM shall be from 8:00 a.m. until noon and from 1:00 p.m. until 5:00 p.m., Monday through Friday, excluding legal holidays.)) (1) Making a request for public records.

(a) Any person wishing to inspect or copy public records of OFM should make the request by email to publicdisclosure@ofm.wa.gov, or in writing on OFM's request form, available at <http://ofm.wa.gov/publicrecords/default.asp>, or by letter or fax addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including email address and telephone number;
- The date of the request; and
- Identification of the public records. Records must be sufficiently described so that OFM may identify the record. A request for all or substantially all the agency's records is not a request for an identifiable record.

(b) The public records officer may accept requests for public records that contain the above information by telephone or in person. If the public records officer accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing to the requestor.

(2) Acknowledging receipt of request. Within five business days after the day the request is received, the public records officer will do one or more of the following:

- (a) Provide the requested record or a link to the record online;
- (b) Provide a reasonable estimate of when records will be available;
- (c) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor; or
- (d) Deny the request.

(3) Notification of other affected parties. In the event that the requested records name or specifically pertain to a person, or contain information that may affect the rights of others, the public records officer may, prior to providing the records, give notice to such others who are named, to whom the records pertain, or whose rights may be affected by the disclosure. The purpose of such notice is both to make persons named in a record aware that such information is being released and to make it possible for those persons, should they choose to do so, to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. By law, some records are exempt or prohibited from disclosure, in whole or in part. If OFM determines that a record or part of a record is exempt or prohibited from disclosure and should be withheld, the public records officer will deny the request as to that record or portion of the record, and will identify the withheld

record in general terms, state the specific exemption authorizing the withholding of the record or portion of the record, and provide a brief explanation of how the exemption applies to the record or portion of the record being withheld.

(5) Providing copies of records. Public records requested will be made available as promptly as is possible without excessive interference with the other essential functions of the agency, and in accordance with the requirement that agencies protect the requested records from damage or disorganization.

(6) Providing records in installments. When the request is for a large number of records, or if the records require substantial legal review to determine whether any exemptions apply, the public records officer may provide copies of the records in installments.

(7) Completion of request. When all requested copies of records are provided, the public records officer will indicate in writing that OFM has fulfilled its duties under the Public Records Act, and that the request is closed.

(8) Closing withdrawn or abandoned request. When the requestor withdraws the request or fails within thirty days to claim or review records or to pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that OFM has closed the request.

(9) Later discovered documents. If, after OFM has informed the requestor that it has provided all available records, it becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them, at no charge, on an expedited basis.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-100** **Processing of public records requests—Inspection of public records.** ((Public records of OFM required by any person to be disclosed in accordance with the provisions of chapter 42.17 RCW, shall be provided by the public records officer or his or her designee for inspection in the office of the director or other agency location as applicable. Persons requesting such records may not remove them from the agency office. Public records requested will be made available as promptly as is possible without excessive interference with the other essential functions of the agency, and in accordance with rules provided to protect the records so requested from damage or disorganization.)) (1) Requesting inspection of records. The process for requesting inspection of public records is the same as for requesting copies of public records.

(2) Providing records for inspection.

(a) Public records will be available for inspection and copying only during normal business hours of OFM, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays, and when staff are available to assist the requestor. Records must be inspected at the offices of OFM.

(b) Consistent with other demands, OFM shall endeavor to promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. Inspec-

tions will be conducted in accordance with the requirement that agencies protect the requested records from damage or disorganization. The requestor will indicate which, if any, documents he or she wishes the agency to copy.

(c) The requestor must claim or review the assembled records within thirty days of OFM's notification to him or her that the records are available for inspection or copying. If a requestor fails to claim or review the assembled records within thirty days, the public records officer will close the request and indicate to the requestor that OFM has closed the request.

(d) When the request is for a large number of records, the public records officer may provide access for inspection in installments.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-110 ((Copying)) Costs of providing copies of public records.** ((No fee shall be charged for the inspection of public records. The agency may impose a charge for providing copies of public records. Such charges shall not exceed the amount necessary to reimburse the agency for its actual costs incident to such copying. If it is unduly burdensome for the agency to calculate the actual cost, OFM may charge \$.15 per page. No person shall be provided a copy of a public record which has been copied by the agency at the request of such person until and unless such person has tendered payment of the charge for such copying.)) (1) Costs of copying. OFM may charge a customized service charge, as permitted by law, for compiling or providing access to certain public records. OFM charges a fee for the copying of public records, including electronic records, as permitted by law. OFM has determined that calculating the actual costs of providing copies of records is unduly burdensome for the following reasons: (a) OFM does not have the resources to conduct a study to accurately determine the actual costs of such staff time; and (b) conducting such a study would interfere with other essential agency functions. Therefore, rather than charging the actual costs of copying paper and electronic records, OFM may charge the fees permitted by law. OFM may waive fees in accordance with its fee waiver schedule, published online at OFM's web site at <http://www.ofm.wa.gov/publicrecords/default.asp>.

Before making copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. Where records are provided on an installment basis, the public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(2) Actual costs of electronic storage media and mailing. OFM may charge actual costs of mailing public records, including the cost of the shipping container. Requestors who request a specific type of postal service, such as return receipt requested, will be charged accordingly. In addition, when OFM determines that it is in its best interest to confirm that the requestor has received the records, OFM may charge the requestor for return receipt requested. OFM may also charge

actual costs for providing electronic storage media such as discs or USB thumb drives.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-120 Commercial purposes.** No provisions of any ((~~regulation~~)) rule contained in this chapter 82-48 WAC shall be construed as giving authority to any officer or OFM employee to give, sell, or provide access to lists of individuals requested for commercial purposes. If a list of individuals is included in the materials requested, OFM ((~~reserves the right to request~~)) may require requestors to identify themselves and the purpose of their request, and provide a signed statement that the requestor will not use the list of individuals for commercial purposes. When OFM has some indication that a requested list of individuals might be used for commercial purposes, OFM will investigate the request further. OFM will determine on a case-by-case basis whether such further investigation is necessary, based on the identity of the requestor, the nature of the records requested, and any other information available to OFM. When OFM determines further investigation is necessary, OFM will require requestors to identify the purpose of their request.

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-140 Exemptions—Court protection.** OFM ((~~reserves the right to~~)) shall determine ((that)) whether a public record or portion of a public record requested in accordance with the procedures outlined in chapter 82-48 WAC is exempt or prohibited from disclosure under the provisions of chapter ((42.17)) 42.56 RCW or other applicable laws.

In addition, pursuant to RCW ((42.17.260)) 42.56.070, OFM ((~~reserves the right to~~)) shall delete identifying details when it makes available any public record in cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ((42.17)) 42.56 RCW.

((Responses by OFM refusing, in whole or in part, inspection or copying of any public record shall be in writing and shall include a statement of the specific exemption authorizing the withholding of the public record or part and a brief explanation of how the exemption applies to the record withheld.))

AMENDATORY SECTION (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-150 Review of denial of public records request.** Upon denial of any request for public records, the requesting party may petition in writing (including email) to the director, with a copy to the public records officer, for review of such denial ((to the director)). The director or his or her designee shall review the denial and provide the results of such review in writing to the petitioner and the public records officer before the end of the second business day following the receipt of the request for review. This review ((shall)) will constitute final agency action for purposes of judicial review;

however, under RCW 42.56.520, any person may seek judicial review upon the conclusion of two business days after the initial denial regardless of whether the internal agency review is complete.

**AMENDATORY SECTION** (Amending WSR 05-01-004, filed 12/1/04, effective 1/2/05)

**WAC 82-48-160 Records index.** The office of financial management ~~((shall))~~ will maintain and make available for public inspection and copying an appropriate index in accordance with RCW ~~((42.17.260))~~ 42.56.070.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 82-48-130 Agency rules for inspection and copying of public records.  
WAC 82-48-170 Communications with the agency.

### WSR 18-09-022 PERMANENT RULES HEALTH CARE AUTHORITY

[Filed April 11, 2018, 9:14 a.m., effective May 12, 2018]

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

Purpose: The agency is amending WAC 182-550-3830 Adjustments to inpatient rates, to make changes to the timing of inpatient rates adjustments. The agency is amending WAC 182-550-7300 OPPS—Payment limitations, to strike subsection (5) that limits the agency's payment to the total billed charges.

Citation of Rules Affected by this Order: Amending WAC 182-550-3830 and 182-550-7300.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-06-048 on March 2, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: April 11, 2018.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-10-014, filed 4/23/15, effective 5/24/15)

#### WAC 182-550-3830 Adjustments to inpatient rates.

(1) The medicaid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates ~~((between rebasing periods))~~ at rebase:

(a) ~~((Effective July 1st of each year, the agency updates all of the following:~~

~~((i)))~~ Wage index adjustment;

~~((ii)))~~ (b) Direct graduate medical education (DGME); and

~~((iii)))~~ (c) Indirect medical education (IME).

~~((b)))~~ (2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

~~((2)))~~ (3) The agency does not update the statewide average DRG factor between rebasing periods, except:

(a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and

(b) When directed by the legislature.

~~((3)))~~ (4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

~~((4)))~~ (5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

~~((5)))~~ (6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's web site as of May 1st of the rate-setting year.

~~((6)))~~ (7)(a) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25 if the hospital meets the criteria in this subsection.

(b) The agency considers an in-state hospital to qualify for the rate enhancement if all of the following conditions apply. The hospital must:

- (i) Be certified by CMS as a sole community hospital as of January 1, 2013;
- (ii) Have a level III adult trauma service designation from the department of health as of January 1, 2014;
- (iii) Have less than one hundred fifty acute care licensed beds in fiscal year 2011; and
- (iv) Be owned and operated by the state or a political subdivision.
- (v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

**WAC 182-550-7300 OPPS—Payment limitations.** (1)

The medicaid agency limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient fee schedule published on the agency's web site, subject to the following limitations:

(a) To receive payment for services, providers must bill claims according to national correct coding initiative (NCCI) standards. When a unit limit for services is not stated in the outpatient fee schedule, the agency pays for services according to the program's unit limits stated in applicable WAC and published provider guides.

(b) The average resource, including units of service, are factored into the enhanced ambulatory patient group (EAPG) weight determination, and the allowable units of service for EAPGs is equal to one.

(2) The following service categories are included in the EAPG payment for significant procedure(s) on the claim and do not receive separate payments under EAPG:

- (a) Services classified as the same or clinically related to the main significant procedure;
- (b) Routine ancillary services;
- (c) Chemotherapy services grouped as class I, class II, or minor; and
- (d) Pharmacotherapy services grouped as class I, class II, or minor.

(3) The agency reduces the EAPG payment by fifty percent based on the default EAPG grouper settings for services subject to one or more of the following discounts:

- (a) Multiple procedures;
- (b) Repeat ancillary services; or
- (c) A terminated procedure.

(4) The agency limits outpatient services billing to one claim per episode of care. If any line of the claim is denied, or a service that was provided was not stated on the initial submitted claim, the agency requires the entire claim to be adjusted.

~~((5) The agency limits payments to the total billed charges.))~~

**WSR 18-09-031**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 17-01—Filed April 11, 2018, 2:15 p.m., effective May 12, 2018]

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

Purpose: The rule amendment makes the rule consistent with current practices, removes unused funding language, corrects out-of-date agency information, and improves the rule's clarity and consistency.

Recent legislative provisos for drought relief funding varied from the language in chapter 173-166 WAC, requiring the adoption of an emergency rule. We will continue to adopt emergency rules to implement drought relief programs when authorized by the legislature. Removing the funding language from the permanent rule improves clarity, versus having two rules for nearly identical functions, and allows for funding decisions having an alternate appeal process.

Citation of Rules Affected by this Order: Amending chapter 173-166 WAC.

Statutory Authority for Adoption: RCW 43.83B.420.

Adopted under notice filed as WSR 18-02-085 on January 2, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 4.

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: April 11, 2018.

Maia D. Bellon  
Director

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

**WAC 173-166-030 Definitions.** As used in this chapter:

(1) "Ecology" is the department of ecology.

(2) "Drought conditions" are water supply conditions where a geographical area or a significant part of a geographical area is receiving, or is projected to receive, less than seventy-five percent of normal water supply as the result of natural conditions and the deficiency causes, or is expected to cause, undue hardship to water users within that area.

(3) "Essential minimum" for the fisheries resource is:

(a) That amount of water or flow rate established as a regulation adopted by ecology pursuant to RCW 90.22.020 or 90.54.050;

(b) That amount of water or flow placed as a proviso on a water right permit or certificate; or

(c) That amount of water or flow established on an interim basis to assure the maintenance of fisheries requirements. Such a determination will be made by ecology, in consultation with, among others, the department((s)) of ((fisher-ies)) fish and wildlife, any concerned federal agencies and affected Indian tribes.

(4) "Executive water emergency committee (EWEC)" is a committee, chaired by the governor's office, including members of state, local, and federal agencies which reviews water supply information provided by the water supply availability committee and determines potential effects of water shortages upon the state of Washington. Affected Indian tribes will be invited to participate.

(5) "Geographical area" is an area within the state of Washington which can be described either by natural or political boundaries and which can be specifically identified in an order declaring a drought emergency. Examples of specific geographical areas include, but are not limited to:

(a) The state of Washington.

(b) Counties.

(c) Water resource inventory areas (WRIAs) as defined in chapter 173-500 WAC.

(d) Individual watersheds which constitute only a portion of a WRIA but whose boundaries can be topographically described.

(e) Groundwater management areas and subareas as defined in chapter 173-100 WAC.

(f) Designated sole source aquifers.

(g) Combinations of the above areas.

(6) "Normal water supply" is((:))

~~((a)) for the purpose of ((the determination of)) determining drought conditions, the ((average)) median amount of water available to a geographical area ((on an annual basis, based upon evaluation of precipitation, streamflow, snowpack and other hydrological and meteorological factors.~~

~~((b) For the purpose of eligibility for drought assistance:~~

~~((i) That amount of water put to beneficial use during the irrigation season for the irrigation of one or more crops, using reasonably efficient practices, including reasonable conveyance losses, under a valid water right permit or certificate, or a supported registered water right claim; or~~

~~((ii) That amount or flow of water required for normal operations of fish hatchery or fish passage facilities. Such facilities, where required by law, must be operating under a valid water right permit or certificate, or under a supported registered water right claim; or~~

~~((iii) The median amount or flow of water that is historically required to provide normal instream habitat conditions for the existing fishery population)), relative to the most recent thirty-year base period used to define climate normals. The determination of drought conditions will consider seasonal water supply forecasts, other relevant hydro-meteorological factors (e.g., precipitation, snowpack, soil moisture, streamflow, and aquifer levels) and also may consider extreme departures from normal conditions over subseasonal time frames.~~

(7) "Previously established activities" include:

(a) The irrigation of a specified number of acres, using reasonably efficient practices, under a valid water right permit or certificate, or a supported registered water right claim.

(b) Those fish-management activities presently employed to maintain the fisheries resource. The resource itself must neither be restored nor enhanced by drought relief actions available under the provisions of this chapter.

(c) The delivery of water by public and private entities through existing supply systems to present populations, areas, and/or facilities for purposes that are nonagricultural and nonfishery related.

(8) "Reasonably efficient practices" are those practices including, but not limited to, methods of conveyance, use, and disposal of water which are reasonable and appropriate under the circumstances to bring about water use efficiency as determined by an area-specific application of criteria identified by ecology, which may include, among others:

(a) Customary practices in the area;

(b) Reasonableness of any facilities at the time of installation;

(c) Cost of improvements and impacts of the costs of upgrading facilities on the continued use of water by an appropriator;

(d) Changes in water use practices and technology; and

(e) Impact of alternative water use practices on other water uses and the environment.

(9) "Supported registered water right claim" is a registered water right claim which includes sufficient evidence to satisfy ecology that a valid water right would be confirmed should the claim be adjudicated. Applications made for emergency drought permits((;)) or water transfers((, or funding assistance)) under this chapter must incorporate, either by reference or inclusion, necessary information to enable ecology to make an informed determination with respect to the claim. Such information may include, but is not limited to:

(a) Documentation of continuous historical exercise of the claimed right;

(b) Historical maps depicting the historical means of irrigation and the areas covered by the claimed right;

(c) Legal documentation, including any previous court or administrative board decisions, which addresses the historical nature and extent of the claimed right;

(d) "Old-timer" testimony which addresses the historical nature and extent of the claimed right.

(10) "Water supply availability committee (WSAC)" is a committee, with a core membership consisting of ecology, the National Weather Service, the ((SoH)) Natural Resources Conservation Service, the U.S. Geological Survey, the U.S. Bureau of Reclamation, and other federal agencies involved in water supply forecasting, which reviews pertinent hydrological and meteorological information and assesses water supply conditions for the state of Washington.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

**WAC 173-166-040 General eligibility rule.** (1) Applications for emergency drought permits, water transfers, or funding assistance made under this chapter will be processed only for previously established activities in a geographical area ((or part of a geographical area)) declared to be suffering from drought conditions. Where required by law, such activ-



ities must be conducted under a valid water right permit, certificate, or supported registered water right claim.

(2) Applications will be processed if the water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply for the previously established activity and experiencing or expected to experience undue hardship as a result.

(3) All permits and approvals issued under this chapter will be subject to existing rights.

(4) Water obtained through the issuance of temporary permits ~~(;)~~ or water right transfers ~~(; and/or funding assistance for projects or measures)~~ must be put to beneficial use in lieu of water which is unavailable because of drought conditions.

(5) All permits and approvals issued under this chapter will be of a temporary nature and will contain an expiration date.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

**WAC 173-166-050 Forecast of drought conditions.**

(1) Whenever it appears to the department of ecology that drought conditions as defined in WAC 173-166-030(2) either exist or are forecast to occur, ecology will consult with the state's water supply availability committee (WSAC) or its successor. Other appropriate sources of water supply information, such as the Columbia River water management group ~~(and)~~, the U.S. Army Corps of Engineers, and other water managers, may be consulted by the WSAC as needed.

(2) Ecology may solicit input from local authorities to aid ecology in determining the anticipated level of hardship and will make that information available to the executive water emergency committee (EWEC).

~~(3)~~ (3) Should the ~~((water supply availability committee))~~ WSAC determine that a geographical area ~~((or a part of a geographical area))~~ is receiving, or is likely to receive, seventy-five percent or less of its normal water supply, it will advise the ~~((executive water emergency committee))~~ EWEC and the Indian tribes within the area ~~((of that fact))~~. The ~~((executive water emergency committee))~~ EWEC will then make a determination as to whether or not undue hardships will occur as a result of the shortage.

~~((3))~~ (4) Should the ~~((executive water emergency committee))~~ EWEC determine that an area will suffer undue hardship as a result of a reduced water supply, it will submit a recommendation to that effect to the governor for written approval. Affected Indian tribes will be notified at the time such a recommendation is submitted.

~~((4))~~ (5) Upon securing the written approval of the governor, ecology will then issue an order declaring a geographical area ~~((or a significant part of a geographical area))~~ to be suffering from drought conditions and publish that order in a newspaper of general circulation in the area affected by the order.

~~((5) The determination of drought conditions will be based upon the updated seasonal forecast as applied to the water supply conditions within the designated geographical area or part of a designated geographical area.)~~

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

**WAC 173-166-060 Orders declaring drought conditions.** (1) If the department of ecology determines that a geographical area ~~((or part of a geographical area))~~ is suffering from drought conditions, it may, upon the advice of the ~~((water supply availability committee))~~ WSAC, with the concurrence of the ~~((executive water emergency committee))~~ EWEC, and the written approval of the governor, issue an order to that effect.

(2) The order declaring drought conditions for a geographical area ~~((or part of a geographical area))~~ must contain the following elements:

(a) A description of the geographical area ~~((or part of a geographical area))~~ which is being so designated.

(b) The facts leading to the issuance of the order.

(c) The statutory authority upon which the order is being issued.

(d) The commencement date and termination date of the order. The termination date may be no later than one calendar year from the date the order is issued.

(e) Brief descriptions of the emergency actions which are possible under the order.

(f) Provisions for the termination of withdrawals if essential minimum flows are jeopardized.

(3) Ecology must publish the order declaring a geographical area ~~((or a part of a geographical area))~~ to be suffering from drought conditions in a newspaper of general circulation in the area affected by the order.

(4) Persons may file written protest as to the contents of the order with ecology. Ecology will have fifteen calendar days from the date of receipt of the protest in which to consult with members of WSAC, EWEC, and the governor and to make a determination as to its validity ~~((; using the procedure specified in WAC 173-166-050))~~.

(5) A person who believes that an area should be declared to be suffering from drought conditions may petition ecology for such a declaration. Upon the receipt of such a petition, ecology will have fifteen calendar days from the date of receipt of the petition in which to make a determination as to its validity, using the procedure specified in WAC 173-166-050, and provide a decision to the applicant. The petition should contain the following information:

(a) A description of the geographical area ~~((or part of a geographical area))~~ which is being requested for designation.

(b) The nature of the relief sought in requesting such a designation.

(c) The facts upon which the petition is based.

(6) Orders declaring areas to be suffering from drought conditions may, with the written approval of the governor, be amended one or more times to change the termination date, provided that the termination date of the order, as amended, is no more than two calendar years from the date the order is first issued.

(7) Orders declaring areas to be suffering from drought conditions may be issued for different areas of the state and sequentially for the same area if drought conditions persist.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

**WAC 173-166-070 Emergency drought permits.**

Ecology may allow water users to obtain water from alternate sources during drought conditions. To accomplish this, ecology may issue emergency drought permits authorizing withdrawals of groundwater and surface water, including dead storage in reservoirs. Permits will be processed under the following criteria:

(1) Applicants must be conducting a previously established activity within a geographical area (~~(or part of a geographical area)~~) declared to be suffering from drought conditions.

(2) An application will be processed if the water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(3) Ecology, plus all state and local agencies with authority to issue permits or other authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for emergency drought permits, such as under RCW 75.20.050, and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed withdrawal.

(4) Waters authorized to be withdrawn must be used in relation to a previously established activity as defined in this chapter. The permit must not cover irrigation of new lands, restoration or enhancement of the fisheries resource, or a new water (~~(supply in addition to the normal amount used)~~) use than practiced in the past by individuals, private entities, or public bodies.

(5) (~~Waters to be withdrawn must constitute an alternate (supplemental) water supply to the user's normal source of water.~~) Emergency drought permits may authorize replacing all or a portion of the normal supply that is unavailable due to drought, but cannot increase authorized use.

(6) The withdrawal must not reduce flows or levels below essential minimums necessary to assure the maintenance of fisheries requirements and to protect federal and state interests including, but not limited to, power generation, navigation, water quality, and existing water rights.

(7) Emergency drought permits issued under this chapter will be temporary in nature and must expire no later than the expiration date of the order declaring the area in which the permitted activity is authorized to be suffering from drought conditions.

(8) Priority will be given to domestic and irrigation uses of water for any emergency withdrawals authorized under this chapter.

(9) Emergency drought permits issued under this chapter must contain provisions for termination should the withdrawal reduce flows or levels below essential minimums as defined in this chapter.

(10) To expedite the issuance of emergency drought permits, ecology is authorized to process the applications and issue the permits without compliance with requirements for:

- (a) Notice of newspaper publication.
- (b) The State Environmental Policy Act.

AMENDATORY SECTION (Amending WSR 91-03-081, filed 1/17/91, effective 2/17/91)

**WAC 173-166-080 Temporary transfers of water rights.** (1) Ecology may approve emergency water right changes in order to effect a transfer of water between willing parties. Water right changes can include purpose of use, place of use, and point of diversion.

(2) Examples of possible water right transfers include, but are not limited to, the following situations:

(a) A water right holder may choose to reduce irrigated acreage and transfer the unused water to another water right holder whose normal water supply is decreased by drought conditions. The acreage irrigated with transferred water on the second parcel may not exceed the acreage reduction on the first parcel.

(b) A water right holder may transfer a water right from an out-of-stream use to an instream use.

(c) Municipalities or other public bodies may transfer water between one another.

(3) Requests for water right transfers will be processed under the following criteria:

(a) Applicants must be conducting a previously established activity within a geographical area (~~(or part of a geographical area)~~) declared to be suffering from drought conditions.

(b) An application for a water right transfer will be processed if the recipient water user is receiving, or is projected to receive, less than seventy-five percent of normal water supply, as the result of natural drought conditions, for the previously established activity and experiencing, or is expected to experience, undue hardship as a result.

(c) All approvals by ecology for water right transfers under this chapter will be temporary in nature and will be for the purpose of alleviating drought conditions. These approvals must terminate no later than the expiration date of the order which declares the area to be suffering from drought conditions.

(d) Water right transfers between willing parties may be approved when an emergency exists only if such a transfer will not affect existing rights whatsoever, or reduce flows or levels below essential minimums, or adversely affect federal and state interests including, but not limited to, power generation, navigation, and water quality.

(e) Water rights may be transferred within areas declared to be suffering from drought conditions. Water rights may also be transferred from outside an area declared to be suffering from drought conditions into an area declared to be suffering from drought conditions, provided such a transfer of water is physically possible and is consistent with the provisions of RCW 90.03.380, 90.03.390, and 90.44.100. Water rights will not be transferred from within an area declared to be suffering from drought conditions to outside that area.

(f) To expedite water transfers during drought conditions, ecology can approve temporary changes in water rights without compliance with requirements for:

- (i) Notice of newspaper publication.
- (ii) The State Environmental Policy Act.

(g) In those cases where temporary water transfers require court approval while general adjudication proceedings are ongoing, ecology will assist the court in coordination, maintaining communications, and providing technical assistance when requested.

(h) The temporary changing of a water right under this chapter will not be admissible as evidence in either supporting or contesting the validity of water claims in a general adjudication of water rights in the state of Washington.

(i) Ecology, plus all state and local agencies with authority to issue permits or other authorizations in connection with emergency actions authorized under the provisions of this chapter, will have fifteen calendar days from the date of receipt of the respective application(s) in which to provide a decision to the applicant. Agencies with authority to review applications for temporary water right transfers, such as under RCW 75.20.050, and affected Indian tribes will have fifteen calendar days from the date ecology receives the application in which to provide ecology with an opinion as to any effects of the proposed transfer.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-166-090	Funding assistance—General criteria.
WAC 173-166-100	Funding assistance—Agricultural criteria.
WAC 173-166-110	Funding assistance—Fisheries criteria.
WAC 173-166-120	Requests for drought relief—Contacts—Applications.

### **WSR 18-09-032**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed April 11, 2018, 3:08 p.m., effective August 1, 2018]

Effective Date of Rule: August 1, 2018.

Purpose: Chapter 246-847 WAC, Occupational therapy, the occupational therapy practice board (board) adopted amendments and new sections of rule to clarify, streamline, and modernize existing rule, and consistent with a five-year rule review in RCW 43.70.041.

Citation of Rules Affected by this Order: New WAC 246-847-051 and 246-847-176; repealing WAC 246-847-030 and 246-847-100; and amending WAC 246-847-010, 246-847-055, 246-847-065, 246-847-068, 246-847-070, 246-847-125, 246-847-140, 246-847-170, and 246-847-210.

Statutory Authority for Adoption: RCW 18.59.130.

Adopted under notice filed as WSR 18-01-110 on December 19, 2017.

Changes Other than Editing from Proposed to Adopted Version: Several, nonsubstantive changes were made between the proposed and adopted rule versions. Many of the changes were editorial in nature, but some language was inserted to make the rule meaning more clear, and to avoid confusion for practitioners and the public. In addition to the editorial changes, the following clarifying changes were made upon adoption of the rule.

WAC 246-847-051 changed the first paragraph from "Graduates of a United States military occupational therapy assistant course that is determined to meet the substantial equivalency requirements may apply for licensure in this state when the following additional requirements have been submitted:" to "A graduate of a United States military occupational therapy assistant course that is substantially equivalent to the requirements in chapters 18.59 RCW and 246-847 WAC may apply for licensure in this state when the following additional requirements have been submitted to the department:"

WAC 246-847-065 changed "The required documentation for this activity is a typed, one-page synopsis of each item authored by the licensee or a certificate from OT practice continuing education article." to "The required documentation for this activity is a typed, one-page synopsis of each item written by the licensee or a certificate from OT practice continuing education article."

WAC 246-847-070(2) changed "If the license has been inactive for three years or less at the time of application, refer to the requirements of WAC 246-12-110" to "If the license has been inactive for three years or less at the time of application to change an inactive credential to an active credential, refer to the requirements of WAC 246-12-110."

WAC 246-847-070(3) changed "If the license has been inactive for over three years but no more than five years at the time of application, the practitioner may return to active status by submitting proof to the department of ..." to "If the license has been inactive for over three years but no more than five years at the time of application to change an inactive credential to an active credential, the practitioner may return to active status by submitting proof to the department of ..."

WAC 246-847-070(4) changed "If the license has been inactive for over five years at the time of application, the practitioner may return to active status by submitting proof to the department of ..." to "If the license has been inactive for over five years at the time of application to change an inactive credential to an active credential, the practitioner may return to active status by submitting proof to the department of ..."

WAC 246-847-140 changed "Supervised fieldwork experience" in RCW 18.59.050 (1)(c)(i) shall mean a minimum six months (twenty-four weeks) of full-time equivalency of Level II fieldwork conducted in settings approved by the applicant's academic program" to "Supervised fieldwork experience as defined in RCW 18.59.050 (1)(c)(i) means, for an occupational therapist, a minimum of six months, or twenty-four weeks, of full-time equivalency of Level II fieldwork must be conducted in settings approved by the applicant's academic program." Additionally, both uses of the

phrase "(twenty-four weeks)" in parentheses, were replaced with ", or twenty-four weeks," and, in the same paragraph, the phrase "shall not" was changed to "does not."

WAC 246-847-170(8) changed "All data recorded in permanent files or records shall be supported by the occupational therapist or occupational therapist assistant's observations or by objective measures of data collection," to "Occupational therapists or occupational therapy assistants shall support all data recorded in the permanent files or records with observations or objective measures of data collection."

WAC 246-847-170 (11)(a) changed "Appropriate medical direction shall be sought on at least an annual basis" to "The occupational therapist shall seek appropriate medical direction at least on an annual basis."

A final cost-benefit analysis is available by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4883, fax 360-236-2901, TTY 360-833-6388 or 711, email kathy.weed@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 the Request of a Non-governmental 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 2, Amended 9, Repealed 2.

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 2, Amended 9, Repealed 2.

Date Adopted: January 26, 2018.

Beth Rollinger, Chair  
Occupational Therapy Board

**AMENDATORY SECTION** (Amending WSR 14-05-016, filed 2/10/14, effective 2/15/14)

**WAC 246-847-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adapting environments for individuals with disabilities" includes assessing needs, identifying strategies, implementing and training in the use of strategies, and evaluating outcomes. Occupational therapy focuses on the interaction of an individual's skills and abilities, the features of the environment, and the demands and purposes of activities.

(2) "Board" means the ~~((board of))~~ occupational therapy practice board.

(3) "Clients" includes ~~((patients, students, and))~~ those to whom occupational therapy services are delivered.

(4) "Client-related tasks" are routine tasks during which ~~((the))~~ an occupational therapy aide may interact with the client but does not act as a primary service provider of occupational therapy services. The following factors must be present when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide:

(a) The outcome anticipated for the delegated task is predictable;

(b) The ~~((situation))~~ status of the client and the environment is stable and will not require that the aide make judgments, interpretations, or adaptations ~~((be made by the aide))~~;

(c) The client has demonstrated some previous performance ability in executing the task; and

(d) The task routine and process have been clearly established.

(5) "Commonly accepted standards for the profession" in RCW 18.59.040 (5)(b) and 18.59.070 shall mean having passed the National Board for Certification in Occupational Therapy or its successor/predecessor organization, not having engaged in unprofessional conduct or gross incompetency as established by the board in WAC 246-847-160 for conduct occurring prior to June 11, 1986, and as established in RCW 18.130.180 for conduct occurring on or after June 11, 1986.

~~((("Consultation" means that practitioners are expected to function as consultants within the scope of practice appropriate to their level of competence.~~

~~((7) "Developing prevocational skills and play and avocational capabilities" also involves the scientifically based use of purposeful activity.~~

~~((8) "Direct supervision" as described in RCW 18.59.040(7) means daily, in-person contact at the site where services are provided by an occupational therapist licensed in the state of Washington.~~

~~((9)) "Department" means the department of health.~~

(7) "Evaluation" ~~((is))~~ means the process of obtaining and interpreting data necessary for treatment~~((s))~~ which includes, but is not limited to, planning for and documenting the evaluation process and results. The evaluation data may be gathered through record review, specific observation, interview, and the administration of data collection procedures~~((s))~~ which include, but are not limited to, the use of standardized tests, performance checklists, and activities and tasks designed to evaluate specific performance abilities.

~~((10) "In association" as described in RCW 18.59.040(7) means practicing in a setting in which an occupational therapist licensed in the state of Washington is available on the premises for supervision, consultation, and assistance as needed to provide protection for the client's health, safety and welfare.~~

~~((11))~~ (8) "Occupational therapy aide" means a person who is trained by an occupational therapist or occupational therapy assistant to perform client and nonclient related tasks. Occupational therapy aides are not primary service providers of occupational therapy in any practice setting. Occupational therapy aides do not provide skilled occupational therapy services.

~~((12))~~ (9) "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the treatment site by an occupational therapist or occupational therapy assistant licensed in the state of Washington. When client-related tasks are provided by an occupational therapy aide more than once a week, professional supervision must occur at least weekly. When client-related tasks are provided by an occupational therapy

aide once a week or less, professional supervision must occur at least once every two weeks.

~~((13))~~ (10) "Regular consultation (~~"as described in RCW 18.59.020(4) means in-person contact~~) with an occupational therapy assistant" means at least monthly ~~((by an) contact with the supervising occupational therapist licensed in the state of Washington, with further supervision available as needed ((by other methods which include but are not limited to phone and email)).~~

~~((14))~~ (11) "Scientifically based use of purposeful activity" ~~((is))~~ means the treatment of individuals using established methodology based upon the behavioral and biological sciences and includes the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. "Occupations" are activities having unique meaning and purpose in an individual's life.

~~((15))~~ (12) "Teaching daily living skills" ~~((is))~~ means the instruction in daily living skills by an occupational therapist or occupational therapy assistant based upon the evaluation of all the components of the individual's disability and the adaptation or treatment based on the evaluation.

~~((16))~~ "Working days" in RCW 18.59.040(5) shall mean consecutive calendar days.

~~((17))~~ "Work site" in RCW 18.59.080 means the primary work location.

#### NEW SECTION

**WAC 246-847-051 Military equivalence.** A graduate of a United States military occupational therapy assistant course that is substantially equivalent to the requirements in chapters 18.59 RCW and 246-847 WAC may apply for licensure in this state when the following additional requirements have been submitted to the department:

(1) Proof of completion of the military's residency program included in their education program in lieu of the field work required under WAC 246-847-150;

(2) Proof of successfully passing the national certification examination as specified in WAC 246-847-080;

(3) Proof of completion of the online jurisprudence examination for occupational therapy with a passing score of one hundred percent; and

(4) An attestation to the completion of seven hours of HIV/AIDS awareness training as specified in chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-847-055 Initial application for individuals who have ~~((not))~~ never practiced ~~((within the past four years))~~ occupational therapy.** (1) Any initial applicant ~~((who has not been actively engaged in the practice of occupational therapy within the past four years shall provide, in addition to))~~ must comply with the requirements for licensure as specified in ~~((RCW 18.59.050 and WAC 246-847-190))~~ chapters 18.59 RCW and 246-847 WAC.

(2) An initial applicant who graduated more than three years but less than five years from date of application and

never practiced must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof to the department of:

~~(a) ((Evidence of having successfully completed an approved occupational therapy or occupational therapy assistant program within the past four years and documentation))~~ Completion of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; ~~((or))~~ and

~~(b) ((Evidence of having passed the examination as defined in WAC 246-847-080 within the previous two-year period and documentation of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; or~~

~~(c) Evidence of having successfully completed a board approved educational program specifically designed for occupational therapists or occupational therapy assistants preparing for reentry into the field of occupational therapy.~~

~~(2))~~ Completion of a board-approved reentry program.

(c) Completion of any additional requirements as required by the board.

(3) Initial applicants who graduated five or more years ago and never practiced must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof to the department of:

(a) Completion of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; and

(b) Completion of a board-approved reentry program;

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations specified in WAC 246-847-080.

(d) Completion of any additional requirements as required by the board.

(4) The applicant may be required to appear before the board for oral interview.

AMENDATORY SECTION (Amending WSR 14-05-016, filed 2/10/14, effective 2/15/14)

**WAC 246-847-065 Continued competency.** Licensed occupational therapists and licensed occupational therapy assistants must complete thirty hours of continued competency every two years in the form of continuing education and professional development. The licensee must submit documentation upon request as required by chapter 246-12 WAC.

~~(1) ((A minimum of twenty hours must be directly related to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010.~~

~~(2) Any remaining hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant.~~

~~(3))~~ Beginning January 1, 2014, as part of their continued competency, occupational therapists and occupational therapy assistants are required to obtain at least three hours of

training every six years in suicide assessment as specified in WAC 246-847-066. The licensee must keep documentation for six years.

(a) Except as provided in (b) of this subsection, an occupational therapist or occupational therapy assistant must complete the first training required by this section during the first full continued competency reporting period after January 1, 2014, or the first full continued competency reporting period after initial licensure, whichever occurs later.

(b) An occupational therapist or occupational therapy assistant applying for initial licensure on or after January 1, 2014, may delay completion of the first training required by this section for six years after initial licensure if:

(i) He or she can demonstrate successful completion of a three-hour training program in suicide assessment that was completed no more than six years prior to the application for initial licensure; and

(ii) The training meets the qualifications listed in WAC 246-847-066.

~~((4))~~ (2) The thirty ~~(continued competency)~~ hours of continuing education and professional development must be obtained through two or more of the activities listed in this subsection. A minimum of twenty hours must directly relate to the practice of occupational therapy as defined in RCW 18.59.020 and WAC 246-847-010. Any remaining hours may be in professional development activities that enhance the practice of the licensed occupational therapist or licensed occupational therapy assistant. Documentation for all activities must include licensee's name, date of activity, and number of hours. Additional specific documentation is defined below:

(a) Continuing education course work. The required documentation for this activity is a certificate or documentation of attendance.

(b) Employer sponsored in-service training or professional study groups. The required documentation for this activity is a certificate or documentation of attendance. A maximum of fifteen hours is allowed per reporting period for this category.

(c) Attendance at a professional conference or workshop presented by a professional organization. The required documentation for this activity is a certificate or documentation of attendance.

(d) Course work offered by an accredited college or university, provided that the course work is taken after the licensee has obtained a degree in occupational therapy, and the course work provides skills and knowledge beyond entry-level skills or knowledge. The required documentation for this activity is a transcript. One course credit is equal to five hours. A maximum of fifteen hours is allowed per reporting period for this category.

(e) Interactive online courses and webinars. The required documentation for this activity is a certificate or documentation of completion.

~~((e) Publications. The required documentation for this activity is a copy of the publication.)~~

(f) Presentation(s) to professionals, including poster presentations. One hour of preparation time may be counted per hour of presentation time. The required documentation for this activity is a copy of the presentation or program list-

ing. Any particular presentation may be reported only once per reporting period. A maximum of ten hours is allowed per reporting period for this category.

~~(g) ((Interactive online courses. The required documentation for this activity is a certificate or documentation of completion.~~

~~(h))~~ Guest lecturing on an occupational therapy-related topic in an academic setting. The occupational therapist or occupational therapy assistant must not be primarily employed in academia to submit credit for this activity. The required documentation for this activity is a letter or other documentation from the course instructor. A maximum of ten hours is allowed per reporting period for this category. One hour of preparation time may be counted per hour of lecture time.

~~(h) Authoring a publication. The required documentation for this activity is a copy of the publication. For a peer reviewed journal article or chapter in a textbook a maximum of ten hours is allowed per reporting period for this category. For nonpeer reviewed professional publication a maximum of five hours is allowed per reporting period for this category.~~

(i) Development of instructional materials incorporating alternative media such as: Video, audio and/or software programs to advance professional skills of others. The required documentation for this activity is a program description. The media/software materials must be available if requested during audit process. A maximum of ten hours is allowed per reporting period for this category.

~~((i))~~ (j) Professional manuscript review. The required documentation for this activity is a letter from the publishing organization verifying review of manuscript. One hour of continuing education may be counted per hour of review time. A maximum of ten hours is allowed per reporting period for this category.

~~((j) Guest lecturer for occupational therapy related academic course work (academia not primary role). The required documentation for this activity is a letter or other documentation from instructor.)~~

(k) ~~((Serving))~~ Service on a professional board, committee, disciplinary panel, or association. The required documentation for this activity is a letter or other documentation from the organization. A maximum of ten hours is allowed per reporting period for this category.

(l) Self-study of ~~((cassette, tape, video tape, or other multimedia device, or book))~~ peer reviewed, role-related professional journal articles, textbooks or chapters, or professionally developed multimedia and digital media educational materials. The required documentation for this activity is a ~~((two))~~ typed, one-page synopsis of each item written by the licensee or a certificate from OT practice continuing education article. A maximum of ten hours is allowed per reporting period for this category. Time spent writing synopsis is not reportable.

(m) ~~((Level II fieldwork))~~ Direct supervision of an occupational therapy student or occupational therapy assistant student ((by site designated supervisor(s))). The required documentation for this activity is a name of student(s), letter of verification from school, and dates of fieldwork. Forty hours of supervision per student is equal to one hour of continued

competency. A maximum of ~~((ten))~~ twelve hours per supervisory reporting period for this category.

(n) Mentoring. Mentoring in this section means a relationship in which a more experienced or more knowledgeable person helps to guide a less experienced or knowledgeable person for the informal transmission of knowledge and support relevant to professional development. The required documentation for this activity is a written report of goals, objectives and analysis of mentee performance signed by both mentor and mentee. Mentoring credits do not count towards the requirement of twenty hours directly related to the practice of occupational therapy. A maximum of five hours is allowed per reporting period for this category.

(o) Attending a Washington occupational therapy practice board meeting. A maximum of two credits per reporting period is allowed.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-847-068 Expired license.** (1) If the license has expired for three years or less, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has expired for over three years but no more than five years at the time of application, ~~((and))~~ the practitioner ~~((has been in))~~ may return to active ~~((practice in another United States jurisdiction, the practitioner must))~~ status by submitting proof to the department of:

(a) ~~((Submit verification of active practice from any other United States jurisdiction;~~

~~((b) Meet))~~ Having met the requirements of chapter 246-12 WAC, Part 2; and

(b) Within the two-year period immediately preceding the date of application for reissuance:

(i) Completion of thirty hours of continued competency as required in WAC 246-847-065; and

(ii) Passing the Washington occupational therapy jurisprudence examination as offered by the department.

(3) If the license has expired for over ~~((three))~~ five years at the time of application, ~~((and))~~ the practitioner ~~((has not been in))~~ may return to active ~~((practice in another United States jurisdiction, the practitioner must))~~ status by submitting proof to the department of:

(a) ~~((Either provide evidence of having passed the examination as defined in WAC 246-847-080 within the previous two-year period or provide evidence of successfully completing a board-approved educational program specifically designed for occupational therapists or occupational therapy assistants preparing for reentry into the field of occupational therapy;~~

~~((b) Meet))~~ Having met the requirements ~~((of chapter 246-12 WAC, Part 2))~~ in subsection (2) of this section;

(b) Completion of a board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examinations as required by WAC 246-847-080.

(4) For a practitioner who holds an expired credential in Washington but is currently licensed and in active practice in another United States jurisdiction, the practitioner may return to active practice by submitting proof to the department of:

(a) Having met the requirements described in subsection (2) of this section; and

(b) Verification of an active license from the United States jurisdiction.

(5) Completion of any additional requirements as required by the board.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-847-070 Inactive credential.** (1) A practitioner may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) If the license has been inactive for three years or less at the time of application to change an inactive credential to an active credential, refer to the requirements of WAC 246-12-110.

(3) If the license has been inactive for over three years but no more than five years at the time of application to change an inactive credential to an active credential, the practitioner may return to active status by submitting proof to the department of:

(a) Having met the requirements of WAC 246-12-110; and

(b) Within the two-year period immediately preceding the date of application for reissuance:

(i) Completion of thirty hours of continuing education as required in WAC 246-847-065; and

(ii) Passing the Washington occupational therapy jurisprudence examination as offered by the department.

(4) If the license has been inactive for over five years at the time of application to change an inactive credential to an active credential, the practitioner may return to active status by submitting proof to the department of:

(a) Having met the requirements in subsection (3) of this section;

(b) Completion of board-approved reentry program; and

(c) In addition to these requirements, the applicant has the choice of:

(i) Completion of extended course work preapproved by the board; or

(ii) Successfully retaking and passing the examination as required by WAC 246-847-080.

(5) For a practitioner who holds an inactive credential in Washington, but is currently licensed and in active practice in another United States jurisdiction, the practitioner may return to active status by submitting proof to the department of:

(a) Having met the requirements described in subsection (3) of this section; and

(b) Verification of active practice from the United States jurisdiction.

(6) Completion of any additional requirements as required by the board.

AMENDATORY SECTION (Amending WSR 93-18-093, filed 9/1/93, effective 10/2/93)

**WAC 246-847-125 Applicants currently licensed in other states or territories.** ~~((1) Before licensure may be extended to any individual))~~ Any initial applicant currently licensed to practice as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States as provided in RCW 18.59.070(2), ~~((the following conditions must be met:~~

~~(a) Evidence of having met the requirements for licensure as provided in RCW 18.59.050; and~~

~~(b) Verification of))~~ may be licensed by endorsement. Applicants must comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof of:

~~(1) Current licensure from ((any state, the District of Columbia, or a territory of the)) another United States ((on forms provided by the secretary; and~~

~~(e) Verification of))~~ jurisdiction;

~~(2) Having passed the examinations as defined in WAC 246-847-080; and~~

~~((d) Evidence of having been actively engaged in the practice of occupational therapy within the preceding four-year period.~~

~~(2) If the applicant has not been actively engaged in the practice of occupational therapy within the past four years, the following conditions must be met:~~

~~(a) Evidence of having taken and passed the examination as defined in WAC 246-847-080 within the previous two-year period and documentation of thirty hours of continued competency as described in WAC 246-847-065 for the previous two-year period; or~~

~~(b) Evidence of having successfully completed a board approved educational program specifically designed for occupational therapists or occupational therapy assistants preparing for reentry into the field of occupational therapy.~~

~~(3) The applicant may be required to appear before the board for oral interview.))~~ (3) Completion of thirty hours of continued competency within the two-year period immediately preceding the application.

AMENDATORY SECTION (Amending WSR 91-05-027, filed 2/12/91, effective 3/15/91)

**WAC 246-847-140 Supervised fieldwork experience—Occupational therapists.** ~~((<sup>2</sup>))~~ Supervised fieldwork experience(<sup>2</sup>) as defined in RCW 18.59.050 (1)(c)(i) ((shall)) means, for an occupational therapist, a minimum six months, or twenty-four weeks, of full-time equivalency of Level II fieldwork must be conducted in settings approved by the applicant's academic program. Level II fieldwork is to provide an in-depth experience in delivering occupational therapy services to clients and to provide opportunities for supervised practice of occupational therapist entry-level roles. The minimum six months, or twenty-four weeks, of full-time equivalency supervised fieldwork experience required by RCW 18.59.050 (1)(c)(i) ((shall)) does not include Level I fieldwork experience as defined by the ((American Occupational Therapy Association.

~~The supervised fieldwork experience shall consist of a minimum of six months sustained fieldwork on a full-time basis. "Full-time basis" is as required by the fieldwork setting))~~ accreditation council for occupational therapy education.

AMENDATORY SECTION (Amending WSR 05-24-104, filed 12/7/05, effective 1/7/06)

**WAC 246-847-170 Code of ethics and standards of professional conduct.** (1) It is the professional responsibility of occupational therapists and occupational therapy assistants to provide services for clients without regard to race, creed, national origin, gender, handicap or religious affiliation.

(2) Treatment objectives and the therapeutic process must be formulated to ensure professional accountability.

(3) Services ~~((shall))~~ must be goal-directed in accordance with the overall educational, habilitation or rehabilitation plan and shall include a system to ensure professional accountability.

(4) Occupational therapists and occupational therapy assistants shall recommend termination of services when established goals have been met or when further skilled services ~~((would not produce improved client performance))~~ are no longer beneficial.

(5) Occupational therapists and occupational therapy assistants shall accurately represent their competence, education, training and experience.

(6) Occupational therapists and occupational therapy assistants shall only provide services and use techniques for which they are qualified by education, training, and experience.

(7) Occupational therapists and occupational therapy assistants shall accurately record information and report information as required by facility standards and state and federal laws.

(8) ~~((All data recorded in permanent files or records shall be supported by the))~~ Occupational therapists or ((the)) occupational therapy ((assistant's)) assistants shall support all data recorded in the permanent files or records with observations or ((by)) objective measures of data collection.

(9) ~~((Client's))~~ Client records shall only be divulged as authorized by law or with the client's consent for release of information.

(10) Occupational therapists and occupational therapy assistants shall not delegate to other personnel those client-related services where the clinical skills and expertise of an occupational therapist or occupational therapy assistant are required.

(11) If, after evaluating the client, the case is a medical case, the occupational therapist shall refer the case to a physician for appropriate medical direction if such direction is lacking.

~~((Appropriate medical direction shall be sought on at least an annual basis.))~~ The occupational therapist shall seek appropriate medical direction on at least an annual basis.

(b) A case is not a medical case if the following is present:

(i) There is an absence of pathology; or



(ii) If a pathology exists, the pathology has stabilized; and

(iii) The occupational therapist is only treating the client's functional deficits.

(12) Occupational therapists shall establish, review, or revise the client's treatment objectives at sufficient intervals to meet the client's needs. The occupational therapy assistant shall collaborate with the occupational therapist in this review of the client's treatment objectives.

(13) Occupational therapists and occupational therapy assistants shall have sufficient command of the English language to read and write effectively in medical charts and to communicate clearly with service recipients and team members.

#### NEW SECTION

**WAC 246-847-176 Telehealth.** (1) "Telehealth" means providing occupational therapy via electronic communication where the occupational therapist or occupational therapy assistant and the patient are not at the same physical location.

(2) An occupational therapist or occupational therapy assistant using telehealth to provide therapy to patients in Washington must be licensed to provide occupational therapy in Washington.

(3) Licensed occupational therapists and occupational therapy assistants may provide occupational therapy via telehealth following all requirements for supervision and standard of care, including those defined in chapters 18.59 RCW and 246-847 WAC.

(4) The occupational therapist or occupational therapy assistant must identify in the clinical record that the occupational therapy occurred via telehealth.

AMENDATORY SECTION (Amending WSR 05-24-106, filed 12/7/05, effective 1/7/06)

**WAC 246-847-210 Unprofessional conduct—Sexual misconduct.** (1) The occupational therapist and occupational therapy assistant shall never engage in sexual contact or sexual activity with current clients or a key party.

(2) "Key party" in this section means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

~~((2))~~ (3) Sexual contact or sexual activity is prohibited with a former client or key party for two years after cessation or termination of professional services.

~~((3))~~ (4) The occupational therapist and occupational therapy assistant shall never engage in sexual contact or sexual activity with former clients or a key party if such contact or activity involves the abuse of the occupational therapy practitioner-client-key party relationship. Factors ~~((which))~~ the board may consider in evaluating if the occupational therapy practitioner-client-key party relationship has been abusive include~~((s))~~, but ~~((is))~~ are not limited to:

(a) The amount of time that has passed since therapy terminated;

(b) The nature and duration of the therapy;

(c) The circumstances of cessation or termination;

(d) The former client's or key party's personal history;

(e) The former client's or key party's current mental status;

(f) The likelihood of adverse impact on the former client, key party and others; and

(g) Any statements or actions made by the occupational therapist or occupational therapy assistant during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the former client or key party.

(5) Sexual misconduct includes, but is not limited to, activities listed in WAC 246-16-100.

~~((4))~~ (6) These rules do not prohibit:

(a) The provision of occupational therapy services on an urgent, unforeseen basis where circumstances will not allow an occupational therapist or occupational therapy assistant to obtain reassignment or make an appropriate referral;

(b) The provision of occupational therapy services to a spouse or any other person who is in a preexisting, established relationship with the occupational therapist or occupational therapy assistant where no evidence of abuse of the occupational therapy practitioner-client relationship exists.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-847-030	Occupational therapists acting in a consulting capacity.
WAC 246-847-100	Examination dates for applicants under RCW 18.59.070(3).

#### **WSR 18-09-036**

#### **PERMANENT RULES**

#### **HEALTH CARE AUTHORITY**

[Filed April 12, 2018, 8:58 a.m., effective May 13, 2018]

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

Purpose: The agency is revising WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, as follows:

- To align with new credentialing for ABA providers through the Washington state department of health under chapter 246-805 WAC;
- To add requirements for providers to be recognized by the agency as centers of excellence (COE); and
- To remove advanced registered nurse practitioners (ARNP) from subsection (2), which lists professionals that automatically qualify as COEs because of provider specialty.

The new credentialing requirements for ABA providers are required under SSB 5488 of 2015. The information regarding COEs is being added to clarify requirements. The removal of ARNPs from subsection (2) is being done because

ARNPs are listed under subsection (3), which lists professionals that require additional experience and training to qualify as COEs.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SSB 5488, 64th legislature, 2015 regular session.

Adopted under notice filed as WSR 18-06-080 on March 6, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 12, 2018.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-19-121, filed 9/21/15, effective 10/22/15)

**WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.**

**Center of excellence.**

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

- (i) ~~(An advanced registered nurse practitioner (ARNP);~~
- ~~(ii))~~ (ii) A developmental pediatrician;
- ~~((iii))~~ (iii) A neurologist;
- ~~((iv))~~ (iv) A pediatric neurologist;
- ~~((v))~~ (v) A pediatric psychiatrist;
- ~~((vi))~~ (vi) A psychiatrist; or
- ~~((vii))~~ (vii) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section and who has been designated by the agency as a COE.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

- (i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) To be recognized as a COE by the agency, the provider must submit a signed COE Attestation form, HCA 13-009, to the agency.

(5) The COE must be enrolled with the agency or the client's managed care organization (~~(unless the client has third-party insurance)) to be reimbursed for services.~~

~~((5))~~ (6) Examples of providers who can qualify as a designated COE include:

- (a) Multidisciplinary clinics;
- (b) Individual qualified provider offices; and
- (c) Neurodevelopmental centers.

~~((6))~~ (7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

**Lead behavior analysis therapist.**

~~((7))~~ (8) The lead behavior analysis therapist (LBAT) must ~~(be)~~:

(a) Be licensed by the department of health (DOH) to practice independently as ~~(an ARNP, physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW,)~~ a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) ~~((Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as an ARNP, physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW, and be an eligible provider according to chapter 182-502 WAC; or~~

(c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC). Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-008, regarding certification as a board-certified behavior analyst (BCBA) or a

board-certified assistant behavior analyst (BCaBA) on file with the agency.

~~((8))~~ (9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) ~~A (board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB))~~ DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

~~(b) ((Eligible to sit for board certification under standards set by the BACB; or~~

~~(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB))~~ A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

~~((9))~~ (10) If the LBAT's role is filled by a ~~((BCaBA))~~ LABA, the responsibilities below must be fulfilled by both the ~~((BCaBA))~~ LABA and the supervising ~~((BCBA))~~ LBA or licensed psychologist, as required by ~~((the BACB))~~ DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the ~~((therapy assistant))~~ certified behavior technician per week.

~~((Therapy assistant.~~

~~(10) The therapy assistant (TA) must be:~~

~~(a) Able to practice independently by being licensed))~~

**Certified behavior technician.**

(11) The certified behavior technician (CBT) must:

(a) ~~Be certified by DOH as a ((licensed mental health practitioner or credentialed as a counselor))~~ CBT under ~~((Title 18))~~ chapter 18.380 RCW in good standing with no license restrictions; or

~~(b) ((Employed by or contracted with an agency enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or~~

~~(c) Employed by or contracted with an agency enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;~~

~~((4))~~ Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency.

~~(12) The ((TA)) CBT must enroll as a ((performing or)) servicing provider ((and have:~~

~~(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a client with core symptoms of autism; and~~

~~(b) A letter of attestation signed by the lead LBAT, documenting that the ((TA)) CBT has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services.~~

~~(12))~~ under chapter 182-502 WAC.

~~(13) The ((TA)) CBT must:~~

~~(a) Deliver services according to the ABA therapy treatment plan; ((and))~~

~~(b) Be supervised by ((an LBAT)) a DOH-licensed professional who meets the requirements under ((subsection (7), (8), and (9) of this section))~~ WAC 246-805-330; and

~~(c) Review the client's progress with the ((LBAT)) supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the ((LBAT)) supervisor.~~

**Facility-based day program.**

~~((13))~~ (14) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following ~~((licensure))~~ requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;

~~(b) ((A clinic or nonhospital-based facility must be licensed as a community mental health agency by DBHR under chapter 388-877A WAC;~~

~~(c) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable; ((and~~

~~(d))~~ (c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.

**WSR 18-09-040**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed April 12, 2018, 2:05 p.m., effective May 13, 2018]

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

Purpose: WAC 458-29A-400 is being amended to incorporate language from SSB 5977 (2017), Sections 1303 and 1304, which provide an exemption for certain leasehold interests from leasehold excise tax.

Citation of Rules Affected by this Order: Amending WAC 458-29A-400 Leasehold excise tax—Exemptions.

Statutory Authority for Adoption: RCW 82.29A.140.

Adopted under notice filed as WSR 18-04-090 on February 5, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 12, 2018.

Erin T. Lopez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-04-103, filed 2/3/15, effective 3/6/15)

**WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) Introduction.**

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department of revenue (department), except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) **Student housing at public and nonprofit schools and colleges.**

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) **Subsidized housing.**

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

(b) **Example.** Assume an apartment building and the property on which it is located is:

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) **Nonprofit fair associations.**

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

(7) **Public employee housing.**

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her

employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

**(b) Examples.**

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

**(8) Interests held by enrolled Indians.**

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The lease-

hold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

**(9) Leases on Indian lands to non-Indians.**

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)((b)) (g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

**(10) Annual taxable rent is less than two hundred fifty dollars.**

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

**(b) Examples.**

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest

because they are not contiguous with the hangars used by Ace Flying Club.

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

**(11) Leases for a continuous period of less than thirty days.** Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

**(12) Month-to-month leases in residential units to be demolished or removed.**

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties

for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

**(13) Public works contracts.**

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

**(14) Correctional industries in state adult correctional facilities.**

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

(b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

**(15) Camp facilities for persons with disabilities.**

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

**(16) Public or entertainment areas of certain baseball stadiums.**

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof

or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

**(17) Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection (16) of this rule.

**(18) Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

**(19) State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

**(20) Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

**(21) Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. RCW 82.29A.136.

**(22) Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

**(23) Amphitheaters.**

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

**(24) Military housing.**

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

**(25) Community colleges and technical colleges.**

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

(i) Food services for students, faculty, and staff;

(ii) The operation of a bookstore on campus; or

(iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

**(26) Expiration date for new tax preferences.**

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

### WSR 18-09-045

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed April 12, 2018, 2:28 p.m., effective May 13, 2018]

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

Purpose: WAC 458-276-030 is being amended to incorporate language from EHB 1595 (2017) which describes the costs associated with responding to public records requests.

Citation of Rules Affected by this Order: Amending WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs.

Statutory Authority for Adoption: Chapter 42.56 RCW (Public Records Act) and RCW 82.01.060(2) (Department of revenue's rule-making authority).

Adopted under notice filed as WSR 18-04-089 on February 5, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 12, 2018.

Erin T. Lopez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-01-002, filed 12/6/17, effective 1/6/18)

#### **WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs.**

(1) **Availability.** All public records of the department of revenue (department) are deemed to be available for public inspection and copying pursuant to these rules in this chapter, except as otherwise provided by WAC 458-276-045 regarding exemptions and other limitations on disclosure of records.

(2) **Centralized administration.** All communications with the department regarding administration or enforcement of chapter 42.56 RCW and these rules in this chapter, and written requests for copies of the department's public records, decisions, and other matters, are handled by the information governance office.

(3) **Written and dated requests.** Requestors are encouraged to view the documents available on the web site prior to submitting a records request. The department recommends a written and dated request for public records to protect against unauthorized disclosure of confidential taxpayer information, unauthorized disclosure of licensing information, unauthorized disclosure of confidential property tax information, invasion of privacy, and to enhance the accuracy of the department's response to the request. A written request minimizes confusion or misunderstanding as to what is being requested and establishes a contact for clarifications and questions.

(4) **Request for records.** The written request is most effective if it contains the following information:

(a) Name of the person requesting the records or a point of contact;

(b) Calendar date on which the request is made;

(c) Specific records requested, if not identified in the public records index located online at [dor.wa.gov](http://dor.wa.gov), then an appropriate description of the records requested; and

(d) Contact information for questions about the request including, if possible, mailing address, email address, and telephone number.

(5) **Web site public records email request available.** The department has developed an "email request form" to assist requestors in obtaining public records. This email request form is located on the department's web site at [www.dor.wa.gov](http://www.dor.wa.gov) (searching: "public records").

(6) **Department's contact information.** Any person requesting access to public records of the department or seeking assistance in making such a request should contact the information governance office. Written requests for identifiable public records may be submitted to the information governance office by mail, email message, through the department's web site, facsimile transmission, or delivered in person to the following addresses and physical location:

#### **In-person delivery to physical address:**

Department of Revenue  
Information Governance Office  
6400 Linderson Way S.W., Suite 288  
Tumwater, WA 98501-6516

#### **Mail delivery:**

Department of Revenue



Information Governance Office  
 P.O. Box 47456  
 Olympia, WA 98504-7478  
**Email message:** dorpublicrecords@dor.wa.gov  
**Department's web site:** dor.wa.gov  
**Facsimile transmission (fax):** 360-705-6655

(7) **Response.** Within five business days of the receipt of the initial public records request by the information governance office, the department will:

- Provide the record;
- Acknowledge that the department has received the request and provide a reasonable estimate of the time it will take to fully respond;
- Seek a clarification of the request; or
- Deny the request.

(8) **Electronic format.** When a person requests public records in an electronic format, the information governance office will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the records.

(9) **Public records index.** The department maintains and makes available for public inspection and copying an appropriate index or indices in accordance with RCW 42.56.070. Such index or indices are located on the department's web site (searching: "public records index").

(10) **Hours for inspection and copying.** Public records maintained by the department will be available for inspection and copying at the information governance office during the office hours of 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) **Fees.**

(a) There is no fee for the inspection of public records.

(b) Pursuant to RCW 42.56.120 (2)(b), the department is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(i) The department does not have the resources to conduct a study to determine actual copying costs for all of its records;

(ii) To conduct such a study would interfere with other essential agency functions; and

(iii) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

Therefore, the department will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The copy fees in (c) of this subsection apply to requests to the department under chapter 42.56 RCW and received on or after the effective date of this rule.

(c) The department will take reasonable steps to provide records in the most efficient manner available in its normal operations. However, the department will generally charge fees for providing copies, whether hardcopy or electronic, to public records requests and may combine the following fees to the extent that more than one type of fee applies to copies produced in response to a particular request:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records using standard black and white paper photocopying. For other than standard photocopies, a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically; and

(v) The actual cost of any digital storage media or device provided by the department, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

~~((e))~~ (d) The department must provide, if asked by the requestor, a summary of the applicable charges before any copies are made. Based on the summary of applicable charges, the requestor may revise the request to reduce the number of copies to be made, thus reducing the charges.

(12) **Fee exception.** The department may not impose the copying fee under subsection (11) of this rule for access to or downloading of records the department routinely posts on dor.wa.gov prior to receipt of a request unless the requestor has specifically requested that the department provide copies of the records through other means.

(13) **Customized service charge.** In addition to the fees imposed under subsection (11) of this rule, the department may also impose a customized service charge. The amount of the customized service charge may:

(a) Be imposed if the department estimates the request will require the use of information technology expertise to prepare data compilations, or to provide customized electronic access services when the department does not use the compilations or customized electronic access services for other department purposes;

(b) Reimburse the department up to the actual cost of providing the services in subsection (13) of this rule; and

(c) Be imposed on the requestor only if the department notified the requestor of the charge. Additionally, the department must provide the requestor:

(i) An explanation of why the charge applies;

(ii) A description of the specific information technology expertise required to fulfill the request;

(iii) A reasonable estimate of the charge; and

(iv) The opportunity to alter the request in order to avoid or reduce the amount of the charge.

(14) **Deposit.** In addition to the fees and charges in subsections (11) and (13) of this rule, the department may also require a deposit not to exceed ten percent of the estimated cost of providing copies for a request. If the department makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or

reviewed, the department is not obligated to fulfill the balance of the request.

(15) **Waiver or alteration of fees.** The department may waive any fee assessed for a public records request pursuant to department rules and regulations. The department may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this rule, or in response to a voluminous or frequently occurring request.

### WSR 18-09-048

#### PERMANENT RULES

#### STATE BOARD OF HEALTH

[Filed April 13, 2018, 9:39 a.m., effective May 14, 2018]

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

Purpose: Chapter 246-390 WAC, Drinking water laboratory certification and data reporting, duplicative certification requirements have been repealed in this chapter which are now covered in the department of ecology's (ecology) Accreditation of environmental laboratories, chapter 173-50 WAC. The rule adopts reporting requirements for labs to send analytical data results to public water systems and the department of health, and adopts laboratory guidance and test panel templates for submitting written and electronic analytical data results by reference.

Citation of Rules Affected by this Order: New WAC 246-390-055, 246-390-065, 246-390-075, 246-390-085 and 246-390-095; repealing WAC 246-390-020, 246-390-040, 246-390-050, 246-390-060, 246-390-070 and 246-390-990; and amending WAC 246-290-001, 246-390-010, 246-390-030, and 246-390-100.

Statutory Authority for Adoption: RCW 43.20.050 and 70.119A.080.

Adopted under notice filed as WSR 18-03-175 on January 24, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-390-055(2), the amendment clarifies that confirmation must be within fourteen calendar days except for samples that have a shorter holding time.

WAC 246-390-075(5), the amendment changes the reporting time frame from seven business days to ten business days to align with chapter 246-290 WAC reporting requirements.

WAC 246-390-100(2), the amendment clarifies that an appeal must be within twenty-eight days of receipt, not service.

A final cost-benefit analysis is available by contacting Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-3147, TTY 360-833-6388 or 711, email [theresa.phillips@doh.wa.gov](mailto:theresa.phillips@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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 4, Repealed 6.

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 5, Amended 4, Repealed 6.

Date Adopted: April 10, 2018.

Michelle A. Davis  
Executive Director

### Chapter 246-390 WAC

#### DRINKING WATER LABORATORY CERTIFICATION ((RULES)) AND DATA REPORTING

AMENDATORY SECTION (Amending WSR 92-15-152, filed 7/22/92, effective 8/22/92)

**WAC 246-390-001 Purpose(~~Objectives~~).** (1) The purpose of this chapter is to (~~establish a state drinking water program for certification of laboratories analyzing public drinking water under RCW 43.20.050. The certification program is designed to satisfy the intent of the primary agreement with United States Environmental Protection Agency and the state, in compliance with 40 C.F.R. 142.10, 7/1/90.~~

~~(2) The department certification program:~~

~~(a) Requires laboratories to demonstrate capability to accurately analyze drinking water samples;~~

~~(b) Aids laboratories in improving quality assurance;~~

~~(c) Offers technical assistance in all drinking water analyses; and~~

~~(d) Fosters cooperation between the state department of health, local health agencies, and operators of laboratories)) set minimum certification and data reporting requirements for environmental laboratories that analyze drinking water samples.~~

(2) This chapter conforms to EPA primary enforcement responsibility requirements of 40 Code of Federal Regulations (C.F.R.) 142.10 for the certification of laboratories.

(3) Certified laboratories must comply with the requirements of this chapter, chapter 173-50 WAC, and applicable state and federal drinking water laws and regulations.

AMENDATORY SECTION (Amending WSR 92-15-152, filed 7/22/92, effective 8/22/92)

**WAC 246-390-010 Definitions, abbreviations, and acronyms.** The definitions, abbreviations, and acronyms in this section (~~shall~~) apply throughout this chapter, unless the context clearly (~~indicated~~) indicates otherwise.

~~(1) ("Administrative Procedure Act" means the adjudicative proceedings governed by chapter 34.05 RCW and chapter 246-08 WAC.~~

~~(2) "Analytical data" means the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, or radiological determination.~~

(3) "Certification" means the formal contractual agreement between the department and the certified laboratory indicating a laboratory is capable of producing accurate analytical data and is authorized to test drinking water compliance samples. The department will issue a certificate to the laboratory indicating the contaminants the laboratory is authorized to analyze. Certification does not guarantee validity of analytical data submitted by a certified laboratory.

(4) "Certification authority" means the designated official or a representative of the official authorized by the department as the head of the certification program.

(5) "Certification manual" means the most recent revision of the procedural and technical criteria of the drinking water certification rules. This document, entitled "Certification Manual for Laboratories Analyzing Washington State Drinking Water," is available from the Department of Health, Public Health Laboratory, Drinking Water Certification Program, 1610 NE 150th St., Seattle, Washington 98155-7224.

(6) "Certification official (CO)" means the designated official authorized by the department to certify drinking water laboratories.

(7) "Compliance sample" means a drinking water sample collected in accordance with WAC 246-290-300 and/or 246-290-320 and submitted to a state certified laboratory for analysis.

(8)) "Acute" means posing an immediate risk to human health.

(2) "Analyte" means the constituent or property of a sample measured using an analytical method for compliance purposes under chapters 246-290 and 246-291 WAC.

(3) "C.F.R." means the Code of Federal Regulations.

(4) "Chronic" means human exposure over many years to a contaminant at levels above the MCL.

(5) "Close of business" means the latest time during a business day when a lab is no longer in routine operation for accepting or performing drinking water sample analysis.

(6) "Confirmation" means an additional sample is analyzed from the same location where a detection has occurred to confirm the detection. The original sample and the confirmation sample are collected and analyzed within a reasonable period of time, generally not to exceed two weeks. Confirmation occurs when the confirmation sample analysis result falls within plus or minus thirty percent of the original sample result. This confirmation analysis is in addition to any analytical method confirmation requirements.

(7) "Contracted lab" means a certified lab that receives a drinking water sample from another certified lab for analysis.

(8) "Contracting lab" means a certified lab that sends a drinking water sample to another certified lab to be analyzed.

(9) "Department" means the Washington state department of health.

((9) "EMSL-CI" means the EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio.

(10) "EMSL-LV" means the EPA Environmental Monitoring System Laboratory, Las Vegas, Nevada.)) (10) "Ecology" means the Washington state department of ecology.

(11) "EPA" means the United States Environmental Protection Agency.

(12) ("Intercomparison studies" means a series of cross check samples sent to radiochemistry laboratories by EPA to compare the results between participating laboratories.

(13) "Laboratory" means any facility under the ownership and technical management of a single entity in a single geographical locale. A laboratory is where scientific examinations are performed on drinking water samples.

(14) "Maximum contaminant level (MCL)" "Estimated concentration" means the level of the analyte reported to the department is above a lab's MDL, but below the lab's MRL.

(13) "GWR" means groundwater rule.

(14) "Lab" or "certified lab" means an environmental lab accredited under chapter 173-50 WAC for one or more drinking water analytes and meets the requirements of this chapter.

(15) "Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water ((the purveyor)) that a public water system delivers to ((any public water system user, measured at the location identified under WAC 246-290-300, Table 4.

(15) "Official methods" means methodologies specified by EPA drinking water regulations under 40 C.F.R. 141.21-141.30, 141.41-141.42, 7/1/90 and approved by the department.

(16) "Parameter" means a single determination or group of related determinations using a specific written official method.

(17) "Performance evaluation (PE)" means an evaluation of the results of analysis of samples from an external testing source whose true values are unknown to the laboratory conducting the analysis. The external testing service must be approved by the department and/or CO if other than EPA sources are used.

(18) "On-site audit" means an on-site inspection performed by the department to determine a laboratory's capabilities and facilities.

(19) "Quality assurance (QA)" means all those planned and systematic actions necessary to provide confidence that an analysis, measurement, or surveillance program produces data of known and defensible quality.

(20) "Quality controls (QC)" means internal written procedures and routine analyses of laboratory reference materials, samples, and blanks to insure precision and accuracy of methodology, equipment and results.

(21) "State advisory level (SAL)" means a department established value for a chemical without an existing MCL. The SAL represents a level which when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health)) consumers. MCLs are established in chapters 246-290 and 246-291 WAC.

(16) "Minimum detectable activity (MDA)" means the smallest activity or concentration of radioactive material in a sample that will yield a net count (above sample background) that can be detected with ninety-five percent probability.

(17) "Minimum detection level (MDL)" means the minimum measured concentration of a substance that can be reported with ninety-nine percent confidence that the mea-

sured concentration is distinguishable from the method blank results.

(18) "**Method reporting limit (MRL)**" means the lowest concentration of a standard used for calibration.

(19) "**Proficiency testing (PT)**" means the evaluation of sample analysis results, the true values of which are known to the supplier of the samples, but unknown to the lab conducting the analysis. PT samples are provided by a source external to the certified lab.

(20) "**Public water system**" is defined and referenced under WAC 246-290-020 and 246-291-010.

(21) "**Quality control (QC)**" means a set of measures used during an analytical method to ensure that the process is within specified control parameters.

(22) "**State detection reporting limit (SDRL)**" means the minimum reportable detection of an analyte as established in Tables 1 through 4 of this chapter.

**AMENDATORY SECTION** (Amending WSR 92-15-152, filed 7/22/92, effective 8/22/92)

**WAC 246-390-030 Certification.** ~~((1) The department may grant certification to a laboratory after conducting a complete assessment of the laboratory's capabilities, including:~~

- ~~(a) Submission of a completed application;~~
- ~~(b) Submission of the proper fees;~~
- ~~(c) Satisfactory performance on PE studies, and inter-comparison samples where necessary;~~
- ~~(d) Submission of an updated QA plan; and~~
- ~~(e) Successful completion of an on-site inspection.~~

~~(2) The department may grant less than full certification based on terms and conditions incorporated in the contractual agreement between the laboratory and the department.)~~ To be certified to analyze drinking water samples, a lab shall:

- (1) Be accredited under chapter 173-50 WAC; and
- (2) Comply with data reporting requirements under this chapter.

#### NEW SECTION

**WAC 246-390-055 Reporting contracted analytical results.** A contracting lab that contracts with another lab shall:

- (1) Verify that the contracted lab is a certified lab;
- (2) Confirm that the contracted lab receives the sample within fourteen calendar days of the contracting lab receiving the sample, but not to exceed an analyte holding time if the holding time is less than fourteen calendar days;
- (3) Provide the following information to the contracted lab:
  - (a) The public water system's department assigned water system identification number;
  - (b) The name of the public water system;
  - (c) The date the sample was collected;
  - (d) The location where the sample was collected;
  - (e) The public water system's department assigned source identification number;
  - (f) The purpose for the sample;
  - (g) The sample composition; and
  - (h) The sample type.

(4) The contracted lab shall submit to the department a copy of the analytical results following the requirements under WAC 246-390-065 and 246-390-075;

(5) The contracted lab shall submit a copy of the analytical results to the contracting lab in the format and time frame per the contract terms.

#### NEW SECTION

**WAC 246-390-065 Notification requirements.** (1) In addition to the data reporting requirements under WAC 246-390-075, a lab shall notify the department and the public water system for:

(a)(i) Routine, repeat, GWR, triggered source water monitoring, and assessment source water monitoring results, as required under chapter 246-290 WAC, that are *E. coli* bacteria present.

(ii) Notification occurs with no less than three attempts to contact the department and the public water system by telephone, facsimile, or email as soon as possible after sample results have been determined, but no later than the close of business.

(b)(i) Routine, repeat, GWR, triggered source water monitoring, and assessment source water monitoring results that are total coliform bacteria present.

(ii) Notification occurs with one attempt to contact the department and the public water system by telephone (voice mail is acceptable), facsimile, or email as soon as possible after sample results have been determined, but no later than the close of business on the next business day. For labs that operate seven days per week or observe regular holidays; weekends and holidays are not considered "business days" for the purposes of this subsection.

(c) Routine or confirmation sample results for nitrate or nitrite that exceed the MCL under chapters 246-290 and 246-291 WAC; or

(d)(i) Routine or confirmation sample results for inorganic, organic, or radiological contaminants that exceed four times the contaminant's primary MCL under chapters 246-290 and 246-291 WAC.

(ii) For (c) and (d) of this subsection, notification occurs with one attempt to contact the department and public water system by telephone, facsimile, or email as soon as possible after sample results have been verified by quality control staff, but no later than the close of business.

(2) A lab shall:

(a) Document all notification attempts required under subsection (1) of this section by recording the following information in a paper or electronic logbook:

- (i) Date;
- (ii) Time;
- (iii) Sample number;
- (iv) Public water system name and department-assigned identification number;
- (v) The contact person and telephone number, facsimile number, or email address for the public water system;
- (vi) The contact person and telephone number, facsimile number, or email address of the department; and
- (vii) The initials of the lab person that made the attempt.

(b) Make the logbook available to the department upon request; and

(c) Retain the logbook for a minimum of two years after the last entry date.

#### NEW SECTION

**WAC 246-390-075 Reporting.** (1) A lab shall report analytical results to the department and the public water system.

(2) Effective December 1, 2018, a lab submitting paper reports shall complete and submit to the department data reports following the procedures and templates in the department's *Laboratory Reporting Guidance*, Publication DOH 331-530, March 2018.

(3) A lab submitting electronic reports shall complete and submit to the department data reports following the procedures in the department's *Electronic Reporting Guidance*, Publication 331-289, March 2018.

(4) Labs shall submit reports to the public water system in the format and time frame that was agreed upon when executing the service agreement between the laboratory and the public water system.

(5) Labs shall submit reports of acute contaminant results within ten business days after receiving the sample.

(6) Labs shall submit reports of chronic contaminants within forty-five business days after receiving the sample.

(7) Analytical results must be complete, legible, and accurate.

(8) A lab shall report numerical results consistent with the accuracy of the EPA-approved methods and any associated lab instruments, glassware, or tools.

(9) A lab shall report numerical results out to, but not exceed, one decimal place past the SDRL in cases where the last definitely known digit exceeds one decimal place past the SDRL as follows:

(a) If the SDRL is 1.1 and the result, out to the last definitely known digit is 1.132, then the value reported to the department is 1.13;

(b) If the digit 6, 7, 8, or 9 is dropped, increase the preceding digit by one unit;

(c) If the digit 0, 1, 2, 3, or 4 is dropped, do not alter the preceding digit; or

(d) If the digit 5 is dropped, round off the preceding digit to the nearest even number. For example, 2.25 becomes 2.2, and 2.35 becomes 2.4.

(10) A lab shall include the following data qualifiers adjacent to the results that are affected:

(a) "B" - This data qualifier is used when the target analyte is detected in the method blank above the lab's established MRL or SDRL, whichever is lower;

(b) "J" - This data qualifier is used when the result is an estimated concentration per subsections (13) and (14) of this section;

(c) "NDDS" - This data qualifier is used when the analyte is not detected in duplicate sample; or

(d) "U" - This data qualifier is used when the radiochemistry analyte is not detected at or above the lab's established MDA.

(11) A lab shall notate on the report to the public water system and the department when any analysis is completed using a provisional accreditation.

(12) At the department's request, a lab shall submit the following information:

(a) The method specific QC for any given analytical report.

(b) The most recent MDL procedures performed for any given analyte.

(c) The most recent PT study performed for any given analyte.

(13) The SDRLs for organic chemical analytes are established in Table 1 of this section.

(a) Labs shall attach to the lab report a copy of the method specific QC results for any organic chemical detection that is reported to the department which is at or above the SDRLs listed in Table 1 of this section except for:

(i) Chloroform (0027);

(ii) Bromodichloromethane (0028);

(iii) Dibromochloromethane (0029);

(iv) Bromoform (0030);

(v) Monochloroacetic Acid (0411);

(vi) Dichloroacetic Acid (0412);

(vii) Trichloroacetic Acid (0413);

(viii) Monobromoacetic Acid (0414);

(ix) Monobromoacetic Acid (0415); and

(x) Total Organic Carbon (0421).

(b) A lab shall report organic chemical analyte results when the lab's established MRL is greater than the SDRL as:

(i) "Nondetect" or "ND" when a lab's result is less than the SDRL and MRL;

(ii) An estimated concentration, notated with a "J" data qualifier when a result is equal to or greater than the SDRL, but less than the lab's established MRL;

(iii) A number when a result is equal to or greater than the lab's established MRL.

(c) A lab shall report organic chemical analyte results when the lab's established MRL is less than the SDRL as:

(i) "Nondetect" or "ND" when a lab's result is less than the lab's established MRL;

(ii) "Nondetect" or "ND" when a lab's result is less than the lab's established SDRL; or

(iii) A number when a result is equal to or greater than the SDRL.

(d) A lab shall report organic chemical analyte results when their established MRL is equal to the SDRL as:

(i) "Nondetect" or "ND" when a lab's result is less than the SDRL and MRL; or

(ii) A number when a result is equal to or greater than the SDRL and the lab's established MRL.

Table 1 - Organic Chemicals

Analyte Name	Analyte Number	Units	SDRL
1,1 Dichloroethane	0058	µg/L	0.5
1,1 Dichloroethylene	0046	µg/L	0.5
1,1 Dichloropropene	0062	µg/L	0.5
1,1,1 Trichloroethane	0047	µg/L	0.5
1,1,1,2 Tetrachloroethane	0072	µg/L	0.5
1,1,2 Trichloroethane	0067	µg/L	0.5
1,1,2,2 Tetrachloroethane	0080	µg/L	0.5
1,2 Dichlorobenzene	0084	µg/L	0.5
1,2 Dichloroethane	0050	µg/L	0.5
1,2 Dichloropropane	0063	µg/L	0.5
1,2,3 Trichlorobenzene	0098	µg/L	0.5
1,2,3 Trichloropropane	0079	µg/L	0.5
1,2,4 Trichlorobenzene	0095	µg/L	0.5
1,2,4 Trimethylbenzene	0091	µg/L	0.5
1,3 Dichloropropane	0070	µg/L	0.5
1,3 Dichloropropene	0154	µg/L	0.5
1,3,5 Trimethylbenzene	0089	µg/L	0.5
1,4 Dichlorobenzene	0052	µg/L	0.5
2,2 Dichloropropane	0059	µg/L	0.5
2,3,7,8 TCDD (dioxin)	0149	ng/L	0.005
2,4 D	0037	µg/L	0.1
2,4 DB	0135	µg/L	1
2,4,5 T	0136	µg/L	0.4
2,4,5 TP (Silvex)	0038	µg/L	0.2
3,5 Dichlorobenzoic Acid	0226	µg/L	0.5
4,4 DDD	0232	µg/L	0.1
4,4 DDE	0233	µg/L	0.1
4,4 DDT	0234	µg/L	0.1
Acenaphthylene	0244	µg/L	0.2
Acifluorfen	0223	µg/L	2
Alachlor	0117	µg/L	0.2
Aldicarb	0142	µg/L	0.5
Aldicarb Sulfone	0143	µg/L	0.8
Aldicarb Sulfoxide	0144	µg/L	0.5
Aldrin	0118	µg/L	0.1
Anthracene	0246	µg/L	0.2
Arochlor 1016	0180	µg/L	0.08
Arochlor 1221	0173	µg/L	20
Arochlor 1232	0174	µg/L	0.5
Arochlor 1242	0175	µg/L	0.3
Arochlor 1248	0176	µg/L	0.1
Arochlor 1254	0177	µg/L	0.1

Analyte Name	Analyte Number	Units	SDRL
Arochlor 1260	0178	µg/L	0.2
Atrazine	0119	µg/L	0.1
Bentazon	0220	µg/L	0.5
Benzene	0049	µg/L	0.5
Benzo (a) anthracene	0247	µg/L	0.2
Benzo (a) Pyrene	0120	µg/L	0.02
Benzo (b) fluoroanthene	0248	µg/L	0.2
Benzo (k) fluoranthene	0250	µg/L	0.2
Benzyl Butyl Phthalate	0258	µg/L	1.0
Bromacil	0179	µg/L	0.1
Bromobenzene	0078	µg/L	0.5
Bromochloromethane	0086	µg/L	0.5
Bromodichloromethane	0028	µg/L	0.5
Bromoform	0030	µg/L	0.5
Bromomethane	0054	µg/L	0.5
Butachlor	0121	µg/L	0.1
Carbaryl	0145	µg/L	2
Carbofuran	0146	µg/L	0.9
Carbon Tetrachloride	0048	µg/L	0.5
Chlordane (total)	0122	µg/L	0.2
Chlorobenzene	0071	µg/L	0.5
Chloroethane	0055	µg/L	0.5
Chloroform	0027	µg/L	0.5
Chloromethane	0053	µg/L	0.5
Chrysene	0251	µg/L	0.2
Cis- 1,2 Dichloroethylene	0060	µg/L	0.5
Cis- 1,3 Dichloropropene	0065	µg/L	0.5
Dalapon	0137	µg/L	1
DBCP	0103	µg/L	0.02
DBCP (screening)	0428	µg/L	0.5
DCPA Acid Metabolites	0225	µg/L	0.1
Di (2-Ethylhexyl) Adipate	0124	µg/L	0.6
Di (2-Ethylhexyl) Phthalate	0125	µg/L	0.6
Dibromoacetic Acid	0415	µg/L	1
Dibromochloromethane	0029	µg/L	0.5
Dibromomethane	0064	µg/L	0.5
Dicamba	0138	µg/L	0.2
Dichloroacetic Acid	0412	µg/L	1
Dichlorodifluoromethane	0104	µg/L	0.5
Dichlorprop	0221	µg/L	0.5
Dieldrin	0123	µg/L	0.1
Diethyl Phthalate	0260	µg/L	1.0
Dimethyl Phthalate	0261	µg/L	1.0

Analyte Name	Analyte Number	Units	SDRL
Di-n-butyl Phthalate	0259	µg/L	1.0
Dinoseb	0139	µg/L	0.2
Diquat	0150	µg/L	0.4
EDB	0102	µg/L	0.01
EDB (screening)	0427	µg/L	0.5
Endothal	0151	µg/L	9
Endrin	0033	µg/L	0.01
EPTC	0208	µg/L	0.1
Ethylbenzene	0073	µg/L	0.5
Fluoranthene	0253	µg/L	0.2
Fluorene	0254	µg/L	0.2
Glyphosate	0152	µg/L	6
HAA(5)	0416	µg/L	*
Heptachlor	0126	µg/L	0.04
Heptachlor Epoxide	0127	µg/L	0.02
Hexachlorobenzene	0128	µg/L	0.1
Hexachlorobutadiene	0097	µg/L	0.5
Hexachlorocyclo Pentadiene	0129	µg/L	0.1
Isopropylbenzene	0087	µg/L	0.5
Lindane (bhc - gamma)	0034	µg/L	0.02
M- dichlorobenzene	0083	µg/L	0.5
M/P Xylenes (MCL for total)	0074	µg/L	0.5
Methomyl	0147	µg/L	4
Methoxychlor	0035	µg/L	0.1
Methylene Chloride (Dichloromethane)	0056	µg/L	0.5
Metolachlor	0130	µg/L	0.1
Metribuzin	0131	µg/L	0.1
Molinate	0218	µg/L	0.1
Monobromoacetic Acid	0414	µg/L	1
Monochloroacetic Acid	0411	µg/L	2
Naphthalene	0096	µg/L	0.5
N-Butylbenzene	0094	µg/L	0.5
N-Propylbenzene	0088	µg/L	0.5
O- Chlorotoluene	0081	µg/L	0.5
O- Xylene (MCL for total)	0075	µg/L	0.5
Oxamyl	0148	µg/L	2
P- Chlorotoluene	0082	µg/L	0.5
Paraquat	0400	µg/L	0.8
PCB (as Decachlorobiphenyl)	0401	µg/L	0.1
Pentachlorophenol	0134	µg/L	0.04
Phenanthrene	0256	µg/L	0.2
Picloram	0140	µg/L	0.1
P-Isopropyltoluene	0093	µg/L	0.5



Analyte Name	Analyte Number	Units	SDRL
Propachlor	0132	µg/L	0.1
Pyrene	0257	µg/L	0.2
Sec- Butylbenzene	0092	µg/L	0.5
Simazine	0133	µg/L	0.07
Styrene	0076	µg/L	0.5
Terbacil	0190	µg/L	0.1
Tert- Butylbenzene	0090	µg/L	0.5
Tetrachloroethylene	0068	µg/L	0.5
Toluene	0066	µg/L	0.5
Total organic carbon	0421	mg/L	0.7
Total Trihalomethane	0031	µg/L	*
Total Xylenes	0160	µg/L	0.5
Toxaphene	0036	µg/L	1
Trans- 1,2 Dichloroethylene	0057	µg/L	0.5
Trans- 1,3 Dichloropropene	0069	µg/L	0.5
Trichloroacetic Acid	0413	µg/L	1
Trichloroethylene	0051	µg/L	0.5
Trichlorofluoromethane	0085	µg/L	0.5
Trifluralin	0243	µg/L	0.1
Vinyl Chloride	0045	µg/L	0.5

**Key**

**mg/L** = parts per million, or milligrams per liter

**ng/L** = nanograms per liter

**µg/L** = parts per billion, or micrograms per liter

\* = results are calculated values based on other analytical results

(14) The SDRLs for inorganic chemical analytes are established in Table 2 of this section.

(a) A lab shall report inorganic chemical analyte results when the lab's established MRL is greater than the SDRL as:

(i) "Nondetect" or "ND" when a lab's result is less than the SDRL and MRL;

(ii) An estimated concentration, notated with a "J" data qualifier, when a result is equal to or greater than the SDRL, but less than the lab's established MRL; or

(iii) A number when a result is equal to or greater than the lab's established MRL.

(b) A lab shall report inorganic chemical analyte results when the lab's established MRL is less than the SDRL as:

(i) "Nondetect" or "ND" when a lab's result is less than the lab's established MRL;

(ii) "Nondetect" or "ND" when a lab's result is less than the lab's established SDRL; or

(iii) A number when a result is equal to or greater than the SDRL.

(c) A lab shall report inorganic chemical analyte results when the lab's established MRL is equal to the SDRL as:

(i) "Nondetect" or "ND" when a lab's result is less than the SDRL and MRL; or

(ii) A number when a result is equal to or greater than the SDRL and the lab's established MRL.

**Table 2 - Inorganic Chemicals**

Analyte Name	Analyte Number	Units	SDRL
Alkalinity-Lab	0403	mg/L	5
Antimony	0112	mg/L	0.003
Arsenic	0004	mg/L	0.001
Asbestos	0115	MFL	0.20
Barium	0005	mg/L	0.1
Beryllium	0110	mg/L	0.0003

Analyte Name	Analyte Number	Units	SDRL
Bromate	0419	mg/L	0.005/0.001*
Cadmium	0006	mg/L	0.001
Chloride	0021	mg/L	20
Chlorite	0418	mg/L	0.02
Chromium	0007	mg/L	0.007
Color	0018	CU	15
Conductivity	0016	µmhos/cm	70
Copper	0023	mg/L	0.02
Cyanide	0116	mg/L	0.05
Fluoride	0019	mg/L	0.2
Hardness	0015	mg/L	10
Iron	0008	mg/L	0.1
Lead	0009	mg/L	0.001
Manganese	0010	mg/L	0.01
Mercury	0011	mg/L	0.0002
Nickel	0111	mg/L	0.005
Nitrate-n	0020	mg/L	0.5
Nitrite-n	0114	mg/L	0.1
Selenium	0012	mg/L	0.002
Silver	0013	mg/L	0.1
Sodium	0014	mg/L	5
Sulfate	0022	mg/L	50
TDS-total dissolved solids	0026	mg/L	100
Thallium	0113	mg/L	0.001
Total nitrate/nitrite	0161	mg/L	0.5
Turbidity	0017	NTU	0.1
Zinc	0024	mg/L	0.2

## Key

CU = color units

MFL = million fibers per liter

mg/L = parts per million, or milligrams per liter

NTU = nephelometric turbidity units

µmhos/cm = micromhos per centimeter

\* = labs that use EPA Methods 317.0, 326.0 or 321.8 must meet a 0.0010 mg/L SDRL for bromate

(15) The SDRLs for radiochemistry analytes are established in Table 3 of this section.

(a) A lab's MDA must meet the established SDRL levels for the analysis to be considered for compliance purposes.

(b) A lab shall report radiochemistry analyte results as:

(i) A number and a "U" qualifier if the analyte was analyzed for, but not detected at or above the lab's established MDA; or

(ii) A number when a result is equal to or greater than the MDA.

**Table 3 - Radiochemistry**

Analyte Name	Analyte Number	Units	SDRL
Cesium 134	0107	pCi/L	10.0
Gross Alpha	0165	pCi/L	3.0
Gross Alpha (Minus Uranium)	0041	pCi/L	*
Gross Beta	0042	pCi/L	4.0

Analyte Name	Analyte Number	Units	SDRL
Iodine 131	0108	pCi/L	1.0
Radium 226	0039	pCi/L	1.0
Radium 226 + 228	0040	pCi/L	*
Radium 228	0166	pCi/L	1.0
Radon	0109	pCi/L	*
Strontium 90	0044	pCi/L	2.0
Tritium	0043	pCi/L	1000
Uranium	0105	µg/L	1.0

**Key**

pCi/L = picocuries per liter

µg/L = parts per billion, or micrograms per liter

\* = results are calculated values based on other analytical results

(16) The units for microbiology analytes are established in Table 4 of this section.

(a) Total coliform and *E. coli* results for routine and repeat samples in accordance with 40 C.F.R. 141 Subpart Y - Revised Total Coliform Rule, GWR triggered, and GWR assessment source sample results that are absent or present as follows:

(i) "Satisfactory" if no total coliforms are detected.

(ii) "Unsatisfactory" if:

(A) Total coliforms are detected; and

(B) *E. coli* absent if *E. coli* is not detected; or

(C) *E. coli* present if *E. coli* is detected.

(b) A lab shall report routine filtered and unfiltered surface water microbiology analyte results as a number.

(c) A lab shall report routine heterotrophic plate count results as a number.

(d) A lab shall report results of investigative samples or samples collected for information only to the public water system for total coliforms, fecal coliforms, and *E. coli* as a number or, as absent or present. Investigative samples or samples collected for information only are not required to be reported to the department.

**Table 4 - Microbiology**

Analyte Name	Analyte Number	Units
Total Coliform (numerical)	0001	CFU/100mL
Total Coliform (numerical)	0001	MPN/100mL
Total Coliform (absence/presence)	0001	N/A
Fecal Coliform (numerical)	0002	CFU/100mL
Fecal Coliform (numerical)	0002	MPN/100mL
Fecal Coliform (absence/presence)	0002	N/A
<i>E. coli</i> (numerical)	0003	CFU/100mL
<i>E. coli</i> (numerical)	0003	MPN/100mL
<i>E. coli</i> (absence/presence)	0003	N/A
Heterotrophic Plate Count (numerical)	0101	CFU/1mL

**Key**

CFU/100mL = colony forming units per 100 milliliters of sample

CFU/1mL = colony forming units per 1 milliliter of sample

MPN/100mL = most probable number per 100 milliliters of sample

**NEW SECTION**

**WAC 246-390-085 Enforcement.** (1) When a lab fails to comply with the requirements of this chapter, the department may initiate one or more of the following enforcement actions:

(a) An informal letter directing appropriate corrective measures;

(b) A notice of violation requiring appropriate corrective measures;

(c) A compliance schedule of specific actions needed to achieve compliance;

(d) A notice of correction with specific actions needed within a designated time period to achieve compliance.

(2) If a lab fails to comply with a notice of correction as specified in subsection (1)(d) of this section, the department may revoke or suspend a lab's drinking water certification in accordance with WAC 246-390-095.

#### NEW SECTION

##### **WAC 246-390-095 Revocation and suspension.** (1)

The department may suspend a lab's certification for up to one year or revoke a lab's certification for up to five years if a lab fails to comply with a notice of correction as specified in WAC 246-390-085.

(2) A lab whose certification is suspended or revoked may, after the period of suspension or revocation has ended, apply for certification in conformance with the requirements at the time of application.

(3) If ecology suspends or revokes a lab's accreditation for drinking water analytes as authorized under chapter 173-50 WAC, the department shall immediately suspend or revoke a lab's certification to analyze drinking water samples. The lab must immediately notify the department and public water systems of any samples that are invalidated as a result of the revocation or suspension.

AMENDATORY SECTION (Amending WSR 92-15-152, filed 7/22/92, effective 8/22/92)

**WAC 246-390-100 Appeals.** ~~((A laboratory manager may appeal any certification action such as denial and revocation in writing to the CO. If the question is not satisfactorily resolved, the laboratory manager may appeal in writing by certified mail to the certification authority within thirty days of the decision of the CO. Decisions of the certification authority may be appealed to the secretary of the department within thirty days of notification of final action. The adjudication procedure is governed by the Administrative Procedure Act, this chapter, and chapter 246-08 WAC. Laboratories may be allowed to maintain certification during the appeal process.))~~ (1) A certified lab may appeal a revocation or suspension action taken by the department in accordance with chapters 246-10 WAC, 34.05 RCW, and RCW 43.70-115.

(2) To appeal a notice of revocation or suspension action, the certified lab must file a written appeal with the department within twenty-eight days of receipt of the initiating documents. The written appeal must contain the specific grounds for an appeal.

(3) A certified lab that requests a hearing may continue to operate until the department issues a final order unless the department takes a summary action due to a high public health risk.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-390-020 Requirement for certification.

WAC 246-390-040 Provisional certification.

WAC 246-390-050 Revoking or denying certification.

WAC 246-390-060 Reciprocity.

WAC 246-390-070 Third-party certification.

WAC 246-390-990 Fees.

#### **WSR 18-09-049**

##### **PERMANENT RULES**

#### **WESTERN WASHINGTON UNIVERSITY**

[Filed April 13, 2018, 9:44 a.m., effective May 14, 2018]

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

Purpose: The manifestation of violence and intimidation observed in on-campus demonstrations in Washington state and across the United States necessitated amendments to WAC 516-52-020 in order to preserve the integrity of Western Washington University's educational mission, to protect the health, safety and welfare of students, faculty and staff, and to preserve university property and scarce state resources.

Citation of Rules Affected by this Order: Amending WAC 516-52-020.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 18-04-105 on February 6, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: April 13, 2018.

Jennifer L. Sloan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-01-080, filed 12/14/92, effective 1/14/93)

**WAC 516-52-020 ((Firearms and dangerous)) Weapons and armaments prohibited.** (1) Definitions. As used in this section, the following words and phrases mean:

(a) Armor or armaments. Includes, but are not limited to, shields, body armor, tactical gear, face masks, and helmets.

(b) Firearm. A weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.

(c) Weapon. Includes, but is not limited to, air guns, pellet guns, paint ball guns, or other pneumatic propellant devices, bows, crossbows, slingshots or other muscle powered projectile devices, daggers, swords, knives or other cutting or stabbing instruments with blades longer than three inches, clubs, bats, sand clubs, truncheons, metal knuckles, incendiary devices or materials, or any other objects or instruments apparently capable of producing bodily harm.

(2) Only such persons who are authorized to carry firearms, ammunition, or other weapons or armaments as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons or armaments issued for their possession by their respective law enforcement agencies or employers while on the campus or other university-controlled property, including, but not limited to, residence halls. ((No one may possess explosives unless licensed to do so for purposes of conducting university-authorized activities relating to building construction or demolition.

(2) Other than the law enforcement officers or other individuals referenced in subsection (1) of this section, members of the campus community and visitors who bring firearms or other weapons to campus must immediately place the firearms or weapons in the university provided storage facility. The storage facility is located at the university public safety department and is accessible twenty-four hours per day.

(3) If any member of the campus community or visitor wishes to bring a weapon to the campus for display or demonstration purposes directly related to a class, seminar, or other educational activity, permission for such possession may be applied for at the university public safety department, which shall review any such proposal and may establish the conditions of the possession on campus.))

(3) Other than the law enforcement officers or other individuals referenced in subsection (2) of this section, individuals seeking to bring a firearm or other weapon onto campus, university-owned property, or a university sponsored event must obtain prior written authorization at the university public safety department, which shall have sole authority to review and approve any such request and, if approval is granted, establish conditions to the firearm or weapon authorization.

(4) Members of the campus community and visitors who bring firearms or other weapons or armaments to campus without prior authorization must immediately remove them from university property or place the firearm(s), weapon(s), or armament(s) in the university provided storage facility. The storage facility is located at the university public safety department and is accessible twenty-four hours per day.

(5) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050.

(6) Except for those persons identified in subsection (2) of this section or under the circumstances described in subsection (3) or (4) of this section, possession of firearms,

ammunition, fireworks, and explosives is prohibited on the university campus, university-owned property, and at university sponsored events. No one may possess fireworks or explosives unless certified or licensed to do so for purposes of conducting university-authorized activities, building construction or demolition.

(7) Some weapons including, but not limited to, sports equipment, kitchen utensils, laboratory materials and equipment, safety training equipment, and props in campus theatre productions are permitted when used for the purpose for which they are intended. Use of weapons, armor, or armaments in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons or property, or in any way to avoid apprehension for a criminal act or acts is prohibited.

(8) Violations of this section are subject to appropriate disciplinary or legal action.

## WSR 18-09-050

### PERMANENT RULES

### WESTERN WASHINGTON UNIVERSITY

[Filed April 13, 2018, 9:48 a.m., effective May 14, 2018]

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

Purpose: The manifestation of violence and intimidation observed in on-campus demonstrations in Washington state and across the United States necessitated amendments to WAC 516-24-130 in order to preserve the integrity of Western Washington University's educational mission, to protect the health, safety and welfare of students, faculty and staff, and to preserve university property and scarce state resources.

Citation of Rules Affected by this Order: Amending WAC 516-24-130.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Adopted under notice filed as WSR 18-04-104 on February 6, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: April 13, 2018.

Jennifer L. Sloan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-09-052, filed 4/13/01, effective 5/14/01)

**WAC 516-24-130 ((Demonstrations-)) Freedom of expression and prohibited conduct.** The value of active participation in political and social issues is recognized by Western Washington University as enhancing the education of the individual and contributing to the betterment of American society. The rights of free speech, petition and assembly are fundamental to the democratic process guaranteed under the Constitution of the United States and will be promoted and respected at all times.

The university (~~furth(er)~~) also recognizes that it has an obligation to maintain on campus an atmosphere that allows the institution to perform the fundamental task of providing an opportunity for all members of the community to pursue knowledge through accepted academic processes.

The university further recognizes that it is committed to a safe campus, ensuring the safety of its community members and preventing loss or damage to its facilities or property.

To achieve these objectives it is essential that (~~demonstrations~~) freedom of expression and assembly be orderly and conducted in a time, place, and manner that allows the orderly function of the university. Any person or group of persons shall not, by their conduct(~~(- disrupt, disturb or interfere with:~~

- ~~(1) Classroom activities and other educational pursuits;~~
- ~~(2) Recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities;~~
- ~~(3) Pedestrian and vehicular traffic;~~
- ~~(4) Preservation and protection of university property and personal property of individuals.);~~
- (1) Violate the prohibition of firearms, weapons, armor or armaments as set forth in WAC 516-52-020.
- (2) Obstruct or interfere with classroom activities and/or other educational or employment pursuits.
- (3) Obstruct or interfere with recognized university activities including, but not limited to, ceremonies, meetings, office functions or residence hall activities.

(4) Obstruct or interfere with pedestrian or vehicular traffic.

(5) Obstruct or interfere with the preservation and protection of university property and personal property of individuals.

(6) Threaten, by statement or implication, the health or safety of others.

(7) Contact or communicate in a threatening nature that harasses, would cause a reasonable person to fear for their safety, or which is so persistent, pervasive, or severe as to deny a person's ability to substantially participate in the university community.

Any person persisting in such conduct after being requested to cease by university authorities, shall be subject, as appropriate, to disciplinary proceedings, trespass, or arrest and prosecution.

**WSR 18-09-052**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Filed April 13, 2018, 10:38 a.m., effective May 14, 2018]

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

Purpose: The agency revised subsection (1)(f) of this section to align with current professional licensing requirements in RCW 18.35.040 for speech language pathologists; created a new subsection (11) that clarifies the agency's process for requesting prior authorization when a client does not meet the expedited prior authorization clinical criteria; and clarified in subsection (12) the agency's criteria for requests for limitation extensions.

Citation of Rules Affected by this Order: Amending WAC 182-545-200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 18.35.040.

Adopted under notice filed as WSR 18-03-130 on January 22, 2018.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
<b>Original WAC 182-545-200 Outpatient rehabilitation (occupational therapy, physical therapy, and speech therapy)</b>		
	(11) The agency evaluates ( <del>(a request for outpatient rehabilitation that is in excess of the limitations or restrictions, according to))</del> <u>limitation extension (LE) requests regarding scope, amount, duration, and frequency of covered health care services under WAC 182-501-0169. ((Prior authorization may be requested))</u> <u>Providers may submit LE requests</u> for additional units when: (a) The criteria for an expedited prior authorization does not apply;	As a result of stakeholder comments, the agency revised subsection (11), moved the proposed (11) to (12), and renumbered the rest of the subsections (without change to content).

Proposed/Adopted	WAC Subsection	Reason
Proposed	(b) The number of available units under the EPA have been used and services are requested beyond the limits; or (c) A new qualifying condition arises after the initial six visits are used.	
Adopted	(11) If the client does not meet the EPA clinical criteria in this section, the agency uses the process in WAC 182-501-0165 to consider prior authorization requests and approves services that are medically necessary.	

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 13, 2018.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 16-03-042, filed 1/14/16, effective 2/14/16)

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

(1) The following health professionals may enroll with the medicaid agency, as defined in WAC 182-500-0010, to provide outpatient rehabilitation (which includes occupational therapy, physical therapy, and speech therapy) within their scope of practice to eligible ~~((persons))~~ clients:

- (a) A psychiatrist;
- (b) A licensed occupational therapist;
- (c) A licensed occupational therapy assistant (OTA) supervised by a licensed occupational therapist;
- (d) A licensed physical therapist;
- (e) A physical therapist assistant supervised by a licensed physical therapist;
- (f) A licensed speech-language pathologist ~~((who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association;~~
- ~~(g) A speech language pathologist who has completed the equivalent educational and work experience necessary for such a certificate; and~~
- ~~(h)); and~~
- (g) A licensed optometrist to provide vision occupational therapy only.

(2) ~~((Persons))~~ Clients covered by one of the Washington apple health programs listed in the table in WAC 182-501-0060 or receiving home health care services as described in

chapter 182-551 WAC (subchapter II) are eligible to receive outpatient rehabilitation as described in this chapter.

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

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

- (a) Covered;
- (b) Medically necessary;
- (c) Within the scope of the eligible person's medical care program;
- (d) Ordered by:
  - (i) A physician, physician assistant (PA), or an advanced registered nurse practitioner (ARNP); or
  - (ii) An optometrist, if the ordered services are for occupational therapy only.
- (e) Within currently accepted standards of evidence-based medical practice;
- (f) Authorized, as required within this chapter, under chapters 182-501 and 182-502 WAC(~~(:)~~) and the agency's published billing instructions ~~((and provider notices))~~;
- (g) Begun within thirty calendar days of the date ordered;
- (h) Provided by one of the health professionals listed in subsection (1) of this section;
- (i) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published billing instructions ~~((and provider notices))~~; and
- (j) Provided as part of an outpatient treatment program:
  - (i) In an office or outpatient hospital setting;
  - (ii) In the home, by a home health agency as described in chapter 182-551 WAC;
  - (iii) In a neurodevelopmental center, as described in WAC 182-545-900; or
  - (iv) For children with disabilities, age two or younger, in natural environments including the home and community setting in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

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

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

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

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

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

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

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

(i) Without authorization:

(A) One occupational therapy evaluation;

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

(C) Twenty-four units of occupational therapy, ~~((f))~~ which ~~((equals))~~ is approximately six hours ~~((h))~~.

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

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

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

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

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

(III) Burns - Second or third degree only;

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

(V) Lymphedema;

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

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

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

(IX) Reflex sympathetic dystrophy;

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

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

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

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

(i) Without authorization:

(A) One physical therapy evaluation;

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

(C) Twenty-four units of physical therapy, ~~((f))~~ which ~~((equals))~~ is approximately six hours ~~((h))~~.

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

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

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

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

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

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

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

(V) Lymphedema;

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

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

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

(IX) Reflex sympathetic dystrophy;

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

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

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

(i) Without authorization:

(A) One speech language pathology evaluation;

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

(C) Six units of speech therapy, ~~((f))~~ which ~~((equals))~~ is approximately six hours ~~((h))~~.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(9) For the purposes of this chapter:

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

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

(10) For expedited prior authorization (EPA):

(a) A provider must establish that:

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

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

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

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

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

(11) If the client does not meet the EPA clinical criteria in this section, the agency uses the process in WAC 182-501-0165 to consider prior authorization requests and approves services that are medically necessary.

(12) The agency evaluates (~~(a request for outpatient rehabilitation that is in excess of the limitations or restrictions, according to)~~) limitation extension (LE) requests regarding scope, amount, duration, and frequency of covered health care services under WAC 182-501-0169. (~~(Prior authorization may be requested)~~) Providers may submit LE requests for additional units when:

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

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

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

~~((12))~~ (13) Duplicate services for outpatient rehabilitation are not allowed for the same person when both providers are performing the same or similar procedure(s).

~~((13))~~ (14) The agency does not pay separately for outpatient rehabilitation that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

~~((14))~~ (15) The agency does not reimburse a health care professional for outpatient rehabilitation performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.

## WSR 18-09-057

### PERMANENT RULES

### OFFICE OF

### ADMINISTRATIVE HEARINGS

[Filed April 16, 2018, 7:03 a.m., effective May 17, 2018]

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

Purpose: Chapter 10-04 WAC was recently updated in response to recent legislation on public records, in order to provide guidance and clarity to public records requesters. Additionally, WAC 10-04-075 was updated to include a sentence that states that fees for copies of public records may be waived when the costs of processing the payment are reasonably likely to exceed the amount of the fees that would be charged.

Citation of Rules Affected by this Order: Amending WAC 10-04-075.

Statutory Authority for Adoption: RCW 34.12.030(6).

Adopted under notice filed as WSR 18-04-087 on February 5, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 10, 2018.

Lorraine Lee  
Chief Administrative Law Judge

AMENDATORY SECTION (Amending WSR 18-01-144, filed 12/20/17, effective 1/20/18)

#### WAC 10-04-075 Fees for providing public records.

(1) There is no fee for inspecting public records.

(2) The office will charge for providing copies of public records and will maintain a fee schedule on its web site. The office may waive fees when the costs of processing the pay-

ment are reasonably likely to exceed the amount of the fees that would be charged.

(3) The office is not calculating actual costs for copying its records because doing so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine actual copying costs;

(b) Conducting such a study would interfere with other essential agency functions; and

(c) Through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act and other laws.

(4) The office uses the standard fees and costs authorized in RCW 42.56.120.

(5) The public records officer may require payment of fees before providing the records.

(a) Before beginning to copy public records, a deposit of up to ten percent of the estimated costs of copying may be required.

(b) Payment of the costs of copying an installment may be required before the installment is provided.

(c) If payment of fees is required, the office will send notification to the requestor. Within thirty days after the office sends notification, the requestor must pay the fee or make other arrangements with the office.

(6) The office will not charge sales tax for copies of public records.

(7) The office will accept payment by check, money order, or cash. For cash payments, it is within the office's discretion to determine the denomination of bills and coins that will be accepted.

**WSR 18-09-058**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed April 16, 2018, 8:24 a.m., effective May 17, 2018]

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

Purpose: The department is amending WAC 220-340-070 to better clarify the application process for obtaining geoduck diver licenses.

Citation of Rules Affected by this Order: Amending WAC 220-340-070.

Statutory Authority for Adoption: RCW 77.04.090 and 77.04.130.

Adopted under notice filed as WSR 18-03-142 on January 22, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 14, 2018.

Brad Smith, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-070 Commercial geoduck harvest—  
Geoduck diver license application and issuance process.**

(1) ~~((The department will not consider incomplete applications for a geoduck diver license.))~~ The following information is required to apply for or renew a geoduck diver license:

(a) A complete, legible, and signed application form;

(b) The application and license fees as provided in RCW 77.65.440;

(i) Applicants renewing a geoduck diver license must submit the completed application, application fee and license fee by December 31;

(ii) New geoduck diver license applicants and renewing applicants who missed the December 31 deadline must submit the completed application and only the application fee by January 10. The license fee will be required within forty-eight hours if the individual is selected.

~~((Proof of))~~ Completion of the department of natural resources (DNR) geoduck diver safety program to be verified by the department of fish and wildlife (DFW) with DNR;  
~~((and))~~

~~((For applications to renew only, a copy of a))~~ All applicants must be on a DNR geoduck harvest agreement plan of operation ((that lists the applicant on the agreement)) during the applicable current calendar year and be verified by the department with DNR on an annual basis; and

(e) The department will not consider incomplete applications for a geoduck diver license.

(2) No more than 77 geoduck diver licenses may be issued per calendar year.

(3) Applicants may submit applications to the department:

(a) By mailing to ~~((600 Capitol Way N., Olympia, WA 98501-1094))~~ P.O. Box 43154, Olympia, WA 98504-3154;

(b) By faxing to 360-902-2945; or

(c) In person at the ~~((WDFW))~~ DFW licensing front desk, first floor, natural resources building at 1111 Washington St. S.E., Olympia, WA 98501 during licensing window hours.

(4) The department ~~((must receive applications to renew a geoduck diver license by December 31st of the year the licensee's current geoduck diver license expires))~~ will renew any geoduck diver license if all requirements listed in subsection (1) of this section are met by December 31. If less than 77 geoduck diver licenses have been issued after the department approves all qualifying applications to renew a geoduck diver license, then the department will issue additional

licenses, up to the 77 geoduck diver license limit, to ~~((qualified))~~ new geoduck diver license applicants (in the order they are received. If the department receives more than one application for a geoduck diver license in a calendar day, and issuing licenses to all applicants received in that calendar day would exceed 77 geoduck diver licenses, the department will conduct a random drawing among the applications received that calendar day to determine which of the applications received in that calendar day will be issued a geoduck diver license)) and renewing applicants who missed the December 31 deadline. The department will complete the following process for issuing licenses to new geoduck diver license qualified applicants and renewing applicants who missed the December 31 deadline:

(a) New geoduck diver license applicants and renewing applicants who missed the December 31 deadline will be eligible if all requirements listed in subsection (1) of this section are met by January 10. A drawing will be held ten business days after January 10 for all eligible new applicants.

(b) After the initial drawing, if there are remaining licenses available up to the 77 geoduck diver license limit, then the department will issue licenses to new geoduck diver applicants and renewing applicants who missed the December 31 deadline based on the calendar date the application is received on a first-come first-serve basis. In the event there are multiple applications received on the same calendar day that exceed the quantity of remaining licenses, a drawing will be held to issue the remaining licenses.

**WSR 18-09-060**

**PERMANENT RULES**

**HORSE RACING COMMISSION**

[Filed April 16, 2018, 8:40 a.m., effective May 17, 2018]

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

Purpose: Update penalties for phenylbutazone overages to reflect amended permitted threshold levels. Adds a penalty for a violation of a [an] adopted level for cobalt in a post race sample.

Citation of Rules Affected by this Order: New [amending] chapter 260-84 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 18-05-015 on February 8, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 13, 2018.

Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 14-03-055, filed 1/13/14, effective 2/13/14)

**WAC 260-84-060 Penalty matrixes.** (1) Unless provided for elsewhere, the imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace <u>or improper conduct</u> WAC 260-36-120 or 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 or 260-36-260	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$75	\$100	\$200
Failure of jockey to report correct weight WAC 260-32-150 and 260-44-080	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$50	\$100	\$200

<b>Class A and B Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$500 and/or suspension (riding days)	Suspension (riding days)	
Rider's misuse of crop WAC 260-52-045	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$200	\$200 to \$300	\$200 to \$500
Arriving late to the paddock or receiving barn WAC 260-28-200	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$50	\$50 to \$100	\$100 to \$200
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Trainer failure to report proper identity of horses in their care WAC 260-28-295	\$50	\$100	\$200
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 or 260-36-260	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$25	\$50	\$100
Failure of jockey to report correct weight WAC 260-32-150	\$25	\$50	\$100
Failure of jockey to appear for films WAC 260-24-510	\$25	\$50	\$100

<b>Class C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$500 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$100 to \$500 and/or suspension (riding days)		
Rider's misuse of crop WAC 260-52-045	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$50	\$100 to \$200	\$200 to \$300
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$100
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$25	\$50	\$100
Failure to obtain permission for equipment change WAC 260-44-010	\$25	\$50	\$100
Failure to report performance records WAC 260-40-100	Warning to \$25	\$50	\$100
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$50	\$100	\$250 and/or suspension
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$50	\$100	\$200
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning	\$50	\$50 - subsequent offenses \$50 plus possible suspensions
Use of improper, profane, or indecent language WAC 260-80-130	Warning to \$200	\$200 to \$300	\$300 to \$500
Failure to complete temporary license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license

<b>Class A, B and C Licensed Facilities</b>			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to register employees with the commission (trainers responsibility) WAC 260-36-250	Warning to \$50	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - Licensing WAC 260-36-080	License canceled		
Failure to divulge a pending felony charge or a felony conviction WAC 260-36-050 and 260-36-120	\$100 to \$250		
False information or failure to provide accurate and complete information on application WAC 260-36-050 or 260-36-120	Warning to \$250		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to display or possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards

have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a).

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the pari-mutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, ((260-84-100,)) 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a referral will not preclude commission action in any matter. An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

**AMENDATORY SECTION** (Amending WSR 15-07-058, filed 3/16/15, effective 4/16/15)

**WAC 260-84-110 Penalties for uniform classifications.** (1) Penalties will be assessed against any person found to be responsible or party to the improper administration of a drug or the intentional administration of a drug resulting in a positive test. In assessing penalties under this section, violations in the last three hundred sixty-five days for Category "B," "C," and "D" penalties from Washington and all recognized racing jurisdictions will be considered. For Category "A" penalties, lifetime violations in Washington and all recognized racing jurisdictions will be considered.

(a) The following are recommended penalties for violations of a drug carrying a Category "A" penalty:

First Offense	Second Offense	Third Offense
Up to a one-year suspension and up to a fine of \$1500 absent mitigating circumstances. DQ and loss of purse.	One-year suspension and up to a fine of \$2500 absent mitigating circumstances. DQ and loss of purse. Referred to commission for additional consideration.	Revocation of license and a fine of \$2500 absent mitigating circumstances. DQ and loss of purse.

(b) The following are recommended penalties for violations of a drug carrying a Category "B" penalty:

First Offense	Second Offense (365-day period)	Third Offense (365-day period)
Zero to a fifteen-day suspension and up to \$500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.	Up to a thirty-day suspension and up to \$1000 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.	Minimum sixty-day suspension and up to \$2500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.

(c) The following are recommended penalties for violations of a drug carrying a Category "C" penalty, overages for permitted NSAIDs, (except phenylbutazone), and no furose-mide when reported:

First Offense	Second Offense (365-day period)	Third Offense (365-day period)
Minimum written warning to maximum \$500 fine.	Minimum written warning to maximum \$750 fine.	Minimum \$500 fine to maximum \$1000 fine. Possible DQ and loss of purse.

(d) The recommended penalty for a violation involving a drug that carries a Category "D" penalty is a written warning. Multiple violations may result in fines and/or suspensions.

(e) The recommended penalty for a finding of an overage of cobalt:

<u>Levels between 26 ppb to 49 ppb</u>	<u>Level 50 ppb or greater</u>	<u>Level over 50 ppb or greater</u>
	<u>First Offense (365-day period)</u>	<u>Second Offense (365-day period)</u>
<u>Horse placed on official veterinarian list until providing a sample under 26 ppb</u>	<u>Zero to a fifteen-day suspension and up to \$500 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.</u>	<u>Up to a thirty-day suspension and up to \$1000 fine absent mitigating circumstances. DQ and loss of purse absent mitigating circumstances.</u>

(2) A lesser penalty may be imposed if a majority of the stewards determine that mitigating circumstances, as outlined in WAC 260-84-090 exist.

**AMENDATORY SECTION** (Amending WSR 15-07-058, filed 3/16/15, effective 4/16/15)

**WAC 260-84-120 Penalties relating to multiple NSAIDs and phenylbutazone.** (1) Should the laboratory analysis of serum or plasma taken from a horse show the presence of more than one approved nonsteroidal anti-inflammatory drug (NSAID) in violation of these rules the following penalties will be assessed:

(a) For a first offense within a three hundred sixty-five day period - Fine not to exceed \$300;

(b) For a second offense within a three hundred sixty-five day period - Fine not to exceed \$750;

(c) For a third offense within a three hundred sixty-five day period - Fine not to exceed \$1,000.

(2) Should the laboratory analysis of serum or plasma taken from a horse show the presence of phenylbutazone in excess of the quantities authorized by this rule, the following penalties will be assessed:

~~((a) For overnight and nongraded stakes races:))~~

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
((>5.0 but <6.5 mcg/ml)) > 2.0 but < 3.5 mcg/ml	Warning	Fine not to exceed \$300	Fine not to exceed \$500
((>6.5 but <10.0 mcg/ml)) > 3.5 but < 7.0 mcg/ml	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000
((>10.0 mcg/ml)) > 7.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000	Fine not to exceed \$2500 and possible suspension

((b) For graded stakes races:

Concentration	1st offense within 365 days	2nd offense within 365 days	3rd and subsequent offenses within 365 days
> 2.0 but < 4.9 mcg/ml	Fine not to exceed \$300	Fine not to exceed \$500	Fine not to exceed \$1000 and 7-day suspension
> 5.0 mcg/ml	Fine not to exceed \$500	Fine not to exceed \$1000 and 7-day suspension	Fine not to exceed \$2500 and 15-day suspension))

(3) Detection of any unreported permitted medication, drug, or substance by the primary testing laboratory may be grounds for disciplinary action.

(4) As reported by the primary testing laboratory, failure of any test sample to show the presence of a permitted medication, drug or substance when such permitted medication, drug or substance was required to be administered may be grounds for disciplinary action, which may include a fine not to exceed three hundred dollars. Multiple violations by an individual within a three hundred sixty-five day period may include additional fines and/or suspension or revocation.

(5) In assessing penalties for equine medication, prior offenses will count regardless of whether the violation(s) occurred in Washington or another recognized racing jurisdiction, and regardless of the prior concentration level.

Changes Other than Editing from Proposed to Adopted Version: The department is deleting obsolete language from the proposed language that refers to fees charged in 2011 and 2012. The language is no longer needed. No other changes were made from the proposed to adopted version.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 16, 2018.

Clark Halvorson  
Assistant Secretary

**WSR 18-09-067**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed April 16, 2018, 2:43 p.m., effective May 17, 2018]

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

Purpose: WAC 246-282-990(5), Sanitary control of shellfish—Fees, annual paralytic shellfish poison (PSP) testing fee redistribution. The purpose of the rule making is to equitably assign the costs of commercial geoduck PSP testing. The cost assessment will follow the annual redistribution formula that is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck and ensure toxic shellfish do not reach consumers.

Citation of Rules Affected by this Order: Amending WAC 246-282-990.

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: RCW 69.30.050.

Adopted under notice filed as WSR 18-05-046 on February 14, 2018.

AMENDATORY SECTION (Amending WSR 17-06-062, filed 2/28/17, effective 3/31/17)

**WAC 246-282-990 Fees.** (1) ~~((The required annual shellfish operation license fees for shellstock shippers and shucker packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.~~

(2)) Annual shellfish operation license fees are:



Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

~~((3))~~ (2) The fee for each export certificate is \$55.00.

~~((4))~~ (3) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$353
Harvester	3 or more	\$535
Shellstock Shipper		\$198
Wholesale Company		
Shellstock Shipper	≤ 2	\$393
0 - 49 acres		
Shellstock Shipper	3 or more	\$610
0 - 49 acres		
Shellstock Shipper	N/A	\$961
50 or greater acres		
Shucker-Packer	≤ 2	\$752
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,076
(plants < 2000 ft <sup>2</sup> )		
Shucker-Packer	≤ 2	\$882
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	3 or more	\$1,297
(plants 2000 - 5000 ft <sup>2</sup> )		
Shucker-Packer	N/A	\$2,412
(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1st of each year for companies licensed as harvesters; or

(iii) July 1st of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

~~((5))~~ (4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Cert #	Fee
Department of Natural Resources	NA	<del>\$(10,163))</del> <u>11,725</u>
Jamestown S'Klallam Tribe	WA-0588-SS	<del>\$(2,278))</del> <u>2,189</u>
Lower Elwha Klallam Tribe	WA-0587-HA	<del>\$(4,556))</del> <u>2,970</u>
Lummi Indian Business Council	WA-0098-SS	<del>\$(350))</del> <u>313</u>
Nisqually Indian Tribe	WA-1268-HA	<del>\$(350))</del> <u>313</u>
Port Gamble S'Klallam Tribe	WA-0859-HA	<del>\$(2,278))</del> <u>2,658</u>
Puyallup Tribe of Indians	WA-1137-HA	<del>\$(6,483))</del> <u>9,693</u>
Skokomish Indian Tribe	WA-0577-HA	<del>\$(175))</del> <u>156</u>
Squaxin Island Tribe	WA-0737-HA	<del>\$(175))</del> <u>156</u>
Suquamish Tribe	WA-0694-SS	<del>\$(18,924))</del> <u>18,135</u>
<del>((Swinomish Indian Tribal Community</del>	<del>WA-1420-SS</del>	<del>\$1,227))</del>
The Tulalip Tribes	WA-0997-HA	<del>\$(8,060))</del> <u>4,846</u>
Taylor Shellfish Company, Inc.	WA-0046-SP	<del>\$(2,979))</del> <u>4,846</u>

~~((6))~~ (5) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

~~((7))~~ (6) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 18-09-072  
PERMANENT RULES  
WASHINGTON STATE  
SCHOOL DIRECTORS' ASSOCIATION**

[Filed April 16, 2018, 4:22 p.m., effective May 17, 2018]

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

Purpose: To comply with EHB 1595 authorizing Washington state agencies to charge fees for copying and transmission of certain public records.

Citation of Rules Affected by this Order: New WAC 430-01-010, 430-01-020, 430-01-030, 430-01-040, 430-01-050, 430-01-060, 430-01-070, 430-01-080, 430-01-090, 430-01-100, 430-01-110, and 430-01-120.

Statutory Authority for Adoption: Chapter 28A.345 RCW, Washington State School Directors' Association.

Other Authority: Chapter 42.56 RCW, Public Records Act.

Adopted under notice filed as WSR 18-03-068 on January 11, 2018.

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 12, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: March 27, 2018.

Tim Garchow  
Executive Director

## Title 430 WAC

### WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

#### Chapter 430-01 WAC

#### Public Records Disclosure Procedure and Collection of Fees

##### NEW SECTION

**WAC 430-01-010 Authority and purpose.** (1) EHB 1595 requires state agencies to make available for inspection and copying nonexempt "public records" in accordance with published rules. In compliance, this chapter is approved and adopted by the board of directors of Washington State School Directors' Association (WSSDA) to inform, facilitate, and regulate the collection of allowed charges for public records requests.

(2) These rules will be interpreted in favor of disclosure. Prompt assistance to the public shall be provided without affecting WSSDA's primordial mission of providing leadership, advocacy, and empowerment to its members.

##### NEW SECTION

**WAC 430-01-020 Definitions.** (1) "Business days" are weekdays, Monday through Friday, excluding official Washington state holidays and state agency closures for any reason.

(2) "Public Records Act" means chapter 42.56 RCW.

(3) "WSSDA" means Washington State School Directors' Association established under chapter 28A.345 RCW.

(4) "Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the agency.

(5) "Standard page" is an 8 x 11 size paper.

##### NEW SECTION

**WAC 430-01-030 Relevant training.** All new WSSDA employees will receive basic training on public records, open government meeting, and records retention within ninety days from date of hire. Such training includes access to publications, on-line classes, and tutorials on the subject published and offered by different agencies of the state.

##### NEW SECTION

**WAC 430-01-040 Access to public records.** The public records are available for public access according to these rules, except as otherwise provided by law.

##### NEW SECTION

**WAC 430-01-050 Public records address** WSSDA's public records officer is available at the following address, telephone and fax numbers or email address:

Office of Public Records/Open Public Meetings  
221 College Street N.E.  
Olympia, WA 98516-5313

WSSDA Public Records Officer

Phone: 360-493-9231

Fax: 360-252-3022

Attn: Public Records Officer

Email: [PublicRecordsRequest@wssda.org](mailto:PublicRecordsRequest@wssda.org)

##### NEW SECTION

**WAC 430-01-060 Requests for public records.** WSSDA adopts the Public Records Act regarding all disclosure of its public records. All public records request must include a reasonable description of the records to enable a WSSDA employee to locate the records requested.

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

##### NEW SECTION

**WAC 430-01-070 Responses to public records requests.** In general, the public records officer shall respond within five business days from receipt of a request by doing one or more of the following:

(1) Provide copies of the records requested or make the record available for inspection;

(2) Provide an internet address and link to WSSDA's website where the specific record can be accessed;

(3) Acknowledge that WSSDA received the request and provide a reasonable estimate of the time to fully respond;

(4) Acknowledge that WSSDA received the request and ask the requestor to clarify a request that is unclear, while providing to the greatest extent possible, a reasonable estimate of the time WSSDA needs to respond to the request if it is not clarified;

(5) Deny the request;

(6) When a requestor fails to respond to WSSDA's request for clarification within thirty days and the entire request is unclear, WSSDA may close the request without further response;

(7) When a requestor fails to respond to WSSDA's request for clarification within thirty days and only part of the request is unclear, WSSDA will respond to the portion of the request that is clear and may close the remainder of the request;

(8) In certain cases, WSSDA shall seek a court order enjoining disclosure pursuant to law;

(9) WSSDA shall deny a computer-generated bot request that is one of multiple requests from the requestor within a twenty-four hour period whenever WSSDA establishes that responding to the multiple bot requests would cause excessive interference with WSSDA's other essential functions;

(10) When WSSDA fails to respond in writing within five business days of receipt of the request for disclosure, the requestor can contact the public records officer or executive director to determine the reason for the failure to respond;

(11) When the number of responsive records to a request is voluminous and the time for locating, assembling, or reviewing the records is considerable, the public records officer may choose to respond in installments treating each installment as a separate public records request.

#### NEW SECTION

**WAC 430-01-080 Records exemption and court protection.** WSSDA reserves the right to exempt public records from disclosure in accordance with chapter 42.56 RCW or other statutes which exempts or prohibits disclosure of specific information or records.

Whenever WSSDA believes that a record is exempt from disclosure and should be withheld, the public records officer shall specify in writing the exemption explaining how the exemption applies to the record withheld or redacted.

When only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer shall first redact the exempt portions; second, provide the nonexempt portions; and finally, explain in writing why portions of the record are exempt and redacted.

If the requested records contain information that may affect rights of others and the information are exempt from disclosure, the public records officer may, prior to providing the records, notify those affected to enable them to contact the requestor and ask him or her to revise the request, or, if necessary, seek a court order to prevent or limit the disclosure. The notice to the affected persons may also include a copy of the request.

WSSDA is prohibited by statute from disclosing lists of individuals for commercial purposes.

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

#### NEW SECTION

**WAC 430-01-090 Costs of providing copies of public records.** (1) **Costs for paper copies.** There is no fee for inspecting public records and charges can be waived for humanitarian reasons. However, a requestor may obtain photocopies or printed copies for a fee of fifteen cents per standard 8 x 11 page.

WSSDA reserves to charge a flat rate of two dollars if the fees allowed under this procedure to provide the records are equal to, or more than, two dollars.

Before making the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor and the balance to be paid before completion of the records request.

If requested, calculations of the costs excluding sales tax shall be shown to the requestor.

(2) **Costs for electronic records.** The actual costs for electronic records are as follows:

(a) Ten cents per page for public records scanned into an electronic format or for the use of WSSDA equipment to scan the records;

(b) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(c) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of WSSDA equipment to send the records electronically; AND

(d) The actual cost of any digital storage media or device provided by WSSDA, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

There is no charge for the emailing of electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) **Costs of mailing.** WSSDA shall charge actual costs of mailing, including the cost shipping.

(4) **Payment.** Payment is made by cash, check, or money order to WSSDA.

(5) **Customized charges.** A customized service charge is imposed by WSSDA when outside information technology experts is needed to prepare data compilations or to customize electronic access services when the compilations and customized access services are not used by WSSDA.

No customized service charge is applicable unless WSSDA notifies beforehand the requestor of the customized service charge explaining its reason, a description of the specific expertise needed, and a reasonable estimate of the charge.

These costs and charges are not exclusive and subject to change upon prior notice.

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

NEW SECTION

**WAC 430-01-100 General rules for charging. (1) No fees for costs of inspection.** The costs of preparing and copying the records for inspection including the costs for redacting and getting the records from state archive will not be charged to the requestor.

(2) **Standard photocopy.** Standard photocopies are black and white paper copies. If WSSDA will charge more than the fifteen cents per page maximum for photocopies, a statement of the actual cost of the copies produced indicating the factors and the manner used to compute the cost.

(3) **Charges for copies other than standard photocopies.** Nonstandard copies include color copies, engineering/architectural drawings, and photographs. WSSDA can charge the actual costs for nonstandard photocopies.

(4) **Copying charges apply only to copies selected by requestor.** When a requestor seeks to inspect a large number of records but only selects a smaller group of records for copying, copy charges can only be charged for the records selected by the requestor.

(5) **Use of outside vendor.** WSSDA is not required to copy records at its own facilities and can utilize external commercial copying center and bill the requestor for the amount charged by the vendor. WSSDA can arrange with the requestor to pay the vendor directly. WSSDA shall not charge the default fifteen cents per page rate when the actual cost of the copying vendor is less. The default rate is only for agency-produced copy.

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

NEW SECTION

**WAC 430-01-110 Closing and compliance of public records requests. Closing requests.** The request is deemed closed once the requested records or last installment of the request has been provided with the requestor expressly or impliedly acknowledging receipt without further follow-up communication being made.

**Other closing conditions.** A request is also deemed closed:

(1) When the requestor fails to make the required deposit of up to ten percent of the estimated costs of copying including the cost of customized service charge;

(2) When the requestor fails to timely respond to a notice of availability to inspect the records requested;

(3) When the requestor failed to inspect, pay, and/or pick up any or all the requested records within fifteen business days of issuance of such notice of availability;

**Records retention.** Once closed, the records of the public records request is retained and the originals of any records assembled in response to the request refiled. Any duplicate copies of records may be destroyed in accordance with records retention schedule.

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

NEW SECTION

**WAC 430-01-120 Review of denials of public records requests.** The requestor may submit a petition for reconsideration either with the records officer or executive director of WSSDA for any denial of a public records request.

Upon receipt of the petition, the public records officer or executive director of WSSDA will review the petition the approval or disapproval of which constitute the final action of WSSDA.

**WSR 18-09-077****PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed April 17, 2018, 11:07 a.m., effective August 1, 2018]

Effective Date of Rule: August 1, 2018.

Purpose: WAC 246-811-990 Chemical dependency professional (CDP) and chemical dependency professional trainee (CDPT)—Fees and renewal cycle, the amended rule increases application and renewal fees for CDPs by thirty-one percent to generate additional revenue. Current licensing fees do not generate sufficient revenue to cover the cost of administering the licensing program and its budget is in a large deficit. The department initially filed a proposal to increase fees for CDPs and CDPTs by fifty percent (WSR 17-15-070 filed July 14, 2017), but withdrew that proposal due to stakeholder concerns that this would be a major deterrent to licensure when Washington needs more providers to respond to the opioid epidemic.

The adopted rule maintains the CDPT fees and includes a more modest increase for CDPs. RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members, so the adopted rule is intended to balance this statutory requirement with the need to lessen the impact on entry into the profession and retention of providers. The increase is anticipated to significantly reduce the program's ending fund balance deficit over time, but not to eliminate it completely. The department will continue to monitor revenue and expenditures for this profession before making further changes.

The amended rule also adjusts late renewal penalties and fees for verification of credentials to meet department fee standards for all health professions.

Citation of Rules Affected by this Order: Amending WAC 246-811-990.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280, and 18.205.060.

Adopted under notice filed as WSR 18-03-143 on January 22, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 11, 2018.

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-990 Chemical dependency professional and chemical dependency professional trainee— Fees and renewal cycle.** (1) A chemical dependency professional (CDP) certificate must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) A chemical dependency professional trainee (CDPT) certificate must be renewed every year to correspond with issuance date.

(3) The following nonrefundable fees will be charged for a certified chemical dependency professional:

Title of Fee	Fee
Application	\$ <del>(200.00)</del> <u>260.00</u>
Initial certification	<del>((225.00))</del> <u>295.00</u>
<u>Active renewal</u>	<del>((230.00))</del> <u>300.00</u>
<u>Active late renewal penalty</u>	<u>150.00</u>
<del>((Renewal))</del> <u>Retired active renewal</u>	115.00
<u>Retired active late renewal penalty</u> <del>((retired active))</del>	<del>((57.50))</del> <u>60.00</u>
<del>((Late renewal penalty</del>	<del>415.00))</del>
Expired certification reissuance	115.00
Duplicate certification	10.00
<del>((Certification))</del> <u>Verification of certificate</u>	<del>((10.00))</del> <u>25.00</u>

(4) The following nonrefundable fees will be charged for a certified chemical dependency professional trainee:

Title of Fee	Fee
Application <u>and initial certification</u>	\$110.00
Renewal	90.00
Late renewal penalty	50.00
Expired certification reissuance	50.00
Duplicate certification	<del>((15.00))</del> <u>10.00</u>

Title of Fee	Fee
<del>((Certification))</del> <u>Verification of certificate</u>	<del>((15.00))</del> <u>25.00</u>

**WSR 18-09-080**  
**PERMANENT RULES**  
**EXECUTIVE ETHICS BOARD**

[Filed April 17, 2018, 12:44 p.m., effective May 18, 2018]

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

Purpose: The proposed rule corrects typographical errors without changing the effect of the rule.

Citation of Rules Affected by this Order: Amending WAC 292-120-035.

Statutory Authority for Adoption: RCW 42.52.360.

Adopted under notice filed as WSR 18-03-095 on January 17, 2018.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 17, 2018.

Ruthann Bryant  
Administrative Officer

AMENDATORY SECTION (Amending WSR 02-04-003, filed 1/23/02, effective 2/23/02)

**WAC 292-120-035 Safe harbor provision.** The board invites and encourages agencies to adopt ~~((policies))~~ policies that prevent agency employees from violating the Ethics in Public Service Act. Pursuant to RCW 42.52.360~~((4))~~ (6), the board may review and approve agency policies. In determining appropriate sanctions, the board may consider agency policies in effect at the time of the conduct. In addition:

(1) The board will not impose sanctions for conduct that would violate the Ethics in Public Service Act, if the conduct at issue was permitted under a board-approved agency policy, as provided for in RCW 42.52.360~~((4))~~ (6), prior to the conduct occurring.

(2) The effect of the safe harbor from sanction, as provided in WAC 292-120-035(1), shall be limited to conduct that conforms to a board-approved agency policy.

**WSR 18-09-086**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**ENTERPRISE SERVICES**

[Filed April 17, 2018, 3:04 p.m., effective May 18, 2018]

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

Purpose: The purpose of these rules are [is] to implement the rule-making requirements of Title 48 RCW as amended by SB 5581. SB 5581 authorizes public benefit hospital districts to participate in self-insurance risk pools with nonprofit hospitals. Further, these rules will govern the creation, management, operation, and dissolution of joint self-insurance programs for public benefit hospital entities. There are no changes to existing rules.

Citation of Rules Affected by this Order: New chapter 200-160 WAC, Self-insurance requirements as to public benefit hospital entities joint self-insurance programs.

Statutory Authority for Adoption: RCW 48.190.040 State risk manager—Rules.

Other Authority: RCW 43.19.011 Director—Powers and duties.

Adopted under notice filed as WSR 18-03-099 on January 17, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 28, 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: March 28, 2018.

Jack Zeigler  
 Policy and Rules Manager

**Chapter 200-160 WAC**

**SELF-INSURANCE REQUIREMENTS AS TO PUBLIC  
 BENEFIT HOSPITAL ENTITIES JOINT SELF-  
 INSURANCE PROGRAMS**

NEW SECTION

**WAC 200-160-010 Preamble and authority.** These rules governing self-insurance transactions are adopted by the state risk manager to implement chapter 48.190 RCW relating to the management and operations of joint public benefit hospital entity property and liability self-insurance programs.

NEW SECTION

**WAC 200-160-020 Definitions.** (1) "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) "Broker of record" means the licensed insurance producer who, through a contractual agreement with the joint self-insurance program, procures insurance and/or reinsurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive process" means a formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for goods and services over fifty thousand dollars. For purchases between five thousand dollars and fifty thousand dollars, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to five thousand dollars are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.

(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's

methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(11) "Foundation agreement" means an agreement, contract or interlocal agreement between members of a joint self-insurance program as permitted by law.

(12) "Governing body" means the multimember board making decisions on behalf of the members of a joint self-insurance program.

(13) "Incurred but not reported (IBNR)" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include:

(a) Known loss events that are expected to be presented later as claims;

(b) Unknown loss events that are expected to become claims; and

(c) Future development on claims already reported.

(14) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act as defined in chapter 39.34 RCW.

(15) "Joint self-insurance program" means any two or more public benefit hospital entities which have entered into a cooperative risk sharing agreement subject to regulation under chapter 48.190 RCW.

(16) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

(17) "Member" means a public benefit hospital entity as described in chapter 48.190 RCW; and

(a) Is a signatory to the joint self-insurance program's foundation agreement; and

(b) Is a participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.190 RCW.

(18) "Primary assets" means cash and investments (less any nonclaims liabilities).

(19) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.190 RCW.

(20) "Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

(21) "Self-insurance program" means any individual or joint self-insurance program required by chapter 48.190 RCW to comply with this chapter.

(22) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

(23) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

(24) "Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(25) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(26) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

#### NEW SECTION

**WAC 200-160-030 Standards for operation and management—Rules for joint hospital benefit entities self-insurance programs.** The following rules apply exclusively to joint self-insurance programs. Individual entity programs shall be exempt from these requirements.

#### NEW SECTION

**WAC 200-160-040 Standards for operation—Membership.** Membership in a joint self-insurance program requires the execution of a foundation agreement. Only members may participate in risk sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member. The approval shall be by resolution or ordinance of the governing body as appropriate for the entity type.

(3) Each member shall become a signatory to the foundation agreement and subsequent amendments to the foundation agreement of the joint self-insurance program.

#### NEW SECTION

**WAC 200-160-050 Standards for operation—Providing services to nonmembers.** (1) Nonmembers may purchase ongoing services through agreement or contract as permitted by the laws of this state and other states. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC 200-

160-020(17) and is eligible for membership as authorized by chapter 48.190 RCW.

(2) A program intending to provide ongoing services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written analysis of all potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide ongoing services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Joint self-insurance programs may provide incidental or occasional services to nonmember public benefit hospitals at no charge when there is a monetary or nonmonetary benefit to members and nonmembers in providing the incidental or occasional services.

(4) Every joint self-insurance program providing ongoing services as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

#### NEW SECTION

**WAC 200-160-060 Standards for operation—Communication with members—Annual membership report.** The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, the audited annual financial statements. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

#### NEW SECTION

**WAC 200-160-070 Standards for operations—Meetings.** All joint self-insurance programs are required to comply with all applicable laws and regulations pertaining to public meetings. All joint self-insurance programs are required to comply with all additional requirements for meeting notifications as described in this chapter.

#### NEW SECTION

**WAC 200-160-080 Standards for operation—Notice of regular meetings of the governing body.** Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be provided in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the web site of the program accessible to the public. Notice of regular meetings shall be published at least ten days in advance of regular meetings.

#### NEW SECTION

**WAC 200-160-090 Standards for operation—Special meetings—Notice to members.** All joint self-insurance programs shall provide notice by electronic mail to the state risk manager and every member of the joint self-insurance program twenty-four hours in advance of every special meeting.

#### NEW SECTION

**WAC 200-160-100 Standards for operations—Meeting agendas—Meeting minutes.** Every joint self-insurance program must provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be provided by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be posted on the web site of the program accessible to the public.

#### NEW SECTION

**WAC 200-160-110 Standards for operation—Notification of changes to bylaws or foundation agreement.** Every joint self-insurance program shall provide notification of the intent to change the bylaws or foundation agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

#### NEW SECTION

**WAC 200-160-120 Standards for operation—Changes to foundation agreement.** (1) Changes to the foundation agreement shall be by amendment and shall be approved by the governing body of each joint self-insurance program during a regular meeting of the governing body.

(2) Amendments to the foundation agreement shall be adopted by ordinance or resolution of the governing board or council of each member and signed by an authorized representative of each member. The signed amendment and copy of the ordinance or resolution, as appropriate, shall be submitted to, and retained by, the joint self-insurance program. Copies of the foundation agreement and subsequent amendments shall be published on the web site of the joint self-insurance program.

(3) Changes to any terms of the foundation agreement shall require amendment using the approval and adoption process described in subsection (2) of this section.

(4) Each new member joining a joint self-insurance program after the formation of the program shall sign a copy of the most current foundation agreement and copies of all subsequent amendments to that agreement that have been adopted by the governing body of the joint self-insurance program. The joint self-insurance program shall retain the signed foundation agreements and amendments until termination of the program occurs.

(5) When a new foundation agreement is adopted by the governing body of the joint self-insurance program to replace



the existing foundation agreement and incorporate amendments, the new foundation agreement shall be adopted by ordinance or resolution by the governing body of each member of the joint self-insurance program. The new foundation agreement shall be signed by an authorized representative of each member. The signed foundation agreement and a copy of the ordinance or resolution adopting the program shall be submitted to, and retained by, the joint self-insurance program until termination of the program occurs.

#### NEW SECTION

**WAC 200-160-130 Standards for operation—Elections of the governing body.** The governing body of every joint self-insurance program shall be elected by a majority of the members voting in the election. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot or electronic ballot. If mail-in or electronic ballots are used, the ballots are to be counted and secured until certified by the governing body at the same or the next regular meeting and recorded in the meeting minutes. Vacancies on the governing board shall be filled according to program bylaws. Joint self-insurance programs governed by a governing body which requires the inclusion of a voting representative from each member entity in such governing body are exempt from the requirements of this section.

#### NEW SECTION

**WAC 200-160-140 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements.** (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets, as described in WAC 200-160-020(18), in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs meeting this requirement shall be considered in compliance with the primary asset test. All joint self-insurance programs that do not meet the requirements of the primary asset test shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of every joint self-insurance program operating under this chapter shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the eighty percent confidence level as determined by the program's actuary as of fiscal year end.

(4) All joint self-insurance programs authorized by chapter 48.190 RCW shall meet the requirements of both the primary asset test and the total asset test. The governing body of all joint self-insurance programs that do not meet require-

ments of the total asset test shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission.

Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
  - (b) Submission of quarterly reports;
  - (c) On-site monitoring by the state risk manager; or
  - (d) Service of a cease and desist order upon the program.
- (5) Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include written notification to every member of the joint self-insurance program, the service of a cease and desist order upon the program, and other available remedies necessary to ensure the program operates in a financially sound manner.

(6) All joint self-insurance programs that do not maintain total primary and secondary assets in an amount equal to or greater than unpaid claim estimate at the seventy percent confidence level, as determined by the program's actuary as of fiscal year end, shall be issued a cease and desist order by the state risk manager. Such programs will be considered under a supervisory cease and desist order.

(7) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

(8) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the accuracy of the estimate for unpaid claims liabilities, including the estimate of unallocated loss adjustment expenses. Costs of these services shall be the responsibility of the joint self-insurance program.

#### NEW SECTION

**WAC 200-160-150 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program assessments.** (1) Joint self-insurance program assessment formulas shall include all costs including rating for insured and self-insured layers of coverage. Assess-

ment formulas shall be consistent and nondiscriminatory among all members.

(2) This provision shall not be construed to prohibit individual choice of coverage by members from several offered by the joint self-insurance program. The assessment formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The assessment formula shall be available for review by the state risk manager.

(4) Joint self-insurance programs shall not sell equity, security, or shares in the joint self-insurance program.

#### NEW SECTION

**WAC 200-160-160 Standards for operations—Disclosures.** (1) All joint self-insurance programs shall furnish to each new member joining a self-insurance program written statements which describe:

(a) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

(b) The method by which the member's annual contribution rates is determined;

(c) The procedure for filing a claim against the joint self-insurance program;

(d) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues; and

(e) General characteristics of the insurance coverage portion of the program.

(2) If any changes are made to subsection (1)(a) through (e) of this section, new written documents must be provided to each member which include changes in their own specific member coverage and annual contribution rate.

#### NEW SECTION

**WAC 200-160-170 Standards for operations—Standards for solvency—Termination provisions.** (1) Program terminations. All joint self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Member terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of membership of a member.

#### NEW SECTION

**WAC 200-160-180 Standards for management and operations—Financial plans.** (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy governing the investments of the program which conforms to the legal requirements applicable to local government members; and

(c) The submission of required documents and audited financial statements to the state risk manager within one hundred twenty days of the program's fiscal year end.

(2) No financial plan of a joint self-insurance program shall permit any loans from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

#### NEW SECTION

**WAC 200-160-190 Standards for management—Standards for contracts—Third-party administrator contracts.** Before contracting for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the governing body of the joint self-insurance program of its ultimate governing, managerial, and financial responsibilities. The procedures shall, as a minimum:

(1) Provide a method of third-party administrator selection using a formal competitive solicitation process;

(2) Require a complete written description of the services to be provided, remuneration levels, contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;

(3) Provide for the confidentiality of the program's information, data, and other intellectual property developed or shared during the course of the contract;

(4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;

(5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced;

(6) Require the compliance with all applicable local, state, and federal laws;

(7) Establish a monitoring and acceptance procedure to determine compliance with third-party administrator contract requirements; and

(8) Establish indemnification provisions and set forth insurance requirements between the parties.

#### NEW SECTION

**WAC 200-160-200 Standards for claims management—Claims administration.** (1) All joint self-insurance programs shall adopt a written or electronic claims administration manual that includes, as a minimum, the following procedures:

(a) Claims filing procedures and forms;

(b) Standards requiring case reserves for each claim be established in the amount of the jury verdict value;

(c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary;

(d) Standards requiring appropriate adjuster workloads;

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff;

(f) Standards requiring file documentation be complete and up-to-date;

(g) Standards requiring timely and appropriate claim resolution practices;

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim;

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099-MISC regulations; and

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.

(7) All joint self-insurance programs shall obtain an independent audit of claim reserving, adjusting and payment procedures every three years at a minimum. The audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to

obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

#### NEW SECTION

**WAC 200-160-210 Standards for management and operations—State risk manager reports.** (1) Every joint property and liability self-insurance program authorized to transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

(a) Audited annual financial statements;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year ending reported in the audited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in articles of incorporation, bylaws, or foundation agreement;

(f) Details of ongoing services provided by contract to nonmembers;

(g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred twenty days following the completion of the joint program's fiscal year.

(3) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(4) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

#### NEW SECTION

**WAC 200-160-220 Standards for operations—Program changes—Notification to the state risk manager.** (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager in accordance with RCW 48.190.060(5). Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

(a) Elimination or reduction of stop loss insurance;

(b) Acceptance of any loans or lines of credit;

(c) Provision of ongoing services to nonmembers;

(d) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

(a) Increases in retention level;

- (b) Decrease or elimination of insurance limits;
- (c) Initial contract with a third-party administrator, or change in third-party administrator;
- (d) Any change to bylaws;
- (e) Any amendments to the foundation agreement.

#### NEW SECTION

**WAC 200-160-230 Standards for management and operations—Conflict of interest.** (1) Every joint self-insurance program shall require the claims auditor, a third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be included in the signed contract between the parties providing assurance that no conflict of interest exists.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

(a) No member of the board of directors; trustee; a third-party administrator; or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

(i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, third-party administrator, or as an employee.

(iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

(b) No consultant or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer or consultant.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The terms of compensation shall be provided for by contract between the broker of record and the governing body, and the amount or percentage of the compensation must be disclosed in writing. Contracts between brokers of record and the governing body of the joint self-insurance program shall include a provision that contingent commissions or other form of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions.

(d) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

#### NEW SECTION

**WAC 200-160-240 Standards for operations—State risk manager—Expense and operating cost fees.** (1) The state risk manager shall fix state risk manager fees to cover expenses and operating costs of the state risk manager's

office in administering chapter 48.190 RCW. Such fees shall be levied against each joint property and liability self-insurance program regulated by chapter 48.190 RCW. Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The state risk manager fees shall be paid by each joint self-insurance program to the state of Washington, department of enterprise services within sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint self-insurance program an initial investigation fee at a rate determined annually by the state risk manager.

#### NEW SECTION

**WAC 200-160-250 Standards for operation—Multi-state operations.** Public benefit hospital entity joint self-insurance programs operating in this state and other states must obtain any licenses, permits, and permissions to the extent required by a state prior to commencing operations in that state.

#### NEW SECTION

**WAC 200-160-260 Standards for operations—Appeals of fees.** (1) A joint self-insurance program that disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

#### NEW SECTION

**WAC 200-160-270 Standards for operations—Appeals of cease and desist orders.** Within ten days after a joint self-insurance program covering property or liability risks has been served with a cease and desist order under RCW 48.190.060 the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapters 34.05 RCW and 10-08 WAC.

NEW SECTION

**WAC 200-160-280 Standards for contracts—Competitive solicitation standards for consultant contracts.**

Every approved joint self-insurance program operating within the requirements of chapter 48.190 RCW shall use a formal competitive solicitation process in the selection of consultants which complies with the laws of this state and the requirements of other states in which it operates. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on preestablished criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents, and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by the state risk manager.

**WSR 18-09-088  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)  
[Filed April 17, 2018, 3:09 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: The 2018 supplemental operating budget, section 207(b) (chapter 299, Laws of 2018) signed into law on March 27, 2018, includes a 9.3 percent grant increase to the temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) programs effective July 1, 2018. The department is amending WAC 388-478-0020, 388-478-0035, and 388-436-0050 in order to increase the grant amount by 9.3 percent, increase the financial need and benefit amount limits for the consolidated emergency assistance program, and increase the maximum earned income limits for the TANF, SFA, RCA, and pregnant women assistance programs.

The proposed rules filed as WSR 18-05-064 on February 16, 2018, contained a 2.5 percent grant increase effective July 1, 2018, that was included in the 2017-2019 biennial operating budget (chapter 1, Laws of 2017). The corresponding dollar amounts contained in WAC 388-478-0020, 388-478-0035, and 388-436-0050 have now been amended to reflect the 9.3 percent increase included in the 2018 supplemental operating budget in order for the department to be in compliance with state law, an additional 6.8 percent over the 2.5 percent increase originally included in the 2017-2019 biennial operating budget.

Citation of Rules Affected by this Order: Amending WAC 388-478-0020, 388-478-0035, and 388-436-0050.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.08A.230.

Other Authority: 2018 supplemental operating budget (chapter 299, Laws of 2018), 2017-2019 biennial operating budget (chapter 1, Laws of 2017).

Adopted under notice filed as WSR 18-05-064 on February 16, 2018.

Changes Other than Editing from Proposed to Adopted Version: The 2018 supplemental operating budget includes a TANF, SFA, and RCA grant increase of 9.3 percent effective July 1, 2018. This is a 6.8 percent difference from the 2.5 percent increase included in the 2017-2019 operating budget ESSB 5883 (chapter 1, Laws of 2017) also effective July 1, 2018. The corresponding dollar amounts listed in WAC 388-478-0020, 388-478-0035, and 388-436-0050 have been amended to reflect the 9.3 percent increase, rather than the 2.5 percent increase previously proposed, in order for the department to be in compliance with state law.

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 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 3, Repealed 0.

Date Adopted: April 16, 2018.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-093, filed 12/15/15, effective 1/15/16)

**WAC 388-436-0050 Determining financial need and benefit amount for CEAP.** (1) To be eligible for (~~CEAP~~ assistance)

the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than ninety percent of the (~~TANF~~) temporary assistance for needy families (TANF) payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	( <del>\$300</del> ) <u>\$327</u>
2	( <del>377</del> ) <u>413</u>
3	( <del>468</del> ) <u>512</u>
4	( <del>550</del> ) <u>603</u>
5	( <del>634</del> ) <u>695</u>
6	( <del>722</del> ) <u>789</u>
7	( <del>834</del> ) <u>912</u>
8 or more	( <del>923</del> ) <u>1,009</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	(( <del>\$201</del> ) <u>\$220</u> )	(( <del>\$256</del> ) <u>\$280</u> )	(( <del>\$316</del> ) <u>\$345</u> )	(( <del>\$373</del> ) <u>\$408</u> )	(( <del>\$429</del> ) <u>\$469</u> )	(( <del>\$487</del> ) <u>\$532</u> )	(( <del>\$556</del> ) <u>\$608</u> )	(( <del>\$615</del> ) <u>\$672</u> )
Shelter	(( <del>245</del> ) <u>268</u> )	(( <del>310</del> ) <u>339</u> )	(( <del>386</del> ) <u>422</u> )	(( <del>455</del> ) <u>497</u> )	(( <del>522</del> ) <u>571</u> )	(( <del>592</del> ) <u>647</u> )	(( <del>686</del> ) <u>750</u> )	(( <del>758</del> ) <u>828</u> )
Clothing	(( <del>28</del> ) <u>31</u> )	(( <del>36</del> ) <u>39</u> )	(( <del>45</del> ) <u>49</u> )	(( <del>52</del> ) <u>57</u> )	(( <del>60</del> ) <u>66</u> )	(( <del>70</del> ) <u>77</u> )	(( <del>78</del> ) <u>85</u> )	(( <del>89</del> ) <u>97</u> )
Minor <u>medical care</u>	(( <del>170</del> ) <u>186</u> )	(( <del>217</del> ) <u>237</u> )	(( <del>269</del> ) <u>294</u> )	(( <del>316</del> ) <u>345</u> )	(( <del>364</del> ) <u>398</u> )	(( <del>411</del> ) <u>449</u> )	(( <del>479</del> ) <u>524</u> )	(( <del>529</del> ) <u>578</u> )
Utilities	(( <del>83</del> ) <u>91</u> )	(( <del>105</del> ) <u>115</u> )	(( <del>130</del> ) <u>142</u> )	(( <del>152</del> ) <u>166</u> )	(( <del>175</del> ) <u>191</u> )	(( <del>201</del> ) <u>220</u> )	(( <del>232</del> ) <u>254</u> )	(( <del>256</del> ) <u>280</u> )
Household maintenance	(( <del>60</del> ) <u>66</u> )	(( <del>77</del> ) <u>84</u> )	(( <del>96</del> ) <u>105</u> )	(( <del>112</del> ) <u>122</u> )	(( <del>130</del> ) <u>142</u> )	(( <del>147</del> ) <u>161</u> )	(( <del>170</del> ) <u>186</u> )	(( <del>187</del> ) <u>204</u> )
Job related transportation	(( <del>332</del> ) <u>363</u> )	(( <del>420</del> ) <u>459</u> )	(( <del>521</del> ) <u>569</u> )	(( <del>613</del> ) <u>670</u> )	(( <del>706</del> ) <u>772</u> )	(( <del>802</del> ) <u>877</u> )	(( <del>927</del> ) <u>1,013</u> )	(( <del>1,026</del> ) <u>1,121</u> )
Child related transportation	(( <del>332</del> ) <u>363</u> )	(( <del>420</del> ) <u>459</u> )	(( <del>521</del> ) <u>569</u> )	(( <del>613</del> ) <u>670</u> )	(( <del>706</del> ) <u>772</u> )	(( <del>802</del> ) <u>877</u> )	(( <del>927</del> ) <u>1,013</u> )	(( <del>1,026</del> ) <u>1,121</u> )

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

(a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;

(b) Cash on hand, if not already counted as income; and

(c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

Assistance unit size	Payment standard	Assistance unit size	Payment standard
4	(( <del>613</del> ) <u>670</u> )	9	(( <del>1,126</del> ) <u>1,231</u> )
5	(( <del>706</del> ) <u>772</u> )	10 or more	(( <del>1,224</del> ) <u>1,338</u> )

(2) The maximum monthly payment standards for TANF, SFA, and RCA assistance units with shelter provided at no cost are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	(( <del>\$202</del> ) <u>\$221</u> )	6	(( <del>\$487</del> ) <u>\$532</u> )
2	(( <del>256</del> ) <u>280</u> )	7	(( <del>564</del> ) <u>616</u> )
3	(( <del>316</del> ) <u>345</u> )	8	(( <del>623</del> ) <u>681</u> )
4	(( <del>373</del> ) <u>408</u> )	9	(( <del>685</del> ) <u>749</u> )
5	(( <del>429</del> ) <u>469</u> )	10 or more	(( <del>744</del> ) <u>813</u> )

AMENDATORY SECTION (Amending WSR 16-01-093, filed 12/15/15, effective 1/15/16)

**WAC 388-478-0020 Payment standards for TANF, SFA, and RCA.** (1) The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units with obligations to pay shelter costs are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	(( <del>\$332</del> ) <u>\$363</u> )	6	(( <del>\$802</del> ) <u>\$877</u> )
2	(( <del>420</del> ) <u>459</u> )	7	(( <del>927</del> ) <u>1,013</u> )
3	(( <del>521</del> ) <u>569</u> )	8	(( <del>1,026</del> ) <u>1,121</u> )

AMENDATORY SECTION (Amending WSR 16-01-093, filed 12/15/15, effective 1/15/16)

**WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA?** To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA),

or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	<del>(\$665)</del> \$726	6	<del>(\$1,604)</del> \$1,754
2	<del>((839))</del> 918	7	<del>((1,853))</del> 2,026
3	<del>((1,042))</del> 1,138	8	<del>((2,051))</del> 2,242
4	<del>((1,225))</del> 1,340	9	<del>((2,252))</del> 2,462
5	<del>((1,413))</del> 1,544	10 or more	<del>((2,448))</del> 2,676

**WSR 18-09-092  
PERMANENT RULES  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed April 17, 2018, 3:46 p.m., effective May 18, 2018]

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

Purpose: This rule-making order makes several technical and substantive amendments to chapter 392-143 WAC, Transportation—Specifications for school buses. Among other things, the amendments define "multifunction school activity bus" (MFSAB), provide for the proper use and the bus driver requirements for an MFSAB, clarify the supporting documentation needed for the issuance of a school bus operation permit, and clarify the process for routine inspections conducted by the Washington state patrol.

Citation of Rules Affected by this Order: Amending WAC 392-143-001, 392-143-010, 392-143-015, 392-143-032, 392-143-035, 392-143-040, 392-143-050, 392-143-055, 392-143-060, 392-143-070, and 392-143-080.

Statutory Authority for Adoption: RCW 46.61.380.

Adopted under notice filed as WSR 18-06-107 on March 7, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-143-070 added the word "or" in the third sentence of the new paragraph.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 11, 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 11, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 17, 2018.

Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-001 Authority and purpose.** The authority for this chapter is RCW 46.61.380 which authorizes the superintendent of public instruction to adopt and enforce regulations to govern the design, marking, and mode of operation of all school buses transporting public school students. The purpose of this chapter is to establish the specifications governing the design and marking of all school buses owned and operated by any school district and all school buses which are privately owned and operated under contract with any school district for the transportation of students. The provisions of this chapter ~~((shall be))~~ **are** incorporated by express reference into all school district contracts for the transportation of public school students in privately owned and operated school buses.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "School bus" means every vehicle with a seating capacity of more than ten persons including the driver regularly used to transport students to and from school or in connection with school activities.
- (2) "School bus specifications manual" means that manual published by the superintendent of public instruction.
- (3) "School district" means either a school district or an educational service district.
- (4) "School bus operation permit" means that form issued by the superintendent of public instruction to a school district, which is required prior to the use of any school bus for the transportation of students. No school bus operation permit is valid for any school bus which does not meet the Federal Motor Vehicle Safety Standards implemented April 1, 1977.
- (5) "Inspection officer" means an employee of the Washington state patrol designated by the chief of the Washington state patrol to inspect school buses.
- (6) "SPI Form 1028" means that form distributed by the superintendent of public instruction upon which the inspection officer indicates that the school bus has been inspected and approved, for used buses previously inspected by the Washington state patrol.
- (7) "SPI Form 1029" means that form distributed by the superintendent of public instruction upon which the inspection officer indicates that the school bus has been inspected and approved upon initial purchase, used buses not previ-

ously inspected by the Washington state patrol, and buses which have undergone rehabilitation or modification.

(8) "Major repairs" means repairs to or rebuilding of the frame, steering, suspension, or braking systems. Major repairs to braking systems does not include routine maintenance such as replacing brake shoes, pads or drums.

(9) "Multifunction school activity bus (MFSAB)" means a vehicle defined by the National Highway Traffic Safety Administration, 49 C.F.R. 571, as a multifunction school activity bus used for purposes consistent with that definition.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-015 School bus specifications manual.**

The Washington state school bus specifications manual is hereby incorporated into this chapter by reference. Prior to any revision of the school bus specification manual, the superintendent of public instruction ((shall)) must serve notice to interested parties and shall hold at least one public meeting.

AMENDATORY SECTION (Amending WSR 12-15-079, filed 7/18/12, effective 8/18/12)

**WAC 392-143-032 School bus operation permit.** The superintendent of public instruction ((shall)) must issue school bus operation permits as follows:

(1) School buses owned or operated by a school district or owned by a private contractor under contract to a school district ((shall)) must be issued a school bus operation permit on receipt of the following electronic files or documents for each new school bus or used school bus not previously issued a school bus operation permit in Washington state:

(a) SPI Form 1020A, School Bus Acquisition Report; ((and))

(b) SPI Form 1029, Initial School Bus Inspection; and

(c) Supporting documentation as required on SPI Form 1020A.

(2) A school bus operation permit ((shall)) must be reissued on receipt of the following electronic files or documents for school buses previously licensed in Washington state:

(a) SPI Form 1020A, School Bus Acquisition Report, from the school district acquiring the school bus; and

(b) SPI Form 1029, Initial School Bus Inspection, if the most recent school bus inspection was more than twelve months prior to the date of acquisition.

(3) A copy of the operation permit ((shall)) must be retained by the school district and a copy shall be placed in the permit holder in the school bus.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-035 Routine inspection of school buses.** All school buses shall be inspected annually by the Washington state patrol. Inspection dates ((shall)) must be determined by the chief of the state patrol. School districts ((shall)) must be notified by the chief of the state patrol prior to each annual inspection of the time and place of inspection. School buses not presented for inspection at the time and

place scheduled by the chief of the state patrol ((shall)) may obtain the appropriate inspection on or before August 31st of the current year. If the vehicle is not inspected on or before August 31st, the bus must not be operated as a school bus unless the requirement is temporarily waived in writing by the chief of the state patrol or until the school bus has passed a required inspection. A second inspection of at least twenty-five percent of each school district's fleet ((shall)) must be conducted annually by the Washington state patrol. This second inspection shall be unannounced and the inspection team ((shall)) must select which buses in the fleet it will inspect. These unannounced inspections ((shall)) must be scheduled so that they do not disrupt the regular transportation program.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-040 Other required inspections of school buses.** All school buses which have been rebuilt, have received a major modification, have received a major repair, or have received an interior renovation or refurbishment ((shall)) must be inspected prior to transporting students in accordance with the following criteria:

(1) A rebuilt school bus: For the purpose of this section, a rebuilt school bus ((shall)) must fully comply with all current Washington specifications at the time the school bus is rebuilt.

(2) A school bus receiving a major modification (e.g., hydraulic lift and/or ramp for wheelchairs) ((shall)) must meet all current state of Washington specifications at the time the major modification is made.

(3) A school bus receiving a major repair ((shall)) must meet or exceed Washington specifications in effect at the time of the original manufacturing date of the bus and shall be inspected in the same manner as a new school bus with emphasis on mechanical safety items.

(4) A school bus receiving an interior renovation or refurbishment ((shall)) must be inspected in the same manner as a new school bus with respect to Federal Motor Vehicle Safety Standard 222.

AMENDATORY SECTION (Amending WSR 04-08-117, filed 4/6/04, effective 5/7/04)

**WAC 392-143-050 Resold school buses.** A school district which sells a school bus to anyone other than another school district ((shall)) must be responsible for removing the school district's name and number and all lettering and markings identifying the vehicle as a school bus prior to its delivery to the purchaser. However, if the district sells the school bus to a private party who certifies in writing that the school bus ((shall)) will be used as a private carrier bus, the district need not remove the four or eight light warning system and stop signal arm.

AMENDATORY SECTION (Amending Order 7-75, filed 12/22/75)

**WAC 392-143-055 Responsibility for compliance with school bus specification rules.** The responsibility for compliance with this chapter lies with the board of directors



of each school district. Failure to comply with this chapter ((shall)) constitutes cause for the withholding of state transportation funds for such time and to such extent as is necessary to ensure compliance.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-060 School bus specifications continued compliance.** School districts ((shall)) must maintain all school buses in such condition that they shall continue to meet or exceed Washington state specifications in effect when the bus was manufactured, except as such standards or specifications are subsequently repealed or modified.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-070 Other vehicles used to transport students.** All vehicles with a seating capacity including the driver of ten persons or less ((shall)) are not ((be)) required to meet school bus specifications. Such vehicles regularly used to transport students to and from school or in connection with school activities ((shall)) must carry the approved school bus first-aid kit, fire extinguisher, and highway warning kit. These vehicles also ((shall)) must pass a safety inspection routinely conducted at the intervals outlined in WAC 392-143-035.

School districts may use an MFSAB with a seating capacity of less than sixteen passengers, including the driver. An MFSAB may be used to transport students and is required to have Washington state patrol inspections, initial and annual, for the appropriate class vehicle. An MFSAB must not be used in home-to-school transportation, or where any stop configuration would require the use of alternately flashing school bus warning lights if the vehicle were a school bus. An MFSAB must be equipped with a lap-shoulder belt or other passenger securement system that meets the requirements set forth in the Washington state school bus specifications manual in all seating positions and must not be painted school bus yellow. An MFSAB must carry the approved school bus first-aid kit, fire extinguisher, and highway warning kit. All drivers of an MFSAB must have a school bus driver's authorization in accordance with chapter 392-144 WAC.

All other vehicles used to transport students with a manufacturer rated seating capacity including the driver greater than ten persons ((shall be)) are required to meet school bus specifications.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

**WAC 392-143-080 Signs and markings for school buses—Exterior—Interior.** Signs and markings on the exterior of any school bus ((shall be)) are limited to the requirements of the school bus specifications manual.

Signs and markings on the interior of any bus ((shall be)) are limited to necessary and/or required manufacturers' equipment and/or component identification and instruction, and the requirements of the school bus specifications manual.