

**WSR 18-11-003**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed May 2, 2018, 1:52 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-354-080 from WSR 18-06-091 filed on March 6, 2018.

Scott Bird

**WSR 18-11-018**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed May 4, 2018, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-116.

Title of Rule and Other Identifying Information: WAC 392-140-973 Finance—Special allocations—Salary bonus for teachers and other certificated staff who hold current certification by the national board—Eligibility.

Hearing Location(s): On June 26, 2018, at 11:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501.

Date of Intended Adoption: June 28, 2018.

Submit Written Comments to: Ross Bunda, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email ross.bunda@k12.wa.us, fax 360-664-3683, by June 26, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by June 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed revision to WAC 392-140-973 would provide a common time frame with other school apportionment processes to compile and calculate student poverty data for the purposes of the national board bonus for instructional assignment in challenging, high poverty schools.

Reasons Supporting Proposal: The proposed revision will help ensure commonality with other school apportionment processes and improve administrative efficiencies [efficiencies].

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.405.415.

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

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6308; Implementation and Enforcement: T. J. Kelly, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6301.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

May 4, 2018

Chris P. S. Reykdal  
 State Superintendent  
 of Public Instruction

AMENDATORY SECTION (Amending WSR 16-23-102, filed 11/17/16, effective 12/18/16)

**WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility.** Staff that are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards during the entire school year, unless otherwise specified in the state Biennial Operating Appropriations Act; and

(2) Who are:

(a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210;

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a);

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Teachers and other certificated instructional staff employed full time or part time by a charter school.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) Challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(i) 70 percent for elementary schools;

(ii) 60 percent for middle schools; or

(iii) 50 percent for high schools; as determined by the October 1st count of the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on ~~(May 1st)~~ March 31st of that prior year: Provided, That schools operating during the current school year

as their first year may qualify as challenging, high poverty schools based upon current year data, as determined by the October 1st count on (~~May 1st~~) March 31st of the current year.

(b) For purposes of the national board challenging, high poverty schools bonus, a school shall be categorized based upon the highest grade served as follows:

(i) A school whose highest grade served is 6th grade or lower shall be considered an elementary school;

(ii) A school whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school;

(iii) A school whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school.

(c) A school shall be considered only if it serves thirty or more students, or is the largest school in the district serving its designated category.

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

(f) Teachers and other certificated instructional staff that meet the qualifications for the challenging, high poverty schools bonus under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the challenging, high poverty schools bonus in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of June 15th of the school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

### WSR 18-11-027

#### PROPOSED RULES

### PARKS AND RECREATION COMMISSION

[Filed May 7, 2018, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-103.

Title of Rule and Other Identifying Information: WAC 352-44-060 Recreational conveyance—Standards, updating to adopt an effective date for ANSI B77.

Hearing Location(s): On July 12, 2018, at 9:00, at the Vancouver City Hall, 416 West 6th Street, Vancouver.

Date of Intended Adoption: July 12, 2018.

Submit Written Comments to: Nata Jo Hurst, 1111 Israel Road S.W., Tumwater, WA 98501-6512, email nata.hurst@parks.wa.gov, fax 360-902-586-0207 [360-902-0207].

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 711, email becki.ellison@parks.wa.gov, by July 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 352-44-060, updating recreational conveyances standards. Adopting an effective date for ANSI B77.

Reasons Supporting Proposal: At the current time there is no date listed when we adopt and enforce new safety standards under ANSI B77. Adding in an effective date of one year removes ambiguity and brings Washington state parks in alignment with the United States Forest Service effective date, and other codes effective date.

Statutory Authority for Adoption: RCW 79A.40.090.

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

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nata Jo Hurst, 1111 Israel Road S.W., Tumwater, WA 98501-6512, 360-902-8638.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. No cost involved, clarification only.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 7, 2018

Valeria Evans

Management Analyst

AMENDATORY SECTION (Amending WSR 91-19-068, filed 9/16/91, effective 10/17/91)

**WAC 352-44-060 Recreational conveyances—Standards.** The current *American National Standards Safety Requirements for Aerial Passenger Tramways* shall apply to the design, inspection, signing, and operation of all conveyances as interpreted by the director unless a request for waiver is submitted by the operator and a waiver is granted by the director. The current American National Standards Safety Requirements for Aerial Passenger Tramways will have an effective date one year after the standard is approved by ANSI.

**WSR 18-11-035**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed May 8, 2018, 9:06 a.m.]

May 1, 2018  
Katherine I. Vasquez  
Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-105.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-0010 What definitions apply to this chapter?

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than June 27, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 26, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by June 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-106-0010 in order to clarify the definition of "informal support" to indicate that paid care givers may not be the source of informal support unless they are household or family members of a client, to provide further detail on the determination of self-performance for instrumental activities of daily living, and to clarify how cognitive performance is determined using the comprehensive assessment reporting evaluation tool.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Hannemann, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2525.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you ~~((make))~~ made yourself understood to those closest to you in the last seven days before the assessment; ~~((express))~~ expressed or ~~((communicate))~~ communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of ~~((a))~~ an alternative communication ~~((board or keyboard))~~ method:

(a) Understood: You ~~((express))~~ expressed ideas clearly;

(b) Usually understood: You ~~((have))~~ had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;

(c) Sometimes understood: You ~~((have))~~ had limited ability, but ~~((are))~~ were able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood: At best, understanding ~~((is))~~ was limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Activities of daily living (ADL)"** means the following:

(a) Bathing: How you ~~((take))~~ took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

(b) Bed mobility: How you moved to and from a lying position ~~((turn))~~ turned side to side, and ~~((position))~~ positioned your body while in bed, in a recliner, or other type of furniture you slept in.

~~((Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:~~

~~((i)) Foot care if you are diabetic or have poor circulation;~~  
~~or~~

~~((ii)) Changing bandages or dressings when sterile procedures are required.~~

~~((d))~~ Dressing: How you put on, ~~((fasten))~~ fastened, and ~~((take))~~ took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

~~((e))~~ (d) Eating: How you ~~((eat))~~ ate and ~~((drink))~~ drank, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you ~~((receive))~~ received, e.g. bringing food to you or cutting it up in smaller pieces.

~~((f))~~ (e) Locomotion in room and immediate living environment: How you ~~((move))~~ moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you ~~((are))~~ were once in your wheelchair.

~~((g))~~ (f) Locomotion outside ~~((of immediate living environment including outdoors))~~ room: How you ~~((move))~~ moved to and ~~((return))~~ returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you ~~((move))~~ moved to and ~~((return))~~ returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, ~~((etc))~~ or when accessing your community.

~~((h))~~ (g) Walk in room, hallway and rest of immediate living environment: How you ~~((walk))~~ walked between locations in your room and immediate living environment.

~~((i))~~ (h) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter ((preparations)) medications, or herbal supplements.

~~((j))~~ (i) Toilet use: How you ~~((use the toilet room))~~ eliminated or toileted, used a commode, bedpan, or urinal, ~~((transfer))~~ transferred on/off toilet, ~~((cleanse))~~ cleansed, ~~((change pad))~~ changed pads, ~~((manage))~~ managed ostomy or catheter, and ~~((adjust))~~ adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy or catheter bag. This type of set up assistance is considered under the definition of support provided.

~~((k))~~ (j) Transfer: How you moved between surfaces, ~~((i.e))~~ e.g., to/from bed, chair, wheelchair, standing position. Transfer does not include how you ~~((move))~~ moved to/from the bath, toilet, or ~~((get))~~ got in/out of a vehicle.

~~((l))~~ (k) Personal hygiene: How you maintain personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum ~~((i.e., including menses care((i.e.))).~~ Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a ~~((summary))~~ printed record of information that the department entered into the CARE assessment describing ~~((your needs))~~ the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of ~~((abilities))~~ strengths and ~~((needs))~~ limitations based on an in-person interview in your own home or ~~((your place of residence))~~ another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

(a) Partially met due to availability of other informal support; or

(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

(i) Less than one-fourth of the time;

(ii) One-fourth to one-half of the time;

(iii) Over one-half of the time to three-fourths of the time; or

(iv) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

~~("Assistance with medication management" means you need assistance managing your medications. You are scored as:~~

~~(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.~~

~~(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.~~

~~(c) Self-directed medication assistance/administration if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.~~

~~(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucous membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.))~~

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

**"Body care"** means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- (i) Foot care if you are diabetic or have poor circulation;
- or
- (ii) Changing bandages or dressings when sterile procedures are required.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

**"Child"** means an individual less than eighteen years of age.

**"Health action plan"** means an individual plan, which identifies health-related problems, interventions and goals.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

**"Decision making"** means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks ~~((€))~~ of activities of daily living in the last seven days before the assessment. The department ~~((determines whether you were))~~ codes your ability to make decisions as one of the following:

(a) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) ~~((Modified independence/))~~ Difficulty in new situations: You had an organized daily routine, were able to make

decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.

(c) ~~((Moderately impaired/))~~ Poor decisions; unaware of consequences: Your decisions were poor and you ~~((require))~~ required reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.

(d) ~~((Severely impaired/))~~ No or few decisions: Decision making was severely impaired; you never/rarely made decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Department"** means the state department of social and health services, aging and ~~((disability))~~ long-term support administration, developmental disabilities administration, or its designee.

**"Designee"** means area agency on aging.

**"Developmental milestones table"** is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the ~~((activity))~~ IADL;
- (b) Some difficulty in performing the ~~((activity))~~ IADL (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the ~~((activity))~~ IADL (e.g., little or no involvement in the ~~((activity))~~ IADL is possible).

**"Disability"** is described under WAC 182-500-0025.

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

**"Home health agency"** means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

- (i) Private duty nursing; or
- (ii) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC 182-509-0001.

**"Individual provider"** under RCW 74.39A.240 means a person ~~((employed by you))~~ contracted with the department to provide personal care or respite services ((in your own home. See WAC 388-71-0500 through 388-71-05909)).

**"Informal support"** means:

(a) Assistance that will be provided without home and community (~~(program)~~) based services funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs. (~~Except for a situation in which the age of a child or shared benefit determines status, if a person is available and willing to provide unpaid assistance to a client,)~~ The department (~~(may)~~) will not consider (~~(the person to be a source of informal support, even if the person is also)~~) an individual provider (~~(for)~~) to be a source of informal support unless the individual provider is also a family member or a household member who had a relationship with the client(~~(-)~~) that existed before the individual provider entered into a contract with the department;

(b) Adult day health is (~~(considered)~~) coded in the assessment as a source of informal support, regardless of funding source;

(c) Informal support does not include shared benefit or age appropriate functioning.

**"Institution"** means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community in thirty days prior to the assessment and includes the following:

(a) Meal preparation: How meals (~~(are)~~) were prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

(b) Ordinary housework: How ordinary work around the house (~~(is)~~) was performed (e.g., doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

(c) Essential shopping: How shopping (~~(is)~~) was completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood (~~(is)~~) or pellets were supplied (e.g., splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the (~~(sole)~~) only source of fuel for heating and/or cooking.

(e) Travel to medical services: How you (~~(travel)~~) traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment(~~(-)~~). This travel includes driving vehicle yourself(~~(-)~~) or traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills (~~(are)~~) were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls (~~(are)~~) were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the (~~(aging and disability services))~~ department and identified in WAC 388-106-0015.

**"MAGI"** means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

**"Medicaid"** is defined under WAC 182-500-0070.

**"Medically necessary"** is defined under WAC 182-500-0070.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, and making their own decisions about health and well-being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 182-500-0085.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

**"Representative"** means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before ~~((the))~~ your assessment, not what you might be capable of doing. Self-performance for ADLs is based on ~~((the))~~ your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADLs does not include physical assistance that occurred ~~((fewer))~~ less than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

(a) Independent, if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision, if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance, if you were highly involved in the ~~((activity))~~ ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs on three or more occasions.

(d) Extensive assistance, if you performed part of the ~~((activity))~~ ADL, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the ~~((activity))~~ ADL, but not all, of the ~~((activity))~~ ADL.

(e) Total dependence, if you received full caregiver performance ~~((of))~~ every time the ~~((activity))~~ ADL and all subtasks are completed during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) ~~((Activity))~~ ADL did not occur, if you or others did not perform an ADL over the last seven days before your assessment. The ~~((activity))~~ ADL may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

**"Self-administration of medication"** means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

(a) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

(d) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

**"Self-performance for bathing"** means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven day look back period, or set-up help. Your self performance level is scored as:

(a) Independent, if you received no help or oversight to complete the ADL of bathing.

(b) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

(c) Physical help transfer only, if in order to bathe you had help to transfer only.

(d) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

(e) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

(f) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

(i) You were not able (e.g., you may be paralyzed);

(ii) No provider was available to assist; or

(iii) You declined because you chose not to perform the ADL.

"**Self performance for IADLs**" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing or how well you performed the ADL. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self performance is scored as:

(a) Independent, if you received no help, set-up help, or supervision;

(b) ~~((Set-up help/arrangements only))~~ Assistance, if ~~((on some occasions you did your own set-up/arrangement and at other times))~~ you received any help ~~((from another person))~~ with the task, including cueing or monitoring in the last thirty days;

(c) ~~((Limited))~~ Total assistance, if ~~((on some occasions))~~ you ~~((did not need any assistance but at other times in the last thirty days you required some assistance))~~ are a child and needed the ADL fully performed by others and you are functioning outside of typical developmental milestones; or

(d) ~~((Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;~~

(e) Total dependence if you needed the activity fully performed by others; or

(f) ~~Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment))~~ ADL did not occur, if you or others did not perform the ADL in the last thirty days before the assessment.

"**Service summary**" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care ~~((needs))~~ tasks, the list of formal and informal providers and what tasks they will provide, a provider schedule, ~~((referral needs/))~~ identified referrals/information, and dates and agreement to the outlined services.

"**Shared benefit**" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi((-)client household benefit from the same IADL task(s) being performed.

"**SSI-related**" is defined under WAC 182-512-0050.

"**Status**" means the level of assistance:

(a) That will be provided by informal supports; or

(b) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multi((-)client household; or

(c) That will be provided to a child primarily due to his or her age.

The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Shared benefit, which means:

(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi((-)client household will benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you will not want assistance with the task.

"**Supplemental security income (SSI)**" means the federal program as described under WAC 182-500-0100.

"**Support provided**" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ~~((activity))~~ ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) ~~((Activity))~~ ADL did not occur during entire seven-day period.

"**Task**" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"**You/your**" means the client.

**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.

**WSR 18-11-041**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed May 9, 2018, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-129 on January 19, 2018.

Title of Rule and Other Identifying Information: WAC 220-354-250 Willapa Bay salmon fall fishery.

Hearing Location(s): On Tuesday, July 10, 2018, at 9:30-11:00 a.m., at the Region 6 Fish and Wildlife Office, 48 Devonshire Road, Montesano, WA 98563.

Date of Intended Adoption: On or after July 17, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, P.O. Box 43200, Olympia, WA 98504-3200, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by July 10, 2018.



Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, TTY 360-902-2207, by July 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable number of salmon during the commercial salmon fishery in Willapa Bay, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: This rule will protect salmon species listed as endangered while supporting commercial salmon fishing opportunity in Willapa Bay and incorporates changes to the rule needed as a result of the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, 360-249-1213; Implementation: Kirt Hughes, 1111 Washington Street S.E., Olympia, WA, 360-902-2705; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal does not affect hydraulics.

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement

**Introduction:** These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay.

**Cost of Compliance for Business:** The changes proposed by these rules that carry potential compliance costs include gear restrictions during certain days in Areas 2M, 2N, 2R, 2T, and 2U. WAC 220-354-250 specifies gillnet mesh requirements of 4.25" maximum for salmon fisheries in Catch Area 2U on September 17, 18, 19, 24, 25, 26, October 1, 2, 3, 8, 9, 11 and 12, in Catch Areas 2N on September 4, 8, 10, 13 and 15, in Catch Area 2M on September 6, 11, and 12. This gear restriction is similar to gear restrictions the department has proposed in the past for Willapa Bay and Grays Harbor salmon fisheries; and currently used in the Columbia River. Because some license holders fish the Columbia River and/or Grays Harbor, they have already acquired this gear. Other license holders will be required to obtain the gear if they choose to fish in [Areas] 2M, 2N, 2R, 2T, or 2U on the aforementioned dates. In addition, this cost can be amortized over years, as the net should last for several years. Cost of

compliance is a range of a one-time cost to satisfy compliance with the rule. That cost is between \$4,000 and \$5,000. *It should be noted that the proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.*

**Cost of Compliance for Ten Percent of Business [That are the] Largest to Comply:** The only metric available to the department for identifying the largest ten percent of businesses, or for use in a cost comparison for small and large businesses, is the exvessel value of salmon sold by each Willapa Bay salmon commercial license in recent years. This exvessel value is used as a surrogate for sales in this analysis, but it is an underestimate of total sales, since the majority of the businesses affected have additional revenue from other fisheries and related ventures. In addition, this analysis assumes that all license holders will be required to purchase equipment described above. However, some license holders already own gear that meets the requirements, and will not be required to purchase new gear. These two factors combined mean that the cost of compliance per one hundred dollars of sales will be overestimated for small and large businesses. Also, note that each individual license was treated as a business for this analysis, although some businesses own more than one license.

There were approximately forty-four Willapa Bay salmon licenses that participated in the Willapa Bay fishery in 2017. The cost of compliance will vary between license types, but the average cost per license is approximately \$4,500, assuming that all license holders will be required to spend the amounts described above. For the ten percent of licenses with the highest exvessel sales values for 2017 combined, the average exvessel value per year was \$10,094. This means that the cost of compliance per \$100 of exvessel value would be \$44.58. Most businesses affected by these rules qualify as small businesses, so an average cost of compliance for all businesses was calculated for comparison. The average exvessel value per year for all licenses for 2017 was \$4,020, meaning the average cost of compliance would be \$111.94 per \$100 of exvessel value. Again, both of these estimates of cost of compliance are believed to be overestimates, for the reasons described above.

**Steps to Reduce Costs:** Most businesses affected by these rules are small businesses. As indicated above, the gear restrictions proposed by the rules apply to Columbia River salmon fisheries, and are identical to gear restrictions the department has required in past Willapa Bay and Grays Harbor salmon fishery seasons.

As in previous years, WDFW interacted with and received input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allowed constituents to participate in formulating these rules.

A copy of the statement may be obtained by contacting Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, phone 360-249-1213, fax 360-249-1229, email Barbara.McClellan@dfw.wa.gov.

May 9, 2018

Scott Bird

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-17-012, filed 8/4/17, effective 9/4/17)

**WAC 220-354-250 Willapa Bay salmon fall fishery.** From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

**Fishing periods:**

(1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:

Area	Time	Date(s)	Maximum Mesh Size
<del>((2M, 2R</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>9/5</del>	<del>4.25"</del>
<del>2M, 2N, 2R</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>9/11, 9/12</del>	<del>4.25"</del>
<del>2T</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>9/18</del>	<del>4.25"</del>
<del>2N</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>9/18, 9/19, 9/20, 9/21, 9/22</del>	<del>4.25"</del>
<del>2M</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>9/18, 9/19, 9/20</del>	<del>4.25"</del>
<del>2R</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>9/18, 9/19, 9/20, 9/21</del>	<del>4.25"</del>
<del>2U</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>9/18, 9/19, 9/20, 9/21</del>	<del>4.25"</del>
<del>2N, 2R</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>9/25, 9/26, 9/27, 9/28, 9/29</del>	<del>6.5"</del>
<del>2M</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>9/25, 9/26, 9/27, 9/28</del>	<del>6.5"</del>
<del>2T</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>9/25, 9/26</del>	<del>4.25"</del>
<del>2U</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>9/25, 9/26, 9/27, 9/28, 9/29</del>	<del>4.25"</del>
<del>2R</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>10/2, 10/3, 10/4, 10/5, 10/6</del>	<del>6.5"</del>
<del>2M, 2N</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>10/3, 10/4, 10/5, 10/6</del>	<del>6.5"</del>
<del>2T</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>10/2, 10/3, 10/4, 10/5, 10/6</del>	<del>6.5"</del>
<del>2U</del>	<del>6:00 a.m. through 6:00 p.m.</del>	<del>10/2, 10/3, 10/4, 10/5, 10/6</del>	<del>4.25"</del>
<del>2N, 2R</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>10/9, 10/10, 10/11, 10/12, 10/13</del>	<del>6.5"</del>
<del>2M</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>10/9, 10/10, 10/11, 10/12</del>	<del>6.5"</del>
<del>2T</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>10/9, 10/10</del>	<del>6.5"</del>
<del>2U</del>	<del>7:00 a.m. through 7:00 p.m.</del>	<del>10/9, 10/10, 10/11, 10/12, 10/13</del>	<del>4.25"</del>
<del>2M, 2N, 2R, 2T, 2U</del>	<del>12:01 a.m. through 11:59 p.m.</del>	<del>10/31 through 11/2</del>	<del>6.5"</del>
<del>2M, 2N, 2R, 2T, 2U</del>	<del>12:01 a.m. through 11:59 p.m.</del>	<del>11/6 through 11/10</del>	<del>6.5"</del>
<del>2M, 2N, 2R, 2T, 2U</del>	<del>12:01 a.m. through 11:59 p.m.</del>	<del>11/13 through 11/17</del>	<del>6.5"</del>
<del>2M, 2N, 2R, 2T, 2U</del>	<del>12:01 a.m. through 11:59 p.m.</del>	<del>11/20 through 11/24</del>	<del>6.5"</del>
<del>2M, 2N, 2R, 2T, 2U</del>	<del>12:01 a.m. through 11:59 p.m.</del>	<del>11/27 through 12/1</del>	<del>6.5"))</del>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/4</u>	<u>4.25"</u>
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/6</u>	<u>4.25"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/8</u>	<u>4.25"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/10, 9/13, 9/15,</u>	<u>4.25"</u>
<u>2M</u>	<u>6:00 p.m. through 6:00 a.m.</u>	<u>9/11 through 9/12</u>	<u>4.25"</u>
<u>2N, 2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/17, 9/18, 9/19, 9/20, 9/21</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/17, 9/18, 9/19</u>	<u>4.25"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/19, 9/20, 9/21</u>	<u>6.5"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/24, 9/25, 9/26, 9/27, 9/28</u>	<u>6.5"</u>
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/24, 9/25, 9/26, 9/27</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/26, 9/27, 9/28</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/24, 9/25, 9/26</u>	<u>4.25"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/2, 10/3, 10/4, 10/5</u>	<u>6.5"</u>

Area	Time	Date(s)	Maximum Mesh Size
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/1, 10/2, 10/3, 10/4</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/2, 10/3, 10/4, 10/5</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/1, 10/2, 10/3</u>	<u>4.25"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/8, 10/9</u>	<u>4.25"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/11, 10/12</u>	<u>4.25"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/10</u>	<u>6.5"</u>
<u>2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/1 through 11/2</u>	<u>6.5"</u>
<u>2M, 2N, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/5 through 11/9</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/12 through 11/16</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/19 through 11/23</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/26 through 11/30</u>	<u>6.5"</u>

**Gear:**

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear.

(b) It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(c) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line.

(d) It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(e) From 12:01 a.m. September (~~(5)~~) 4 through 11:59 p.m. (~~(December 1)~~) November 30, 2018; Mesh size must not exceed six and one-half inches stretched, except mesh size must not exceed four and one-quarter inches stretched in Area(~~s 2M and 2R~~) 2N on September (~~(5)~~) 4, 8, 10, 13, and 15, in Area(~~s~~) 2M on September (~~(11, 12, 18, 19, and 20, 2N on September 11, 12, 18, 19, 20, 21, and 22, and 2R on September 11, 12, 18, 19, 20, and 21, in Area 2T on September 18, 25, and 26)~~) 6, 11, and 12, and in Area 2U on September 17, 18, 19, ((20, 21)) 24, 25, 26((, 27, 28, 29)), October 1, 2, 3, ((4, 5, 6)) 8, 9, ((10,)) 11, and 12((, and 13)).

**Other:**

(3) Recovery boxes and soak time limits described in this section are required from 12:01 a.m. September (~~(5)~~) 4 through 11:59 p.m. (~~(October 13)~~) November 30, 2018:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box, which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection. From (~~(September 5)~~) November 1 through (~~(December 1, 2017)~~) November 30, 2018, all chum must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection.

(c) All fish placed in recovery boxes must remain until they are not lethargic and/or not bleeding and must be released to the river/bay prior to landing or docking.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "~~((direct retail endorsement)) limited fish seller endorsement.~~" According to WAC (~~(220-352-180(14))~~) 220-352-320, reports must be made by 10:00 a.m. the day following landing, unless otherwise spec-

ified in an electronic fish receiving ticket reporting agreement (see WAC 220-352-035(3)).

(5) Retention prohibitions:

(a) All green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) Retention of any species other than coho (~~salmon or~~) Chinook, or chum salmon is prohibited.

(c) From 12:01 a.m. September (~~(5)~~) 4 through 11:59 p.m. October (~~(43)~~) 12, 2018, retention of any species other than coho (~~salmon or~~) hatchery Chinook marked by a healed scar at the site of the adipose fin, or chum salmon is prohibited.

(d) From 12:01 a.m. (~~October 31~~) November 1 through 11:59 p.m. (~~December 4~~) November 30, 2018, retention of any species other than coho salmon(~~;~~) or hatchery Chinook salmon marked by a healed scar at the site of the adipose fin (~~or wild (unmarked) Chinook~~) is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or email at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(8) Those waters of Area 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N, 123°50.83134'W are CLOSED from (~~(6:00)~~) 12:01 a.m. September (~~(18, 2017)~~) 19, 2018, through 11:59 p.m., September (~~(30, 2017)~~) 28, 2018.

(9) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or email. Notice of intent must be given prior to 5:00 p.m. on August (~~(28, 2017)~~) 25, 2018.

**WSR 18-11-042**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed May 9, 2018, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-058.

Title of Rule and Other Identifying Information: New WAC 170-300-0001 Intent and authority, 170-300-0010 License required, 170-300-0015 Licensee absence, 170-300-0016 Inactive status—Voluntary and temporary closure, 170-300-0020 Unlicensed programs, 170-300-0025 Certified and exempt programs, 170-300-0030 Nondiscrimination, 170-300-0055 Developmental screening and communication to parents or guardians, 170-300-0065 School readiness and family engagement activities, 170-300-0080 Family support self-assessment, 170-300-0085 Family partnerships and communication, 170-300-0100 General staff qualifications, 170-300-0105 Preservice requirements, 170-300-0106 Training requirements, 170-300-0107 In-service training, 170-300-0110 Program based staff policies and training, 170-300-0111 Staff oversight, 170-300-0115 Staff records, 170-300-0120 Providing for personal, professional, and health needs of staff, 170-300-0130 Indoor early learning program space, 170-300-0135 Routine care, play, learning, relaxation, and comfort, 170-300-0140 Room arrangement, child-related displays, private space, and belongings, 170-300-0145 Outdoor early learning program space, 170-300-0146 Equipment and surfaces in outdoor early learning space, 170-300-0147 Weather conditions and outdoor hazards, 170-300-0150 Program and activities, 170-300-0155 Use of television, video, and computers, 170-300-0160 Promoting acceptance of diversity, 170-300-0165 Safety requirements, 170-300-0166 Emergency preparation and exiting, 170-300-0170 Fire safety, 170-300-0175 Water hazards and swimming pools, 170-300-0180 Meal and snack schedule, 170-300-0185 Menus, milk, and food, 170-300-0186 Food allergies and special dietary needs, 170-300-0190 Parent or guardian provided food and written food plans, 170-300-0195 Food service, equipment, and practices, 170-300-0196 Food sources, 170-300-0197 Safe food practices, 170-300-0198 Food preparation areas, 170-300-0200 Handwashing and hand sanitizer, 170-300-0205 Child, staff, and household member illness, 170-300-0210 Immunizations and exempt children, 170-300-0211 Children exempt from immunizations, 170-300-0215 Medication, 170-300-0220 Bathroom space and toilet training, 170-300-0221 Diaper changing areas and disposal, 170-300-0225 Pets and animals, 170-300-0230 First aid supplies, 170-300-0236 Safe drinking water, 170-300-0240 Clean and healthy environment, 170-300-0241 Cleaning schedules, 170-300-0245 Laundry and equipment, 170-300-0250 Private septic systems, 170-300-0255 Pest control, 170-300-0260 Storage of hazardous and maintenance supplies, 170-300-0265 Sleep, rest, and equipment, 170-300-0270 Overnight care, 170-300-0275 Infant and toddler care, 170-300-0280 Bottle preparation, 170-300-0281 Breast milk, 170-300-0285 Infant and toddler nutrition and feeding, 170-300-0290 Infant and toddler sleep, rest, and equipment, 170-300-0295 Infant and toddler programs and activities, 170-300-0296 Infant and toddler development, 170-300-0300 Individual care plan, 170-300-0305 Curriculum philosophy and planning, 170-300-0310 Concept development and feedback quality, 170-300-0315 Language modeling and reasoning, 170-300-0320 Facilitating child interests, learning perspective, and productivity, 170-300-0325 Creating a climate for healthy child development, 170-300-0330 Positive relationships and child guidance, 170-300-0331 Prohibited

behavior, discipline, and physical removal of children, 170-300-0335 Physical restraint, 170-300-0340 Expulsion, 170-300-0345 Supervising children, 170-300-0350 Supervising children during water activities, 170-300-0354 Indoor early learning program space capacity, 170-300-0355 Family home capacity, ratio, and group size, 170-300-0356 Center capacity, ratio, and group size, 170-300-0357 Center mixed age group capacity, ratio, and group size, 170-300-0360 Program and daily schedule, 170-300-0401 License fees, 170-300-0402 Changing early learning program space or location, 170-300-0415 Zoning codes, and ordinances, 170-300-0420 Prohibited substances, 170-300-0425 Initial, nonexpiring, dual licenses, and license modification, 170-300-0435 Waiver from department rules, 170-300-0436 Variance from department rules, 170-300-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and provider rights, 170-300-0443 Enforcement actions, notice, and appeal, 170-300-0450 Parent or guardian handbook and related policies, 170-300-0455 Attendance records, 170-300-0460 Child records, 170-300-0470 Emergency preparedness plan, 170-300-0475 Duty to protect children and report incidents, 170-300-0480 Transportation and off-site activity policy, 170-300-0485 Termination of services policy, 170-300-0486 Expulsion policy, 170-300-0490 Child restraint policy, 170-300-0495 Consistent care policy, 170-300-0500 Health policy and 170-300-0505 Postings; and amending WAC 170-300-0005 Definitions.

Hearing Location(s): On June 26, 2018, at 6:00 p.m., at the Everett Library Auditorium, 2702 Hoyt Avenue, Everett, WA; on June 26, 2018, at 7:00 p.m., at the Chehalis Library Meeting Room, 400 North Market Boulevard, Chehalis, WA; and on June 27, 2018, at 5:00 p.m., at the Greenough Conference Center, Yakima Room, 33 South 2nd Avenue, Yakima, WA.

Date of Intended Adoption: June 30, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, email [rules@del.wa.gov](mailto:rules@del.wa.gov), fax 360-725-4925, <https://del.wa.gov/PolicyProposalComment/Detail.aspx>, by June 27, 2018.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-725-4670, fax 360-725-4925, email [rules@del.wa.gov](mailto:rules@del.wa.gov), by June 22, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Align foundational standards of care for early learning programs administered by family home and center child care providers; address critical health and safety needs of children enrolled in early learning programs, meet federal requirements, accommodate unique differences between family home and center environments, promote cultural diversity; and introduce education requirements that will better equip early learning providers with the necessary skills and knowledge to administer early learning programs that fully protect the health and safety of children in their care while delivering the best possible care.

Reasons Supporting Proposal: Chapter 7, Laws of 2015 (Early Start Act) directed the department of early learning (DEL) to create a single set of licensing standards for center and family child care providers. The regulated community negotiated and reached consensus on nearly all proposed rules. Finally, the proposed rules further DEL's mission to

develop children to their fullest potential and get all of the state's youngest learners prepared for kindergarten.

Statutory Authority for Adoption: RCW 43.215.070, 43.215.201, chapter 43.215 RCW.

Statute Being Implemented: RCW 43.215.201, chapter 43.215 RCW.

Rule is necessary because of federal law, Pub. L. 113-186.

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: At the end of the comment period, DEL intends to adopt final rules with a delayed effective date of August 1, 2019. The year between the adoption and effective dates will aid implementation by allowing for extensive communication, training, planning. The year will also be used by DEL to collaborate with the regulated community on implementing the new professional development requirements.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Debbie O'Neili [O'Neil], 3918 West Court Street, Pasco, WA, 509-544-5706; Implementation and Enforcement: DEL, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies required to comply with RCW 34.05.328(5)(a)(i). Further, DEL does not voluntarily make that section applicable to the adoption of this rule.

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement

#### SECTION [SECTION] 1:

**Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

DEL licenses center and family home child care providers. Chapters 170-295 and 170-296A WAC provide the providers' respective licensing requirements. DEL proposes these rules to comply with chapter 7, Laws of 2015 (Early Start Act), which directed DEL to create a single set of licensing standards for center and family child care providers. The proposed rules introduce education requirements that will better equip early learning providers with the necessary skills and knowledge to administer early learning programs that fully protect the health and safety of children in their care while delivering the best possible care. These goals are part of DEL's mission to develop children to their fullest potential and get all of the state's youngest learners prepared for kindergarten. The proposed rules also address critical health and safety needs of children enrolled in early learning programs, meet federal requirements, accommodate unique differences between family home and center environments, and promote cultural diversity. More detail about the proposed rules is included in Section 3. All but two of the proposed require-

ments that are likely to exceed the minor cost threshold are current requirements, but are all included here since the current requirements are being recodified in new sections. The only professional services needed to comply with the new requirements are continuing and higher education.

**SECTION 2:**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
624410	Child day care services	2228*	\$1,548	937.9591562

\* Based on data from the 2012 U.,S. Census. As of April 12, 2018, 3,415 family homes and 2,141 centers were licensed in Washington State for a total of 5,566 child care providers.

**SECTION 3:**

**Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

Compliance with the proposed requirements detailed here is not likely to cause businesses to lose sales or revenue.

Proposed WAC 170-300-0001 through 170-300-0080 explain when a program must be licensed, procedures for a licensee's absence, and what information about child development and early intervention screenings must be communicated to families. Any increase would be to administrative costs and is expected to be minimal.

Proposed WAC 170-300-0100 through 170-300-0107 identify providers' preservice screening requirements, preservice education requirements and in-service continuing education requirements. Preservice requirements are primarily early childhood education (ECE) certificates, or the equivalent. The state's community college system offers three stackable certificates that lead to an AA degree.

Probable costs for preservice screening required of all providers are \$55 for a tuberculosis screening and, for providers who will have unsupervised access to children, \$68 for a comprehensive background check. Probable costs for specific preservice education requirements for family home and center child care positions are:

Position	Required Education	Probable Cost:
<b>Family Home Child Care:</b>		
Licensee	ECE initial certificate	\$2,208
Lead Teacher (primary staff person)	ECE initial certificate	\$2,208
Assistant Teacher (secondary staff person)	High school diploma or GED certificate	\$120 (GED)
<b>Center Child Care:</b>		
Director	ECE state certificate	\$8,648
Assistant Director	ECE state certificate	\$8,648
Program Supervisor	ECE state certificate	\$8,648
Lead Teacher	ECE short certificate	\$3,680
Assistant Teacher	ECE initial certificate	\$2,208

**Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

**Table A:**

Additionally, child care basics training must be completed by all of the positions listed above. Child care basics is a series of training modules that cover recognizing and reporting child abuse, emergency preparedness, serving children experiencing homelessness, child restraint procedures, medication management, shaken baby syndrome, and infant safe sleep practices. Additional training requirements are first aid, bloodborne pathogens, and CPR. Finally, providers who will serve food must obtain a food worker card. Probable cost of this training: Child care basics \$250, first aid, CPR, bloodborne pathogens - \$120, and food handler - \$10.

Temporary increased administrative costs of \$15/hour may result if an early learning provider needs substitutes to replace employees who are released to complete coursework.

Ten hours of continuing education must be completed annually. Many of the classes are free or on a sliding scale. The probable cost of in-service training is \$0 - \$60 per year.

Proposed WAC 170-300-0110 through 170-300-0120 are administrative in nature and require specific staff policies, staff oversight, staff-related recordkeeping, and specific staff support. Any increase would be to administrative costs and is expected to be minimal.

Proposed WAC 170-300-0130 through 170-300-0147 specify environmental standards for early learning programs, including indoor furnishings, storage for children's belongings, and safety requirements for indoor and outdoor space. Probable costs are:

Family Home Child Care		Center Child Care	
Requirement	Cost	Requirement	Cost
ADA compliance to accommodate enrolled children	Indeterminate	ADA compliance to remove barriers to building access, if readily achievable and accommodate enrolled children	Indeterminate
Child-size furniture and soft furnishings	\$1,300	Child-size furniture and soft furnishings	\$6,408
Bins/racks for storing children's personal belongings*	\$500	Bins/racks for storing children's personal belongings*	\$3,000
Outdoor play equipment for any licensed outdoor space	\$1,000 (1 swing/slide combo)	Outdoor play equipment for any licensed outdoor space	\$6,000 (6 swing/slide combos)
Family homes and centers:			
Fence with self-closing, self-latching gate to enclose any licensed outdoor space* Probable cost assumes 1,000 square-foot area:			\$9,609
Shock absorbing material under swings and outdoor play equipment* Probable cost assumes a coverage area of 230 sq. feet necessary for a swing set at a depth of 6 feet. Acceptable options are:			
rubber mulch - 4.2 cubic yards			\$1,309
pea gravel - 6 cubic yards			\$400.20
playground wood chips - 6 cubic yards			\$180

\* Only new requirement in environmental standards.

Analysis based on current average family home capacity of nine children and average center capacity of sixty-nine children. Sales tax, delivery, and installation charges are not included in probable costs.

Proposed WAC 170-300-0150 through 170-300-0160a specify standards for early learning program activities to encourage physical play, quiet activities, promote imagination and creativity, promote language development and literacy skills, promote counting and other numeracy skills, promote spatial ability, encourage discovery and exploration, and promote learning skills. Select soft furnishings that comply with proposed WAC 170-300-0135 will, at least in part, satisfy these standards. Probable costs to fully comply with these proposals are \$300 - \$500 for a family home child care and \$2,100 - \$3,500 for a child care center.

Proposed WAC 170-300-0165 through 170-300-0175 specify requirements necessary to protect children's safety while in child care. Some of these requirements will apply to very few programs, because they are specific to the physical structure and surroundings that would not be in or near licensed space, such as glass doors and water hazards. Probable costs are:

Requirement:	Probable Cost:
Stickers for glass door	\$20
Shatter resistant light bulbs	\$45/15 bulbs
Cardinal window gate	\$25/4 gates
Window/door alarm	\$30/4 alarms
Deck guardrail (required only when platform or deck with a drop zone of more than 18" is used for child care activities)	\$96/3 feet of railing
Flashlight and extra batteries	\$25

Requirement:	Probable Cost:
Working telephone	\$50 and monthly phone service charge
Pivot or side-hinged exit door for family home child care	\$500
Annual fire safety inspection	\$25 - \$100
Annual fireplace/woodstove inspection	\$99
1 smoke detector per floor and in each sleeping area	\$50 per detector
1 fire extinguisher per floor	\$35
Barrier with lock for water hazard - examples include:	
locking cover straps for hot tub	\$17
fencing with locking gate for 14'x28' swimming pool with alarm	\$1,987
Annual cleaning for swimming pool used in program	Indeterminate

Proposed WAC 170-300-0180 through 170-300-0198 provide for safe food preparation and service, good nutrition, accommodating special dietary needs of children in care, and offer tooth brushing to promote good dental hygiene. Probable costs are:

Requirement:	Probable Cost:
Meals and snacks - assuming 3 snacks and 1 meal	\$10/per child, daily
Vented range hood, exhaust fan or window in food prep area	\$290 (range hood)
Refrigerator/freezer	\$700
2 compartment sink and sanitizing dishwasher or	\$792
3 compartment sink	\$775

Requirement:	Probable Cost:
Colander to prevent food from touching sink basin	\$30
Toothbrush and toothpaste	\$3/brush and \$5/tooth-paste tube

Sales tax, delivery, and installation charges are not included in probable costs. A provider will likely incur minimal administrative costs to prepare and post menus and confer with families about special dietary needs that may require written food plans.

Proposed WAC 170-300-0200 through 170-300-0236 specify standards to promote good health for children in care, such as proper handwashing, limiting exposure to illness, confirming immunization or otherwise communicating with parents about immunizations, safe medication practices, safe bathroom and diapering practices, safe drinking water, first aid, and pets/animals related-restrictions. Probable costs are:

Requirement:	Probable Cost:
Handwashing soap	\$7/gallon
Paper towels	\$23/250 towels
Working toilet	\$150
Utility step platform	\$30
Toilet paper dispenser	\$30
Toilet paper	\$50/96 rolls
Working sink/faucet	\$250
Bathroom window or exhaust fan	\$40
Washable floor surface	\$3/sq. ft.
Nonslip floor surface around tub or shower or grab bar	\$50
First aid kit for licensed space	\$15
First aid kit for transport vehicle	\$15
Centers only: Diapering area if program enrolls infants or toddlers. Diapering area must contain sink, sturdy diapering surface or mat, moisture	\$533

Requirement:	Probable Cost:
resistant and washable floor mat extending at least 2' from diaper station and handwashing area; dirty diaper storage, and dirty diaper disposal receptacle with removable liners	
Centers only: Safe drinking water must be offered in each classroom. Acceptable sources include a sink that is not used for handwashing, a drinking fountain, or bottled water	\$250/classroom

Sales tax, delivery, installation charges, and monthly water service costs are not included in probable costs.

Proposed WAC 170-300-0240 through 170-300-0260 clarify cleaning and sanitation standards and prescribe requirements for private septic systems, pest control and hazardous material storage. Probable costs are:

Requirement:	Probable Cost:
Bleach	\$3/gallon
All-purpose cleaner	\$20/2.5 gallon
Laundry soap	\$25/gallon
Washing machine and dryer - optional	\$1,400
Vacuum	\$100
Carpet shampooer	\$200
Annual septic system inspection	\$50
Centers only: Hazardous materials storage room must have exterior window or mechanical ventilation system	Indeterminate

Sales tax, delivery, installation charges, any contracted services, and monthly water service costs are not included in probable costs. A provider will incur additional cost if septic system inspection reveals issues that require remediation.

Proposed WAC 170-300-0265 through 170-300-0270 specify standards for sleep and rest, including what equipment must be provided and how it will be maintained. Probable costs are:

Family Home Child Care		Center Child Care	
Requirement	Cost	Requirement	Cost
Sleeping equipment. Options include: Toddler cots or Sleep mats	\$3,593 or \$90	Sleeping equipment. Option include: Toddler cots or Sleep mats	\$27,548 or \$690
Bedding	\$180	Bedding	\$1,380
Weekly laundering	\$312	Weekly laundering	\$2,392
Door alarm for overnight care	\$15/door	(Centers typically do not provide overnight care)	
Baby monitors for overnight care	\$30		

Sales tax is not included in probable costs. Analysis is based on one year license cycle.

Proposed WAC 170-300-0275 through 170-300-0290 specify requirements specific to infant and toddler care. Probable costs are:



Requirement:	Probable Cost:
Bottle preparation area that includes a sink and is 8' from diaper changing area or physically separated by moisture-resistant, cleanable barrier	\$0*
Refrigerator for breast milk	\$0*
Safe sleep training	\$0*
High chairs	\$100/chair
Developmentally appropriate dishes/utensils	\$25/child
Crib or playpen for each child	\$150/unit
Moisture-resistant mattress for crib	\$70
Bedding	\$15/sheet
Developmentally appropriate toys and soft furnishings	\$100/child
Centers: Regular child care health consultation	\$75-\$125/hr

\* A kitchen may be used for bottle preparation. Probable costs for kitchen sink and refrigerator are listed above. Safe sleep training is a preservice training requirement for all providers.

Sales tax and monthly water service costs are not included in probable costs. Analysis is based on one year license cycle.

Proposed WAC 170-300-0300 through 170-300-0400 specify standards for interactions and curriculum, including provider interactions with children and families, child-to-child interactions, restraint practices, expulsion policies, classroom organization, and emotional and learning supports. Any increase would be to administrative costs and is expected to be minimal.

Proposed WAC 170-300-0345 through 170-300-0355 specify standards for program structure and organization, including supervising children, how program capacity is determined and provider/staff to child ratios. Probable costs are:

Requirement	Probable Cost
Fifteen sq. ft. per infant; 35 sq. ft. per child for all other children	Indeterminate
Instructional staff to meet capacity and staff to child ratios	Average state wage amounts: * \$15.73=center program supervisor \$13.00=center lead teacher \$11.53=center aide \$11.88=family home assistant staff
Annual licensing fee	family home child care \$30 center child care \$125
Certificate of occupancy and state fire marshall inspection	\$0**
"No Smoking" signs	\$10/sign

\* Source: DEL's Provider Minimum Wage Impact Survey, March 2017

\*\* Paid by DEL.

Proposed WAC 170-300-0450 through 170-300-0505 clarify what records an early learning program must keep, policies that must be maintained, required reporting, and what information must be posted in public areas. Any increase would be to administrative costs and is expected to be minimal.

**SECTION 4:**

**Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.**

Analysis assumes a center statewide average capacity of sixty-nine children in care and a family home statewide average capacity of nine children. Analysis assumes the program is served by typical utilities, such as water and power. Ongoing costs are factored using a one year licensing cycle.

**New Costs:**

Proposed WAC 170-300-0100 imposes a probable cost of \$2,208 on a family home provider who has not completed any coursework that will satisfy the education requirement. A family home provider may incur additional costs of a substitute while he or she completes the education requirement. The proposed rule may impose more-than-minor costs on centers who incur costs for substitutes if employees are released to complete coursework. This analysis assumes that

center employees will be responsible for their individual education costs.

Compliance with proposed WAC 170-300-0140, supplying mid-level personal, child-accessible storage, will result in a probable cost of \$3,000 for a center.

**Current Costs Recodified in New Chapter 170-300 WAC Sections:**

To comply with proposed WAC 170-300-0135, a center will likely incur probable costs of \$6,723 for an adequate supply of child-sized furniture and soft furnishings.

Fencing with self-closing, self-latching gates will likely exceed the minor cost threshold for family homes and centers who license outdoor program space. The probable cost varies depending on the size of the space and fence material. Depending on the material used and area that must be covered, shock-absorbing material under outdoor equipment may exceed the minor cost threshold for family homes and centers. If decks or platforms needing guardrails are used for outdoor activities, guardrail materials and installation will likely exceed the minor cost threshold. The cost varies depending on the length needed, materials used, and whether professional installation is needed. A family home or center that uses a self-maintained swimming pool in its program may exceed the minor cost threshold to make the pool inac-

cessible to children when not supervised by installing a barrier with a locking mechanism and alarming the door that leads to the pool area. These requirements are proposed by WAC 170-300-0045, 170-300-0046, 170-300-0165, and 170-300-0175, respectively.

Meals required by proposed WAC 170-300-0180 will exceed the minor cost threshold for family homes and centers, as will equipping a kitchen to comply with proposed WAC 170-300-0198 and 170-300-0199.

Outfitting a toileting area with equipment and supplies to comply with proposed WAC 170-300-0200 through 170-300-0220 will exceed the minor cost threshold for centers and family homes.

Providing sleep equipment and weekly laundering of bedding to comply with proposed WAC 170-300-0265 will cause centers to exceed the minor cost threshold.

A center who provides infant care must contract with a health consultant to comply with proposed WAC 170-300-0275, which will likely exceed the minor cost threshold.

Wages resulting from adequate staffing to comply with staff to child ratios of proposed WAC 170-300-0355 and 170-300-0366 will exceed the minor cost threshold for family homes and centers.

Additionally centers' ADA compliance required by proposed WAC 170-300-0130 may exceed the minor cost threshold if building alterations are required. ADA compliance is currently a federal requirement and should not be considered a new cost for current licensed centers.

#### SECTION 5:

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.**

Only small businesses are impacted.

#### SECTION 6:

**If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.**

#### NEW REQUIREMENTS:

Proposed WAC 170-300-0100: DEL is committed to collaborating with small business owners to develop equivalencies based on experience, licensing history, and coursework completed to satisfy the professional development requirements of proposed WAC 170-300-0100. DEL is supporting current providers by allowing five years from the rule's expected effective date of August 2019 to complete the requirement. Providers who participate in early achievers, Washington's quality early learning rating system, are supported with free training, education scholarships, needs-based grants, quality improvement awards, and reimbursements for substitutes, all of which could be used to offset proposed WAC 170-300-0100 impact on their businesses.

Proposed WAC 170-300-0140 (personal storage): Storage options are available to providers that would not exceed the minor cost threshold.

The current costs recodified in the proposed rules, including those that exceed the minor cost threshold, have no impact on current licensed family home and center child providers.

#### SECTION 7:

**Describe how small businesses were involved in the development of the proposed rule.**

Prior to drafting, DEL engaged in a series of meetings around the state to discuss with regulated small businesses the requirement to align standards. Comments collected in those meetings informed rule drafting. DEL released initial draft rules in April 2016 and solicited comments through June 2016. Revised drafts were released November 26 and comments were solicited again.

DEL facilitated two hundred twenty hours of negotiation that included representatives of family homes, centers, head start/ECEAP providers, families, and DEL licensing staff. Negotiators' revisions to DEL's draft rules were released in October 2017 and DEL again solicited public comment.

The revised draft rules released November 2016 and negotiated revisions generated over one thousand five hundred public comments, which were delivered to the negotiators for their consideration. Time was also reserved during scheduled negotiation sessions to hear public comments.

#### SECTION 8:

**Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

DEL estimates that there are currently three thousand two hundred sixty-nine providers working in the child care or early learning industry in Washington state that do not meet the educational requirements that would be imposed by proposed WAC 170-300-0100. This data, however, does not enable DEL to predict whether the requirements of this section would result in a loss of jobs or create jobs. Hiring and staffing decisions would vary depending on the needs, resources, and workforce of each early learning program. In addition, a program's hiring and staffing decisions as related to this proposed rule would depend on whether that program elects to cover the cost to complete newly required ECE certificates or not.

In response to providers' concerns that new professional development requirements will cause providers to exit the field, DEL committed to collaborating with providers to determine equivalencies for current staff with the intent of minimizing impact.

The remaining proposed rules are not expected to impact job creation or loss.

A copy of the statement may be obtained by contacting Rules Coordinator, P.O. Box 40970, phone 360-725-4670, fax 360-725-4925, email [rules@del.wa.gov](mailto:rules@del.wa.gov), <https://del.wa.gov/providers-educators/laws-rules-and-performance-standards/del-rules-under-development/early-start-act>.

May 11, 2018  
Heather Moss  
Director

## INTENT AND AUTHORITY

### NEW SECTION

**WAC 170-300-0001 Intent and authority.** (1) The department of children, youth, and families was established

under chapter 6, Laws of 2017. Chapter 43.216 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and ECEAP standards, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Under chapter 7, Laws of 2015 3rd sp. sess. (Early Start Act), the state legislature directed the department to create a single set of licensing standards for center and family home providers.

(3) This chapter reflects the department's commitment to:

- (a) Promoting the health, safety, and well-being of children;
- (b) Expanding access to high quality early learning opportunities to improve outcomes for young children;
- (c) Promoting strong school readiness; and
- (d) Recognizing parents and guardians as a child's primary teacher and advocate.

(4) Pursuant to this chapter, the department will periodically monitor and assess early learning programs to determine compliance with these foundational quality standards.

#### NEW SECTION

**WAC 170-300-0010 License required.** (1) An individual or entity that provides child care and early learning services for a group of children, birth through twelve years of age, must be licensed by the department, pursuant to RCW 43.216.295, unless exempt under RCW 43.216.010(2) and WAC 170-300-0025.

(2) The department must not license a department employee or a member of the employee's household if the employee is involved directly, or in an administrative or supervisory capacity in the:

- (a) Licensing process;
- (b) Placement of a child in a licensed early learning program; or
- (c) Authorization of payment for the child in care.

(3) A license is required when an individual provides child care and early learning services in his or her family home:

- (a) Outside the child's home on a regular and ongoing basis for one or more children not related to the licensee; or
- (b) For preschool age children for more than four hours a day.

As used in this chapter, "not related" means not any of the relatives listed in RCW 43.216.010 (2)(a).

(4) The department may license a center located in a private family residence when the portion of the residence accessible to children is:

- (a) Used exclusively for children during the center's operating hours or when children are in care; or
- (b) Separate from the family living quarters.

#### NEW SECTION

**WAC 170-300-0015 Licensee absence.** (1) In a family home early learning program, the licensee must have a written plan for when the licensee will be absent but the program remains open for the care of children. If a family home licensee is absent more than ten consecutive operating days,

the licensee must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(2) In a center early learning program, the licensee must have a written plan for when the director, assistant director, and program supervisor will be simultaneously absent but the program remains open for the care of children. If the director, assistant director, and program supervisor are simultaneously absent for more than ten consecutive operating days, an early learning provider must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(3) A written notification under this section must include the following information:

- (a) The time period of the absence;
- (b) Emergency contact information for the absent early learning provider; and
- (c) A written plan for program staff to follow that includes:
  - (i) A staffing plan that meets child-to-staff ratios;
  - (ii) Identification of a lead teacher to be present and in charge;
  - (iii) Early learning program staff roles and responsibilities;
  - (iv) How each child's needs will be met during the absence; and
  - (v) The responsibility for meeting licensing requirements.

(4) If a facility licensing compliance agreement (FLCA) is developed as a result of early learning program staff failing to comply with licensing regulations during an absence described in this section, an early learning provider must:

- (a) Retrain early learning program staff on the foundational quality standards documented on the FLCA; and
- (b) Document that the retraining occurred.

#### NEW SECTION

**WAC 170-300-0016 Inactive status—Voluntary and temporary closure.** (1) If a center or family home licensee plans to temporarily close their early learning program for more than thirty calendar days, and this closure is a departure from the program's regular schedule, an early learning provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

- (a) The date the early learning program will cease operating;
- (b) The reasons why the licensee is going on inactive status; and
- (c) A projected date the early learning program will reopen.

(2) The requirements of this section do not apply to licensed early learning programs that have temporary closures beyond thirty calendar days as part of their regular schedule, such as programs based on the school year or seasonal occupation.

(3) A licensee may not request inactive status during their first initial licensing period (six months) unless for an emergency.

(4) An early learning provider must inform parents and guardians that the program will temporarily close.

(5) An early learning provider is responsible for notifying the department of changes to program status including voluntary closures, new household members or staff, or other program changes. Program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 170-06 WAC, as hereafter recodified or amended, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

- (a) Place the license on inactive status;
- (b) Inform the licensee that the license is inactive; and
- (c) Notify the following programs of the inactive status:
  - (i) The department's child care subsidy programs;
  - (ii) USDA Child and Adult Care Food Program (CACFP); and
  - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a twelve-month period, the department must close the license for failing to comply with RCW 43.216.305(2). The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) The department may pursue enforcement actions after three failed attempts to monitor an early learning program if:

- (a) The early learning provider has not been available to permit the monitoring visits;
- (b) The monitoring visits were attempted within a three-month span to the monitoring due date; and
- (c) The department attempted to contact the provider by phone during the third attempted visit while still on the early learning premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. After receiving notice of the intent to reopen, the department will:

- (a) Conduct a health and safety visit of the early learning program within ten business days to determine that the provider is in compliance with this chapter;
- (b) Activate the license and inform the licensee that the license is active; and
- (c) Notify the following programs of the active status:
  - (i) The department's child care subsidy programs;
  - (ii) CACFP; and
  - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

#### NEW SECTION

**WAC 170-300-0020 Unlicensed programs.** (1) If the department suspects that an individual or agency is providing unlicensed child care, the department must follow the requirements of RCW 43.216.360.

(2) If an individual decides to obtain a license, within thirty calendar days from the date of the department's notice in subsection (1) of this section, the individual or agency must submit a written agreement on a department form stating they agree to:

- (a) Attend and participate in the next available department licensing orientation; and
- (b) Submit a licensing application after completing orientation.

(3) The department's written notice under subsection (1) of this section must inform the individual or agency providing unlicensed child care:

- (a) That the individual or agency must stop providing child care, pursuant to RCW 43.216.360;
- (b) How to respond to the department;
- (c) How to apply for a license;
- (d) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;
- (e) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and
- (f) How to ask for a hearing, under chapter 34.05 RCW (Administrative Procedure Act), chapter 43.216 RCW, and chapter 170-03 WAC (department hearing rules), as hereafter recodified or amended.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

(5) A person providing unlicensed child care:

- (a) Shall be guilty of a misdemeanor pursuant to RCW 43.216.365; and
- (b) May be subject to an injunction pursuant to RCW 43.216.355.

#### NEW SECTION

##### **WAC 170-300-0025 Certified and exempt programs.**

(1) The department must not license a child care program that is legally exempt from licensing per RCW 43.216.010(2). However, if a child care program requests to become certified by the department, the department shall apply all licensing rules to the otherwise exempt program. In such a case, the department shall apply licensing rules equally to licensed and certified child care programs.

(2) The department may certify an otherwise exempt child care program for subsidy payment without further inspection if the program is:

- (a) Licensed by an Indian tribe, band, nation, or other organized community of Indians, including an Alaska native village as defined in 43 U.S.C. Sec. 1602(c), recognized as eligible for services by the United States Secretary of the Interior;
- (b) Certified by the federal Department of Defense; or
- (c) Approved by the office of superintendent of public instruction (OSPI).

(3) A child care program exempt from licensing pursuant to RCW 43.216.010(2) must use the department's form to submit their exempt status.

(4) A child care program requesting certification must be located on the premises over which the tribe, federal Department of Defense, or OSPI has jurisdiction.

(5) A child care program regulated by a tribe, the federal Department of Defense, or OSPI may request certification:

- (a) For subsidy payment only; or
- (b) As meeting foundational quality standards of this chapter.

(6) The department must not certify a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

- (a) Certification process;
- (b) Placement of a child in a certified program; or
- (c) Authorization of payment for the child in care.

#### NEW SECTION

**WAC 170-300-0030 Nondiscrimination.** (1) Early learning programs are defined by state and federal law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, ethnicity, national origin, marital status, gender, sexual orientation, class, age, religion, or ability; and

(b) Comply with the requirements of the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) An early learning program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

### CHILD OUTCOMES

#### NEW SECTION

**WAC 170-300-0055 Developmental screening and communication to parents or guardians.** (1) An early learning provider must inform parents or guardians about the importance of developmental screenings for each child from birth through age five.

(2) If not conducted on-site, an early learning provider must share information with parents or guardians about organizations that conduct developmental screenings such as a local business, school district, health care provider, specialist, or resources listed on the department web site.

#### NEW SECTION

**WAC 170-300-0065 School readiness and family engagement activities.** (1) At least once per calendar year, an early learning provider must supply to parents or guardians kindergarten or school readiness materials.

(2) Kindergarten or school readiness materials must be the same or similar to resources posted online by OSPI, the department, or other equivalent organizations. These materials may address:

- (a) Kindergarten transition activities, if applicable; and
- (b) Developmentally appropriate local school and school district activities designed to engage families.

### FAMILY ENGAGEMENT AND PARTNERSHIPS

#### NEW SECTION

##### **WAC 170-300-0080 Family support self-assessment.**

An early learning provider must assess their program within one year of being licensed, or within six months of the date this section becomes effective, to identify ways to support the families of enrolled children. A provider must complete the strengthening families program self-assessment, or an equivalent assessment, applicable to the early learning program type (center or family home).

#### NEW SECTION

**WAC 170-300-0085 Family partnerships and communication.** (1) An early learning provider must communicate with families to identify individual children's developmental goals.

(2) An early learning provider must attempt to obtain information from each child's family about that child's developmental, behavioral, health, linguistic, cultural, social, and other relevant information. The provider must make this attempt upon that child's enrollment and annually thereafter.

(3) An early learning provider must determine how the program can best accommodate each child's individual characteristics, strengths, and needs. The provider must utilize the information in subsection (2) of this section and seek input from family members and staff familiar with a child's behavior, developmental, and learning patterns.

(4) An early learning provider must:

(a) Attempt to discuss with parents or guardians information including, but not limited to:

(i) A child's strength in areas of development, health issues, special needs, and other concerns;

(ii) Family routines or events, approaches to parenting, family beliefs, culture, language, and child rearing practices;

(iii) Internal transitions within the early learning program and transitions to external services or programs, as necessary;

(iv) Collaboration between the provider and the parent or guardian in behavior management; and

(v) A child's progress, at least two times per year.

(b) Communicate the importance of regular attendance for the child;

(c) Give parents or guardians contact information for questions or concerns;

(d) Give families opportunities to share their language and culture in the early learning program;

(e) Arrange a confidential time and space for individual conversations regarding children, as needed;

(f) Allow parents or guardians access to their child during normal hours of operation, except as excluded by a court order; and

(g) Communicate verbally or in writing:

(i) Changes in drop-off and pickup arrangements as needed; and

(ii) Daily activities.

## PROFESSIONAL DEVELOPMENT, TRAINING AND REQUIREMENTS

### NEW SECTION

**WAC 170-300-0100 General staff qualifications.** All early learning providers must meet the following requirements prior to working:

(1) **Family home early learning program licensees** work from their private residence to provide early learning programming to a group of no more than twelve children present at one time.

(a) A family home licensee must meet the following qualifications upon application:

- (i) Be at least eighteen years old;
- (ii) Have a high school diploma or equivalent; and
- (iii) Complete the applicable preservice requirements pursuant to WAC 170-300-0105.

(b) A family home licensee must meet the following qualifications:

(i) Family home licensees must have an ECE initial certificate, or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective; and

(ii) Upon completion of the ECE initial certificate or equivalent, family home licensees must complete an ECE short certificate or equivalent within two years, as approved and verified in the electronic workforce registry by the department.

(A) If a family home licensee already has an existing ECE initial certificate or equivalent, the licensee must complete an ECE short certificate or equivalent within five years of licensure by the department.

(B) Five years from the date this rule takes effect, the family home licensee must complete an ECE short certificate or equivalent within three years.

(iii) Have their continued professional development progress documented annually.

(c) Family home licensees must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours, or designate a person with the qualifications of a family home licensee to be on-site when not present;

(ii) Comply with these foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program;

(iv) Have knowledge of community resources available to families, including resources for children with special needs and the ability to share these resources with families; and

(v) Oversee early learning program staff and support staff in creating and maintaining staff records.

(2) **Center early learning program licensees** must meet the requirements of a center director, listed in subsection (3) of this section, or hire a center director who meets the qualifications prior to being granted an initial license. Center licensees who fulfill the role of center director in their early

learning program must complete all trainings and requirements for center directors.

(3) **Center directors or assistant directors** manage the early learning program and set appropriate program and staff expectations.

(a) A center director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A center director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) A center director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent at the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program and at least six months of experience in administration or management or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 170-300-0105;

(v) If a center director does not meet the minimum qualification requirements, the center early learning program must employ an assistant director or program supervisor who meets the minimum qualifications of these positions;

(vi) Have their continued professional development progress documented annually.

(b) An assistant director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) An assistant director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) An assistant director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent at the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program or two years of experience in administration or management, or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 170-300-0105;

(v) Have their continued professional development progress documented annually.

(c) A center director or assistant director or equivalent must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours up to forty hours per week, or designate a person with the qualifications of an assistant director, program supervisor, or equivalent. A center director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;

- (ii) Comply with foundational quality standards;
- (iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program (or designate a program supervisor with this responsibility);
- (iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and
- (v) Oversee professional development plans for early learning program staff including, but not limited to:
  - (A) Providing support to staff for creating and maintaining staff records;
  - (B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and
  - (C) Observing and mentoring staff.
- (4) **Center program supervisors** plan the early learning program services under the oversight of a center director or assistant director.
  - (a) A program supervisor must meet the following qualifications:
    - (i) Be at least eighteen years old;
    - (ii) If a director or assistant director has an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:
      - (A) A program supervisor must complete an ECE state certificate or equivalent within five years of the date this section becomes effective or from the date of hire or promotion, whichever is later;
      - (B) A program supervisor at the time of hire or promotion must have an ECE state certificate if the director or assistant director does not have an ECE state certificate.
    - (iii) Have two years of experience as a teacher of children in any age group enrolled in any early learning program;
    - (iv) Complete the applicable preservice requirements, pursuant to WAC 170-300-0105; and
    - (v) Have their continued professional development progress documented annually.
  - (b) A program supervisor performs the following duties:
    - (i) Guide the planning of curriculum philosophy, implementation, and environmental design of the early learning program;
    - (ii) Comply with foundational quality standards;
    - (iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and
    - (iv) Manage the professional development plans and requirements for staff as needed.
  - (c) One person may be the center director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (3)(a) and (b) of this section are met.
- (5) **Lead teachers** are responsible for implementing the center or family home early learning program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.
  - (a) A lead teacher must meet the following qualifications:
    - (i) Be at least eighteen years old;

- (ii) Have a high school diploma or equivalent; and
- (iii) Complete the applicable preservice requirements, pursuant to WAC 170-300-0105.
- (b) A center lead teacher must meet the following requirements:
  - (i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed early learning program;
  - (ii) Progress towards an ECE short certificate or equivalent. A center lead teacher hired after this chapter becomes effective must have an ECE short certificate within two years of receiving an ECE initial certificate, or seven years from being employed or promoted into this position at any licensed early learning program; and
  - (iii) Have their professional development progress documented annually.
- (c) A family home lead teacher must meet the following requirements:
  - (i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted into this position at any licensed early learning program;
  - (ii) Prior to being in charge of their early learning program fifty percent or more of the time, a family home lead teacher must meet the qualifications of the family home licensee and complete or be registered in orientation training required in WAC 170-300-0105(1); and
  - (iii) Have their professional development progress documented annually.
- (6) **Assistant teachers** help a lead teacher or licensee provide instructional support to children and implement developmentally appropriate programs in center or family home early learning programs.
  - (a) An assistant teacher must meet the following qualifications:
    - (i) Be at least eighteen years old;
    - (ii) Have a high school diploma or equivalent; and
    - (iii) Have a minimum of an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted to this position at any licensed early learning program;
  - (iv) Complete the applicable preservice requirements, pursuant to WAC 170-300-0105; and
  - (v) Have their professional development progress documented annually.
  - (b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.
    - (c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the provider must notify the department with a plan to manage the classroom.

(7) **Aides** provide classroom support to an assistant teacher, lead teacher, program supervisor, center director, assistant director, or family home licensee. Aides must meet the following qualifications:

- (a) Be at least fourteen years old;
  - (b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;
  - (c) Complete the applicable preservice requirements, pursuant to WAC 170-300-0105;
  - (d) Have their professional development progress documented annually; and
  - (e) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee.
- (i) Aides working nineteen hours per month or less can count towards ratio with applicable preservice requirements pursuant to WAC 170-300-0105 and without in-service training requirements pursuant to WAC 170-300-0107 (1)(a).
- (ii) Aides who work twenty hours or more per month with a cumulative twelve months of employment must complete applicable preservice requirements pursuant to WAC 170-300-0105 and in-service training pursuant to WAC 170-300-0107 (1)(a).

(8) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (7) of this section must meet the following qualifications:

- (a) Complete and pass a background check, pursuant to chapter 170-06 WAC, as hereafter recodified or amended;
- (b) Have a negative TB test, pursuant to WAC 170-300-0105; and
- (c) Complete program based staff policies and training, pursuant to WAC 170-300-0110.

(9) **Volunteers** help at early learning programs. Volunteers must meet the following qualifications:

- (a) Be at least fourteen years old (volunteers must have written permission to volunteer from their parent or guardian if they are under eighteen years old);
- (b) Work under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee;
- (c) Regular, ongoing volunteers may count in staff-to-child ratio if they:
  - (i) Complete and pass a background check, pursuant to chapter 170-06 WAC, as hereafter recodified or amended;
  - (ii) Complete a TB test, pursuant to WAC 170-300-0105;
  - (iii) Complete the training requirements, pursuant to WAC 170-300-0106;
  - (iv) Complete program based staff policies and training, pursuant to WAC 170-300-0110; and
  - (v) Have their professional development progress documented annually.
- (d) Occasional volunteers must comply with (a) and (b) of this subsection. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

#### NEW SECTION

**WAC 170-300-0105 Preservice requirements.** (1) All applicants, coapplicants, family home licensees, center directors, assistant directors, and program supervisors must complete a department provided orientation for the applicable early learning program. Prior to being in charge of the early learning program fifty percent of the time or more, those newly promoted or assuming a role of one of the roles listed here must complete or be registered in orientation training.

(2) Early learning providers and household members in a family home early learning program must complete a department background check, pursuant to chapter 170-06 WAC, as hereafter recodified or amended.

(3) Early learning providers, including volunteers and household members in a family home early learning program ages fourteen and over, must provide documentation signed within the last twelve months by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

- (a) A negative TB symptom screen and negative TB risk assessment;
  - (b) A previous positive FDA-approved TB test and a current negative chest radiograph and documentation of clearance to safely work or reside in an early learning program; or
  - (c) A positive symptom screening or a positive risk assessment with documentation of:
    - (i) A current negative FDA-approved TB test;
    - (ii) A previous or current positive FDA-approved TB test; and
    - (iii) A current negative chest radiograph and documentation of clearance to safely work or reside in an early learning program.
- (4) Upon notification of TB exposure, early learning providers may be required to be retested for TB as directed by the local health jurisdiction.

#### NEW SECTION

**WAC 170-300-0106 Training requirements.** (1) Early learning providers licensed, working, or volunteering in an early learning program before the date this section becomes effective must complete the applicable training requirements of this section within three months of the date this section becomes effective unless otherwise indicated. Early learning providers hired after the date this section becomes effective must complete the training requirements of subsections (4) through (10) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.

(2) License applicants and early learning providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and aides must complete the child care basics training as approved or offered by the department:

- (a) Prior to being granted a license;
- (b) Prior to working unsupervised with children; or



(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role.

(4) Early learning providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) Early learning providers must complete the emergency preparedness training as approved or offered by the department (applicable to the early learning program where they work or volunteer) according to subsection (1) of this section.

(6) Early learning providers licensed to care for infants must complete the prevention and identifying shaken baby syndrome/abuse head trauma training as approved or offered by the department according to subsection (1) of this section.

(7) Early learning providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(8) License applicants and early learning providers licensed to care for infants must complete the safe sleep training as approved or offered by the department. This training must be completed annually and:

- (a) Prior to being licensed;
- (b) Prior to caring for infants; or
- (c) According to subsection (1) of this section.

(9) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, and other appropriate staff members must complete the child restraint training as approved or offered by the department. This training must be completed annually; and:

- (a) Prior to being authorized to restrain an enrolled child; or
- (b) According to subsection (1) of this section.

(10) Family home licensees, center directors, assistant directors, program supervisors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(11) Early learning providers who directly care for children must complete the prevention of exposure to blood and body fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(12) Early learning providers must have a current first-aid and cardiopulmonary resuscitation (CPR) certification prior to being alone with children. Early learning providers must ensure that at least one staff person with a current first-aid and CPR certificate is present with each group of children at all times.

(a) Proof of certification may be a card, certificate, or instructor letter.

(b) The first-aid and CPR training and certification must:

- (i) Be delivered in person and include a hands-on component for first aid and CPR demonstrated in front of an instructor certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program;
- (ii) Include child and adult CPR; and
- (iii) Infant CPR, if applicable.

(13) Early learning providers who prepare or serve food to children at an early learning program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

- (a) Be obtained online or through the local health jurisdiction; and
- (b) Be renewed prior to expiring.

#### NEW SECTION

**WAC 170-300-0107 In-service training.** (1) An early learning provider must complete ten hours of annual in-service training after twelve months of cumulative employment.

(a) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, and assistant teachers must complete the department enhancing quality of early learning (EQEL) in-service training within thirty-six months of being hired in a licensed facility, unless the provider has completed a department approved alternative training. EQEL hours may count towards the ten hours of annual in-service training.

(b) Every thirty-six months, following the completion of EQEL or a department approved alternative training, family home licensees, center directors, assistant directors, and program supervisors, must complete a minimum of ten hours of in-service training "child development" and a minimum of ten hours of in-service training on "leadership practices."

(i) Child development training includes the following Washington state core competencies: Child growth and development, curriculum and learning environment, ongoing measurements of child progress, family and community partnerships, health, safety, nutrition, and interactions.

(ii) Leadership practices training includes the following Washington state core competencies: Program planning and development, professional development, and leadership.

(2) In-service training requirements of this chapter may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours may be carried over from one fiscal year to the next fiscal year.

#### NEW SECTION

**WAC 170-300-0110 Program based staff policies and training.** (1) An early learning provider must have and follow written policies for early learning program staff. Staff policies must include those listed in subsections (2) and (3) of this section and must be reviewed and approved by the department prior to issuing a provider's initial license. Providers must notify the department when substantial changes are made.

(2) Early learning program staff policies must include, but are not limited to:

- (a) All of the information in the parent or guardian handbook except fees;
  - (b) Job descriptions, pay dates, and benefits;
  - (c) Professional development expectations and plans;
  - (d) Expectations for attendance and conduct;
  - (e) Early learning program staff responsibilities for:
    - (i) Child supervision requirements, including preventing children's access to unlicensed space;
    - (ii) Child growth and development;
    - (iii) Developmentally appropriate curriculum;
    - (iv) Teacher-child interaction;
    - (v) Child protection, guidance, and discipline techniques;
    - (vi) Safe sleep practices, if applicable;
    - (vii) Food service practices;
    - (viii) Off-site field trips, if applicable;
    - (ix) Transporting children, if applicable;
    - (x) Health, safety, and sanitization procedures;
    - (xi) Medication management procedures;
    - (xii) Medical emergencies, fire, disaster evacuation and emergency preparedness plans;
    - (xiii) Mandatory reporting of suspected child abuse, neglect, and exploitation, per RCW 26.44.020 and 26.44.030 and all other reporting requirements;
    - (xiv) Implementation of child's individual health care or special needs plan;
    - (xv) Following nonsmoking, vaping, alcohol and drug regulations;
    - (xvi) Overnight care, if applicable;
    - (xvii) Religious, equity and cultural responsiveness;
    - (xviii) Nondiscrimination;
    - (xviii) Planned daily activities and routines.
  - (f) Staff responsibilities if the family home licensee, center director, assistant director, or program supervisor is absent from the early learning program;
  - (g) A plan that includes how both administrative and child caretaking duties are met when a job requires such dual responsibilities; and
  - (h) Observation, evaluation, and feedback policies.
- (3) An early learning provider must have and follow written policies requiring staff working, transitioning, or covering breaks with the same classroom or group of children to share applicable information with each other on a daily basis regarding:
- (a) A child's health needs, allergies and medication;
  - (b) Any change in a child's daily schedule;
  - (c) Significant educational or developmental information;
  - (d) Any communications from the family; and
  - (e) Information to be shared with the family.
- (4) An early learning provider must develop, deliver, and document the delivery of early learning staff training specific to the early learning program and premises.
- (a) Training topics must include:
    - (i) Staff policies listed in subsections (2) and (3) of this section;
    - (ii) Chapter 43.216 RCW; and

(ii) Chapters 170-300 and 170-06 WAC, as hereafter recodified or amended.

(b) Training must be updated with changes in program policies and state or federal regulations.

#### NEW SECTION

**WAC 170-300-0111 Staff oversight.** (1) An early learning provider who oversees staff must:

- (a) Establish a work plan with clear expectations;
  - (b) Be aware of what staff members are doing; and
  - (c) Be available and able to respond in an emergency as needed to protect the health and safety of children in care.
- (2) When the family home licensee, center director, assistant director, program supervisor, lead teacher, or assistant teacher is the only staff supervising an aide or volunteer, the aide or volunteer may be out of the supervisor's visual and auditory range only when the aide, volunteer or supervisor is attending to personal needs.

#### NEW SECTION

**WAC 170-300-0115 Staff records.** (1) An early learning provider must establish a records system for themselves, household members, staff, and volunteers that complies with the requirements of this chapter. Early learning program staff records must be:

- (a) Verified by the licensee, center director, assistant director, or program supervisor;
  - (b) Entered and maintained in the electronic workforce registry, if applicable. Paper records may be discarded once entered into the electronic workforce registry and confirmed by the department;
  - (c) Updated to delete staff names from the electronic workforce registry when no longer employed at the early learning program; and
  - (d) Kept on-site or in the program's administrative office in a manner that allows the department to review the records.
- (2) Records for each early learning provider and staff member must include:
- (a) First and last name;
  - (b) Date of birth;
  - (c) Job title;
  - (d) First and last day of employment, if applicable;
  - (e) Proof of professional credentials, requirements, and training for each early learning staff member, pursuant to WAC 170-300-0100 through 170-300-0110.

(3) A licensee, center director, assistant director, or program supervisor must maintain the following records for each early learning provider and staff in a confidential manner. These records must be reviewable by the department and must include at a minimum:

- (a) A copy of current government issued photo identification;
- (b) Emergency contact information;
- (c) Completed employment application or resume;
- (d) Annual observation, evaluation, and feedback information; and
- (e) The licensee's Social Security number, federal EIN, or a written document stating the licensee does not possess either.

NEW SECTION

**WAC 170-300-0120 Providing for personal, professional, and health needs of staff.** (1) A licensee must provide for the personal and professional needs of staff by:

- (a) Having a secure place to store personal belongings that is inaccessible to children;
- (b) Having a readily accessible phone to use for emergency calls or to contact the parents of enrolled children; and
- (c) Providing file and storage space for professional materials.

(2) An early learning provider must be excluded from the early learning premises when that provider's illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require a staff member to be excluded are pursuant to WAC 170-300-0205.

(3) If a staff person has not been vaccinated, or has not shown documented immunity to a vaccine preventable disease, that person may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010, as now and hereafter amended.

(4) An early learning program's health policy, pursuant to WAC 170-300-0500, must include provisions for excluding or separating staff with a contagious disease described in WAC 246-110-010, as now and hereafter amended.

**ENVIRONMENT****Space and Furnishings**NEW SECTION

**WAC 170-300-0130 Indoor early learning program space.** (1) Indoor early learning program space must be accessible during program operating hours.

(2) Early learning program space, ramps, and handrails must comply with, be accessible to, and accommodate children and adults with disabilities as required by the Washington law against discrimination (chapter 49.60 RCW) and the ADA, as now and hereafter amended.

(3) Early learning program space must allow children to move between areas without disrupting another child's work or play.

(4) A family home licensee must provide a signed and dated declaration form annually stating that the early learning program meets the following requirements, as applicable, in unlicensed space:

- (a) Furnace area safety, or smoke or carbon monoxide detector requirements pursuant to WAC 170-300-0170(3);
- (b) Guns, weapons, or ammunition storage pursuant to WAC 170-300-0165 (2)(e);
- (c) Medication storage pursuant to WAC 170-300-0215;
- (d) Refrigerator or freezer pursuant to WAC 170-300-0165 (3)(d); or
- (e) Storage areas that contain chemicals, utility sinks, or wet mops pursuant to WAC 170-300-0260.

NEW SECTION

**WAC 170-300-0135 Routine care, play, learning, relaxation, and comfort.** (1) An early learning provider must have accessible and child-size furniture and equipment (or altered and adapted in a family home early learning program) in sufficient quantity for the number of children in care. Tables must not be bucket style.

(2) Furniture and equipment must be:

- (a) Maintained in a safe working condition;
- (b) Developmentally and age appropriate;

(c) Visually inspected at least weekly for hazards, broken parts, or damage. All equipment with hazardous, broken parts, or damage must be repaired as soon as possible and must be inaccessible to children until repairs are made according to the manufacturer's instructions, if available;

(d) Arranged in a way that does not interfere with other play equipment;

(e) Installed and assembled according to manufacturer's specifications;

(f) Stored in a manner to prevent injury; and

(g) Accessible to the child's height so that he or she can find, use, and return materials independently.

(3) An early learning provider must supply soft furnishings in licensed space accessible to children. Soft furnishings may include, but are not limited to, carpeted areas and area rugs, upholstered furniture, cushions or large floor pillows, and stuffed animals.

NEW SECTION

**WAC 170-300-0140 Room arrangement, child-related displays, private space, and belongings.** (1) Early learning materials and equipment must be visible, accessible to children in care, and must be arranged to promote and encourage independent access by children.

(2) An early learning provider must display age and developmentally appropriate early learning materials. Materials must be located at enrolled children's eye level and related to current activities or curriculum.

(3) An early learning provider must offer, or allow a child to create, a place for privacy. This space must:

(a) Allow the provider to supervise children; and

(b) Include an area accessible to children who seek or need time alone or in small groups.

(4) An early learning provider must have extra clothing available for children who wet, soil, or have a need to change clothes.

(5) An early learning provider must supply individual storage space for each child's belongings while in attendance. At a minimum, the space must be:

(a) Accessible to the child; and

(b) Large enough and spaced sufficiently apart from other storage space to:

(i) Store the child's personal articles and clothing; and

(ii) Promote or encourage children to organize their possessions.

(6) Child usable and accessible areas must be arranged to provide sufficient space for routine care, child play, and learning activities. These areas must be designed to:

- (a) Allow the provider to supervise or actively supervise the children, depending on the nature of the activities;
- (b) Allow children to move freely; and
- (c) Allow for different types of activities at the same time (for example: Blocks, puppets, language and literary materials, art materials, clay or play dough, music and movement, or dramatic play).

#### NEW SECTION

**WAC 170-300-0145 Outdoor early learning program space.** (1) An early learning provider must visually inspect outdoor program space and equipment daily to ensure outdoor areas and equipment are free of hazards.

(2) Outdoor play space must contain a minimum of seventy-five square feet of licensed usable space per child accessing the play space at any given time. An early learning provider may develop an alternate plan if an early learning program does not have enough outdoor play space to accommodate all enrolled children at once (for example, rotating groups of children to play outdoors or using an off-site play area). The department must approve alternate plans to use off-site play spaces.

(3) An early learning program must have shaded areas in outdoor play space provided by trees, buildings, or shade structures.

(4) Outdoor play space must promote a variety of age and developmentally appropriate active play areas for children in care. Activities must encourage and promote both moderate and vigorous physical activity such as running, jumping, skipping, throwing, pedaling, pushing, pulling, kicking, and climbing.

(5) When the licensed outdoor play space is not immediately adjacent to the early learning program site, an early learning provider must use a safe route when moving to and from the licensed outdoor play space.

(6) Licensed outdoor play areas must be enclosed with a fence or barrier that is intended to prevent children from exiting and discourages climbing. If the outdoor play area is enclosed by a barrier that is not a fence, the barrier may be a wall constructed with brick, stone, or a similar material.

(7) Licensed outdoor play areas must be enclosed to deter people without permission from entering the area.

(8) Fences, barriers, and gates must be in good condition, have no gap through which a sphere with a diameter of three and one-half inches can pass, and have a minimum height of forty-eight inches or conform in height to applicable local codes.

(9) The opening between a fence post and gate or fence post and building must have no gap through which a sphere with a diameter of three and one-half inches can pass.

(10) An early learning provider must not install any wooden fence, playground structure, or furniture if it contains chromated copper arsenate (CCA), creosote or pentachlorophenol. If wooden fences, structures, and furniture are suspected of having CCA, they must be tested. If CCA is present, fences, structures, and furniture must be removed or sealed with an oil-based outdoor sealant annually or as needed within six months of the date this section becomes effective.

(11) Within six months of the date this section becomes effective or prior to licensing, exiting mechanisms on gates from a licensed outdoor play area to unlicensed space must be equipped with a self-closing and self-latching mechanism (shuts automatically when released from an individual's control). A gate that is not an emergency exit must be locked or self-closing and self-latching.

(12) Outdoor play areas must have two exits that must not be partially or entirely blocked, with at least one exit located away from the building.

#### NEW SECTION

**WAC 170-300-0146 Equipment and surfaces in outdoor early learning space.** (1) Playground equipment and surfacing used by an early learning provider must comply with applicable CPSC guidelines, as now and hereafter amended including, but not limited to, installing, arranging, designing, constructing, and maintaining outdoor play equipment and surfacing.

(a) Climbing play equipment must not be placed on or above concrete, asphalt, packed soil, lumber, or similar hard surfaces;

(b) The ground under swings and play equipment must be covered by a shock absorbing material (grass alone is not an acceptable) such as:

- (i) Pea gravel at least nine inches deep;
- (ii) Playground wood chips at least nine inches deep;
- (iii) Shredded recycled rubber at least six inches deep; or
- (iv) Any material that has a certificate of compliance, label, or documentation stating it meets ASTM standards F1292-13 and F2223-10, as now and hereafter amended.

(2) Permanently anchored outdoor play equipment must not be placed over septic tank areas or drain fields, and must be installed according to the manufacturer's directions.

(3) Handmade playground equipment must be maintained for safety or removed when no longer safe. Prior to construction of new handmade playground equipment, the provider must notify the department and have plans and a materials list available upon request.

(4) Bouncing equipment including, but not limited to, trampolines, rebounders and inflatable equipment must be inaccessible and locked. This requirement does not apply to bounce balls designed to be used by individual children.

#### NEW SECTION

**WAC 170-300-0147 Weather conditions and outdoor hazards.** (1) An early learning provider must observe weather conditions and other possible hazards to take appropriate action for child health and safety. Conditions that pose a health or safety risk may include, but are not limited to:

- (a) Heat in excess of 100 degrees Fahrenheit or pursuant to advice of the local authority;
- (b) Cold less than 20 degrees Fahrenheit, or pursuant to advice of the local authority;
- (c) Lightning storm, tornado, hurricane, or flooding if there is immediate or likely danger;
- (d) Earthquake;
- (e) Air quality emergency ordered by a local or state authority on air quality or public health;

- (f) Lockdown notification ordered by a public safety authority; and
  - (g) Other similar incidents.
- (2) An early learning provider must dress children for weather conditions during outdoor play time.

### ACTIVITIES

#### NEW SECTION

**WAC 170-300-0150 Program and activities.** (1) An early learning provider must supply children in care with early learning materials that are age and developmentally appropriate. For each age group of children in care, a provider must supply a variety of materials that satisfy individual, developmental, and cultural needs. Early learning materials must be:

- (a) Clean;
- (b) Washable or disposable;
- (c) Accommodating to a range of abilities of children in care;
- (d) Available to children in care appropriate to a child's age and developmental level;
- (e) Nonpoisonous and free of toxins. If an early learning provider is using prepackaged art materials, the materials must be labeled "non-toxic" and meet ASTM standard D-4236 as described in 16 C.F.R. 1500.14 (b)(8)(i), as now and hereafter amended;
- (f) In good and safe working condition;
- (g) Accommodating to special needs of children in care; and
- (h) Removed from the early learning program space once an item has been recalled by CPSC.

(2) An early learning provider must ensure a sufficient quantity and variety of materials to engage children in the early learning program (for example: Arts and crafts supplies, various textured materials, construction materials, manipulative materials, music and sound devices, books, and social living equipment). Materials must:

- (a) Encourage both active physical play and quiet play activities;
- (b) Promote imagination and creativity;
- (c) Promote language development and literacy skills;
- (d) Promote numeracy (counting and numbers) and spatial ability;
- (e) Encourage discovery and exploration; and
- (f) Promote learning skills.

#### NEW SECTION

**WAC 170-300-0155 Use of television, video, and computers.** If an early learning provider offers screen time to children in care:

- (1) The screen time available for each child:
  - (a) Must be educational, developmentally and age appropriate, nonviolent, and culturally sensitive; and
  - (b) Should be interactive with staff.
- (2) Children must not be required to participate in screen time activities. Alternative activities must be provided to children in care when screen time is offered.

(3) Screen time must not occur during scheduled meals or snacks.

(4) Total screen time must not exceed two and one-half hours per week for each child over twenty-four months of age through preschool in full-day care (one and one-quarter hours per child in half-day care).

(5) For school-age children, screen time must be limited to two and one-half hours per week for each child unless computer use is required for homework or a part of curriculum.

(6) There must not be intentional screen time for children under twenty-four months of age. An infant or toddler must be redirected from an area where screen time is displayed.

#### NEW SECTION

**WAC 170-300-0160 Promoting acceptance of diversity.** (1) An early learning provider must provide culturally and racially diverse learning opportunities. Diverse learning opportunities must be demonstrated by the provider's curriculum, activities, and materials that represent all children, families, and staff. A provider must use equipment and materials that include, but are not limited to:

- (a) Diverse dolls, books, pictures, games, or materials that do not reinforce stereotypes;
  - (b) Diverse music from many cultures in children's primary languages; and
  - (c) A balance of different ethnic and cultural groups, ages, abilities, family styles, and genders.
- (2) An early learning provider must intervene appropriately to stop biased behavior displayed by children or adults including, but not limited to:
- (a) Redirecting an inappropriate conversation or behavior;
  - (b) Being aware of situations that may involve bias and responding appropriately; and
  - (c) Refusing to ignore bias.

### SAFETY

#### NEW SECTION

**WAC 170-300-0165 Safety requirements.** (1) An early learning provider must keep indoor and outdoor early learning program space, materials, and equipment free from hazards and in safe working condition. Equipment and toys purchased and used must be compliant with CPSC guidelines or ASTM standards, as now and hereafter amended. Playground equipment and surfaces must meet the requirements of WAC 170-300-0146.

(2) An early learning provider must take steps to prevent hazards to children including, but not limited to:

- (a) Making inaccessible to infants and toddlers any equipment, material, or objects that may pose a risk of choking, aspiration, or ingestion. For the purposes of this section, equipment, material, or objects that have a diameter or overall dimension of one and three-quarter inches or less shall be considered items that may pose a risk of choking, aspiration, or ingestion. Small parts from larger equipment, material, or objects that have a diameter or overall dimension of one and three-quarter inches or less, that may become detached from

the larger equipment, materials, or object shall also be considered items that may pose a risk of choking, aspiration, or ingestion;

(b) Eliminating and not using in the licensed space, pursuant to RCW 43.216.380, any window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing risk of strangulation to children.

(i) Window blinds and other window coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are allowed; and

(ii) A window covering must not be secured to the frame of a window or door used as an emergency exit in a way that would prevent the window or door from opening easily.

(c) Making inaccessible to children straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck that are not used during supervised early learning program activities;

(d) Making inaccessible to children plastic bags and other suffocation hazards;

(e) Ensuring firearms, guns, weapons, and ammunition are not on the premises of a center early learning program. Firearms, guns, weapons, and ammunition on the premises of a family home early learning program must be stored in a locked gun safe or locked room inaccessible to children. If stored in a locked room, each gun must be stored unloaded and with a trigger lock or other disabling device. The locked room must be inaccessible to children at all times;

(f) Preventing children from walking into or through a glass door, window, or other glass barrier, by placing stickers or art work at the children's eye level on the glass; and

(g) Cribs, play pens, bassinets, infant beds, and indoor climbing structures must not be placed next to windows, to prevent harm from shattered glass, unless the window is made of safety glass.

(3) An early learning provider must take measures intended to prevent other hazards to children in care in early learning program space including, but not limited to:

(a) **Cuts, abrasions, and punctures.** Equipment, materials, and other objects on the premises that have splintered edges, sharp edges, points, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children;

(b) **Burns.** Equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;

(c) **Sheering, crushing, or pinching.** Broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;

(d) **Entrapment.** Freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers must be inaccessible to children unless being actively supervised;

(e) **Tripping.** Tripping hazards must be eliminated. Uneven walkways, damaged flooring or carpeting, or other tripping hazards must be removed or repaired;

(f) **Falling objects.** Large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and

(g) **Equipment in poor condition.** Equipment in poor condition (loose parts, rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.

(4) To ensure a safe environment for children in care, an early learning provider must comply with the following requirements:

(a) **Indoor temperatures for the premises.** The temperature of indoor early learning licensed space must be between 65 and 82 degrees Fahrenheit. If indoor licensed space is colder than 65 or hotter than 82 degrees Fahrenheit, an early learning provider must use climate control devices that are inaccessible to children to bring the temperature within the required range;

(b) **Window openings.** Windows within the reach of children must only open up to three and one-half inches or have some barrier or preventative measure to discourage children from exiting through the window. The three and one-half inch opening does not apply to exit windows in family home early learning programs;

(c) **Licensed space lighting.** Early learning program space must have natural or artificial light that provides appropriate illumination for early learning program activities and supervision. A provider must comply with all light fixture manufacturers' installation and use requirements. A provider must also ensure compliance with the following requirements:

(i) Light fixtures must have shatter-resistant covers or light bulbs;

(ii) Lights or light fixtures used indoors must be designed for indoor use only;

(iii) Free standing lamps must be attached or secured to prevent tipping; and

(iv) Halogen lamps and bulbs are prohibited.

(d) **Safe noise levels.** Noise levels must be maintained at a level in which a normal conversation may occur;

(e) **Safe water temperature.** All water accessible to enrolled children must not be hotter than 120 degrees Fahrenheit;

(f) **Stairway safety.**

(i) There must not be clutter or obstructions in the stairway;

(ii) All stairways (indoor and outdoor), not including play structures, must meet local building codes pursuant to RCW 43.216.340.

(A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.

(B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.

(C) Stairways with a wall on both sides must have a handrail no higher than thirty-eight inches on at least one side of the stairway.

(iii) Stairways must have a pressure gate, safety gate or door to keep stairs inaccessible to infants and toddlers when not in use. Openings between slats on pressure or safety gates must not be large enough to allow a sphere that is three and one-half inches wide to pass through.

(g) **Platforms and decks.** All platforms and decks used for child care activities must meet local building codes pursuant to RCW 43.216.340 within six months of the date this section becomes effective. This does not include play equipment. All platforms and decks with a drop zone of more than eighteen inches must have guardrails in sections without steps.

(5) To ensure a safe environment for children in care, an early learning provider must comply with the following electrical requirements:

(a) In areas accessible to children, electrical outlets must have automatic shutters that only allow electrical plugs to be inserted (tamper-resistant) or that are covered by blank plates or other tamper-resistant covers appropriate to the electrical outlet;

(b) Outlets near sinks, tubs, toilets, or other water sources must be inaccessible to children or be tamper-resistant and equipped with a ground fault circuit interrupter (GFCI) outlet type;

(c) Electrical cords must be in good working condition, not torn or frayed, and not have any exposed wires;

(d) Electrical cords must be plugged directly into a wall outlet or a surge protector;

(e) Power strips with surge protectors may be used but must not be accessible to children in care;

(f) Extension cords may only be used for a brief, temporary purpose and must not replace direct wiring; and

(g) Electrical devices accessible to children must not be plugged into an electrical outlet near a water source such as sink, tub, water table, or swimming pool.

#### NEW SECTION

**WAC 170-300-0166 Emergency preparation and exiting.** (1) To be properly prepared for an emergency, an early learning program must have an emergency preparedness plan pursuant to WAC 170-300-0470.

(2) An early learning provider must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone must be available for use with sufficient backup power to function for at least five hours.

(3) To ensure a safe exit from the premises during an emergency, the early learning provider must comply with the following requirements:

(a) Emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the early learning program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned;

(b) Exit doors that are not designated as an emergency exit door may be locked during operating hours. Locking interior doors in early learning program space must be designed to be unlocked from either side. An unlocking device must be readily available;

(c) Exit doors must not be partially or entirely blocked; and

(d) Family home early learning programs must have at least one pivoting or side-hinged swinging exit door. Other exit doors may be sliding glass doors.

#### NEW SECTION

**WAC 170-300-0170 Fire safety.** (1) An early learning provider must comply with the state building code, as now and hereafter amended, pursuant to RCW 19.27.031.

(2) An early learning provider must arrange for a fire safety inspection annually. A provider must arrange a fire safety inspection with a local government agency. If a local government agency is not available to conduct a fire safety inspection, a provider must inspect for fire safety using the state fire marshal form.

(3) To ensure a safe environment for children in care, an early learning provider must comply with the following fire safety requirements:

(a) **Combustible materials.**

(i) Combustible materials must be properly discarded pursuant to local jurisdictions, removed from the premises, or properly stored in closed metal containers specifically designed to hold such combustible materials;

(ii) Combustible materials stored in a closed metal container must not be stored in the premises licensed space or any place that may be accessible to children in care;

(iii) Combustible materials include, but are not limited to, lint, gasoline, natural gas, diesel, fuel, propane, rags soaked in combustible materials, oils, chemicals, or solvents.

(b) **Furnaces and other heating devices.**

(i) Paper, rubbish, or other combustible materials must be at least three feet from furnaces, fireplaces, or other heating devices;

(ii) Furnaces and other heating devices must be inaccessible to children in care; and

(iii) An appliance or heating device that has a surface capable of burning a child or reaching 110 degrees Fahrenheit must be inaccessible to children in care unless a program activity involves such an appliance or device and children are being actively supervised.

(c) **Electrical motors.** Electrical motor fans and appliances must be regularly cleaned to prevent accumulation of dust or lint.

(d) **Open flame devices, candles, matches and lighters.**

(i) Except for the use of a gas kitchen range, open flame devices must not be used in early learning program space or any other space accessible to children in care during operating hours;

(ii) Candles must not be used during operating hours;

(iii) Matches and lighters must be inaccessible to children.

(e) **Portable heaters and generators.** Portable heaters or fuel powered generators must not be used inside early learning program space during operating hours.

(i) In case of an emergency, a generator may be used but must be placed at least fifteen feet from buildings, windows, doors, ventilation intakes, or other places where exhaust

fumes may be vented into the premises or early learning space; and

(ii) Appliances must be plugged directly into a generator or into a heavy duty outdoor-rated extension cord that is plugged into a generator.

(f) **Fireplaces, woodstoves, or similar wood burning heating devices.** Chimneys, fireplaces, gas burning fireplaces, wood stoves or similar wood-burning devices must be inspected annually by a state or locally certified inspector, unless the provider submits to the department a written statement that the chimney, fireplace, wood stove or similar wood-burning device will not be used at any time.

(g) **Fire alarms and smoke and carbon monoxide detectors.**

(i) An early learning provider must have and maintain at least one smoke detector per licensed sleeping area and one per floor. Pursuant to the state building code, center early learning providers must comply with WAC 51-50-0907, as now and hereafter amended, and family early learning providers must comply with WAC 51-51-0314, as now and hereafter amended; and

(ii) An early learning provider must have and maintain carbon monoxide detectors. Pursuant to the state building code, center early learning providers must comply with WAC 51-50-0915, as now and hereafter amended, and family early learning providers must comply with WAC 51-51-0315, as now and hereafter amended.

(h) **Backup method to sound an alarm.** In addition to working smoke detectors, an early learning provider must have another method to alert all staff and enrolled children of a fire, emergency situation, or drill.

(i) **Extinguishers.** An early learning provider must have and maintain working fire extinguishers that are marked with a minimum rating of 2A:10 BC.

(i) Fire extinguishers must be located pursuant to the state building code chapter 51-54A WAC, as now and hereafter amended, and must be readily available for use in case of an emergency;

(ii) Fire extinguishers must be located on each level of the early learning program space used by children and mounted within seventy-five feet of an exit next to the path of the exit; and

(iii) If a fire extinguisher is mounted in a closet, there must be a sign indicating the location of the extinguisher and obstructions must not block access to the closet.

(j) **Monthly inspections.** An early learning provider must involve staff responsible for different groups of children or individual classrooms during monthly inspections. At least once per month, a provider must inspect the premises to identify possible fire hazards and eliminate any hazards found including, but not limited to:

- (i) Fire extinguishers;
- (ii) Smoke detectors;
- (iii) Alternate alarms; and
- (iv) Emergency lighting.

#### NEW SECTION

**WAC 170-300-0175 Water hazards and swimming pools.** To prevent injury or drowning and ensure the health

and safety of children, an early learning provider must comply with the requirements described in this section.

(1) The following bodies of water must be inaccessible to children in care by using a physical barrier with a locking mechanism:

(a) Swimming pools when not being used as part of the early learning program, hot tubs, spas and jet tubs;

(b) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools or similar bodies of water; and

(c) Uncovered wells, septic tanks, wastewater, wastewater tanks, below grade storage tanks, farm manure ponds or other similar hazards.

(2) An early learning provider must comply with the following requirements when using a swimming pool as part of the early learning program:

(a) Comply with the supervision requirements of WAC 170-300-0350;

(b) Audible alarms must be on all doors, screens, and gates in licensed areas that lead to a swimming pool. The alarm must be sufficient to warn staff when children enter the outdoor area and could access the swimming pool;

(c) Swimming pools must be maintained according to manufacturer specifications;

(d) Swimming pools must be cleaned and sanitized according to manufacturer instructions and department of health or local health jurisdiction guidelines;

(e) A swimming pool must not be used if the main drain cover is missing; and

(f) Children in diapers or toilet training must wear swim pants to lower the risk of contaminating the water.

(3) Filtered wading pools must be inaccessible to children when not in use. Wading pools that do not have a filtering system are not permitted in the early learning program space.

(4) For bodies of water not located in early learning program space, but that are in close proximity, a physical barrier on the property must make such bodies of water inaccessible to children in care.

(5) Five gallon buckets or other similar containers must not be used for infant or toddler water play.

(6) If an early learning provider uses water tables or similar containers, the tables or containers must be emptied and sanitized daily, or more often if necessary.

## FOOD AND NUTRITION

### NEW SECTION

**WAC 170-300-0180 Meal and snack schedule.** (1) An early learning provider must serve meals and snacks to children in care as follows:

(a) Meals and snacks must be served not less than two hours and not more than three hours apart unless the child is asleep;

(b) Children in care for five to nine hours:

(i) At least one meal and two snacks; or

(ii) Two meals and one snack.

(c) Children in care for more than nine hours:

(i) Two meals and two snacks; or



(ii) Three snacks and one meal.

(d) After school snack, dinner, evening snack, and breakfast:

(i) A snack or meal must be provided to a child that arrives to the early learning program after school;

(ii) Dinner must be provided to children in nighttime care if a child is at an early learning program after his or her dinnertime, or has not had dinner;

(iii) An evening snack must be provided to children in nighttime care;

(iv) Breakfast must be provided to children in nighttime care if a child remains in care after the child's usual breakfast time; and

(v) A breakfast or morning snack must be available to children in care.

(2) An early learning provider must offer children the opportunity for developmentally appropriate tooth brushing activities after each meal or snack.

(a) Tooth brushing activities must be safe, sanitary, and educational.

(b) Toothbrushes used in an early learning program must be stored in a manner that prevents cross contamination.

(c) The parent or guardian of a child may opt out of the daily tooth brushing activities by signing a written form.

#### NEW SECTION

**WAC 170-300-0185 Menus, milk, and food.** To ensure proper nutrition of children in care, an early learning provider must comply with the child nutrition requirements described in this section.

(1) Meals, snack foods, and beverages provided to children in care must comply with the requirements contained in the most current edition of the *USDA Child and Adult Care Food Program (CACFP) Handbook*, or the *USDA National School Lunch and School Breakfast Program* standards.

(a) An early learning provider must supply dated menus.

(b) Food and beverage substitutions to a scheduled menu must be of equal nutritional value.

(c) An early learning provider must only serve water, unflavored milk or one hundred percent fruit or vegetable juice.

(d) An early learning provider must limit the consumption of one hundred percent fruit juice to no more than four to six ounces per day for children between one and six years old, and eight to twelve ounces per day for children seven through twelve years old.

(2) An early learning provider must serve a fruit or vegetable as one of the two required components during at least one snack per day.

#### NEW SECTION

**WAC 170-300-0186 Food allergies and special dietary needs.** (1) An early learning provider must obtain written instructions (the individual care plan) from the child's health care provider and parent or guardian when caring for a child with a known food allergy or special dietary requirement due to a health condition. The individual care plan pursuant to WAC 170-300-0300 must:

(a) Identify foods that must not be consumed by the child and steps to take in the case of an unintended allergic reaction;

(b) Identify foods that can substitute for allergenic foods; and

(c) Provide a specific treatment plan for the early learning provider to follow in response to an allergic reaction. The specific treatment plan must include the:

(i) Names of all medication to be administered;

(ii) Directions for how to administer the medication;

(iii) Directions related to medication dosage amounts; and

(iv) Description of allergic reactions and symptoms associated with the child's particular allergies.

(2) An early learning provider must arrange with the parents or guardians of a child in care to ensure the early learning program has the necessary medication, training, and equipment to properly manage a child's food allergies.

(3) If a child suffers from an allergic reaction, the early learning provider must immediately:

(a) Administer medication pursuant to the instructions in that child's individual care plan;

(b) Contact 911 whenever epinephrine or other lifesaving medication has been administered; and

(c) Notify the parents or guardians of a child if it is suspected or appears that any of the following occurred, or is occurring:

(i) The child is having an allergic reaction; or

(ii) The child consumed or came in contact with a food identified by the parents or guardians that must not be consumed by the child, even if the child is not having or did not have an allergic reaction.

(4) Early learning providers must review each child's individual care plan information for food allergies prior to serving food to children.

#### NEW SECTION

**WAC 170-300-0190 Parent or guardian provided food and written food plans.** (1) A written food plan must be developed by the provider and a child's parent or guardian, signed by all parties, and followed when accommodating a child's:

(a) Special feeding needs;

(b) Special diets;

(c) Religious or cultural preferences;

(d) Family preference; or

(e) Other needs.

(2) An early learning provider may allow or require parents or guardians to bring food for their child.

(3) If a parent or guardian provides meals for their child, an early learning provider must:

(a) Notify the parent or guardian in writing of the USDA CACFP requirements for each meal; and

(b) Supplement a child's meal that does not satisfy USDA CACFP requirements if necessary.

(4) On special occasions, such as birthdays, an early learning provider may allow parents or guardians to bring in snacks that may not satisfy the nutritional requirements for all children. The snacks provided must be limited to:

- (a) Store purchased fruits and vegetables (uncut);
- (b) Foods prepackaged in the original manufacturer containers; or
- (c) Snacks prepared, cooked, or baked at home by parents or guardians of a child in care. Prior to serving, an early learning provider must receive written permission from each child's parent or guardian stating their child may consume food prepared, cooked, or baked by another child's parent or guardian.

NEW SECTION

**WAC 170-300-0195 Food service, equipment, and practices.** (1) An early learning provider preparing or serving food must comply with the current department of health *Washington State Food and Beverage Workers' Manual* and supervise services that prepare or deliver food to the early learning program.

(2) Snacks and meals must be prepared and served by an early learning provider who possesses a valid and current food worker card pursuant to WAC 170-300-0106(13), unless the food is provided pursuant to WAC 170-300-0196(3).

(3) An early learning provider must:

(a) Supply durable and developmentally appropriate individual eating and drinking equipment, or developmentally appropriate single use disposable items;

(b) Clean and sanitize eating and drinking equipment after each use. Water cups or bottles must be cleaned and sanitized daily if designated for a single child;

(c) Ensure plastic eating and drinking equipment does not contain BPA (a chemical used in hard plastic bottles and as a protective lining in food and beverage cans) or have cracks or chips;

(d) Use gloves, utensils, or tongs to serve food;

(e) Serve meals or snacks on plates, dishware, containers, trays, or napkins or paper towels, if appropriate. Food should not be served directly on the eating surface; and

(f) Be respectful of each child's cultural food practices.

(4) An early learning provider must:

(a) Serve each child individually or serve family style dining, allowing each child the opportunity to practice skills such as passing shared serving bowls and serving themselves; and

(b) Sit with children during meals.

NEW SECTION

**WAC 170-300-0196 Food sources.** (1) Food prepared and served from an early learning program must not be tampered with or spoiled.

(2) Food prepared and served from an early learning program must be obtained from an approved source licensed and inspected by the local health jurisdiction, the Washington state department of agriculture (WSDA), or the USDA. Food items not approved to be served to children in care include:

(a) Meat, fish, poultry, eggs, or milk that has not been inspected by the USDA or WSDA;

(b) Home canned food;

(c) Game meat or other meat that has not been inspected by the WSDA or USDA;

(d) Leftover food that was previously served from outside of the early learning program; or

(e) Food from roadside stands selling without a permit.

(3) Food not prepared on-site by an early learning provider, pursuant to WAC 170-300-0195(2), must be provided by:

(a) A licensed food service establishment, kitchen, or catering business that meets department of health food service requirements (chapter 246-215 WAC, as now and hereafter amended) and is regularly inspected by a local health jurisdiction;

(b) A parent or guardian for his or her own children; or

(c) A manufacturer of prepackaged food.

(4) Fruits and vegetables (produce) grown on-site in a garden as part of an early learning program may be served to children as part of a meal or snack. Prior to preparing and serving:

(a) The produce must be thoroughly washed and scrubbed in running cold water to remove soil and other contaminants;

(b) Damaged or bruised areas on the produce must be removed; and

(c) Produce that shows signs of rotting must be discarded.

NEW SECTION

**WAC 170-300-0197 Safe food practices.** (1) Early learning providers must wash their hands, pursuant to WAC 170-300-0200.

(2) Early learning providers must store, prepare, cook, hold food, and wash dishes, pursuant to WAC 170-300-0195.

(3) For all foods offered by the provider or given to an enrolled child by a parent or guardian, the provider must:

(a) Provide appropriate refrigeration to preserve foods from spoiling. Foods that may be subject to spoiling include, but are not limited to, meats, cooked potatoes, cooked legumes, cooked rice, sprouts, cut melons, cut cantaloupes, milk, and cheese; and

(b) Refrigerate foods requiring refrigeration at 41 degrees Fahrenheit or less and freeze foods required to be frozen at 10 degrees Fahrenheit or less.

(4) Food must be stored as follows:

(a) In original containers or in clean, labeled, dated, and airtight food grade containers, if appropriate;

(b) Food not required to be refrigerated or frozen must not be stored directly on the floor;

(c) In a manner that prevents contamination;

(d) Food and food service items (such as utensils, napkins, and dishes) must not be stored in an area with toxic materials (such as cleaning supplies, paint, or pesticides);

(e) Food that is past the manufacturer's expiration or "best served by" date must not be served to enrolled children; and

(f) Raw meat must be stored in the refrigerator or freezer below cooked or ready to eat foods.

(5) For food requiring temperature control, a center early learning program must maintain a food temperature log by using a calibrated and working metal stem-type or digital food thermometer.

(6) Prior to storing leftover food in a refrigerator or freezer, an early learning provider must label the food with the date the leftover food was opened or cooked.

(7) An early learning provider may serve leftover food that originated from the early learning program if the leftover food was not previously served and:

(a) Refrigerated leftover food must be stored and then served again within forty-eight hours of originally being prepared; or

(b) Frozen leftover food must be promptly served after thawing and being cooked.

(8) Frozen food must be thawed by one of the following methods:

(a) In a refrigerator;

(b) Under cool running water inside a pan placed in a sink with the drain plug removed; or

(c) In a microwave if the food is to be cooked as part of the continuous cooking process.

#### NEW SECTION

**WAC 170-300-0198 Food preparation areas.** (1) An early learning provider or staff must clean and sanitize food preparation areas and eating surfaces before and after each use, pursuant to WAC 170-300-0241 (1)(a).

(2) In an early learning program's food preparation area, kitchens must:

(a) Have walls, counter tops, floors, cabinets, and shelves that are:

(i) Maintained in good repair including, but not limited to, being properly sealed without chips, cracks, or tears; and

(ii) Moisture resistant.

(b) Have a properly maintained and vented range hood, exhaust fan, or operable window; and

(c) Have a properly maintained and working refrigerator, freezer, or a combination refrigerator and freezer with sufficient space for proper storage and cooling of food.

(3) An early learning provider must:

(a) Have at least eight feet between the food preparation area and any diaper changing tables or counters and sinks used for diaper changing;

(b) Clean and sanitize a sink immediately before using it to prepare food to be served to children in care;

(c) Use a colander or other method to prevent food and kitchen utensils from touching the sink basin; and

(d) Clean dishes, pans, baby bottles, and kitchen utensils as follows:

(i) Cleaning and sanitizing with an automatic dishwasher that uses heat or chemicals to sanitize; or

(ii) Handwashing, rinsing, sanitizing, and allowing to air dry.

(4) Center early learning programs licensed after the date this chapter becomes effective must have:

(a) A handwashing sink separate from dishwashing facilities;

(b) A food preparation sink located in the food preparation area; and

(c) A method to clean and sanitize dishes, pans, kitchen utensils, and equipment in the food preparation area using:

(i) A two-compartment sink and an automatic dishwasher that sanitizes with heat or chemicals; or

(ii) A three-compartment sink method (sink one is used to wash, sink two is used to rinse, sink three contains a sanitizer, and the dishes are allowed to air dry).

(5) An early learning provider may use the kitchen for actively supervised cooking or food preparation activities with children in care.

### HEALTH PRACTICES

#### NEW SECTION

**WAC 170-300-0200 Handwashing and hand sanitizer.** (1) Early learning providers must comply with the following handwashing procedures or those defined by the United States Center for Disease Control and Prevention, and children should strongly be encouraged to:

(a) Wet hands with warm water;

(b) Apply soap to the hands;

(c) Rub hands together to wash for at least twenty seconds;

(d) Thoroughly rinse hands with water;

(e) Dry hands with a paper towel, single-use cloth towel, or air hand dryer;

(f) Turn water faucet off using a paper towel or single-use cloth towel unless it turns off automatically; and

(g) Properly discard paper single-use cloth towels after each use.

(2) An early learning provider must wash and sanitize cloth towels after a single use. Soiled and used towels must be inaccessible to children.

(3) To prevent children from being burned, air hand dryers must have a heat guard (barrier that prevents user from touching heating element) and turn off automatically.

(4) Early learning providers must wash their hands following the handwashing procedures listed above:

(a) When arriving at work;

(b) After toileting a child;

(c) Before and after diapering a child (use a wet wipe in place of handwashing during the middle of diapering if needed);

(d) After personal toileting;

(e) After attending to an ill child;

(f) Before and after preparing, serving, or eating food;

(g) Before preparing bottles;

(h) After handling raw or undercooked meat, poultry, or fish;

(i) Before and after giving medication or applying topical ointment;

(j) After handling or feeding animals, handling an animal's toys or equipment, or cleaning up after animals;

(k) After handling bodily fluids;

(l) After using tobacco or vapor products;

(m) After being outdoors;

(n) After gardening activities;

(o) After handling garbage and garbage receptacles; and

(p) As needed or required by the circumstances.

(5) Early learning providers must direct, assist, teach, and coach, children to wash their hands, using the steps listed above:

- (a) When arriving at the early learning premises;
  - (b) After using the toilet;
  - (c) After diapering;
  - (d) After outdoor play;
  - (e) After gardening activities;
  - (f) After playing with animals;
  - (g) After touching body fluids such as blood or after nose blowing or sneezing;
  - (h) Before and after eating or participating in food activities including table setting; and
  - (i) As needed or required by the circumstances.
- (6) Hand sanitizers or hand wipes with alcohol may be used for adults and children over twenty-four months of age under the following conditions:
- (a) When proper handwashing facilities are not available; and
  - (b) Hands are not visibly soiled or dirty.
- (7) Children must be actively supervised when using hand sanitizers to avoid ingestion or contact with eyes, nose, or mouths.
- (a) Hand sanitizer must not be used in place of proper handwashing.
  - (b) An alcohol-based hand sanitizer must contain sixty to ninety percent alcohol to be effective.

#### NEW SECTION

**WAC 170-300-0205 Child, staff, and household member illness.** (1) An early learning provider must observe all children for signs of illness when they arrive at the early learning program and throughout the day. Parents or guardians of a child should be notified, as soon as possible, if the child develops signs or symptoms of illness.

(2) If an early learning provider becomes ill, a licensee, center director, assistant director, or program supervisor must determine whether that person should be required to leave the licensed early learning space.

(3) When a child becomes ill, an early learning provider (or school nurse, if applicable) must determine whether the child should be sent home or separated from others. A provider must supervise the child to reasonably prevent contact between the ill child and healthy children.

(4) An ill child must be sent home or reasonably separated from other children if:

- (a) The illness or condition prevents the child from participating in normal activities;
- (b) The illness or condition requires more care and attention than the early learning provider can give;
- (c) The required amount of care for the ill child compromises or places at risk the health and safety of other children in care; or
- (d) There is a risk that the child's illness or condition will spread to other children or individuals.

(5) Unless covered by an individual care plan or protected by the ADA, an ill child, staff member, or other individual must be sent home or isolated from children in care if he or she has:

(a) A fever 101 degrees Fahrenheit for children over two months (or 100.4 degrees Fahrenheit for an infant younger than two months) by any method, and behavior change or other signs and symptoms of illness (including sore throat, earache, headache, rash, vomiting, diarrhea);

(b) Vomiting two or more times in the previous twenty-four hours;

(c) Diarrhea where stool frequency exceeds two stools above normal per twenty-four hours for that child or whose stool contains more than a drop of blood or mucus;

(d) A rash not associated with heat, diapering, or an allergic reaction;

(e) Open sores or wounds discharging bodily fluids that cannot be adequately covered with a waterproof dressing or mouth sores with drooling;

(f) Lice, ringworm, or scabies. Individuals with head lice, ringworm, or scabies must be excluded from the child care premises beginning from the end of the day the head lice or scabies was discovered. The provider may allow an individual with head lice or scabies to return to the premises after receiving the first treatment; or

(g) A child who appears severely ill, which may include lethargy, persistent crying, difficulty breathing, or a significant change in behavior or activity level indicative of illness.

(6) At the first opportunity, but in no case longer than twenty-four hours of learning that an enrolled child, staff member, volunteer or household member has been diagnosed by a health care professional with a contagious disease listed in WAC 246-110-010(3), as now and hereafter amended, an early learning provider must provide written notice to the department, the local health jurisdiction, and the parents or guardians of the enrolled children.

(7) An early learning provider must not take ear or rectal temperatures to determine a child's body temperature.

(a) Providers must use developmentally appropriate methods when taking infant or toddler temperatures (for example, digital forehead scan thermometers or underarm auxiliary methods);

(b) Oral temperatures may be taken for preschool through school-age children if single-use covers are used to prevent cross contamination; and

(c) Glass thermometers containing mercury must not be used.

(8) An early learning provider may readmit a child, staff member, volunteer or household member into the early learning program area with written permission of a health care provider or health jurisdiction stating the individual may safely return after being diagnosed with a contagious disease listed in WAC 246-110-010(3), as now and hereafter amended.

#### NEW SECTION

**WAC 170-300-0210 Immunizations and exempt children.** (1) Before attending an early learning program, a child must be vaccinated against or show proof of acquired immunity for the vaccine-preventable disease, pursuant to chapter 246-105 WAC, as now and hereafter amended. An early learning provider may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) An early learning provider must receive for each enrolled child:

(a) A current and complete department of health certificate of immunization status (CIS) or certificate of exemption (COE) or other department of health approved form, pursuant to WAC 246-105-050, as now and hereafter amended; or

(b) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, an early learning provider must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed as soon as possible and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) An early learning provider must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) An early learning provider may accept homeless or foster children into care without the records listed in this section if the child's family, case worker, or health care provider offers written proof that he or she is in the process of obtaining the child's immunization records.

(6) An early learning provider may exclude a child from care according to the criteria listed in WAC 246-105-080, as now and hereafter amended.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) An early learning provider may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

#### NEW SECTION

**WAC 170-300-0215 Medication.** (1) **Managing medication.** A medication management policy must include, but is not limited to, safe medication storage, reasonable accommodations for giving medication, mandatory medication documentation, and forms pursuant to WAC 170-300-0500.

(2) **Medication training.** An early learning provider must not give medication to a child if the provider has not successfully completed:

(a) An orientation about the early learning program's medication policies and procedures;

(b) The department standardized training course in medication administration that includes a competency assessment

pursuant to WAC 170-300-0106(10) or equivalent training; and

(c) If applicable, a training from a child's parents or guardian (or an appointed designee) for special medical procedures that are part of a child's individual care plan. This training must be documented and signed by the provider and the child's parent or guardian (or designee).

(3) **Medication administration.** An early learning provider must not give medication to any child without written and signed consent from that child's parent or guardian, must administer medication pursuant to directions on the medication label, and using appropriate cleaned and sanitized medication measuring devices.

(a) An early learning provider must administer medication to children in care as follows:

(i) **Prescription medication.** Prescription medication must only be given to the child named on the prescription. Prescription medication must be prescribed by a health care professional with prescriptive authority for a specific child. Prescription medication must be accompanied with medication authorization form that has the medical need and the possible side effects of the medication. Prescription medication must be labeled with:

(A) A child's first and last name;

(B) The date the prescription was filled;

(C) The name and contact information of the prescribing health professional;

(D) The expiration date, dosage amount, and length of time to give the medication; and

(E) Instructions for administration and storage.

(ii) **Nonprescription oral medication.** Nonprescription (over-the-counter) oral medication brought to the early learning program by a parent or guardian must be in the original packaging.

(A) Nonprescription (over-the-counter) medication needs to be labeled with child's first and last name and accompanied with medication authorization form that has the expiration date, medical need, dosage amount, age, and length of time to give the medication. Early learning providers must follow the instructions on the label or the parent must provide a medical professional's note; and

(B) Nonprescription medication must only be given to the child named on the label provided by the parent or guardian.

(iii) **Other nonprescription medication:** An early learning provider must receive written authorization from a child's parent or guardian and health care provider with prescriptive authority prior to administering if the item does not include age, expiration date, dosage amount, and length of time to give the medication:

(A) Vitamins;

(B) Herbal supplements;

(C) Fluoride supplements;

(D) Homeopathic or naturopathic medication; and

(E) Teething gel or tablets (amber bead necklaces are prohibited).

(iv) **Nonmedical items.** A parent or guardian must annually authorize an early learning provider to administer the following nonmedical items:

(A) Diaper ointments (used as needed and according to manufacturer's instructions);

(B) Sunscreen;

(C) Lip balm or lotion;

(D) Hand sanitizers or hand wipes with alcohol, which may be used only for children over twenty-four months old; and

(E) Fluoride toothpaste for children two years old or older.

(v) An early learning provider may allow children to take his or her own medication with parent or guardian authorization. The early learning staff member must observe and document that the child took the medication.

(vi) An early learning provider must not give or permit another to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a qualified health care professional.

(b) Medication documentation (excluding nonmedical items). An early learning provider must keep a current written medication log that includes:

(i) A child's first and last name;

(ii) The name of the medication that was given to the child;

(iii) The dose amount that was given to the child;

(iv) Notes about any side effects exhibited by the child;

(v) The date and time of each medication given or reasons that a particular medication was not given; and

(vi) The name and signature of the person that gave the medication.

(c) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements. An early learning provider must comply with the following additional medication storage requirements:

(i) Medication must be inaccessible to children;

(ii) Controlled substances must be locked in a container or cabinet which is inaccessible to children;

(iii) Medication must be kept away from food in a separate, sealed container; and

(iv) External medication (designed to be applied to the outside of the body) must be stored to provide separation from internal medication (designed to be swallowed or injected) to prevent cross contamination.

(d) An early learning provider must return a child's unused medication to that child's parent or guardian. If this is not possible, a provider must follow the Food and Drug Administration (FDA) recommendations for medication disposal.

(e) An early learning provider must not accept or give to a child homemade medication, such as diaper cream or sunscreen.

#### NEW SECTION

**WAC 170-300-0220 Bathroom space and toilet training.** (1) An early learning provider must provide at least one indoor bathroom in the licensed space that has the following:

(a) One working flush toilet.

(i) Toilets must be an appropriate height and size for enrolled children. A platform may be used to accommodate the height and size of children. Platforms must be easily cleanable and resistant to moisture and slipping.

(ii) Center early learning programs licensed after this chapter becomes effective must have one working flush toilet for every fifteen children and staff. A child in diapers does not count for purposes of toilet calculations until the child begins toilet training.

(iii) Toilets for staff may be located outside of licensed space on the premises.

(b) One working sink and faucet.

(i) Sinks and faucets must be an appropriate height and size for children. A platform may be used to accommodate the height and size of children. Platforms must be easily cleanable and resistant to moisture and slipping.

(ii) A faucet used for handwashing must provide warm running water.

(iii) Sinks and faucets must be located inside the bathroom or immediately outside the bathroom.

(iv) Sinks and faucets for staff may be outside of licensed space on the early learning premises.

(v) Water controls on bathroom sinks must be accessible for the intended user.

(vi) Bathroom sinks must not be used as a drinking source or for food preparation.

(vii) Center early learning programs must have one working sink and faucet for every fifteen children and staff.

(c) A means of providing privacy for children who demonstrate the need for privacy while toileting;

(d) A toilet paper dispenser for each toilet that is appropriate for the height and size of children;

(e) An operable window or exhaust fan; and

(f) An easily cleanable floor.

(i) Floors must have a washable surface;

(ii) Be resistant to moisture; and

(iii) Cleaned and disinfected daily, or more often as needed.

(2) If an early learning program space is equipped with a bathtub or shower, the provider must:

(a) Only give a bath or shower to a child with consent from that child's parent or guardian;

(b) Only use the bath or shower:

(i) To clean a child after an accident, such as diarrhea or vomiting; or

(ii) During overnight care hours.

(c) Ensure the area around a bathtub or shower is resistant to slipping or equipped with a conveniently located grab bar; and

(d) Keep the bathtub or shower inaccessible to children when not in use by children (in center early learning programs only).

(3) An early learning provider must discuss toilet training procedures with that child's parent or guardian when a child is ready for training. A provider must facilitate the toilet training process by encouraging the child with:

(a) Positive reinforcement (which may not include food items);

(b) Culturally sensitive methods;

(c) Developmentally appropriate methods; and

(d) A toilet training routine developed in agreement with the parent or guardian.

(4) An early learning provider may use a modified toilet seat if it is cleaned and disinfected using a safe disinfectant at least daily or more often if soiled.

(5) Toilet training equipment must be cleaned in a sink not used for food preparation, handwashing, or clean up.

(a) A family home early learning program may use a bathtub or multipurpose sink to clean toilet training equipment unless it is used for food preparation.

(b) The sink, basin, or bathtub in a family home early learning program used to clean toilet training equipment must be cleaned and disinfected after each use with a safe disinfectant.

(6) If a child is developmentally ready, and an early learning provider uses a stand-up diapering procedure, it must be done in the bathroom or a diaper changing area.

#### NEW SECTION

**WAC 170-300-0221 Diaper changing areas and disposal.** (1) A center early learning provider must have a designated diaper changing area, including stand-up diapering, for each classroom or for every age grouping of children who require diapering. Only one diaper changing area is required at a family home early learning provider.

(a) A diaper changing area must:

(i) Be separate from areas where food is stored, prepared, or served;

(ii) Have a sink with hot and cold running water, not used for food preparation and clean up;

(iii) Have a sturdy surface or mat that:

(A) Is not torn or repaired with tape;

(B) Is washable;

(C) Has a moisture resistant surface that is cleanable; and

(D) Is large enough to prevent the area underneath the diaper changing area from being contaminated with bodily fluids.

(iv) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and

(v) Be uncluttered and not used for storage of any items not used in diapering a child.

(b) An early learning provider must not leave a child unattended on the diaper changing surface or mat during the diaper changing process;

(c) An early learning provider must not use safety belts on diaper changing tables because they are neither cleanable nor safe; and

(d) An early learning provider must post an easily viewable diaper changing procedure at each station and must follow each step described in the procedure.

(2) If an early learning provider uses a diaper changing station, the station must:

(a) Have a handwashing sink within arm's reach of, or be readily accessible to, an early learning provider to prevent cross contamination; and

(b) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet

from the diaper changing station and handwashing area; and either:

(i) A table or counter large enough to accommodate the length of a child, with a protective barrier at least three and one-half inches high on all sides from the surface the child lays on; or

(ii) A wall mounted diaper changing station that meets manufacturer guidelines and specifications in addition to the requirements of this section.

(3) If an early learning provider uses reusable or cloth diapers, the diapers must:

(a) Not be rinsed;

(b) Be placed in a securely sealed moisture impervious bag;

(c) Be stored in a separate disposal container; and

(d) Be delivered to a commercial laundry service or given to the child's parent or guardian at least daily.

(4) An early learning provider must provide a container designated for disposing of soiled diapers and diapering supplies only. The diaper disposal container must be:

(a) Hands-free and covered with a lid to prevent cross contamination;

(b) Lined with a disposable plastic trash bag; and

(c) Within arm's length of the diaper changing area.

#### NEW SECTION

**WAC 170-300-0225 Pets and animals.** (1) An early learning provider may have pets or other animals on the early learning program premises.

(2) If an early learning provider keeps pets or animals on the early learning program premises:

(a) The provider must have and follow a pet and animal policy; and

(b) Provide written notice to children's parents and guardians.

(3) Pets or other animals that have contact with children must:

(a) Have all required vaccinations, pursuant to local and county regulations;

(b) Show no signs of illness, disease, worms, or parasites. If these symptoms appear, the pet or animal must be removed from the licensed space until appropriately treated for the condition; and

(c) Be nonaggressive. If the pet or animal exhibits aggressive behavior, the pet or animal must be removed from the licensed space.

(4) An early learning provider must:

(a) Make reptiles and amphibians that are not part of the early learning program or activities inaccessible to enrolled children due to the risk of salmonella or other diseases;

(b) Require that chickens, ducks, turkeys, doves, pigeons, or other birds are caged, cooped, or penned outside early learning program space when children are in care, at a distance that prevents children from having direct access to the enclosures or waste;

(c) Cage indoor birds;

(d) Prevent debris from spilling out of a container or cage used for pets and animals, if applicable;

(e) Not allow pets and animals in the kitchen during food preparation and ensure pets and animals do not come into contact with food, food preparation, or serving areas while food is served;

(f) Not use a sink that is used for cleaning food or utensils to clean pet supplies;

(g) Not allow animals in rooms or areas typically used by infants or toddlers (center early learning programs only); and

(h) Store pet and animal medication separate from human medication.

(5) An early learning provider must require:

(a) Animals and pets to go to the bathroom outdoors if the animals do not have a designated indoor litter area. The designated outdoor area must be inaccessible to children in care;

(b) Pet containers and cages to be cleaned and disinfected at least weekly, or more often if needed;

(c) Litter boxes to be kept inaccessible to children and cleaned daily;

(d) Animal waste and litter to be disposed of as soon as possible and the area disinfected;

(e) Animal waste to be inaccessible to children;

(f) Animal waste to be disposed of in a manner that prevents children from coming into contact with the waste material;

(g) Animal waste, including fish tank water, must be disposed of in unlicensed space or toilets or custodial sinks. Toilets and custodial sink areas must be washed, rinsed, and disinfected after disposal; and

(h) Indoor and outdoor play space to be cleaned and disinfected where animal or bird waste or vomit is present. This must be done as soon as possible or prior to access by children.

#### NEW SECTION

**WAC 170-300-0230 First-aid supplies.** (1) An early learning provider must keep a complete first-aid kit in the licensed space, on any off-site trip, and in a vehicle used to transport children in care. A first-aid kit must:

(a) Be stored in a location that is easily accessible to staff;

(b) Be inaccessible to children;

(c) Be separate from food or chemicals;

(d) Be kept clean and sanitary;

(e) Be stored in a manner that prevents contamination; and

(f) Have sufficient supplies for the number of enrolled children and staff consistent with the early learning program's licensed capacity, or sufficient supplies for each room in the licensed space.

(2) A first-aid kit must include:

(a) Disposable nonporous protective nonlatex gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice packs;

(h) A disposable or mercury free thermometer that uses disposable sleeves, or is cleaned and sanitized after each use;

(i) A sling, or a large triangular bandage;

(j) Adhesive tape;

(k) A CPR barrier with a one-way valve or both an adult and pediatric CPR mask with a one-way valve;

(l) A current first-aid manual; and

(m) Hand sanitizer (for adult use only).

#### NEW SECTION

**WAC 170-300-0236 Safe drinking water.** (1) An early learning program's drinking water must:

(a) Be offered multiple times throughout the day and be readily available to children at all times;

(b) Be offered in outdoor play areas, in each classroom for centers, and in the licensed space for family homes;

(c) Be served in a manner that prevents contamination;

(d) Not be obtained from a handwashing sink used with toileting or diapering; and

(e) Be served fresh daily or more often as needed.

(2) Drinking fountains at an early learning program must:

(a) Not be attached to handwashing sinks or disabled;

(b) Not be located in bathrooms;

(c) Not be a "bubble type" fountain (the water flow must form an arch);

(d) Be cleaned and sanitized daily, or more often as needed; and

(e) Be located above water impervious flooring.

### **CLEANING AND SANITATION**

#### NEW SECTION

**WAC 170-300-0240 Clean and healthy environment.**

(1) Early learning program premises and program equipment must be clean and sanitary.

(2) Hard surfaces in early learning programs including, but not limited to, floors (excluding carpet), walls, counters, bookshelves, and tables must be smooth and easily cleanable.

(a) A cleanable surface must be:

(i) Designed to be cleaned frequently and made of sealed wood, linoleum, tile, plastic, or other solid surface materials;

(ii) Moisture resistant; and

(iii) Free of chips, cracks, and tears.

(b) An early learning provider must have at least twenty-four inches of moisture resistant and cleanable material or barrier around sinks, drinking fountains, and toilets.

(c) An early learning provider must clean all surfaces before sanitizing or disinfecting. Surfaces must be cleaned with a soap and water solution or spray cleaner and rinsed. If using a spray cleaner, directions on the label must be followed.

(d) Aerosol sprays and air fresheners must not be used during child care hours.

(e) If a bleach solution is used for sanitizing or disinfecting, an early learning provider must use one that is fragrance-free and follow department of health's current guidelines for mixing bleach solutions for child care and similar environments.



(f) If an early learning provider uses a product other than bleach, including wipes, to sanitize or disinfect, the product must be:

- (i) Approved by the department prior to use;
- (ii) Used by trained staff only;
- (iii) Registered with the EPA and have safety data sheets (SDSs) available;
- (iv) Used in accordance with the manufacturer's label, which must include:
  - (A) Directions for use;
  - (B) A description of the safety precautions, procedures, and equipment that must be used for mixing the substitute product concentration, if applicable;
  - (C) A description of the safety precautions and procedures if the substitute product contacts skin or is inhaled, if applicable; and
  - (D) A description of the procedures and safety precautions for rinsing cleaned areas and cleaning equipment, if applicable.
- (v) Labeled as safe to use on food surfaces if the product will be used to sanitize:
  - (A) Food contact surfaces; or
  - (B) Items such as eating utensils or toys used by the child or put into the child's mouth; and
- (vi) Fragrance-free.

#### NEW SECTION

**WAC 170-300-0241 Cleaning schedules.** (1) An early learning provider must develop and follow a cleaning schedule that includes:

- (a) Food preparation areas, tables and chairs, high chairs, and food service counters, which must be cleaned and sanitized before and after each meal and snack with single use paper towels or one-time use wiping cloths;
- (b) Eating utensils, bottles, drinking equipment, and dishes, which must be cleaned and sanitized after each use;
- (c) Pacifiers, which:
  - (i) Must be cleaned and sanitized after each use by washing and boiling the pacifier or washing the pacifier in the dishwasher; or
  - (ii) May be reused by an individual child if they have been rinsed after each use and stored in a device or container that prevents contamination. Both the pacifier and the storage device or container must be cleaned and sanitized daily;
- (d) Appliances used to prepare food, which must be cleaned after each use and sanitized daily or more often as needed;
- (e) Refrigerators and freezers, which must be cleaned and sanitized monthly or more often as needed;
- (f) Toys, which must be cleaned and sanitized as follows:
  - (i) Infant and toddler toys must be cleaned and sanitized at least daily or more often as needed;
  - (ii) All other toys must be cleaned and sanitized weekly or more often as needed; and
  - (iii) When a toy comes into contact with a child's mouth or bodily fluids it must be removed from use until it can be cleaned and sanitized prior to reuse; and
- (g) Furniture and equipment, which must be cleaned monthly or more often as needed.

(2) Machine washable clothes provided by the early learning program must be laundered as needed.

(3) Sleeping equipment must be:

- (a) Cleaned and sanitized after each use if used by more than one child; or
  - (b) Cleaned and sanitized weekly or more often as needed if assigned to only one child.
- (4) Bedding must be:
- (a) Laundered and sanitized after each use if used by more than one child; or
  - (b) Laundered and sanitized weekly or more often as needed if assigned to only one child.

(5) Sinks that are not used for handwashing after toileting, diapering, or food preparation must be cleaned and sanitized daily or more often as needed.

(6) Toileting and diaper changing areas including, but not limited to, toilets, counters, sinks, and floors must be cleaned and disinfected daily or more often as needed.

(7) Diaper changing tables and changing pads must be cleaned and disinfected between children, even if using a nonabsorbent covering that is discarded after each use.

(8) Garbage cans and receptacles must be emptied on a daily basis and cleaned and disinfected as needed.

(9) Diaper receptacles must be emptied, cleaned, and disinfected daily or more often as needed. Contents of a diaper receptacle must be removed from the licensed space, and replaced with a new liner at least daily or more often if odor is present.

(10) Floors must be cleaned by either sweeping or vacuuming at least once per day or more often as needed. Moisture resistant flooring must be cleaned and sanitized at least once per day or more often as needed.

(11) Large area rugs or installed carpet must be cleaned at least once every six months, or when visible dirt or stains are present, using a carpet shampoo machine, steam cleaner, or other method that minimizes the exposure of children in care to pathogens and allergens.

(a) An early learning provider must not use dry shampoos or dry chemical sanitizers or disinfectants, unless approved by the department.

(b) If caring for infants, a provider must either place a safe and clean material over large rugs or carpet, or clean rugs or carpet at least once per month or more often if visible stains are present.

(12) Small area rugs must be shaken outdoors or vacuumed daily, and laundered as needed.

(13) Carpets or area rugs soiled with bodily fluids must be cleaned and disinfected with high heat or an EPA registered product. An early learning provider must limit exposure to blood and body fluids during cleanup.

(14) Children must not:

(a) Be present when carpets are cleaned or vacuumed unless the provider is spot vacuuming, the vacuum has a HEPA filter, and children are not within the immediate area; or

(b) Use or play on or near carpet areas until dry.

NEW SECTION**WAC 170-300-0245 Laundry and equipment.** (1)

Laundry and laundry equipment at an early learning program must be inaccessible to children and separated from areas where food is prepared to prevent cross contamination.

(2) Dirty or soiled laundry must be:

- (a) Kept separate from clean laundry;
- (b) Cleaned with laundry soap or detergent;
- (c) Rinsed; and
- (d) Sanitized:

(i) With bleach or a similar sanitizer registered by the EPA; or

(ii) By using a "sanitize" setting on a washing machine or dryer that reaches at least 140 degrees Fahrenheit.

(3) A dryer must be vented to the outside of the building or following the manufacturer's specifications.

NEW SECTION

**WAC 170-300-0250 Private septic systems.** (1) If an early learning program is served by a private septic system, the septic system must be designed, constructed, and maintained in accordance with state and local health jurisdiction requirements.

(a) A private septic system must be inspected by a septic system maintenance service provider approved by the local health jurisdiction and monitored on a routine basis. Any deficiencies noted in an inspection report must be corrected with the necessary permits and inspections.

(b) The most recent private septic system pumping and inspection records must be kept on the licensed premises or in the program's administrative office.

(c) If an early learning provider does not have the documentation described in (b) of this subsection, the provider must obtain from the state, local health jurisdiction, or a department approved private company such documentation within six months of the date this section becomes effective.

(d) An early learning provider must notify the department and local health jurisdiction if there is a problem, concern, or malfunction with a private septic system.

(e) If a private septic system problem, concern, or malfunction interferes with the proper care of children and an approved alternative is not available, the state, local health jurisdiction, or department may require an early learning program to close until the system is inspected, repaired, and approved by the local health jurisdiction.

(2) Pursuant to WAC 170-300-0146(2), playground design must not:

(a) Interfere with access to or the operation of a private septic system, including a private septic system's drain field and tanks; or

(b) Be located or placed in a way that impacts the private septic system's drain field or tanks as determined by local officials.

NEW SECTION

**WAC 170-300-0255 Pest control.** (1) An early learning provider must take appropriate steps to safely prevent or control pests that pose a risk to the health and safety of adults and

children in and around the licensed space. Pest control steps must include:

(a) **Prevention.** A provider must take steps to prevent attracting pests including, but not limited to, identifying and removing food and water sources that attract pests.

(b) **Inspection.** Indoor and outdoor areas in and around the licensed space must be inspected for evidence of pests. A provider must document the date and location if evidence is found.

(c) **Identification.** Pests found in the licensed space must be identified and documented so the pest may be properly removed or exterminated.

(d) **Management.** A provider must document steps taken to remove or exterminate the pests if found in the licensed space.

(e) **Notification.** If pesticides are used, the early learning provider must notify the parents or guardians of enrolled children what pesticide will be applied and where it will be applied no less than forty-eight hours before application, unless in cases of emergency (such as a wasp nest).

(f) **Application.** Pesticide must be applied to early learning program space when children are not present. When pesticide is applied, center providers must comply with chapter 17.21 RCW and family home providers must comply with the pesticide manufacturer's instructions.

(2) An early learning provider must have a pest control policy that emphasizes prevention and natural, nonchemical, low-toxicity methods where pesticides or herbicides are used as a last resort (i.e., integrated pest management).

NEW SECTION**WAC 170-300-0260 Storage of hazardous and maintenance supplies.** (1) An early learning provider must ensure all poisonous or dangerous substances including, but not limited to, fuels, solvents, oils, laundry, dishwasher, other detergents, sanitizing products, disinfectants and items labeled "keep out of reach of children" are stored:

(a) In a location that is inaccessible to children;

(b) Separate and apart from food preparation areas, food items, and food supplies;

(c) In their original containers or clearly labeled with the name of the product if not in the original container; and

(d) In compliance with the manufacturer's directions (including, not storing products near heat sources).

(2) Storage areas and storage rooms must:

(a) Be inaccessible to children;

(b) Have locking doors or other methods to prevent child access;

(c) Have moisture resistant and easily cleanable floors;

(d) Have a designated maintenance or janitorial utility sink, or another method to dispose of wastewater (kitchen sinks must not be used for disposal of wastewater); and

(e) Be kept clean and sanitary.

(3) Center early learning program space with storage areas and rooms that contain chemicals, utility sinks, or wet mops must be ventilated to the outdoors with an exterior window or mechanical ventilation to prevent the buildup of odors, fumes, or other hazards.

(4) Family home providers must store and maintain chemicals and wet mops in a manner that minimizes the buildup of odors, fumes, or other hazards.

(5) Saws, power tools, lawn mowers, toilet plungers, toilet brushes, and other maintenance and janitorial equipment must be inaccessible to children.

### SLEEP AND REST

#### NEW SECTION

##### **WAC 170-300-0265 Sleep, rest, and equipment.** (1)

An early learning provider must offer a supervised daily rest period for children preschool age and younger who remain in care for more than six hours per day, or who show a need for rest.

(2) An early learning provider must provide quiet activities for children who do not require rest. Quiet activities must be minimally disruptive to sleeping children.

(3) An early learning provider must communicate a child's sleep needs and patterns with that child's parent or guardian.

(4) An early learning provider must not place children directly on the floor to rest or sleep.

(5) For children not using cribs or playpens, an early learning provider must provide developmentally appropriate mats, cots, or other sleep equipment made of water resistant material that can be cleaned and sanitized.

(6) Mats, cots, and other sleep equipment used in an early learning program must be:

(a) In good condition, have no tears or holes, and have no repairs with tape;

(b) Cleaned, sanitized, and air dried at least once per week or more often as needed if used by only one child, or after each use if used by more than one child; and

(c) Stored so sleeping surfaces are not touching each other unless cleaned and sanitized after each use.

(7) Floor mats designed for sleeping and mattresses must be at least one inch thick.

(8) Floor mats must be spaced apart from other floor mats, cots, and mattresses to reduce germ exposure and allow early learning providers' access to each child during sleep time as follows:

(a) There must be at least eighteen inches on each side between each floor mat, cot, or mattress; and

(b) Floor mats, cots, and mattresses must be arranged so children are head to toe, or toe to toe.

(9) Each child's bedding must:

(a) Have a clean sheet or blanket to cover the sleeping surface and a clean blanket for the child that is suitable given the child's size and room temperature;

(b) Be laundered weekly or more often if soiled, or laundered daily if used by more than one child; and

(c) Be stored separately from bedding used by another child, unless it is cleaned and sanitized after each use.

(10) An early learning provider must not allow children less than six years of age to use loft style beds or upper bunks of bunk beds.

#### NEW SECTION

**WAC 170-300-0270 Overnight care.** (1) An early learning provider must be approved by the department to provide overnight care between nine o'clock at night and five o'clock in the morning when any enrolled child sleeps for three or more hours at the program.

(2) If approved by the department to provide overnight care, an early learning provider must supply every child an individual bed or other sleep equipment that:

(a) Is safe and in good working condition;

(b) Is made of moisture resistant material that can be cleaned and sanitized;

(c) Meets the child's developmental needs; and

(d) Is stored so sleeping surfaces are not touching each other unless cleaned and sanitized after each use.

(3) Each child's bedding must:

(a) Have a clean sheet or blanket to cover the sleeping surface and a clean cover for the child except for infants;

(b) Be laundered weekly or more often if soiled. Bedding must be laundered daily if used by different children; and

(c) Be stored separately from bedding used by another child, unless it is cleaned and sanitized after each use.

(4) An early learning provider must:

(a) Supervise children until they are asleep, except where children demonstrate the need for privacy to change clothes and can safely do so; and

(b) Have department approval prior to using night latches, deadbolts, or security chains.

(5) An early learning provider who sleeps while children are in overnight care must:

(a) Have written permission and documentation that parents are aware that the provider is sleeping while their children are in care and have read the facilities policies and procedures for overnight care;

(b) Stay awake until all children are asleep or returning to sleep;

(c) Remain on the same floor level as sleeping children at all times;

(d) Sleep in the same room with infants and toddlers;

(e) Be physically available and responsive, available to immediately respond to a child's needs;

(f) Have alarms to alert them if a child should leave the room;

(g) Have monitoring devices to assist in hearing and visibly checking on children in each room used for sleeping; and

(h) Be awake for the arrival and departure of each child in overnight care.

(6) An early learning provider who accepts infants for overnight care must comply with all safe sleep rules pursuant to WAC 170-300-0291 for at least the first fifteen nights a new infant is enrolled in that program. A provider may sleep while the infant sleeps during overnight care if:

(a) The provider continues to comply with WAC 170-300-0291 (1)(b), (c), (f), (g), (h), (i) and (2);

(b) Once that provider has become familiar with the sleep routines and patterns of that infant; and

(c) The provider has observed no apparent health or safety risks while the infant sleeps.

## INFANT AND TODDLER

### NEW SECTION

**WAC 170-300-0275 Infant and toddler care.** (1) An early learning program may care for infants if the department inspects the program space and approves care for infants:

- (a) Prior to issuing the program its license; or
- (b) Prior to caring for infants if the program has not previously done so.

(2) An early learning provider working directly with infants must complete the department required infant safe sleep training pursuant to WAC 170-300-0106(8).

(3) An early learning provider must not use or allow the use of wheeled baby walkers.

(4) A center early learning provider licensed to care for any infant shall employ or contract with a child care health consultant to provide health consultation to support the practices of staff working with infants and to support the needs of individual infants.

(5) A center early learning provider shall enter into a department approved written agreement for services with a child care health consultant.

(a) The child care health consultant must be a currently licensed registered nurse who:

(i) Has worked in pediatrics or public health in the past five years or has taken or taught classes in pediatric nursing at the college level in the past five years;

(ii) Has experience with state licensing and public health requirements; and

(iii) Attests in writing to knowledge and experience sufficient to provide service consistent with the health consultant competencies described in the most current version of *Caring for Our Children*.

(b) The child care health consultant must be available, or make available a designee who meets the requirements of subsection (2)(a) of this section, for consultation by phone as needed.

(6) A center early learning provider shall ensure that the child care health consultant:

(a) Conducts at least one on-site visit monthly, if an infant is enrolled, during which the consultant:

(i) Observes and assesses staff knowledge of infant health, development, and safety and offers support through training, consultation, or referral;

(ii) Observes and assesses classroom health practices including, but not limited to, infection control including cleaning, sanitizing, and disinfecting, and provides technical assistance to correct any practices of concern;

(iii) Observes and assesses behavior, development, and health status of individual infants in care and makes recommendations to staff or parents or guardians including if further assessment is recommended, as requested or otherwise determined appropriate.

(b) Provides a dated, signed, written summary to the early learning provider for each visit that includes topics discussed with parents or staff, any areas of concern related to discussion, observation, assessment, or screening outcomes; and

(c) Reports each visit to the department.

(7) A center early learning provider must keep on-site a copy of the child care health consultant's written reports along with any notes, recommended follow up, and any actions taken to address concerns identified.

(8) If a center early learning provider is unable to independently employ or contract with a child care health consultant within thirty calendar days of enrolling an infant, the provider shall contact the department for assistance. The department shall assist the provider obtain the services of a child care health consultant or may grant a waiver until the services can be secured.

### NEW SECTION

**WAC 170-300-0280 Bottle preparation.** (1) An early learning provider may allow parents to bring from home filled bottles clearly labeled with the date and infant's first and last name for daily use. Bottles must be immediately refrigerated.

(2) A bottle preparation area must:

(a) Include a sink; and

(b) Be located at least eight feet from any diaper changing tables or counters and sinks used for diaper changing; or

(c) Be physically separated from the diaper changing area by means of a barrier to prevent cross contamination. If a barrier is used, it must be:

(i) Smooth and easily cleanable;

(ii) Sealed, if made of wood;

(iii) Moisture resistant;

(iv) Extend at least twenty-four inches in height from the counter or changing surface; and

(v) Solid without cracks, breaks or separation.

(3) To prepare bottles, an early learning provider must:

(a) Clean bottles and nipples before use using warm soapy water and a bottlebrush and sanitize by boiling in hot water for one minute, or pursuant to WAC 170-300-0198;

(b) Clean and sanitize the sink used for preparing bottles;

(c) Obtain water from a sink used for bottle or food preparation only, or from another approved source, such as bottled water. Water from a handwashing or diaper changing sink may not be used for bottle preparation;

(d) Use bottles and nipples in good repair (with no cracks);

(e) Use glass or stainless steel bottles, or use plastic bottles labeled with "1," "2," "4," or "5" on the bottle. A plastic bottle must not contain the chemical bisphenol-A or phthalates;

(f) Prepare infant formula according to manufacturer's directions and never serve infant formula past the expiration date on the container;

(g) Not heat a bottle in a microwave;

(h) Warm bottles under running warm water, in a container of water, or in a bottle warmer;

(i) Keep bottle nipples covered if bottles are prepared ahead;

(j) Store prepared and unserved bottles in the refrigerator;

(k) Not allow infants or toddlers to share bottles or cups when in use; and

(l) Throw away contents of any formula bottle not fully consumed within one hour (partially consumed bottles must not be put back into the refrigerator).

#### NEW SECTION

**WAC 170-300-0281 Breast milk.** (1) When a parent or guardian provides breast milk, an early learning provider must:

- (a) Immediately refrigerate or freeze the breast milk;
- (b) Label the breast milk container with the child's first and last name and the date received;
- (c) Store frozen breast milk at zero degrees Fahrenheit or less, and in a closed container to prevent contamination; and
- (d) Keep frozen breast milk for no more than thirty days upon receipt and return any unused frozen breast milk to the parent after thirty days.

(2) Frozen breast milk must be kept in the refrigerator at a temperature of 39 degrees Fahrenheit for up to twenty-four hours after thawed.

(3) Thawed breast milk that has not been served within twenty-four hours must be labeled "do not use" and returned to the parent or guardian.

(4) An early learning provider must return any unused refrigerated, not been previously frozen, bottles or containers of breast milk to the parent at the end of the child's day, or label "do not use."

(5) An early learning provider must thaw frozen breast milk in the refrigerator, under warm running water, in a container with warm water, or in a bottle warmer.

(6) An early learning provider must not thaw or heat breast milk in a microwave oven or on the stove.

(7) An early learning provider must obtain parental consent prior to feeding infant formula to an otherwise breastfed infant.

#### NEW SECTION

**WAC 170-300-0285 Infant and toddler nutrition and feeding.** (1) An early learning provider must have and follow written policies on providing, preparing, and storing breast milk or infant formula and food.

(2) After consulting a parent or guardian, an early learning provider must implement a feeding plan for infants and toddlers that includes:

(a) A plan to support the needs of a breastfeeding mother and infant by:

- (i) Providing an area for mothers to breastfeed their infants; and
- (ii) Providing educational materials and resources to support breastfeeding mothers.

(b) Feeding infants and toddlers when hungry according to their nutritional and developmental needs, unless medically directed;

(c) Serving only breast milk or infant formula to an infant, unless the child's health care provider offers a written order stating otherwise; and

(d) When bottle feeding, an early learning provider must:

- (i) Test the temperature of bottle contents before feeding to avoid scalding or burning the child's mouth;

(ii) Hold infants and, when developmentally appropriate, toddlers to make eye contact and talk to them;

(iii) Stop feeding the infant or toddler when he or she shows signs of fullness; and

(iv) Not allow infants or toddlers to be propped with bottles or given a bottle or cup when lying down.

(e) Transitioning a child to a cup only when developmentally appropriate;

(f) Introducing age-appropriate solid foods no sooner than four months of age, based on an infant's ability to sit with support, hold his or her head steady, close his or her lips over a spoon, and show signs of hunger and being full, unless identified in written food plan pursuant to WAC 170-300-0190 or written medical approval;

(g) Not adding food, medication, or sweeteners to the contents of a bottle unless a health care provider gives written consent;

(h) Not serving one hundred percent juice or any sweetened beverages (for example, juice drinks, sports drinks, or tea) to infants less than twelve months old, unless a health care provider gives written consent, and helping prevent tooth decay by only offering juice to children older than twelve months from a cup;

(i) Increasing the texture of the food from strained, to mashed, to soft table foods as a child's development and skills progress between six and twelve months of age. Soft foods offered to older infants should be cut into pieces one-quarter inch or smaller to prevent choking;

(j) Allowing older infants or toddlers to self-feed soft foods from developmentally appropriate eating equipment;

(k) Placing infants or toddlers who can sit up on their own in high chairs or at an appropriate child-size table and chairs when feeding solid foods or liquids from a cup, and having an early learning provider sit with and observe each child eating. If high chairs are used, each high chair must:

(i) Have a base that is wider than the seat;

(ii) Have a safety device, used each time a child is seated, that prevents the child from climbing or sliding down the chair;

(iii) Be free of cracks and tears; and

(iv) Have a washable surface.

(l) Not leaving infants or toddlers more than fifteen minutes in high chairs waiting for meal or snack time, and removing a child as soon as possible once he or she finishes eating;

(m) Preventing infants or toddlers from sharing the same dish or utensil;

(n) Not serving any uneaten food from the serving container after the intended meal; and

(o) Not serving food to infants or toddlers using polystyrene foam (styrofoam) cups, bowls, or plates.

#### NEW SECTION

**WAC 170-300-0290 Infant and toddler sleep, rest, and equipment.** (1) For infants, an early learning provider must supply a single level crib, playpen, or other developmentally appropriate sleep equipment. Providers must not use sofas, couches, or adult-sized or toddler beds for infant sleeping.

(2) For toddlers, an early learning provider must supply a single level crib, playpen, toddler bed, or other developmentally appropriate sleep equipment. An early learning provider must allow toddlers to follow their own sleep patterns.

(3) Sleep equipment not covered in WAC 170-300-0265 must:

(a) Be approved by CPSC or ASTM International Safety Standards for use by infants and toddlers;

(b) Cribs must have a certificate of compliance, sticker, or documentation from the manufacturer or importer stating the crib meets 16 C.F.R. 1219 and 1220;

(c) Have a clean, firm, and snug-fitting mattress designed specifically for the particular equipment;

(d) Have a tight-fitted sheet that is designed for the sleep equipment;

(e) Have a moisture resistant and easily cleaned and sanitized mattress, if applicable. The mattress must be free of tears or holes and not repaired with tape;

(f) The sheet must be laundered at least weekly or more often, such as between uses by different children or if soiled;

(g) Cribs and playpens arranged side by side must be spaced at least thirty inches apart; and

(h) Cribs and playpens placed end to end must have a moisture resistant and easily cleanable solid barrier if spaced closer than thirty inches.

(4) An early learning provider must immediately remove sleeping children from car seats, swings, or similar equipment not designed for sleep unless doing so would put another enrolled child at risk.

(5) An early learning provider must consult with a child's parent or guardian before that child is transitioned from infant sleeping equipment to other sleep equipment.

(6) An early learning provider must transition children who are able to climb out of their sleeping equipment to developmentally appropriate sleep equipment. When parents do not agree with transitioning, the provider and parent will cocreate a transition plan.

#### NEW SECTION

**WAC 170-300-0295 Infant and toddler programs and activities.** (1) An early learning provider must support each infant and toddler's culture, language, and family.

(2) An early learning provider must ensure an adequate supply of age and developmentally appropriate program materials and equipment for infants and toddlers. Materials and equipment must meet individual, developmental, and cultural needs of children in care, and must be:

(a) Clean and washable or disposable;

(b) Nonpoisonous, free of toxins, and meet ASTM D-4236 labeling requirements for chronic health hazards;

(c) Large enough to prevent swallowing or choking;

(d) Safe and in good working condition;

(e) Child size;

(f) Accommodating to a range of abilities and special needs of enrolled children, if applicable;

(g) Accessible for children to find, use, and return independently; and

(h) Removed from the early learning premises as soon as a provider becomes aware an item has been recalled by CPSC.

#### NEW SECTION

##### **WAC 170-300-0296 Infant and toddler development.**

(1) An early learning provider must expose infants and toddlers to a developmentally appropriate curriculum.

(2) Developmentally appropriate curriculum may include, but is not limited to:

(a) Developing infant and toddler language and communication by:

(i) Talking and listening to children, encouraging soft infant sounds, naming objects, feelings, and desires, and describing actions;

(ii) Giving individual attention to children when needed;

(iii) Playing and reading with children;

(iv) Mirroring similar infant sounds and sharing a child's focus of attention;

(v) Communicating throughout the day and during feeding, changing, and cuddle times; and

(vi) Providing materials and equipment that promote language development and communication such as soft books, interactive storybook reading, rhymes and songs, and finger puppets.

(b) Developing infant and toddler physical and cognitive abilities by:

(i) Allowing each infant actively supervised tummy time throughout the day when the infant is awake;

(ii) Providing infants and toddlers freedom to explore and learn on their own on the floor;

(iii) Providing infants and toddlers access to active outdoor playtime. An early learning provider must enforce sun safety precautions for infants younger than six months old by keeping them out of the direct sunlight and limiting sun exposure when ultraviolet rays are strongest (typically from 10:00 a.m. to 2:00 p.m.); and

(iv) Encouraging infants and toddlers to play, crawl, pull up, and walk by using materials and equipment that promotes:

(A) Physical and cognitive activities, for example rattles, grasping and reaching toys, busy boxes, nesting cups, small push and pull toys, riding toys, balls, squeezable toys, books, dolls, press-together blocks, and limited use of equipment such as bouncers, swings, or boppies; and

(B) Spatial and numeracy understanding, for example counting toys, soft blocks and toys with different sizes such as measuring cups or spoons, and toys with different shapes and colors to help introduce sorting and categorization.

(c) Developing infant and toddler social and emotional abilities by:

(i) Providing social contact with infants and toddlers in addition to time spent feeding, diapering and bathing by playing with children, naming and acknowledging emotions, and encouraging peer interaction;

(ii) Immediately investigating cries or other signs of distress;

(iii) Providing comfort to an upset or hurt child;

- (iv) Positively responding to a child's verbal and nonverbal cues;
- (v) Intervening during negative peer interactions such as when a child grabs other children's toys, pulls hair, or bites;
- (vi) Providing physical stimulation through holding, cuddling, rocking, talking, singing, playing, carrying, and changing positions; and
- (vii) Providing materials and equipment that promote social and emotional activities such as pictures of children and adults exhibiting different emotions, pictures of infants and family members, dolls and soft toys, rattles, music, and dancing scarves.

## INTERACTIONS AND CURRICULUM

### Learning Supports

#### NEW SECTION

**WAC 170-300-0300 Individual care plan.** (1) An early learning provider must develop an individual care plan for each child with special needs and must notify the department when a child with special needs is enrolled or identified in the early learning program. Plans and documentation required under this section must:

- (a) Meet the requirements of this section;
  - (b) Be available for department review;
  - (c) Have written permission from a child's parent or guardian stating that a visiting health professional may provide services to the child at the early learning program, if applicable;
  - (d) Have verification that early learning program staff involved with a particular child has been trained on implementing the individual care plan for that child, if applicable;
  - (e) Be updated annually or when there is a change in the child's special needs; and
  - (f) Be kept in the child's file.
- (2) The individual care plan must be signed by the parent or guardian and may be developed using a department provided template.
- (a) The individual care plan must contain:
    - (i) The child's diagnosis, if known;
    - (ii) Contact information for the primary health care provider or other relevant specialist;
    - (iii) A list of medications to be administered at scheduled times, or during an emergency along with descriptions of symptoms that would trigger emergency medication;
    - (iv) Directions on how to administer medication;
    - (v) Allergies;
    - (vi) Food allergy and dietary needs, pursuant to WAC 170-300-0186;
    - (vii) Activity, behavioral, or environmental modifications for the child;
    - (viii) Known symptoms and triggers;
    - (ix) Emergency response plans and what procedures to perform; and
    - (x) Suggested special skills training, and education for early learning program staff, including specific pediatric first aid and CPR for special health care needs.

(b) An early learning provider must have supporting documentation of the child's special needs provided by the child's licensed or certified:

- (i) Physician or physician's assistant;
  - (ii) Mental health professional;
  - (iii) Education professional;
  - (iv) Social worker with a bachelor's degree or higher with a specialization in the individual child's needs; or
  - (v) Registered nurse or advanced registered nurse practitioner.
- (3) An early learning provider's written plan and documentation for accommodations must be informed by any existing:
- (a) Individual education plan (IEP);
  - (b) Individual health plan (IHP);
  - (c) 504 Plan; or
  - (d) Individualized family service plan (IFSP).

#### NEW SECTION

**WAC 170-300-0305 Curriculum philosophy and planning.** (1) An early learning provider must have a written curriculum philosophy that describes the program of planned daily activities related to early childhood or child development.

- (2) The curriculum philosophy must address all age groups being served, be informed by the Washington state early learning and development guidelines, and may include:
- (a) How children develop emotionally, socially, cognitively, and physically;
  - (b) What early learning looks like or areas of focus for each age group being served;
  - (c) How the provider will meet cultural, dual language learner, and special needs of children in care;
  - (d) How to guide learning and social interactions;
  - (e) The importance of play to a child's learning process; and
  - (f) For infants and toddlers, the importance of developing consistent, nurturing relationships with caregivers as a component of learning.
- (3) Staff must be trained on the program's curriculum philosophy.
- (4) A lead teacher or family home early learning provider must be given regularly scheduled time to plan and develop curriculum and activities. Planning may be done during rest time but all supervision requirements pursuant to WAC 170-300-0345 must be met.

#### NEW SECTION

**WAC 170-300-0310 Concept development and feedback quality.** (1) An early learning provider must facilitate activities to support child learning and understanding.

- (2) An early learning provider may facilitate child learning and understanding through a variety of techniques such as:
- (a) Using a variety of teaching strategies (different techniques, curricula, or styles) and materials to address different learning styles, abilities, developmental levels, and temperament;
  - (b) Helping children enter into and sustain play;

- (c) Encouraging children to participate by asking questions and providing guidance;
- (d) Providing opportunities for children's creativity;
- (e) Linking concepts and activities to one another and to the children's lives and interests;
- (f) Noticing and responding to teachable moments;
- (g) Clarifying and expanding children's understanding;
- (h) Describing and discussing children's learning processes;
- (i) Encouraging children's efforts and persistence;
- (j) Showing tolerance for mistakes;
- (k) Using diverse vocabulary;
- (l) Leading discussions and activities;
- (m) Providing materials during the day, including daily routines such as meals and transitions, to encourage communication in English and children's home languages when possible; and
- (n) Use scaffolding methods to gradually move children toward stronger understanding and greater independence in the learning process.

#### NEW SECTION

**WAC 170-300-0315 Language modeling and reasoning.** (1) An early learning provider must be aware of and responsive to children's developmental, linguistic, cultural, and academic needs.

(2) An early learning provider must be aware of and responsive to children's needs by engaging in activities such as:

- (a) Asking developmentally appropriate questions for the age group and allow children to answer without interruption from the provider;
- (b) Circulating among the children during free choice activities and talking with children about what they are doing;
- (c) Using teaching techniques such as:
  - (i) Self-talk: When the provider talks about what he or she is doing, seeing, eating, touching, or thinking as he or she is involved in that activity;
  - (ii) Parallel-talk: When the provider talks about what the child is doing, seeing, eating, or touching as the child is engaging in those activities; or
  - (iii) Language expansion: When the provider adds detail or new words to build on ideas that children are expressing.
- (d) An early learning provider working with preschool and school-age children must use language to develop and encourage reasoning skills by using techniques such as:
  - (i) Talking about logical relationships or concepts during the day including, but not limited to, the daily schedule, the differences and similarities between objects, or people in the classroom;
  - (ii) Introducing concepts using guiding questions that encourage children to figure out cause and effect relationships;
  - (iii) Providing opportunities for reading and writing activities; and
  - (iv) Asking open ended questions to help children improve skills and acquire knowledge.

(e) An early learning provider working with non-English speaking children must encourage language development and acquisition by using techniques such as:

- (i) Using words in various languages to talk about the routines;
- (ii) Reading books out loud or using audio books; and
- (iii) Playing games in different languages.

#### NEW SECTION

**WAC 170-300-0320 Facilitating child interests, learning, perspective, and productivity.** (1) An early learning provider must work to maximize children's interests, engagement with developmentally and culturally responsive activities, and ability to learn from play.

(2) An early learning provider must maximize children's interests, engagement, and abilities by using techniques such as:

- (a) Maximizing learning time with learning materials and products, limiting disruptions during activities, and offering additional choices when activities are completed;
- (b) Giving clear instructions and directions; and
- (c) Making opportunities for children to learn during transitions by clearly communicating expectations and keeping transitions to a duration that is developmentally appropriate.

(3) An early learning provider must offer developmentally and culturally responsive activities that offer a range of auditory, visual, and movement opportunities by using techniques such as:

- (a) Encourage child engagement;
- (b) Promote each child's self-help and social skills;
- (c) Organized around child interests and ideas;
- (d) Allow choice, exploration, and experimentation;
- (e) Promote active and play-based learning experiences;
- (f) Allow children freedom to move during activities;
- (g) Ensure child expression;
- (h) Utilize interesting and creative materials;
- (i) Offer hands-on opportunities for children;
- (j) Provide opportunity for children to direct their own learning and problem solving rather than teacher-directed activities; and
- (k) Orient and guide children toward learning objectives.

#### **EMOTIONAL SUPPORT AND CLASSROOM ORGANIZATION**

#### NEW SECTION

**WAC 170-300-0325 Creating a climate for healthy child development.** (1) When communicating or interacting with children, an early learning provider must maintain a climate for healthy, culturally responsive child development such as:

- (a) Using a calm and respectful tone of voice;
- (b) Using positive language to explain what children can do and give descriptive feedback;
- (c) Having relaxed conversations with children by listening and responding to what they say. Adult conversations must not dominate the overall sound of the group;



(d) Greeting children upon arrival and departure at the early learning program;

(e) Using facial expressions such as smiling, laughing, and enthusiasm to match a child's mood;

(f) Using physical proximity in a culturally responsive way to speak to children at their eye level and with warm physical contact including, but not limited to, gently touching a hand or shoulder, sitting next to a child, appropriately holding younger children close while communicating;

(g) Validating children's feelings and show tolerance for mistakes;

(h) Being responsive and listening to children's requests and questions, encouraging children to share experiences, ideas, and feelings;

(i) Observing children in order to learn about their families, cultures, individual interests, ideas, questions, and theories;

(j) Modeling and teaching emotional skills such as recognizing feelings, expressing them appropriately, accepting others' feelings, and controlling impulses to act out feelings;

(k) Representing the diversity found in the early learning program and society, including gender, age, language, and abilities, while being respectful of cultural traditions, values, religion and beliefs of enrolled families; and

(l) Interacting with staff and other adults in a positive, respectful manner.

(2) An early learning provider must encourage positive interactions between and among children with techniques such as:

(a) Giving children several chances a day to interact with each other while playing or completing routine tasks;

(b) Modeling social skills;

(c) Encouraging socially isolated children to find friends;

(d) Helping children understand feelings of others; and

(e) Including children with special needs to play with others.

#### NEW SECTION

**WAC 170-300-0330 Positive relationships and child guidance.** (1) An early learning provider must work to maintain positive relationships with children by using consistent guidance techniques to help children learn. Guidance techniques must adapt an early learning program's environment, routines, and activities to a child's strengths, developmental level, abilities, culture, community, and relate to the child's behavior.

(2) Guidance techniques may include:

(a) Coaching behavior;

(b) Modeling and teaching social skills such as taking turns, cooperation, waiting, self-control, respect for the rights of others, treating others kindly, and conflict resolution;

(c) Offering choices;

(d) Distracting;

(e) Redirecting or helping a child change their focus to something appropriate to achieve their goal;

(f) Planning ahead to prevent problems and letting children know what events will happen next;

(g) Explaining consistent, clear rules and involving children in defining simple, clear classroom limits;

(h) Involving children in solving problems; and

(i) Explaining to children the natural and logical consequence related to the child's behavior in a reasonable and developmentally appropriate manner.

#### NEW SECTION

**WAC 170-300-0331 Prohibited behavior, discipline, and physical removal of children.** (1) An early learning provider must take steps to prevent and, once aware of, must not tolerate:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) Prevent a child from or punish a child for exercising religious rights; or

(g) Anyone to:

(i) Restrict a child's breathing;

(ii) Bind or restrict a child's movement unless permitted under WAC 170-300-0335;

(iii) Tape a child's nose, mouth, or other body part;

(iv) Deprive a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

(v) Force a child to ingest something as punishment such as hot sauce or soap;

(vi) Interfere with a child's ability to take care of his or her own hygiene and toileting needs;

(vii) Use toilet learning or training methods that punish, demean, or humiliate a child;

(viii) Withhold hygiene care, toileting care, or diaper changing from any child unable to provide such care for himself or herself;

(ix) Expose a child to extreme temperatures as punishment;

(x) Demand excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

(xi) Place the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

(xii) Use high chairs, car seats, or other confining space or equipment to punish a child or restrict movement.

(2) An early learning provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically aggressive.

(3) An early learning provider may separate a preschool age or school age child from other children when that child needs to regain control of him or herself.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, center director, assistant director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, an early learning provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of his or her actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If an early learning provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, center director, assistant director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical removal of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk him or her away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and remove him or her to a quiet place where the child cannot hurt themselves or others.

#### NEW SECTION

**WAC 170-300-0335 Physical restraint.** (1) An early learning provider must have written physical restraint protocols pursuant to WAC 170-300-0490, and implement such protocols only when appropriate and after complying with all requirements of WAC 170-300-0330 and 170-300-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened, and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation;

(c) Developmentally appropriate; and

(d) Only performed by early learning providers training in a restraint technique pursuant to WAC 170-300-0106(9).

(3) No person may use bonds, ties, blankets, straps, car seats, high chairs, activity saucers, or heavy weights (including an adult sitting on a child) to physically restrain children.

(4) Licensees, center directors, assistant directors, program supervisors, lead teachers or trained staff must remove him or herself from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another early learning provider is pres-

ent. If an early learning provider observes another staff using inappropriate restraint techniques, the staff must intervene.

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint to the child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within twenty-four hours, pursuant to WAC 170-300-0475;

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(c) Document the incident in the child's file, including the date, time, early learning program staff involved, duration and what happened before, during and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, parents or guardians, to address underlying issues and reduce need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

#### NEW SECTION

**WAC 170-300-0340 Expulsion.** (1) To promote consistent care and maximize opportunities for child development and learning, an early learning provider must develop and follow expulsion policies and practices, pursuant to WAC 170-300-0486.

(2) An early learning provider may expel a child only if:

(a) The child exhibits behavior that presents a serious safety concern for that child or others; and

(b) The program is not able to reduce or eliminate the safety concern through reasonable modifications.

(3) If a child is expelled, an early learning provider must:

(a) Review the program's expulsion policy with the parent or guardian of the child;

(b) Provide a record to the parent or guardian about the expulsion and the steps that were taken to avoid expulsion. The record must include the date, time, early learning program staff involved, and details of each incident that led to expulsion; and

(c) Provide information to the parent or guardian of the child that includes, but is not limited to, community-based resources that may benefit the child.

(4) The early learning provider must report to the department when children are expelled. The information must include:

(a) Child demographic data including, but not limited to, the age, race, ethnicity, and gender of the child;

(b) The reason the child was expelled; and

(c) The resources that were provided to the parent or guardian of the child.

## PROGRAM STRUCTURE AND ORGANIZATION

### NEW SECTION

**WAC 170-300-0345 Supervising children.** (1) An early learning provider must only allow the following persons to have unsupervised access to a child in care:

- (a) That child's own parent or guardian;
- (b) Licensees or early learning program staff authorized by the department in chapter 170-06 WAC, as hereafter recodified or amended;
- (c) A government representative including an emergency responder who has specific and verifiable authority for access, supported by documentation; and
- (d) A person authorized in writing or over the phone by that child's parent such as a family member, family friend, or the child's therapist or health care provider.

(2) An early learning provider must meet capacity, group size, mixed age grouping, and staff-to-child ratios while children are in care. This includes, but is not limited to:

- (a) Indoor and outdoor play activities;
- (b) Off-site activities;
- (c) During transportation;
- (d) Meal times;
- (e) Rest periods;
- (f) Evening or overnight care; and
- (g) When children are on different floor levels of the early learning program.

(3) An early learning provider must supervise children in care by:

- (a) Scanning the environment looking and listening for both verbal and nonverbal cues to anticipate problems and plan accordingly;
- (b) Visibly checking children on many occasions with little time in between;
- (c) Positioning him or herself to supervise all areas accessible to children;
- (d) Attending to children and being aware of what children are doing at all times;
- (e) Being available and able to promptly assist or redirect a child as necessary; and
- (f) Considering the following when deciding whether increased supervision is needed:
  - (i) Ages of children;
  - (ii) Individual differences and abilities of children;
  - (iii) Layout of the indoor and outdoor licensed space and play area;
  - (iv) The risk associated with the activities children are engaged in; and
  - (v) Any nearby hazards including those in the licensed or unlicensed space.

(4) An early learning program staff member may undertake other activities for a temporary time period when not required to be providing active supervision required under subsection (5)(c) of this section. Such activities include, but are not limited to, cleaning up after an activity or preparing items for a new activity. This early learning staff member must remain in visual or auditory range, and be available and able to respond if needed.

(5) An early learning provider must:

- (a) Not use devices such as a baby monitors, video monitors, or mirrors in place of supervision, unless used pursuant to WAC 170-300-0270(5);
- (b) Be able to hear when doors in the immediate area are opened to prevent children from leaving unsupervised;
- (c) Actively supervise children when the children:
  - (i) Interact with pets or animals;
  - (ii) Engage in water or sand play;
  - (iii) Play in an area in close proximity to a body of water;
  - (iv) Use a safe route to access an outdoor play area not immediately adjacent to the early learning program;
  - (v) Engage in planned activities in the kitchen;
  - (vi) Ride on public transportation;
  - (vii) Engage in outdoor play; and
  - (viii) During field trips.
- (d) Ensure no infant or child is left unattended during:
  - (i) Diapering;
  - (ii) Bottle feeding; or
  - (iii) Tummy time.
- (e) Provide developmentally appropriate supervision to children while bathing.

### NEW SECTION

**WAC 170-300-0350 Supervising children during water activities.** (1) During water activities, an early learning provider must meet all supervision requirements of this section and WAC 170-300-0345.

(2) During water activities, an early learning provider must:

- (a) Ensure a one-to-one (1:1) staff-to-child ratio for infants;
  - (b) Hold or have continuous touch of infants, nonambulatory toddlers, and children with special needs as required; and
  - (c) Keep toddlers within arm's length.
- (3) An early learning provider must have written permission for water activities from each child's parent or guardian.
- (4) For water activities on or off the early learning program premises, where the water is more than twenty-four inches deep, an early learning provider must ensure:
- (a) A certified lifeguard is present and on duty; and
  - (b) At least one additional staff member than would otherwise be required is present to help actively supervise if the children are preschool age or older.

(5) An early learning provider must have life-saving equipment readily accessible during water activities if a pool is six feet or more in any direction and two feet or more in depth. Life-saving equipment may include a ring buoy and rope, a rescue tube, or a throwing line and a shepherd's hook that will not conduct electricity.

(6) If an early learning provider takes children off-site to an area with an accessible body of water more than four inches deep (for example, a park with a lake or stream) but children are not engaging in a water activity, there must be:

- (a) At least one more staff person than required in the staff-to-child ratio; and
- (b) At least one attending staff person must be able to swim.

NEW SECTION

**WAC 170-300-0354 Indoor early learning program space capacity.** (1) To define capacity, licensed indoor early learning program space must have a minimum of thirty-five square feet per child in attendance and further comply with the requirements of this chapter.

(a) Center early learning program space must provide fifteen additional square feet for each infant or toddler using a crib or playpen if the crib or playpen is located or placed in the sleeping or play area.

(b) Floor space under tables, desks, chairs, and other equipment used as part of children's activities must be included in the overall capacity.

(c) Office or kitchen space that is inaccessible to children and not intended for their use must not be included in the overall capacity.

(d) Napping areas may be used as early learning program space if mats and cots are removed when not in use and children have free access to the area.

(2) The following indoor space must not be counted in the overall capacity:

(a) Unlicensed space;

(b) Hallway space that is used for emergency evacuation or is not approved to be used for program activities;

(c) Bathrooms and diaper changing areas (including twenty-four inches surrounding diaper changing areas and handwashing sink, unless the diaper changing area has a two foot high barrier);

(d) Laundry areas;

(e) Closets;

(f) Stairways; and

(g) Floor space occupied by shelves, built-in cabinets, file cabinets, desks, or other office equipment not intended to be accessible to children.

(3) A large, licensed indoor gross motor activity space may be used to supplement the requirements of outdoor program space, pursuant to WAC 170-300-0145, but must not be counted in the overall capacity if:

(a) The space provides seventy-five square feet per child for the maximum number of children listed on the license or the provider rotates groups of children; and

(b) The space is safe and appropriate for activities otherwise performed in an outdoor play space.

NEW SECTION

**WAC 170-300-0355 Family home capacity, ratio, and group size.** (1) The department issues initial or nonexpiring family home licenses for up to twelve children. The department will not issue a family license to care for more children than permitted by the rules in this chapter but may issue a license to care for fewer than the maximum allowable enrolled children. Family home licenses state:

(a) The maximum number of children that may be in care at any one time (total capacity); and

(b) The age range of children allowed in care.

(2) The department determines capacity for a family home early learning program after considering:

(a) Square footage of the early learning program;

(b) An early learning provider's years of experience in licensed child care (experience must be from working as a center director, program supervisor, lead teacher, family home licensee, or another similar role in a child care setting);

(c) A provider's education and ongoing training;

(d) The age range requested or approved by the department;

(e) The amount of developmentally appropriate equipment, materials, and toys an early learning program can provide children to use;

(f) A provider's licensing history with the department; and

(g) The number of qualified staff available to meet staff-to-child ratios.

(3) A family home licensee must not exceed the total capacity or age range stated on the child care license at any time except as provided in this section. All children on the premises, signed in to child care, on an off-site trip from the early learning program, or being transported by the early learning program staff are counted in capacity including the children of staff.

(a) A family home licensee must receive department approval to care for a child with special needs, pursuant to WAC 170-300-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in both capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 170-300-0300 counts towards capacity but does not count in the staff-to-child ratio.

(c) A child who turns thirteen years old permitted by chapter 170-290 WAC, as hereafter recodified or amended, and who must be counted in both capacity and staff-to-child ratio.

(4) Any child birth through twelve years old on the premises, signed in to the child care, on an off-site trip from the early learning program, or being transported counts in capacity. This includes a family home licensee's own children, children of staff, or visiting children not accompanied or supervised by an adult.

(5) A family home licensee must provide qualified staff to fulfill the staffing requirements and staff-to-child ratios during operating hours, including off-site activities and when transporting children in care.

(6) A family home licensee must provide additional staff, pursuant to WAC 170-300-0350, when children are participating in water activities or activities near water.

(7) When applying for an initial or nonexpiring family home license, a family home licensee with less than one year of experience may request from the department a capacity of up to six children, birth through twelve years of age.

(a) A maximum of three children may be under two years of age.

(b) If there are three children under two years of age, one of these children must be able to walk independently.

(8) When applying for an initial or nonexpiring family home license, a family home licensee with at least one year but less than two years of experience and:

(a) Working alone may request a capacity of up to eight children ages two through twelve years of age, with a maximum of four children under three years of age.

(b) Working with a qualified assistant may request a capacity of up to nine children birth through twelve years of age with a maximum of four children under two years of age.

(9) When applying for an initial or nonexpiring family home license, a family home licensee with at least two years' experience and:

(a) Working alone may request a capacity of up to ten children ages three years through twelve years of age;

(b) Working alone may request a capacity of up to twelve children for school age children only; and

(c) Working with a qualified assistant, may request a capacity of up to twelve children birth through twelve years of age with a maximum of six children under two years of age with two children being able to walk independently.

(10) A family home licensee, with two years of experience, may request a license for birth to twenty-four months of age with a maximum group size of eight when:

(a) There are two staff present with the group consisting of one staff who meets the qualification of the licensee and another who meets the qualifications to be counted in ratio;

(b) The staff-to-child ratio is 1:4;

(c) Fifteen additional square feet are provided for each infant or toddler; and

(d) A second staff member is present whenever:

(i) More than two children in care do not walk independently; or

(ii) When there are more than four children in care.

(11) The staff-to-child ratio is determined by the ages and number of children in care. Two early learning program staff are required anytime:

(a) More than six children are in care and any child in care is under two years of age;

(b) More than eight children are in care and any child in care is under three years of age; or

(c) More than ten children are in care and any child is under school age.

#### NEW SECTION

**WAC 170-300-0356 Center capacity, ratio, and group size.** (1) The department issues initial or nonexpiring center early learning provider licenses. The department will not issue a center license to care for more children than permitted by the rules in this chapter. The department may issue a license to care for fewer than the maximum allowable enrolled children. For each center, licenses state:

(a) The maximum number of children that may be in care at any one time (total capacity);

(b) The licensed capacity for each space within the center licensed for use by children; and

(c) The age range of children allowed in care.

(2) The department determines capacity for a center early learning program after considering:

(a) Square footage of the early learning program;

(b) A provider's education and ongoing training;

(c) The age range of children requested or approved by the department;

(d) The amount of developmentally appropriate equipment, materials, and toys an early learning program can provide children to use;

(e) A provider's licensing history with the department; and

(f) The number of qualified staff available to meet staff-to-child ratios.

(3) A center licensee must not exceed the total capacity or age range stated on the child care license at any time except as provided in this section. All children on the premises, signed in to child care, on an off-site trip from the early learning program, or being transported by the early learning program staff are counted in capacity including the children of staff.

(a) A center licensee must receive department approval to care for a child with special needs, pursuant to WAC 170-300-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 170-300-0300 does not count in the staff-to-child ratio.

(c) A child who turns thirteen years old permitted by chapter 170-290 WAC, as hereafter recodified or amended, must be counted in both capacity and staff-to-child ratio.

(4) A center licensee must provide qualified staff to fulfill staffing requirements, staff-to-child ratios, group size, and mixed age grouping during operating hours, including off-site activities or when transporting children in care.

(5) In each classroom or well-defined space, the maximum group size and ratio of center staff members to children, including children related to staff or the licensee, must be:

(a) Infants (birth through eleven months of age) with a:

(i) Maximum group size of eight with a ratio of one staff to four children (1:4);

(ii) Maximum group size of nine with a ratio of 1:3.

(b) Toddlers (twelve through twenty-nine months of age) with a:

(i) Maximum group size of fourteen with a ratio of 1:7;

(ii) Maximum group size of fifteen with a ratio of 1:5.

(c) Preschoolers (thirty months through six years of age who are not attending kindergarten or elementary school) with a maximum group size of twenty with a ratio of 1:10; and

(d) School-age children (five years through twelve years of age who are enrolled in or attending kindergarten or elementary school) with a maximum group size of thirty with a ratio of 1:15.

(6) A center licensee may combine children of different age groups for periods of no more than the first two hours of the day or the last two hours of the day, not to exceed two hours in any given day, provided the staff-to-child ratio and group size designated for the youngest child in the mixed group are maintained.

(7) Children at least five years old and enrolled in or attending kindergarten may be a part of the preschool or school-age group if developmentally appropriate and the child's parent or guardian agrees to this placement.

(8) A center licensee must conduct activities for each group of children in a specific room or other defined space within a larger area.

(9) A center licensee must provide additional staff as described in WAC 170-300-0350 when children are participating in water activities or activities near water.

(10) When only one center staff is required to care for the only group of children on-site for up to an hour at the beginning or end of the day, the center licensee must ensure:

(a) That staff member provides an appropriate level of supervision at all times to the children in care;

(b) That staff member is free of all other duties while providing care to children; and

(c) A second individual with a cleared background check is on-site and readily available to respond if needed, or the department approves an alternate plan.

#### NEW SECTION

**WAC 170-300-0357 Center mixed age group capacity, ratio, and group size.** (1) A center early learning program must do the following to mix age groups of children in care (in addition to any specific requirements of this section):

(a) Meet the square footage and staff-to-child ratio requirements for the youngest child present in the group;

(b) Meet the health, safety, and developmental needs for all ages of children in the mixed group; and

(c) Inform the department of the center's mixed age group policy.

(2) A center early learning program must do the following to mix groups of children birth to thirty-six months old with a maximum group size of eight children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:4.

(3) A center early learning program must do the following to mix groups of children birth to thirty-six months old with a maximum group size of nine children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:3.

(4) A center early learning program must do the following to mix groups of children twelve to thirty-six months old:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:7 with a maximum group size of fourteen children.

(5) A center early learning program must do the following to mix groups of children twelve to thirty-six months old:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:5 with a maximum group size of fifteen children.

(6) A center early learning program must do the following to mix groups of children between thirty-six months old

through kindergarten with a maximum group size of twenty children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

(7) A center early learning program must do the following to mix groups of children between thirty-six months old through kindergarten with a maximum group size of twenty-six children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

(8) A center early learning program must do the following to mix groups of children four and one-half to nine years old with a maximum group size of twenty children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

(9) A center early learning program must do the following to mix groups of children four and one-half to nine years old with a maximum group size of twenty-six children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

#### NEW SECTION

**WAC 170-300-0360 Program and daily schedule.** (1) An early learning provider must have an established program and daily schedule that is familiar to children.

(2) A schedule must be designed to meet enrolled children's developmental, cultural, and special needs. The daily schedule must:

(a) Be specific for each age group of children, when applicable;

(b) Offer a variety of activities to meet children's needs, pursuant to WAC 170-300-0150;

(c) Meet the following daily morning or afternoon active outdoor play time requirements:

(i) Twenty minutes for each three hours of programming for infants (as tolerated) and toddlers;

(ii) Thirty minutes for each three hours of programming for children preschool age and older; and

(iii) Programs that operate more than six hours a day must provide ninety minutes of active play for preschool age and up or sixty minutes of active play for infants and toddlers (thirty minutes of which may be moderate to vigorous indoor activities).

(d) Include scheduled and consistent times for meal service;

(e) Include routine transportation times, if applicable;

(f) Include rest periods, if applicable; and

(g) Include overnight care, if applicable.

**PROGRAM ADMINISTRATION AND OVERSIGHT  
LICENSING PROCESS**

NEW SECTION

**WAC 170-300-0401 License fees.** (1) The rules establishing licensing fees within this chapter are adopted pursuant to RCW 43.216.300.

(2) The license fee is nonrefundable and is due:

(a) With the early learning applicant's initial license application packet; and

(b) Annually thereafter, thirty calendar days prior to the anniversary date of the license.

(3) Payment must be in the form of a check, credit or debit card, or money order.

(4) The annual fee for family home early learning programs is thirty dollars, or as otherwise set by the legislature.

(5) The annual fee for center early learning programs is one hundred twenty-five dollars for the first twelve children plus twelve dollars for each additional child, or as otherwise set by the legislature.

NEW SECTION

**WAC 170-300-0402 Changing early learning program space or location.** (1) An early learning provider must notify the department prior to making a change to early learning program space that may impact the health, safety, or welfare of enrolled children. Such changes include, but are not limited to:

(a) Moving early learning programs to a different residence, building, or facility (even if the new location is on the same premises);

(b) An early learning program altering a planned use of space including, but not limited to, the ages of children served in a room or previously unlicensed areas;

(c) Modifying facilities in a way that requires a permit under the Washington state building code or by a local jurisdiction, such as remodeling or renovating early learning program space; and

(d) Changing outdoor play areas, such as adding or altering the type of surface or altering stationary climbing or play equipment.

(2) An early learning provider must submit to the department the new proposed floor plan prior to making changes under subsection (1)(a) through (c) of this section.

(3) An early learning provider planning a change under subsection (1)(a) of this section must also:

(a) Submit a complete application, pursuant to WAC 170-300-0400, as soon as the provider plans to move and has an identified address, but not more than ninety calendar days before moving;

(b) Not significantly change or move a center early learning program until the department has first inspected the new location and determines it meets the requirements in this chapter and RCW 43.216.305; and

(c) Not operate a family home early learning program for more than two weeks following the move before having the department inspect the new location, pursuant to RCW 43.216.305.

NEW SECTION

**WAC 170-300-0415 Zoning, codes, and ordinances.**

(1) The department adopts and incorporates by reference the Washington state building code (chapter 19.27 RCW), as now and hereafter amended.

(2) Early learning program space must comply with the Washington state building code or local building code as enacted at the time of licensure. Facility modifications must comply with WAC 170-300-0402.

(3) Prior to licensing, an applicant must contact state, city, and local agencies that regulate the early learning program. An early learning provider must obtain regulations and comply with the direction given by such agencies. These agencies may include, but are not limited to, the Washington state department of labor and industries, the Washington state fire marshal, the Washington state department of health, and local health jurisdictions.

(4) Prior to licensing, a center early learning applicant must:

(a) Have a certificate of occupancy issued by the local building, planning, or zoning department, or a local equivalent if locality does not have the certificate of occupancy; and

(b) Be inspected and approved by the state fire marshal.

NEW SECTION

**WAC 170-300-0420 Prohibited substances.** (1) Chapter 70.160 RCW prohibits smoking in public places and places of employment.

(2) Pursuant to RCW 70.160.050, an early learning provider must:

(a) Prohibit smoking, vaping, or similar activities in licensed indoor space, even during nonbusiness hours;

(b) Prohibit smoking, vaping, or similar activities in licensed outdoor space unless:

(i) Smoking, vaping or similar activities occurs during nonbusiness hours; or

(ii) In an area for smoking or vaping tobacco products that is not a "public place" or "place of employment," as defined in RCW 70.160.020.

(c) Prohibit smoking, vaping, or similar activities in motor vehicles used to transport enrolled children;

(d) Prohibit smoking, vaping, or similar activities by any provider who is supervising children, including during field trips;

(e) Prohibit smoking, vaping, or similar activities within twenty-five feet from entrances, exits, operable windows, and vents, pursuant to RCW 70.160.075; and

(f) Post "no smoking or vaping" signs. Signs must be clearly visible and located at each building entrance used as part of the early learning program.

(3) An early learning provider must:

(a) Prohibit any person from consuming or being under the influence of alcohol on licensed space during business hours;

(b) Prohibit any person within licensed space from consuming or being under the influence of illegal drugs or misused prescription drugs;

(c) Store any tobacco or vapor products, or the packaging of tobacco or vapor products in a space that is inaccessible to children;

(d) Prohibit children from accessing cigarette or cigar butts or ashes;

(e) Store any cannabis or associated paraphernalia out of the licensed space and in a space that is inaccessible to children; and

(f) Store alcohol in a space that is inaccessible to children (both opened and closed containers).

(4) A center early learning provider must prohibit any person from using, consuming, or being under the influence of cannabis in any form on licensed space.

(5) A family home early learning provider must prohibit any person from using, consuming, or being under the influence of cannabis products in any form on licensed space during business hours.

#### NEW SECTION

**WAC 170-300-0425 Initial, nonexpiring, dual licenses, and license modification.** (1) The department may issue an initial license when an early learning program applicant demonstrates compliance with health and safety requirements of this chapter but may not be in full compliance with all requirements, pursuant to RCW 43.216.315.

(a) An initial license is valid for six months from the date issued.

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years.

(c) The department must evaluate the early learning provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements of this chapter during the period of initial licensure, pursuant to RCW 43.216.305.

(3) A licensee must submit annual compliance documents at least thirty calendar days prior to that provider's anniversary date. A provider's anniversary date is the date the first initial license was issued. Pursuant to RCW 43.216.305, the required annual compliance documents are:

(a) The annual nonrefundable license fee;

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed early learning program;

(ii) The intent to cease operation as a licensed early learning program;

(iii) A change in the early learning program's operational hours or dates; and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background check applications as determined by the department's established schedule, pursuant to RCW 43.216.270(2); and

(d) For each individual required to have a background check clearance, the early learning provider must verify current background checks or require the individual to submit a background check application at least thirty calendar days prior to the anniversary date.

(4) If a licensee fails to meet the requirements for continuing a nonexpiring license by their anniversary date, the licensee's current license expires. The early learning provider must submit a new application for licensure, pursuant to RCW 43.216.305(3).

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practices, pursuant to RCW 43.216.305 (4)(a).

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license resulting from a failure to comply with the requirements of this section.

(7) A licensee must have department approval to hold dual licenses (for example: An early learning program license and another care giving license, certification, or similar authorization).

(8) If the department determines that a licensee is not meeting all applicable requirements and regulations:

(a) The department and licensee may agree to modify the child care license;

(b) The licensee may give up one of the licenses, certifications, or authorizations; or

(c) The department may suspend, deny, or revoke the early learning license, pursuant to RCW 43.216.325.

(9) An early learning provider must report within twenty-four hours:

(a) To the department and local authorities: A fire or other structural damage to the early learning program space or other parts of the premises;

(b) To the department:

(i) A retirement, termination, death, incapacity, or change of the program director, or program supervisor, or change of ownership or incorporation of a provider;

(ii) When a provider becomes aware of a charge or conviction against themselves, a staff person or, applicable household member, pursuant to WAC 170-06-0043, as hereafter recodified or amended;

(iii) When a provider becomes aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves, a staff person, or a household member, if applicable;

(iv) A change in the number of household members living within a family home early learning program space. This includes individuals fourteen years old or older that move in or out of the home, or a resignation or termination, pursuant to RCW 43.216.390. A birth or death affecting the number of household members must be reported within twenty-four hours or at first opportunity; and

(v) Any changes in the early learning program hours of operation to include closure dates.

(10) Prior to increasing capacity of an early learning program, the licensee, center director, assistant director, or program supervisor must request and be approved to increase capacity by the department.

(11) Licensee, center director, assistant director, or program supervisor must have state fire marshal or department approval and comply with local building ordinances following a significant change under WAC 170-300-0402 (1)(a) through (c), if applicable.



(12) Licensee, center director, assistant director, or program supervisor must notify the department within thirty calendar days when liability insurance coverage under RCW 43.216.700 has lapsed or been terminated.

#### NEW SECTION

**WAC 170-300-0435 Waiver from department rules—WAC.** (1) The department cannot waive a requirement of state law (RCW) or federal law.

(2) Pursuant to RCW 43.216.065, the department may approve a waiver from a rule in this chapter if it does not jeopardize the health, safety, or welfare of the children in care.

(3) An early learning provider's request for a waiver from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the local licensing office;

(b) Approved in writing by the department director or the director's designee prior to the early learning provider implementing the waiver from the rule; and

(c) For a specific program need or child.

(4) A granted waiver may be time specific or may remain in effect for as long as the early learning provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted waiver if a licensing rule which was considered in granting the waiver is materially altered or amended.

#### NEW SECTION

**WAC 170-300-0436 Variance from department rules—WAC.** (1) The department cannot provide variance from a requirement in state (RCW) or federal law.

(2) Upon written request of an applicant, licensee, center director, assistant director, or program supervisor, the department may grant a variance from a rule in this chapter if the proposed program alternative does not jeopardize the health, safety, or welfare of the children in care.

(3) A request for variance from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the local licensing office;

(b) Approved in writing by the department director or the director's designee prior to the early learning provider implementing the variance from the rule; and

(c) For a specific program approach or methodology.

(4) A granted variance may be time specific or may remain in effect for as long as the early learning provider continues to comply with the conditions of the variance. If the variance from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted variance if a licensing rule which was considered in granting the variance is materially altered or amended.

#### NEW SECTION

**WAC 170-300-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and provider rights.** (1) At the department's discretion, when an early learning provider is in violation of this chapter or chapter 43.216 RCW, a facility licensing compliance agreement (FLCA) may be issued in lieu of the department taking enforcement action. The FLCA must contain:

(a) A description of the violation and the law or rule that was violated;

(b) A proposed plan from the provider or a designee to comply with the law or rule;

(c) The date the violation must be corrected, determined by:

(i) The seriousness of the violation;

(ii) The potential threat to the health, safety, and well-being of the children in care; and

(iii) The number of times the early learning program has violated rules in this chapter or under chapter 43.216 RCW.

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date;

(e) The signature of the department licensor and the licensee.

(2) An early learning provider must return a copy of the completed FLCA to the department after corrective action has been completed and by the date indicated.

(3) An early learning provider may request an internal review process regarding the violation of department rules pursuant to RCW 43.216.395.

(4) In an enforcement action against an early learning program or provider, the provider has the right to:

(a) Refuse to accept or sign a FLCA.

(b) Refuse to agree to a probationary license.

(5) If an early learning provider refuses a FLCA or probationary license, this may result in any of the following enforcement actions:

(a) Modification of the license;

(b) Noncontinuation of a nonexpiring license;

(c) Suspension of the license;

(d) Revocation of the license; or

(e) Civil penalties.

(6) The department may place an early learning provider on nonreferral status, pursuant to RCW 43.216.325(4), in addition to or in lieu of an enforcement action under this chapter.

(7) A probationary license may be issued to an early learning provider or program operating under a nonexpiring license as part of a corrective action plan. Prior to issuing a probationary license, the department must refer the program or provider for technical assistance, pursuant to RCW 43.216.320(2).

(8) A department decision to issue a probationary license is based on an early learning program or provider's:

(a) Negligent or intentional noncompliance with the licensing rules;

(b) History of noncompliance with licensing rules;

(c) Current noncompliance with licensing rules;

(d) Fire safety inspection or health and sanitation inspection report that failed to gain approval;

- (e) Use of unauthorized space for child care;
  - (f) Inadequate supervision of children;
  - (g) Understaffing for the number of children in care;
  - (h) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation or personal hygiene practices; and
  - (i) Any other factors relevant to the specific situation and consistent with the intent or purpose of chapter 43.216 RCW.
- (9) When the department issues a probationary license, the early learning provider must:
- (a) Provide notice of the probationary license and a copy of the department's probationary licensing agreement to the parents or guardians of enrolled children within five business days of receiving the probationary license;
  - (b) Provide documentation to the department that parents or guardians of enrolled children have been notified within ten business days of receiving the probationary license;
  - (c) Inform new parents or guardians of the probationary status before enrolling new children into care;
  - (d) Return the early learning program's nonexpiring license to the department; and
  - (e) Post documentation of the approved written probationary license as required by RCW 43.216.687.
- (10) Pursuant to RCW 43.216.689, an early learning provider must have inspection reports and notices of enforcement actions for the past three years readily available for review by the department, parents, and the public.

#### NEW SECTION

**WAC 170-300-0443 Enforcement actions, notice, and appeal.** (1) Pursuant to RCW 43.216.325, the department is authorized to take enforcement actions when an early learning provider fails to comply with this chapter or chapter 43.216 RCW. Enforcement actions are taken pursuant to RCW 43.216.020, 43.216.065, and 43.216.250. Enforcement actions include civil monetary penalties (fines) and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An early learning provider subject to an enforcement action has the right to appeal by requesting an adjudicative proceeding (or "hearing") pursuant to chapter 170-03 WAC, DEL hearing rules, as hereafter recodified or amended.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent by certified mail or personal service and must include:

- (a) The reason why the department is taking the action;
  - (b) The rules the provider failed to comply with;
  - (c) The provider's right to appeal enforcement actions; and
  - (d) How the provider may appeal and request a hearing.
- (4) Fines shall not exceed two hundred fifty dollars per day per violation for center early learning programs or one hundred fifty dollars per day per violation for family home early learning programs, or as otherwise set by the legislature. Fines may be:

(a) Assessed and collected with interest for each day a violation occurs;

(b) Imposed in addition to other enforcement actions; and

(c) Withdrawn or reduced if an early learning provider comes into compliance during the notification period.

(5) An early learning provider must pay fines within twenty-eight calendar days after receiving a notice of violation unless:

(a) The office of financial recovery establishes a payment plan for the provider; or

(b) The provider requests a hearing, pursuant to chapter 170-03 WAC, DEL hearing rules, as hereafter recodified or amended, and RCW 43.216.335(3).

(6) The department may suspend or revoke a license if an early learning provider fails to pay a fine within twenty-eight calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for annual compliance, the department may elect not to continue the license for failure to pay a fine.

### **RECORDS, POLICIES, REPORTING AND POSTING**

#### NEW SECTION

**WAC 170-300-0450 Parent or guardian handbook and related policies.** (1) An early learning provider must supply to each parent or guardian written policies regarding the early learning program. Each enrolled child's record must have signed documentation stating the parent or guardian reviewed the handbook and early learning program policies.

(2) An early learning provider must have and follow formal written policies in either paper or electronic format, including:

- (a) A nondiscrimination statement;
- (b) A family engagement and partnership communication plan;
- (c) A parent or guardian's permission for photography, videotaping, or surveillance of his or her child;
- (d) Alcohol, tobacco, cannabis use and prohibition of illegal drugs;
- (e) Curriculum philosophy on how children learn and develop, and how this philosophy is implemented;
- (f) Child guidance plan, which includes restraint policies and forbidding corporal punishment;
- (g) Expulsion policy;
- (h) Early learning program staff-to-child ratios and classroom types offered, if applicable;
- (i) If the early learning program offers any of the following, they must include a policy for each that applies to their program:
  - (i) Care for children with specific or special needs;
  - (ii) Infant and toddler care, covering:
    - (A) Diapering;
    - (B) Feeding;
    - (C) Toilet training;
    - (D) Child sleep pattern; and
    - (E) Safe sleep requirements.
  - (iii) Dual language learning;
  - (iv) Religious and cultural activities, including how holidays will be celebrated;
  - (v) Transportation and off-site field trips;

- (vi) Water activities;
- (vii) Overnight care; and
- (viii) How weapons on the premises are secured.
- (j) Program days and hours of operation, including closure dates and observed holidays;
- (k) Enrollment and disenrollment requirements;
- (l) Fees and payment plans;
- (m) Sign-in and sign-out requirements;
- (n) Information required for the child's record, including:
  - (i) The importance and plan for keeping the information current;
  - (ii) A plan to keep the child's information confidential; and
  - (iii) Who may legally access the child's information.
- (o) A kindergarten transition plan, if applicable;
- (p) What parents or guardians must supply for their child (for example: Extra clothing or diapers);
- (q) Permission for a parent or guardian's access to areas of the early learning program during business hours;
- (r) Termination of services policy;
- (s) Emergency preparedness plan;
- (t) The early learning provider and program staff's duty to report incidents including reporting suspected child abuse, neglect, sexual abuse, or maltreatment;
- (u) Policies regarding mixed age groups, if applicable (including when children may be in a mixed age group);
- (v) Description of where the parent or guardian may find and review the early learning program's:
  - (i) Health policy;
  - (ii) Staff policies, if applicable;
  - (iii) Consistent care policy;
  - (iv) Menus;
  - (v) Liability insurance;
  - (vi) Inspection reports and notices of enforcement actions, if applicable; and
  - (vii) Other relevant program policies.

#### NEW SECTION

**WAC 170-300-0455 Attendance records.** (1) An early learning provider may keep a child in care up to a maximum of ten hours each day. If needed, the maximum time may be extended based upon the parent or guardian's work, an agreed upon alternate schedule, or travel to and from the early learning program.

(2) An early learning provider must keep daily child attendance records, either in paper or electronic format, for each child (including the children of staff in the program). These records must be easily accessible and kept on-site or in the program's administrative office for department review. These records must clearly document:

- (a) The name of the child;
- (b) The date of care;
- (c) Child arrival and departure times from the early learning program;
- (d) Signature or electronic signature of parent, guardian or other authorized person at the time of arrival and departure; and

(e) A staff signature when a child leaves the early learning program to attend school or participate in off-site activities not offered by the early learning program.

(3) An early learning provider must keep daily staff attendance records for each center classroom or family home program. These attendance records must be on paper or in an electronic format and clearly document:

- (a) The name of each staff member (including staff assigned to care for children with special needs and one-on-one care) and volunteers;
- (b) The number of children in each classroom or family home program;
- (c) The staff-to-child ratio;
- (d) The date; and
- (e) Start and end times of the assigned staff or volunteers.

(4) If the attendance records are kept electronically, the electronic system must:

(a) Record either an electronic signature, swipecard, personal identification number (PIN), biometric reader, or similar action by the parent or authorized person when signing the child in or out of care (or staff notation of who picked up or dropped off along with time in and out if authorized person does not have electronic signature, swipe card, PIN, biometric reader or similar action);

(b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against disproof of the electronic records;

(c) Be able to produce an authentic, verifiable and uniquely identified written record for each transaction;

(d) Be able to authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;

(e) Be able to capture an electronic record for each transaction conducted;

(f) Be able to retain the electronic record in an accessible form for their legal minimum retention period;

(g) Be able to search and retrieve electronic records in the normal course of business; and

(h) Be able to perform in an accurate, reliable, and consistent manner in the normal course of business.

(5) Electronic attendance records must contain information necessary to reproduce the entire electronic record and associated signatures in a form that permits a person viewing or printing the entire electronic record to verify:

(a) The contents of the electronic record;

(b) The person signing the electronic record; and

(c) The date signatures were executed.

#### NEW SECTION

**WAC 170-300-0460 Child records.** (1) An early learning provider must keep current individualized enrollment and health records for all enrolled children, including children of staff, updated annually or more often as health records are updated.

(a) A child's record must be kept in a confidential manner but in an area easily accessible to staff.

(b) A child's parent or guardian must be allowed access to all of his or her own child's records.

(2) Each child's enrollment record must include the following:

- (a) The child's birth date;
  - (b) An enrolled child's parent or phone numbers, address, and contact information for reaching the family while the child is in care;
  - (c) Emergency contact information. If no emergency contact is available, a written and signed emergency contact plan may be accepted;
  - (d) Names and phone numbers of persons authorized to pickup enrolled children;
  - (e) A plan for special or individual needs of the child, if applicable, including parent or guardian signature, pursuant to WAC 170-300-0300;
  - (f) Signed parent or guardian permissions, pursuant to WAC 170-300-0450 as applicable for:
    - (i) Field trips;
    - (ii) Transportation;
    - (iii) Bathing;
    - (iv) Water activities including swimming pools or other bodies of water; and
    - (v) Photo, video, or surveillance activity.
  - (g) The beginning and end enrollment date for children no longer in the early learning program's care;
  - (h) A parent or guardian approved plan for use of physical restraint and documentation of parental or guardian notification;
  - (i) Expulsion information, documentation, and steps taken to avoid expulsion;
  - (j) Termination of services documentation and communication; and
  - (k) Notification of child developmental screening information given to the child's parent or guardian, if applicable.
- (3) Each child's health record and the information described in subsection (2)(a) through (e) of this section must be available to staff for medical administration or emergencies.
- (4) A health record is required for every child who is enrolled and counted in an early learning program's capacity. A health record must include:
- (a) An immunization record, pursuant to WAC 170-300-0210(1);
  - (b) The child's health history including any known health conditions and the child's individual care plan, if applicable;
  - (c) A medication authorization and administration log, pursuant to WAC 170-300-0215, if applicable;
  - (d) Documentation of special medical procedure training by parent or guardian, if applicable;
  - (e) Medical and dental care provider names and contact information or what facility the parent or guardian would prefer for treatment;
  - (f) Dates of the child's last physical exam and dental exam, if available;
  - (g) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian;
  - (h) Signed parent or guardian permission for visiting health professionals who provide direct services to children at the early learning program;

- (i) An incident or injury report that includes:
  - (i) The date and description of the child's incident or injury;
  - (ii) Treatment provided to the child while in care;
  - (iii) The names of the early learning program staff providing the treatment; and
  - (iv) Evidence that a copy of the incident or injury report was given to the child's parent or guardian.
- (j) Documentation that a provider reported food poisoning or contagious diseases to the local health jurisdiction or the department of health, if applicable.

#### NEW SECTION

##### **WAC 170-300-0470 Emergency preparedness plan.**

- (1) An early learning provider must have and follow a written emergency preparedness plan. The plan must be reviewed and approved by the department prior to when changes are made. Emergency preparedness plans must:
- (a) Be designed to respond to fire, natural disasters, and other emergencies that might affect the early learning program;
  - (b) Be specific to the early learning program and able to be implemented during hours of operation;
  - (c) Address what the provider would do if he or she has an emergency and children may be left unsupervised;
  - (d) Address what the early learning program must do if parents are not able to get to their children for up to three days;
  - (e) Must follow requirements in chapter 212-12 WAC, Fire marshal standards, as now or hereafter amended and the state fire marshal's office requirements if a center early learning program;
  - (f) Be reviewed at program orientation, annually with all early learning program staff with documented signatures, and when the plan is updated; and
  - (g) Be reviewed with parents or guardians when a child is enrolled and when the plan is updated.
- (2) The written emergency preparedness plan must cover at a minimum:
- (a) Disaster plans, including fires that may require evacuation:
    - (i) An evacuation floor plan that identifies room numbers or names of rooms, emergency exit pathways, emergency exit doors, and for family home based programs, emergency exit windows if applicable;
    - (ii) Methods to be used for sounding an alarm and calling 911;
    - (iii) Actions to be taken by a person discovering an emergency;
    - (iv) How the early learning provider will evacuate children, especially those who cannot walk independently. This may include infant evacuation cribs (for center early learning programs), children with disabilities, functional needs requirements, or other special needs;
    - (v) Where the alternate evacuation location is;
    - (vi) What to take when evacuating children, including:
      - (A) First-aid kit(s);
      - (B) Copies of emergency contact information;
      - (C) Child medication records; and

(D) Individual children's medication, if applicable.

(vii) How the provider will maintain the required staff-to-child ratio and account for all children;

(viii) How parents or guardians will be able to contact the early learning program; and

(ix) How children will be reunited with their parents or guardians after the event.

(b) Earthquake procedures including:

(i) What a provider will do during an earthquake;

(ii) How a provider will account for all children; and

(iii) How a provider will coordinate with local or state officials to determine if the licensed space is safe for children after an earthquake.

(c) Public safety related lockdown scenarios where an individual at or near an early learning program is harming or attempting to harm others with or without a weapon. This plan must include lockdown of the early learning program or shelter-in-place steps including:

(i) How doors and windows will be secured to prevent access, if needed; and

(ii) Where children will safely stay inside the early learning program.

(d) How parents or guardians will be contacted after the emergency ends.

(3) An early learning provider must keep on the premises a three day supply of food, water, and life-sustaining medication for the licensed capacity of children and current staff for use in case of an emergency.

(4) An early learning provider must practice and record emergency drills with staff and children as follows:

(a) Fire and evacuation drill once each calendar month;

(b) Earthquake, lockdown, or shelter-in-place drill once every three calendar months;

(c) Emergency drills must be conducted with a variety of staff and at different times of the day, including in the evening and during overnight hours for early learning programs that care for children during those hours; and

(d) Drills must be recorded on a department form and include:

(i) The date and time of the drill;

(ii) The number of children and staff who participated;

(iii) The length of the drill; and

(iv) Notes about how the drill went and how it may be improved.

(5) In areas where local emergency plans are already in place, such as school districts, an early learning program may adopt or amend such procedures when developing their own plan.

#### NEW SECTION

**WAC 170-300-0475 Duty to protect children and report incidents.** (1) Pursuant to RCW 26.44.030, when an early learning provider has reasonable cause to believe that a child has suffered abuse or neglect, that provider must report such incident, or cause a report to be made, to the proper law enforcement agency or the department. "Abuse or neglect" has the same meaning here as in RCW 26.44.020.

(2) An early learning provider must report by phone upon knowledge of the following to:

(a) Law enforcement or the department at the first opportunity, but in no case longer than forty-eight hours:

(i) The death of a child while in the early learning program's care or the death from injury or illness that may have occurred while the child was in care;

(ii) A child's attempted suicide or talk about attempting suicide;

(iii) Any suspected physical, sexual or emotional child abuse;

(iv) Any suspected child neglect, child endangerment, or child exploitation;

(v) A child's disclosure of sexual or physical abuse; or

(vi) Inappropriate sexual contact between two or more children.

(b) Emergency services (911) immediately, and to the department within twenty-four hours:

(i) A child missing from care, triggered as soon as staff realizes the child is missing;

(ii) A medical emergency that requires immediate professional medical care;

(iii) A child who is given too much of any oral, inhaled, or injected medication;

(iv) A child who took or received another child's medication;

(v) A fire or other emergency;

(vi) Poisoning or suspected poisoning; or

(vii) Other dangers or incidents requiring emergency response.

(c) Washington poison center immediately after calling 911, and to the department within twenty-four hours:

(i) A poisoning or suspected poisoning;

(ii) A child who is given too much of any oral, inhaled, or injected medication; or

(iii) A child who took or received another child's medication;

(iv) The provider must follow any directions provided by Washington poison center.

(d) The local health jurisdiction or the department of health immediately, and to the department within twenty-four hours about an occurrence of food poisoning or reportable contagious disease as defined in chapter 246-110 WAC, as now or hereafter amended;

(e) The department at the first opportunity, but in no case longer than twenty-four hours, upon knowledge of any person required by chapter 170-06 WAC, as hereafter recodified or amended, to have a change in their background check history due to:

(i) A pending charge or conviction for a crime listed in chapter 170-06 WAC, as hereafter recodified or amended;

(ii) An allegation or finding of child abuse, neglect, maltreatment or exploitation under chapter 26.44 RCW or chapter 388-15 WAC;

(iii) An allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) A pending charge or conviction of a crime listed in the director's list in chapter 170-06 WAC, as hereafter recodified or amended, from outside Washington state, or a "negative action" as defined in RCW 43.216.010.

(3) In addition to reporting to the department by phone or email, an early learning provider must submit a written inci-

dent report of the following on a department form within twenty-four hours:

(a) Situations that required an emergency response from emergency services (911), Washington poison center, or department of health;

(b) Situations that occur while children are in care that may put children at risk including, but not limited to, inappropriate sexual touching, neglect, physical abuse, maltreatment, or exploitation; and

(c) A serious injury to a child in care.

(4) An early learning provider must immediately report to the parent or guardian:

(a) Their child's death, serious injury, need for emergency or poison services; or

(b) An incident involving their child that was reported to the local health jurisdiction or the department of health.

#### NEW SECTION

**WAC 170-300-0480 Transportation and off-site activity policy.** (1) An early learning provider must have and follow a transportation and off-site activity policy for personal or public transportation service, or nonmotorized travel offered to children in care.

(a) The transportation and off-site activity policy must include routine trips, which must not exceed two hours per day for any individual child.

(b) Written parent or guardian authorization to transport the parent or guardian's child. The written authorization must be:

(i) A specific event, date, and anticipated travel time;

(ii) A specific type of trip (for example, transporting to and from school, or transporting to and from a field trip); or

(iii) A full range of trips a child may take while in the early learning provider's care.

(c) Written notices to parents or guardians, to be given at least twenty-four hours before field trips are taken.

(2) During travel to an off-site activity, an early learning provider must:

(a) Have the health history, appropriate medication (if applicable), emergency information, and emergency medical authorization forms accessible for each child being transported;

(b) Have a phone to call for emergency help;

(c) Have a complete first-aid kit;

(d) Maintain the staff-to-child ratio, mixed groupings, and active supervision requirements;

(e) Have at least one staff member currently certified in first aid and CPR supervise children;

(f) Take attendance using a roll call or other method that assures all children are accounted for each time children begin and end travel to an off-site activity, and every time children enter and exit a vehicle; and

(g) Never leave children unattended in the vehicle.

(3) When an early learning provider supplies the vehicle to transport children in care, the program and provider must:

(a) Follow chapter 46.61 RCW, Rules of the road, and other applicable laws regarding child restraints and car seats;

(b) Assure that the number of passengers does not exceed the seating capacity of the vehicle;

(c) Maintain the vehicle in good repair and safe operating condition;

(d) Maintain the vehicle temperature at a comfortable level to children;

(e) Assure the vehicle has a current license and registration as required by Washington state transportation laws;

(f) Assure the vehicle has emergency reflective triangles or other devices to alert other drivers of an emergency;

(g) Assure the driver has a valid driver's license for the type of vehicle being driven and a safe driving record for at least the last five years;

(h) Prevent any driver with a known condition that would compromise driving, supervision, or evacuation capabilities from operating program vehicles; and

(i) Have a current insurance policy that covers the driver, the vehicle, and all occupants.

#### NEW SECTION

**WAC 170-300-0485 Termination of services policy.** An early learning provider may terminate a child's services due to that child's parent or guardian's inability to meet the expectations and requirements of the early learning program. Expectations and requirements of the program may include unpaid bills, continual late arrivals, or a parent, guardian or family member's inappropriate or unsafe behavior in or near early learning program space.

#### NEW SECTION

**WAC 170-300-0486 Expulsion policy.** (1) An early learning provider must have and follow an expulsion policy, pursuant to WAC 170-300-0340.

(2) An expulsion policy must:

(a) Provide examples of behavior that could lead to expulsion from the early learning program;

(b) Detail steps the provider takes to avoid expelling a child including, but not limited to, environmental and staffing changes;

(c) Detail how the provider communicates to the parent or guardian of a child the steps taken under (b) of this subsection; and

(d) Include information that may benefit an expelled child including, but not limited to, community based resources.

#### NEW SECTION

**WAC 170-300-0490 Child restraint policy.** (1) An early learning provider must have and follow a child restraint policy that contains behavior management and practices, pursuant to WAC 170-300-0335.

(2) A restraint policy must be:

(a) Appropriate for children's developmental level, abilities, and language skills;

(b) Directly related to the child's behavior; and

(c) Designed to be consistent, fair, and positive.

(3) Family home licensees, center directors, assistant directors, program supervisors, lead teachers and other appropriate staff members must be trained annually in the program's child restraint policy.

(4) Only trained staff may restrain a child in care in accordance with WAC 170-300-0335.

#### NEW SECTION

**WAC 170-300-0495 Consistent care policy.** (1) An early learning program must have and follow a policy that promotes the consistent care of children.

(2) When possible, an early learning provider must be assigned to work with a consistent group of children for much of the day with a goal of building long-term, trusting relationships.

#### NEW SECTION

**WAC 170-300-0500 Health policy.** (1) An early learning provider must have and follow a written health policy reviewed and approved by the department that includes the topics listed in subsection (2) of this section. The health policy must be reviewed and approved by the department when changes are made, and as otherwise necessary.

(2) An early learning program's health policy must meet the requirements of this chapter including, but not limited to:

- (a) A prevention of exposure to blood and body fluids plan;
- (b) Meals, snacks, and food services including guidelines for food allergies and food brought from home;
- (c) Handwashing and hand sanitizer use;
- (d) Observing children for signs of illness daily;
- (e) Exclusion and return of ill children, staff, or any other person in the program space;
- (f) Contagious disease notification;
- (g) Medical emergencies, injury treatment and reporting;
- (h) Immunization tracking;
- (i) Medication management, storage, administration and documentation;
- (j) Care for pets and animals that have access to licensed space and the health risks of interacting with pets and animals;
- (k) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, toiletting equipment, and laundry will be cleaned, sanitized and disinfected;
- (l) Pest control policies;
- (m) Caring for children with special needs or health needs, including allergies, as listed in the child's record; and
- (n) Dental hygiene practices and education.

#### NEW SECTION

**WAC 170-300-0505 Postings.** (1) Postings listed in subsection (2) of this section that are part of an early learning program must be clearly visible to parents, guardians, and early learning program staff.

(2) Postings on early learning premises must include:

- (a) The child care license, pursuant to WAC 170-300-0010;
- (b) Floor plan with emergency routes and exits identified in each child care area, pursuant to WAC 170-300-0400 (1)(b)(i) and 170-300-0470 (2)(a)(i);

(c) Dietary restrictions, known allergies, and nutrition requirements, if applicable, in a location easily accessible for staff but not available to those who are not parents or guardians of the enrolled child, pursuant to WAC 170-300-0186 (8);

(d) Handwashing practices at each handwashing sink, pursuant to WAC 170-300-0200(1);

(e) If applicable, diaper changing or stand-up diapering procedure at each diapering station, pursuant to WAC 170-300-0220 and 170-300-0221 (1)(d);

(f) Pesticide treatment, if applicable, pursuant to RCW 43.216.280 and 17.21.410 (1)(d);

(g) Emergency numbers and information including, but not limited to:

- (i) 911 or emergency services number;
  - (ii) Name, address and directions from the nearest arterial street or nearest cross street to the facility;
  - (iii) The department's toll-free number;
  - (iv) Washington poison center toll-free number; and
  - (v) The department's child protective services.
- (h) The location of emergency medical information for children and staff;

(i) A notice of any current or pending enforcement action, including probationary licenses pursuant to RCW 43.216.687. Notice must be posted:

- (i) Immediately upon receipt; and
- (ii) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer.

(j) A notice of safe sleep violation in the licensed space as required by WAC 170-300-0291(2), if applicable;

(k) "No smoking" and "no vaping" signs, pursuant to WAC 170-300-0420 (2)(f);

(l) A copy of a department approved waiver or variance from a rule of this chapter, if applicable. Waivers or variances must be posted for parent or guardian view when related to the overall program (not related to any specific child), and as long as the waiver or variance is approved;

(m) Insurance coverage, or a lapse or termination of such coverage if applicable, pursuant to RCW 43.216.700; and

(n) Any other information listed in RCW 43.216.687.

**AMENDATORY SECTION** (Amending WSR 17-10-032, filed 4/26/17, effective 5/27/17)

**WAC 170-300-0005 Definitions.** The following definitions apply to this chapter:

**"Accessible to children"** means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

**"Accommodations"** means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

**"Active supervision"** or **"actively supervise"** means ((focused attention and intentional observation of children at all times. An early learning provider must position themselves to observe all children. Watching, counting, and listening at all times. They also use their knowledge of each child's development and abilities to anticipate what a child may do, and get involved or redirect children if necessary. Infants,

toddlers, and preschoolers must be supervised at all times including daily routines such as sleeping, eating, changing diapers, or using the bathroom)) a heightened standard of care beyond supervision. This standard requires an early learning provider to see and hear the children they are responsible for during higher risk activities. The provider must be able to prevent or instantly respond to unsafe or harmful events.

**"ADA"** refers to the Americans with Disabilities Act, as now and hereafter amended.

**"Aide"** is a person who offers support to the early learning program staff.

**"Allergy" or "allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

**"Annual"** means the calendar year, January 1st through December 31st.

**"Applicant"** means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

**"Appropriate"** when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

**"Appropriately"** means correct or properly suited for a particular situation.

**"Assistant director"** is a person responsible for the overall management of the center early learning program including the facility and operations.

**"Assistant teacher"** is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

**"ASTM"** refers to the American Society for Testing and Materials.

**"Bathroom"** means a room containing a built-in, flush-type toilet.

**"Bias"** means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

**"Body of water" or "bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

**"CACFP"** means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

**"Cannabis"** (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

**"Capacity"** means the maximum number of children an early learning provider is authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

**"Center early learning program"** is a facility providing regularly scheduled care for a group of children birth through twelve years of age for periods of less than twenty-four hours a day, pursuant to RCW 43.216.010 (1)(a) (child day care center).

**"Center early learning program licensee" or "center licensee"** means an entity licensed and authorized by the department to operate a center early learning program.

**"Certificate of exemption (COE)"** means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(2), or an immunization form produced by the state immunization information system.

**"Certificate of immunization status (child)"** means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(1), or an immunization form produced by the state immunization information system.

**"Certification"** means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

**"Child"** means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

**"Child abuse" or "neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

**"Child care"** refers to supervision of children outside the child's home for periods of less than twenty-four hours a day.

**"Child care basics" or "CCB"** means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

**"Chromated copper arsenate" or "CCA"** is a wood preservative and insecticide that contains roughly twenty-two percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and ((playgroup)) playground equipment. Information about the health hazards of arsenic can be found ((at the following DOH web site: <http://www.doh.wa.gov/CommunityandEnvironment/Contaminants/Arsenic>).

**"Department" or "DEL"** refers to the Washington state department of early learning.

**"DOH"** refers to the Washington state department of health)) on the department of health's web site.

**"Clean" or "cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent



solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

**"Confidential"** means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

**"Consistent care"** means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

**"Contagious disease"** means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. The Washington state department of health publishes a list of contagious diseases.

**"Continuous"** means without interruptions, gaps, or stopping.

**"Core competencies"** are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

**"CPSC"** means the United States Consumer Product Safety Commission.

**"Cultural"** or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

**"Curriculum philosophy"** means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

**"DCYF"** or **"the department"** refers to the Washington state department of children, youth, and families.

**"Developmental screening"** is the use of standardized tools to identify a child at risk of a developmental delay or disorder. (Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009).

**"Developmentally appropriate"** means:

(a) An early learning provider interacts with each child in a way that recognizes and respects the child's chronological and developmental age;

(b) Knowledge about how children grow and learn;

(c) Reflects the developmental level of the individual child; and

(d) Interactions and activities are planned with the developmental needs of the individual child in mind.

**"Director"** means the person responsible for the overall management of a center early learning program including the facility and operation.

**"Disability"** or **"disabilities"** has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

**"Discipline"** means a method used to redirect a child in order to achieve a desired behavior.

**"Disinfectant"** means a chemical liquid used to destroy bacteria.

**"Disinfect"** means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(b) Other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

**"Drinking water"** or **"potable water"** is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

**"Dual language learners"** refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

**"Early achievers"** is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

**"Early childhood education (ECE) initial certificate"** (twelve quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

**"Early childhood education (ECE) short certificate"** (initial certificate plus eight quarter credits) is Washington's short certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

**"Early childhood education (ECE) state certificate"** (short certificate plus twenty-seven quarter credits) is Washington's state certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

**"Early learning program"** refers to regularly scheduled care for a group of children birth through twelve years of age for periods of less than twenty-four hours, licensed by the department.

**"Early learning program space"** means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

**"Early learning program staff"** refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

**"Early learning provider"** or **"provider"** refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center directors, assistant directors, program supervisors, lead teachers, assistants, ((instructional aides,)) aides, and volunteers.

**"ECEAP" or "early childhood education and assistance program"** is a comprehensive preschool program that provides free services and support to eligible children and their families.

**"Electronic record"** means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

**"Electronic signature"** means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

**"Electronic workforce registry"** refers to the Washington state department of children, youth, and families' current database of professional records of individual early learning providers.

**"Emergency preparedness"** means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

**"Enforcement action"** means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 170-03 WAC, as hereafter recodified or amended.

**"EPA"** means the United States Environmental Protection Agency.

**"Equivalency"** when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

**"Exempt" or "exemption"** in regards to immunizations means a type of immunization status approved by the Washington state department of health where a child has not been fully immunized against one or more vaccine preventable diseases due to medical, religious, philosophical or personal reasons.

**"Expel" or "expulsion"** means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

**"Family home early learning program"** means an early learning program licensed by the department where a family home licensee provides child care or education services for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216.010 (1)(c) (family day care provider).

**"Family home early learning program licensee" or "family home licensee"** means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

**"Family living quarters"** means a family home licensee or applicant's residence and other spaces or building on the premises.

**"Food worker card"** refers to a card issued by the Washington state department of health that permits a trained individual to safely and appropriately handle food served to the public.

**"Foundational quality standards"** refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

**"Good repair"** means about eighty percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

**"Health care provider"** means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

**"Household member"** means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

**"Immunization"** is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

**"Inaccessible to children"** means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

**"Inactive"** when used by the department to indicate a licensing status, means early learning providers who have requested and have been approved to temporarily cease caring for children and close their early learning program.

**"Individual care plan"** means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

**"Infant"** is a child birth through eleven months of age.

**"In-service training"** means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an early learning provider.

**"Internal review process"** has the same meaning in this chapter as in RCW 43.216.395, as now or hereafter amended.

**"Lead teacher"** means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

**"License"** means a permit issued by the department legally authorizing an applicant to operate an early learning program.

**"Licensed space"** means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

**"Licensee"** means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

**"Lockdown"** means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

**"Locking mechanism"** means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

**"Modification"** when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

**"Nonexpiring license"** means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

**"Operating hours"** means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

**"Parent"** or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

**"Peer interaction"** refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

**"Personal needs"** means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

**"Pest"** means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

**"Pesticide"** refers to chemicals used to kill pests.

**"Pet"** means a domestic or tamed animal or bird kept for companionship or pleasure.

**"Physical barrier"** means a nonclimbable fence or a wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

**"Physical restraint"** means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

**"Poison"** includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

**"Premises"** means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

**"Preschool-age children"** means children thirty months through six years of age not attending kindergarten or elementary school.

**"Preservice training"** means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

**"Private septic system"** means a septic system that is not connected to a public sewer system maintained by a government agency. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

**"Probationary license"** has the same meaning as in RCW 43.216.010(23).

**"Professional development support plan"** is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

**"Program supervisor"** means the center early learning provider responsible for planning and supervising the learning and activity program.

**"RCW"** means the Revised Code of Washington.

**"Readily available"** means able to be used or obtained quickly and easily.

**"Revocation"** or **"revoke"** when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

**"Routine care"** means typical or usual care provided to a child during the time the child is enrolled in the early learning program (for example: Feeding, diapering, toileting, napping, resting, playing, and learning).

**"Safe route"** means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

**"Safety plan"** means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensuror and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the early learning program. Program changes shall be agreed to in writing and signed by all participants at the meeting. Safety plans expire thirty calendar days after being signed by all parties. Safety plans may only be extended for an additional thirty days and extensions may only be authorized by a department supervisor.

**"Sanitize"** means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

**"School-age children"** means a child not less than five years of age through twelve years of age who is attending kindergarten or elementary school.

**"Screen time"** means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

**"Serious injury"** means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requiring professional medical care; poisoning; or an overdose of a chemical substance.

**"Shelter in place"** means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

**"Sign"** means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

**"Sleeping equipment"** includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play" but does not include a car seat or infant swing.

**"Special needs"** is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

**"Staff"** means any early learning provider providing care in the early learning program.

**"Strengthening families program self-assessment"** refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

- (a) Parental resilience;
- (b) Social connections;
- (c) Knowledge of parenting and child development;
- (d) Concrete support in times of need; and
- (e) Social and emotional competence of children.

**"Supervise" or "supervision"** means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of care.

**"Suspend"** when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

**"Swimming pool"** means a pool that has a water depth greater than two feet (24 inches).

**"Technical assistance"** means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

**"Toddler"** means a child twelve months through twenty-nine months of age.

**"Tummy time"** means placing an infant in a nonrestrictive prone position, lying on his or her stomach when not in sleeping equipment.

**"Transition"** is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

**"Unlicensed space"** means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

**"Unsupervised access"** as used throughout this chapter has the same meaning as in WAC 170-06-0020 as hereafter recodified or amended.

**"USDA"** means the U.S. Department of Agriculture.

**"Usable space"** means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

**"Vapor product"** means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

**"Variance"** is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department must grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of request for variance under chapter 170-03 WAC, as hereafter recodified or amended. The provider may challenge a variance disapproval on a department form.

**"Volunteer"** includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person

pursuant to WAC 170-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 170-06-0020 as hereafter recodified or amended.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department must grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 170-03 WAC, as hereafter recodified or amended. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to guidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

## WSR 18-11-090

### PROPOSED RULES

### DEPARTMENT OF

### SERVICES FOR THE BLIND

[Filed May 18, 2018, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-03-015.

Title of Rule and Other Identifying Information: Revisions to existing chapter 67-10 WAC, Public records—Disclosure; chapter 67-16 WAC, Department—General administration; and chapter 67-25 WAC, Vocational rehabilitation and services for blind persons.

Hearing Location(s): On June 26, 2018, at 5:30 - 7:30 p.m., at the Department of Services for the Blind, 3411 South Alaska Street, Seattle, 98118.

Date of Intended Adoption: July 1, 2018.

Submit Written Comments to: Michael MacKillop, 3411 South Alaska Street, Seattle, WA 98118, email michael.mackillop@dsb.wa.gov, info@dsb.wa.gov, by June 26, 2018.

Assistance for Persons with Disabilities: Contact Michael MacKillop, phone 206-906-5520, email michael.mackillop@dsb.wa.gov, by June 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes align agency policy with relevant changes to federal Rehabilitation Act as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA). Substantive changes include: Additional defined terms; required coordination with other federally funded workforce development system partner agencies; clarity on concept of informed choice; required timeline and process changes for eligibility and planned services, including additional consideration of career advancement and deletion of extended evaluation; clarity on competitive and integrated employment concepts; categorization of significance of disability and order of selection criteria; addition of preemployment transition services; items exempt or require comparable benefit consideration; expanded technical assistance for self-employment; added detail about state rehabilitation council; clarity on purpose of background checks for participants; and updated terminology and processes for the agency.

Reasons Supporting Proposal: The changes are required to align with changes in relevant federal laws and regulations.

Statutory Authority for Adoption: WIOA (H.R. 803; Pub.L. 113-128) is a United States public law that incorporates the Rehab Act of 1973 as amended and consolidates job training programs under the Workforce Investment Act of 1998 into a single funding stream.

Rule is necessary because of federal law, WIOA (H.R. 803; Pub.L. 113-128) and Code of Federal Regulations Title 34, Subtitle B, Chapter III, Part 361.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The agency believes these proposed WAC changes are necessary for alignment with federal legislation and regulatory changes.

Name of Proponent: Department of services for the blind, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael MacKillop, 3411 South Alaska Street, Seattle, WA 98118, 206-906-5520.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed to align with federal statute and regulations.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or com-

ply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: [No information supplied by agency].

May 18, 2018  
Michael MacKillop  
Deputy Director

AMENDATORY SECTION (Amending WSR 84-01-040, filed 12/15/83)

**WAC 67-10-010 Purpose.** The department of services for the blind is an agency of state government created by chapter 194, Laws of 1983. It shall hereafter in this chapter be referred to as the "department." The chief executive officer of the department is the director. The director shall be appointed by the governor, with the consent of the senate.

The state rehabilitation council for the blind has the role of advising the department on issues affecting blind individuals across the state (reference WAC 67-10-025). The members are appointed by the governor. Terms are for a period of three years. State rehabilitation council members elect one of their members as chair for a term of one year.

The department's programs provide services statewide. The department has offices located throughout the state.

NEW SECTION

**WAC 67-10-025 State rehabilitation council for the blind.** (1) The purpose of the state rehabilitation council for the blind is to:

- Review, analyze, and advise the department of its responsibilities under The Rehabilitation Act of 1973 including, vocational rehabilitation, business enterprise program, and independent living services;
- Partner with the department in the development and review of the VR state plan goals and priorities, the DSB strategic plan, reports, needs assessments, and program evaluation;
- Conduct a review and analysis of consumer satisfaction as it relates to the functions performed by the department, the services delivered, and outcomes achieved;
- Prepare and submit an annual report to the governor and the RSA commissioner, and make the report available to the public;
- Coordinate with other councils, as specified by The Rehabilitation Act of 1973, including, the state independent living council and centers for independent living;
- Advocate for people who are blind by making recommendations to the governor and the legislature on issues related to the department, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind persons;
- Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the department director;
- Perform other functions consistent with The Rehabilitation Act of 1973, comparable to other functions performed by the council, determined by the council.

(2) Members of the state rehabilitation council for the blind shall be appointed by the governor considering geographic representation, gender, ethnicity and other unique characteristics. Individuals who are blind must constitute a majority of the council.

Membership must also include the following represented groups:

- A consumer organization of the blind; two current or former recipients of vocational rehabilitation services;
- Four representatives of business, labor and industry;
- The state workforce investment board;
- The client assistance program;
- The parent information and training center;
- A current or former qualified vocational rehabilitation counselor who shall be a nonvoting member if currently employed by the department;
- A community rehabilitation program;
- The tribal vocational rehabilitation program;
- The office of the superintendent of public instruction;
- A representative of individuals who are blind who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;
- The Washington state independent living council;
- The executive director of the department who shall be a nonvoting member.

(3) Members are appointed to the state rehabilitation council for the blind for a term of three years. Members may seek reappointment for a second term. No member may serve more than two consecutive full terms, except for the CAP and tribal representative positions, or unless the governor finds it necessary to extend a position for a specified time in order to achieve required representation. If a vacancy occurs due to resignation or withdrawal prior to the end date of the term, the governor may appoint a new member who will serve out the remainder of the position's term to its scheduled end date. A member's term may be ended at any time by the governor.

AMENDATORY SECTION (Amending WSR 88-09-006, filed 4/11/88)

**WAC 67-10-060 Public records officer.** The public records officer for the department shall be ~~((the deputy director, as designated))~~ appointed by the director, for all records maintained by the department whether located at the ~~((central))~~ headquarters office ~~((thereof at Olympia, Washington;))~~ or at such other offices throughout the state maintained by the department. The public records officer shall be located at such central office. The public records officer shall be responsible for implementation of this chapter regarding release of public records, coordinating the staff of the department in this regard, generally insuring compliance by the staff with the public records disclosure requirements of RCW 42.17.250 through 42.17.320, and maintaining the records index of the department as required.

AMENDATORY SECTION (Amending WSR 84-01-040, filed 12/15/83)

**WAC 67-10-080 Office hours.** Public records shall be available for inspection and copying during the customary office hours of the department. For purposes of this chapter,

the customary office hours shall be from 8:00 a.m. to ~~((4:30))~~ 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 84-01-040, filed 12/15/83)

**WAC 67-10-170 ((Form 1—Request for inspection of records.)) Public records request.**

(( .....  
Request number

.....  
Date requested

.....  
Date provided

.....  
(For office use only)

WASHINGTON DEPARTMENT OF SERVICES FOR THE BLIND  
Request for Inspection of Records

The information requested in Blocks 1 through 6 is not mandatory, however, the completion of these blocks will enable this office to expedite your request and contact you should the record you seek not be immediately available.

1. Name	4. Phone number
2. Address	5. Representing (if applicable)
3. Zip code	6. If urgent - date needed

Below please state what record(s) you wish to inspect and be as specific as possible. If you are uncertain as to the type or identification of specific record or records we will assist you.

I certify that the information requested from the above record(s) will not be part of a list of individuals to be used for commercial purposes.

Signed.....  
Date .....

A public records request form is available for inspection of records and copies of information requested. The requestor provides contact information including name, phone number, address, email address, and a description of the records.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 67-10-020 Description of organization of the department.
- WAC 67-10-030 Location of established places.

- WAC 67-10-040 Operations and procedures.
- WAC 67-10-160 Adoption of forms.
- WAC 67-10-180 Form 2—Request for photocopy of record(s).

AMENDATORY SECTION (Amending WSR 84-01-041, filed 12/15/83)

**WAC 67-16-010 Physical and informational accessibility.** ~~((1) No otherwise qualified handicapped individual shall, solely by reason of handicap, be excluded from participation, be denied benefits of, or be subjected to discrimination under any department provided program or activity.~~

~~(2) No handicapped person will be subjected to discrimination because department provided facilities are inaccessible to or unusable by handicapped persons. Any construction or alteration to any present or future locations or facility, on behalf of or for the use of the department, will be readily accessible to and useable by handicapped persons.~~

~~(3) No person shall be denied access to department information, records or materials solely on the basis of his/her inability to utilize such information, records or materials in a customary manner.)~~ (1) It is the policy of the department of services for the blind that persons shall not be discriminated against (in employment or service) because of race, color, creed, religion, national origin, sexual orientation, age, sex, presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal by a person with a disability, disabled veteran status or Vietnam era veteran status, recently separated veteran status, or other protected veteran status and (in employment only) because of marital status.

(2) It is a violation of this nondiscrimination policy when inequitable practices, based on factors listed in subsection (1) of this section, occur in service delivery or employment. Some of these practices include: Denial of services or benefits; refusal to hire or promote; failure to provide appropriate interpreter services including American sign language (ASL); limiting access to services because of inaccessible facilities; failure to make reasonable accommodations to allow full participation of persons with disabilities in all programs, activities, and services; denial of the opportunity to act as a consultant or volunteer, or serve on committees and boards.

(3) The department nondiscrimination policy is consistent with Titles VI and VII of the Civil Rights Act of 1964, as amended in 1972; Executive Order 11250; sections 503 and 504 of The Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975; the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act, as amended; the Americans With Disabilities Act of 1990; the Civil Rights Act of 1991; the Washington State Law Against Discrimination, chapter 49.60 RCW; Affirmative Action, chapter 49.74 RCW; and Policy 188 - Accessibility, Office of the Chief Information Officer.

AMENDATORY SECTION (Amending WSR 04-12-029, filed 5/26/04, effective 7/1/04)

**WAC 67-16-020 Purpose and definition.** The authority for conducting background checks on contractors and service providers is established in chapter 74.18 RCW. The purpose for background checks is to ensure the suitability, character and competence of contractors and service providers to work with ~~((clients))~~ agency participants with a visual disability as defined in WAC 67-25-009, 67-35-030, 67-55-040, and/or 67-75-040 ~~((3)(a))~~.

AMENDATORY SECTION (Amending WSR 10-19-081, filed 9/16/10, effective 10/17/10)

**WAC 67-16-030 Background check process for contractors, vendors, and service providers.** (1) The director of the department of services for the blind (DSB) shall investigate the conviction records, pending charges and disciplinary board final decisions for contractors, vendors, and service providers who will or may have unsupervised access to DSB ~~((clients))~~ participants.

(2) The investigation shall consist of a background check as allowed under the Washington State Criminal Records Privacy Act, RCW 10.97.050; the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the Federal Bureau of Investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

(3) The director may waive the requirement for a background check if the contractor, vendor, or service provider has been cleared in a background check within the previous two years.

(4) When necessary, the director may engage a service provider, vendor, or contractor on a conditional basis, pending completion of the background check.

(5) The investigation shall include an examination of state and national criminal identification data. The director shall use the information solely for the purpose of determining the character, suitability and competence of the individual contractor or service provider to work with the department of services for the blind ~~((clients))~~ participants.

(6) The director shall provide the results of the background check in writing to the contractor, vendor, or service provider.

(7) The office of the director shall maintain confidential records of all background check information. Such information shall be limited to only those individuals processing the information within the department.

(8) The fingerprint criminal history records checks will be at the expense of the contractor or service provider.

(9) Current contractors, vendors, or service providers for whom disqualifying crimes are discovered in the background check process will be notified in writing. The written notification shall include notice of termination of the contract or service provider agreement and give the individual the right to request a review by the director of the department of services for the blind.

AMENDATORY SECTION (Amending WSR 10-19-081, filed 9/16/10, effective 10/17/10)

**WAC 67-16-040 Department of services for the blind—Background check requirements for employees, applicants, volunteers and student interns.** (1) The executive director of the department of services for the blind shall conduct background checks on all employees in covered positions and applicants under final consideration for a covered position. A covered position is one in which a person will or may have unsupervised access to vulnerable ~~((clients))~~ participants or potential ~~((clients))~~ participants with vision disability. These ~~((clients))~~ participants or potential ~~((clients))~~ participants may also have other disabilities, such as developmental disabilities or mental health disabilities. Employees and applicants shall authorize the executive director of the department of services for the blind to conduct a background check.

(2) The requirement for background checks shall include the following:

(a) ~~((Current employees as of July 1, 2004.~~

~~((b)))~~ Any employee seeking a covered position because of a reduction in force, reallocation, transfer, promotion or demotion.

~~((c)))~~ (b) Any applicant prior to appointment into a covered position, except when appointment is made on a conditional basis under subsection (7)(b) of this section.

(3) A background check will be conducted on the final preferred candidate prior to appointment.

(4) The executive director of the department of services for the blind shall use the results of a background check solely to determine the character, competence and suitability of a person for a covered position. The background check information shall consist of:

(a) A fingerprint check using a complete Washington state criminal identification fingerprint card.

(b) Conviction records, pending charges, and disciplinary board final decisions (if applicable).

(c) Evidence that substantiates or mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(i) The employee or applicant's background check authorization and disclosure form;

(ii) The employee or applicant's age at the time of conviction, charge, or disciplinary board final decision;

(iii) The nature and severity of the conviction, charge, or disciplinary board final decision;

(iv) The length of time since the conviction, charge, or disciplinary board final decisions;

(v) The nature and number of previous offenses; and

(vi) The relationship between the nature of the conviction, pending charge, or disciplinary board final decision and the duties of the employee or applicant.

(5) A permanent employee with a background check disqualification may voluntarily resign, or be subject to disciplinary action in accordance with WAC 357-40-010.

(6) Interim measures that may be used while the executive director explores availability of actions (not to exceed ~~((30))~~ thirty calendar days except in cases where there are investigations of pending charges):



(a) Voluntary use of accrued vacation, exchange, and/or compensatory time.

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave.

When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(7) The executive director of the department of services for the blind shall:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks;

(d) Provide the employee/applicant with the results of the background check in writing;

(e) Notify employees of their promotional register rights when they have been separated from their position, either voluntarily or involuntarily due to a background disqualification.

(8) Failure to authorize the executive director of the department of services for the blind to conduct a background check disqualifies an employee or applicant from consideration for any covered position including an employee's current covered position.

(9) An applicant for a covered position who is denied employment due to a disqualifying finding, shall be given the right to request a review of the decision by the executive director.

Requests for review must be in writing and received by the executive director within fifteen calendar days of the postmark date of the notification or date of hand-delivery.

(10) Permanent nonrepresented employees may appeal to the personnel resources board in accordance with RCW 41.06.170 and rules promulgated thereunder including WAC 357-52-010. Represented employees may appeal to the Washington state federation of state employees under the terms of the collective bargaining agreement.

(11) Nothing in this rule shall limit the department of services for the blind executive director's use of other authorities to conduct background checks.

(12) Information pertaining to background checks is confidential and shall be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee. Access to background check information shall be limited to only those individuals processing the information for the department. Misuse of background check information is a criminal offense and may result in prosecution and/or disciplinary action as provided under WAC 357-40-010.

(13) The department of services for the blind will pay the costs associated with the background checks for current employees, applicants, volunteers, and student interns.

#### NEW SECTION

**WAC 67-16-050 Background check requirements for participants.** Background checks may be secured as a vocational rehabilitation assessment service for a participant who is seeking employment in a field that customarily requires a background check as a condition of employment. The department may obtain a criminal history background check verifying that the customer is not excluded from employment in the field or specific job as part of the participant's informed choice in exploring or selecting an employment goal.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-005 Definitions.** (1) "Act" or "the law," except when context indicates otherwise, means the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA) of 2014.

(2) "Administrative costs" under the vocational rehabilitation services portion of the unified or combined state plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program, including expenses related to program planning, development, monitoring, and evaluation including, but not limited to, expenses for:

(a) Quality assurance;

(b) Budgeting, accounting, financial management, information systems, and related data processing;

(c) Providing information about the program to the public;

(d) Technical assistance and support services to other state agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in C.F.R. Sec. 361.49 (a)(4);

(e) The state rehabilitation council and other advisory committees;

(f) Professional organization membership dues for designated state unit employees;

(g) The removal of architectural barriers in state vocational rehabilitation agency offices and state-operated rehabilitation facilities;

(h) Operating and maintaining designated state unit facilities, equipment, and grounds, as well as the infrastructure of the one-stop system;

(i) Supplies;

(j) Administration of the comprehensive system of personnel development personnel administration, administration of affirmative action plans, and training and staff development;

(k) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(l) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(m) Costs incurred in conducting reviews of determinations made by personnel of the designated state unit, including costs associated with mediation and impartial due process hearings; and

(n) Legal expenses required in the administration of the program.

(3) "Applicant" means an individual who has submitted to the department an application or letter requesting vocational rehabilitation services in accordance with WAC ((67-25-010)) 67-25-093.

((3)) (4) "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

((4)) (5) "Assessment" means a review of existing or additional data for one or more of the following (as appropriate in each case):

(a) An assessment to determine eligibility of an individual with a disability for vocational rehabilitation services in accordance with WAC ((67-25-020)) 67-25-130;

(b) A comprehensive assessment to determine with the individual the employment outcome to be achieved and a detailed plan of services needed to obtain the employment outcome, in accordance with WAC ((67-25-255, to determine with the individual the employment outcome to be achieved, and a detailed plan of services needed to obtain the employment outcome)) 67-25-205;

(c) An assessment for assignment for an order of ((priority)) selection if the department is unable to serve all eligible individuals, in accordance with WAC ((67-25-460, if the department is unable to serve all eligible individuals)) 67-25-193;

(d) An assessment through a trial work experience ((and extended evaluation, in accordance with WAC 67-25-065 and 67-25-070)) or work skills assessment, if there is a question about the applicant's ability to benefit in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability, in accordance with WAC 67-25-140 and 67-25-220.

((5) "Blind person" means a person who:

(a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision;

(b) Has an eye condition of a progressive nature which may lead to blindness; or

(c) Is blind for purposes of the business enterprise program in accordance with RCW 74.18.200.))

(6) "Assistive technology" is defined in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002) as an assistive technology device or assistive technology service:

(a) An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities;

(b) An assistive technology service is any service that directly assists an individual with a disability in the selection,

acquisition, or use of an assistive technology device, including:

(i) The evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

(ii) A service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(iii) A service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

(iv) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(vii) A service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

(7) "Clear and convincing evidence" means that the department has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means "unequivocal."

(8) "Client assistance program (CAP)" means a program, authorized under the act, which assists individuals with disabilities to receive ((vocational rehabilitation services)) those services for which they are eligible under the act by providing information and advocacy.

((7) "Competitive employment" means work:

(a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(8) "Customer" means any individual with a disability:

(a) Who has been found eligible for vocational rehabilitation services from the department; and

(b) For whom services have not been denied or terminated by the department.))

(9) "Community rehabilitation program (CRP)" means an agency, organization or institution (or unit thereof) that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities as one of its major functions to enable those individuals to maximize

their opportunities for employment, including career advancement. These services may include:

- (a) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;
- (b) Testing, fitting, or training in the use of prosthetic and orthotic devices;
- (c) Recreational therapy;
- (d) Physical and occupational therapy;
- (e) Speech, language, and hearing therapy;
- (f) Psychiatric, psychological, and social services, including positive behavior management;
- (g) Assessment for determining eligibility and vocational rehabilitation needs;
- (h) Rehabilitation technology;
- (i) Job development, placement, and retention services;
- (j) Evaluation or control of specific disabilities;
- (k) Orientation and mobility services for individuals who are blind;
- (l) Extended employment;
- (m) Psychosocial rehabilitation services;
- (n) Supported employment services and extended services;
- (o) Customized employment;
- (p) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;
- (q) Personal assistance services; and
- (r) Services similar to the services described in (a) through (q) of this subsection.

(10) "Comparable benefits" means services and benefits, including accommodations and auxiliary aids and services, that are:

- (a) Provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits;
- (b) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with WAC 67-25-230; and
- (c) Commensurate to the services that the individual would otherwise receive from the designated state vocational rehabilitation agency.

For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(11) "Competitive and integrated employment" means work that:

- (a) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:
  - (i) Is not less than the rate required under the applicable federal, state or local minimum wage law for the place of employment;
  - (ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(iii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(iv) Is eligible for the level of benefits provided to other employees; and

(b) Is at a location:

(i) Typically found in the community; and

(ii) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire worksite; and

(iii) As appropriate to the work performed, the individual interacts with other persons such as participants and vendors who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(c) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(12) Customized employment means competitive integrated employment, for an individual with a significant disability, that is:

(a) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(b) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(c) Carried out through flexible strategies, such as:

(i) Job exploration by the individual; and

(ii) Working with an employer to facilitate placement, including:

(A) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(B) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(C) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(D) Providing services and supports at the job location.

(d) Customized employment may be provided as part of a job placement service in accordance with WAC 67-25-440.

(13) "Department" means the Washington state department of services for the blind.

((+0)) (14) "Designated state agency (DSA)" and "designated state unit (DSU)" mean the sole state agency (DSA) and division (DSU), designated to administer or supervise the local administration of the vocational rehabilitation services portion of the combined state plan. In Washington state, both the DSA and DSU entities for vocational rehabilitation services for individuals who are blind refer to the department of services for the blind.

(15) "Director," except when the context indicates otherwise, means the executive director of the department of services for the blind.

~~((H))~~ (16) "Eligible individual" means an applicant for vocational rehabilitation services who meets eligibility requirements in accordance with WAC ~~((67-25-030))~~ 67-25-125.

~~((I))~~ (12) "Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment (WAC 67-25-436), or any other type of employment in an integrated setting, including self-employment, telecommuting, business enterprises, or business ownership, that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This definition also includes employment as a homemaker and employment as an unpaid family worker in accordance with procedures to be established by the department for determining the applicability of these outcomes for eligible individuals.

(13) "Employment service provider" means a program that provides directly or facilitates the provision of one or more vocational rehabilitation services, which enable individuals with disabilities to maximize opportunities for employment, including career advancement. Services include:

- (a) Medical, psychiatric, psychological, social, and vocational services provided under one management;
- (b) Testing, fitting, or training in the use of prosthetic and orthotic devices;
- (c) Recreational therapy;
- (d) Physical and occupational therapy;
- (e) Speech, language and hearing therapy;
- (f) Psychiatric, psychological and social services, including positive behavior management;
- (g) Assessment for determining eligibility and vocational rehabilitation needs;
- (h) Rehabilitation technology;
- (i) Job development, placement, and retention services;
- (j) Evaluation or control of specific disabilities;
- (k) Assessment and training in adaptive skills of blindness;
- (l) Extended employment;
- (m) Psychosocial rehabilitation services;
- (n) Supported employment services and extended services;
- (o) Services to family members when necessary for the vocational rehabilitation of the customer;
- (p) Personal assistance services; or
- (q) Services similar to those described in (a) through (p) of this subsection.

~~(H))~~ (17) "Employment outcome" means, with respect to an individual, entering, advancing in or retaining full-time or, if appropriate, part-time competitive integrated employment (including customized employment, self-employment, telecommuting, or business ownership), or supported employment (in accordance with WAC 67-25-430), that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(18) "Extended employment" means work in a nonintegrated or sheltered setting for a public or private agency or organization that provides compensation in accordance with the Fair Labor Standards Act. The department ~~((will only support extended employment as an intermediate step toward competitive employment))~~ does not provide supports for extended employment goals or outcomes.

~~((I))~~ (19) "Extended services" means ongoing support services and other appropriate services that are:

(a) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in competitive and integrated employment with long-term supports;

(b) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment in a competitive and integrated workplace;

(c) Based on the needs of an eligible individual, as specified in an individualized plan for employment; and

(d) Provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the department.

The department may not provide extended services to an individual who is not a youth with a most significant disability;

Limits for the department providing extended services to youth are described in WAC 67-25-565.

(20) "Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(21) "Fair hearing board" means a committee, body, or group of persons established by a state prior to January 1, 1985, that:

(a) Is authorized under state law to review determinations made by personnel of the department that affect the provision of vocational rehabilitation services; and

(b) Carries out the responsibilities of the impartial hearing officer (see subsection (23) of this section).

(22) "Family member" for purposes of receiving vocational rehabilitation services in accordance with WAC 67-25-230 and 67-25-485 means an individual:

(a) Who either is a relative or guardian of an applicant or eligible individual; or lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual; and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(23) "Impartial hearing officer" means an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(b) Is not a member of the state rehabilitation council for the department;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

(d) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the combined state plan, and the federal and state regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(24) "Individual who is blind" means a person who:

(a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight;

(b) Has an eye condition of a progressive nature which may lead to blindness; or

(c) Is blind for purposes of the business enterprise program in accordance with RCW 74.18.200.

(25) "Individual with a disability" for purposes of this chapter means an individual who:

(a) Has a physical or mental impairment which results in a substantial impediment to employment; and

(b) Can benefit in terms of an employment outcome from vocational rehabilitation services.

((46)) (26) "Individual with a most significant disability" means an individual who meets the department's criteria for an individual with a most significant disability:

(a) Has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(27) "Individual with a significant disability" means an individual who meets the department's criteria for an individual with a significant disability:

(a) Has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(28) "Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

((47)) (29) "Informed choice" means the process by which an individual receiving vocational rehabilitation services from the department makes decisions about rehabilitation goals and the services and service providers necessary to reach those goals. Informed choice places primary responsi-

bility for action and decision making with the individual, with support of a vocational rehabilitation counselor. Individuals have a right to make informed choices relating to:

(a) Assessment services in accordance with WAC ((67-25-020, 67-25-255, and 67-25-257)) 67-25-130, 67-25-205, and 67-25-220;

(b) Options for developing the individualized plan for employment in accordance with WAC ((67-25-260)) 67-25-230;

(c) Vocational rehabilitation services and service providers in accordance with WAC ((67-25-350)) 67-25-265; and

(d) Employment outcome and work setting in accordance with WAC 67-25-553.

((18)) (30) "Integrated setting" means ((a setting typically found in the community in which an individual with a disability, including those with the most significant disabilities in accordance with WAC 67-25-060, interact with non-disabled individuals, other than service providers, to the same extent that nondisabled individuals in comparable settings interact with other persons.

(19) "Residence" or "residency" means, for purposes of this chapter, voluntarily living in the state for other than temporary reasons at the time of application.

(20) "Statewide workforce investment system" means a system described in section 111 (d)(2) of the Workforce Investment Act of 1998.

(21));

(a) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals; and

(b) With respect to an employment outcome, means a setting:

(i) Typically found in the community; and

(ii) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire worksite; and

(iii) As appropriate to the work performed, the individual interacts with other persons such as participants and vendors who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

(31) "Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(32) "Native American; American Indian tribe; American Indian; reservation."

(a) "Native American" and "American Indian" refer to an individual who is a member of an Indian tribe, a native or a descendant of a native, as such terms are defined in subsec-

tions (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(b) "American Indian tribe" is any federal or state American Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 (b)(l));

(c) "Reservation" is a federal or state Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or a defined area of land recognized by a state or the federal government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(33) "One-stop delivery system" or "workforce development system" is the system that brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(34) "Participant" means any individual with a disability:

(a) Who has been found eligible for vocational rehabilitation services from the department; and

(b) For whom services have not been denied or terminated by the department; or

(c) Is potentially eligible and actively engaged in the department's preemployment transition services.

(35) "Physical or mental impairment" means:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(36) "Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(37) "Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term "rehabilitation technology" is broadly inclusive of the terms "rehabilita-

tion engineering," "assistive technology devices," and "assistive technology services."

(38) "Special wage certificate" means a certificate issued to an employer under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) and 29 C.F.R. Part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage.

Special wage certificate entity means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate

(39) "Statewide workforce development system" means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102). The department is designated as a Title IV core partner within the workforce development system, and has shared responsibilities in combined state planning, common performance measures, and leveraging resources and services through the American job centers.

(40) "Student with a disability" means, for the vocational rehabilitation program, an individual with a disability in a secondary, postsecondary, or other recognized education program who:

(a) Is not older than twenty-one years old; and

(b) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or is an individual with a disability for purposes of section 504 of The Rehabilitation Act of 1973.

(41) "Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

((22)) (42) "Supported employment" means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities:

(a) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(b) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the designated state unit, in order to perform this work.

(43) "Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(44) "Vocational rehabilitation (VR) counselor" means a qualified employee of the department who has direct respon-

sibility for providing or supervising the provision of all rehabilitation services to ~~((customers))~~ participants.

~~((23))~~ (45) "Vocational rehabilitation services" means any goods or services necessary for a ~~((customer))~~ participant to achieve an employment outcome provided in accordance with WAC ~~((67-25-350))~~ 67-25-265.

(46) "Youth with a disability," for purposes of the vocational rehabilitation program, means an individual with a disability who is not older than twenty-four years of age.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-010 Application for services.** (1) Any individual who is blind, as defined in WAC ~~((67-25-005))~~ 67-25-009, may apply for vocational rehabilitation services, including any individual who has previously applied for, has previously received, or has previously been denied such services.

(2) Any individual who is blind seeking to obtain vocational rehabilitation services from the department shall submit a written letter or application for services to the department, or shall request vocational rehabilitation services ~~((on an intake form at a WorkSource center operated under the statewide workforce investment system))~~ through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act.

(3) The written letter or application for services shall be signed and dated by the individual requesting services or, if appropriate, by the individual's representative, and shall include:

- (a) The applicant's name ~~((and address));~~
- (b) The applicant's contact and address information; and
- (c) The applicant's disability; ~~((and~~
- ~~((e)))~~
- (d) The applicant's Social Security number is preferred.
- (4) The applicant must be available to complete the assessment process;

~~((5))~~ The department shall not provide vocational rehabilitation services to any individual who has failed to ~~((submit a signed and dated letter or application containing the above information))~~ meet the above application criteria.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-015 Intake—Initial interview.** (1) An applicant for vocational rehabilitation services shall be interviewed personally by a vocational rehabilitation ~~((counselor))~~ professional or paraprofessional within ten working days upon receipt of an application by the department.

(2) The interviewer shall:

(a) Explain to the applicant the nature and operation of the vocational rehabilitation program as it relates to the applicant;

(b) Specifically inform the applicant of the right to appeal any eligibility decision made by the department on his or her behalf through mediation and fair hearing in accordance with WAC ~~((67-25-570))~~ 67-25-600;

(c) Inform the applicant of his or her right of confidentiality of information possessed by the department and condi-

tions for its release in accordance with WAC ~~((67-25-550))~~ 67-25-051;

(d) Inform the applicant of the vocational rehabilitation concept of informed choice, and how it relates to the individual's rehabilitation process in accordance with WAC 67-25-061;

(e) Provide to the applicant a description of client assistance program services; and

~~((e))~~ (f) Obtain information from the applicant necessary to determine his or her eligibility for vocational rehabilitation services in accordance with WAC ~~((67-25-020 and 67-25-030))~~ 67-25-125 and 67-25-130.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-020 Eligibility—Assessment for eligibility determination.** (1) An assessment shall be conducted for each applicant to determine whether:

(a) The individual is blind as defined in WAC ~~((67-25-005))~~ 67-25-009, which alone or combined with other disabilities results in a substantial impediment to employment; and

(b) Vocational rehabilitation services are required for the applicant to prepare for, enter, engage in, advance in or retain an employment outcome consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

The assessment must include an appraisal of the current visual condition and prognosis of the applicant based on ophthalmological or optometric findings.

(2) If the department is operating under an order of ~~((priority))~~ selection, in accordance with WAC ~~((67-25-460))~~ 67-25-193, the assessment must also include information to be used for determination of priority categorization for services in accordance with WAC 67-25-183.

(3) The assessment shall, to the maximum extent possible, be based on a review of existing data in accordance with confidentiality requirements in WAC ~~((67-25-550))~~ 67-25-051. The assessment shall, where appropriate, include information provided by the applicant or the applicant's family, education records, information used by the Social Security Administration, determinations made by other agencies, and observations of the vocational rehabilitation counselor and other appropriate staff members.

(4) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, the assessment may include provision of vocational rehabilitation services necessary to determine whether the applicant is eligible.

Services provided for this purpose may include trial work experience ~~((or extended evaluation))~~ in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-140. The department will provide assistance to the applicant, if necessary, to assure that the applicant is prepared to make an informed choice in the selection of services needed to make an eligibility decision.

~~((5) The assessment must include an appraisal of the current visual condition and prognosis of the applicant based on ophthalmological or optometric findings.)~~

#### NEW SECTION

**WAC 67-25-021 Vocational rehabilitation grant—Purpose.** Under the U.S. Department of Education's state vocational rehabilitation services program, the Washington state department of services for the blind is provided a grant to assist in operating a statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation program for individuals with visual disabilities, which is:

- (1) An integral part of a statewide workforce development system; and
- (2) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with visual and other disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-025 Eligibility ((for services))—Time-line.** ~~((1) The department shall determine whether an individual is eligible for vocational rehabilitation services within sixty days after receipt of an application for services, unless, exceptional and unforeseen circumstances beyond the control of the department preclude completion of the determination within sixty days, in which case, the department will notify the applicant.~~

~~(2) The applicant must agree to an extension of eligibility determination or, must agree to participate in trial work experience or extended evaluation in accordance with WAC 67-25-065 and 67-25-070. If the applicant does not agree to an extension of the eligibility determination or does not agree to participate in trial work experience or extended evaluation, the applicant will be determined ineligible for vocational rehabilitation services and the case service record will be closed in accordance with WAC 67-25-055.)~~ Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act (WIOA), an eligibility determination must be made within sixty days, unless:

- (1) Exceptional and unforeseen circumstances beyond the control of the department preclude making an eligibility determination in sixty days and the department and the individual agree to a specific extension of time; or
- (2) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in a trial work assessment in accordance with WAC 67-25-140.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

#### **WAC 67-25-030 Eligibility ((for services))—Criteria.**

(1) Eligibility shall be based only upon determination by a vocational rehabilitation counselor that:

- (a) The individual is blind, as defined in WAC ~~((67-25-005))~~ 67-25-009;
- (b) The blindness alone or combined with other disabilities constitutes or results in a substantial impediment to competitive and integrated employment; and
- (c) Vocational rehabilitation services are required for the individual to prepare for, enter, engage in, advance in, or retain ~~((an))~~ a competitive and integrated employment outcome consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Any eligible individual must intend to achieve a competitive and integrated employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act and ~~((meets the criteria in subsection (1)(a) of this section))~~ is blind (as defined in WAC 67-25-009) is presumed eligible for vocational rehabilitation services and is considered to be an individual with a significant disability as defined in WAC ~~((67-25-060))~~ 67-25-193.

If an applicant is unable to provide appropriate evidence, the department will verify the applicant's eligibility under Title II or XVI of the Social Security Act by contacting the Social Security Administration within a reasonable period of time to determine the applicant's eligibility for vocational rehabilitation services.

(3) ~~If ((an individual is blind, and))~~ the individual's visual disability results in a substantial impediment to employment, it shall be presumed that the individual can benefit in terms of an employment outcome from vocational rehabilitation services, unless, the department can demonstrate by clear and convincing evidence, in accordance with WAC ~~((67-25-065))~~ 67-25-140, that the individual is incapable of benefiting in terms of ~~((an))~~ a competitive and integrated employment outcome from vocational rehabilitation services due to the significance of his or her disability.

~~(4) ((Eligibility requirements are applied without regard to the race, color, sex, religion, national origin, creed, marital status, or age of the applicant.~~

~~(5) No individual or group of individuals shall be found ineligible solely on the basis of the type of disability.~~

~~(6) No individual shall be found ineligible based on requirements for duration of residence.~~

~~(7) No individual shall be found ineligible solely on the basis of lack of U.S. citizenship. However, before the department will pay for vocational rehabilitation services, including assessment services, the applicant must provide copies of documents requested by the department that verify his or her immigration and naturalization status, and verify his or her identity. If the applicant is not a United States citizen, his or her legal work status must also be verified. The department will provide services, including assessment services, only to~~



applicants who meet at least one of the following conditions: United States citizenship; permanent residency status in the United States; or when a valid work permit has been issued.

(8) Eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(9) An individual who is blind or who has a visual disability which does not result in an impediment to employment, but who may have other disabilities which might result in impediments to employment, may be referred to other service providers or may be provided services through a cooperative plan with other service providers, such as, division of vocational rehabilitation, division of developmental disabilities, and WorkSource centers established under the statewide workforce investment system.)) No applicant or group of applicants is excluded or found ineligible solely on the basis of:

(a) Type of disability;

(b) Age, gender, race, color, national origin, sexual orientation, or sexual identity of the applicant;

(c) Type of expected competitive and integrated employment outcome;

(d) Source of referral for vocational rehabilitation services;

(e) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;

(f) Applicants' employment history or current employment status;

(g) Applicants' educational status or current educational credential;

(h) Duration of residence for any applicant who is present in the state; and

(i) Lack of U.S. citizenship.

(5)(a) The department will provide services, including assessment services, only to applicants who present documentation demonstrating a legal eligibility to work in the United States; and

(b) Before the department will pay for vocational rehabilitation services, including assessment services, the applicant must provide copies of documents requested by the department that verify his or her immigration and naturalization status, and verify his or her identity. If the applicant is not a United States citizen, his or her legal work status must also be verified.

(6) An individual who is blind or who has a visual disability which does not result in an impediment to employment, but who may have other disabilities which might result in impediments to competitive and integrated employment, may be referred to other service providers or may be provided services through a cooperative plan with other service providers, such as the division of vocational rehabilitation, division of developmental disabilities, and the American job centers established under the statewide workforce development system.

(7) Nothing in this section is to be construed to create an entitlement to any vocational rehabilitation service.

#### NEW SECTION

**WAC 67-25-035 Vocational rehabilitation grant—Requirements of department.** To fulfill the requirements of the VR grant, the department must:

(1) Establish a state rehabilitation council to jointly develop, agree to, and review department goals and priorities and to consult with regarding department policy and procedure;

(2) Take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of The Rehabilitation Act of 1973;

(3) Be primarily concerned with vocational rehabilitation;

(4) Have a full-time director responsible for day-to-day operations;

(5) Have ninety percent of staff employed full time on rehabilitation work;

(6) Have sole authority and responsibility to expend funds made available in The Rehabilitation Act of 1973 (as amended), in a manner consistent with the act;

(7) Have the responsibility for all decisions affecting:

(a) Eligibility for VR services, the nature and scope of available services, and the provision of these services;

(b) The determination to close the record of services of an individual who has achieved an employment outcome, in accordance with WAC 67-25-051;

(c) Policy formation and implementation;

(d) Allocation and expenditure of VR funds; and

(e) Participation as a partner in the one-stop service delivery.

The responsibility for the functions described in subsections (6) and (7) of this section may not be delegated to any other department or individual.

#### NEW SECTION

**WAC 67-25-040 Workforce development system—Requirements of department.** (1) Under WIOA, the department is identified as a required partner within the one-stop delivery system.

(2)(a) Access to the department's programs and activities is required through the state's comprehensive one-stop centers.

(b) Access to the department's programs and activities may mean:

(i) Having a program staff physically present at the one-stop center;

(ii) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through the department; or

(iii) Making available a "direct linkage" through technology to program staff who can provide meaningful information or services:

(A) A "direct linkage" means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time web-based communication to a

program staff member who can provide program information and/or services to the customer;

(B) A "direct linkage" cannot exclusively be providing a phone number or computer web site or providing information, pamphlets or materials.

(3) The department must use a portion of funds (to the extent consistent with WIOA and with federal cost principles in 2 C.F.R. Parts 200 and 3474, requiring, among other things, that costs are allowable, reasonable, necessary, allocable, and proportionally beneficial to the department) to:

(a) Provide applicable career services; and

(b) Work collaboratively with the state and local workforce development boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure costs (as defined in 34 C.F.R. section 361.700) through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner program based on proportionate use and relative benefit received;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements within the federal VR grant.

(4) The department must enter into an MOU with the local workforce development boards relating to the operation of the one-stop delivery system to include elements described in 34 C.F.R. 361.500 and 361.755.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-050 Eligibility—Certification and notification for decision of eligibility.** (1) There shall be a certification of eligibility if the applicant meets the requirements specified in WAC ((67-25-030)) 67-25-125. The certification shall be dated and signed by a vocational rehabilitation counselor.

(2) If an applicant is offered an opportunity for trial work experience in accordance with WAC 67-25-140, there shall be a certification of eligibility for the services specified. The certification shall be dated and signed by a vocational rehabilitation counselor:

(a) The applicant shall be notified in writing, using appropriate modes of communication, and in the individual's native language if necessary, of the action taken on eligibility or ineligibility;

(b) The applicant shall be advised of the right to appeal any eligibility decision made by the department concerning the applicant including: The procedure to request mediation and fair hearing in accordance with WAC 67-25-600; and a description of client assistance program services;

(c) If an applicant is determined ineligible for vocational rehabilitation services, the notice shall clearly specify how he or she failed to meet the eligibility criteria set forth in WAC 67-25-125;

(d) If the applicant is determined eligible for vocational rehabilitation services, the notice shall clearly specify the date of eligibility certification;

(e) If the vocational rehabilitation counselor determines that an applicant is not eligible for vocational rehabilitation services, the rehabilitation counselor will provide the individ-

ual with information and referral to other agencies or organizations that may provide services to meet the individual's employment related needs.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-056 VR program exit—Ineligibility determination(~~—Review~~) or lack of participation.** ~~((+))~~ After twelve months, and annually thereafter, if requested by the individual or by the individual's representative, the department shall complete a review of an ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome, unless:

(a) The individual has refused the review;

(b) The individual is no longer present in the state; or

(c) His or her whereabouts are unknown.

~~(2) The individual, or if appropriate, the individual's representative, shall be given an opportunity to participate in any review and reconsideration of eligibility.)~~ (1) If the department finds that an applicant is ineligible for vocational rehabilitation services for the following reasons:

(a) Based on evidence in accordance with WAC 67-25-125;

(b) Based on clear and convincing evidence in accordance with WAC 67-25-140;

(c) Based on clear and convincing evidence and in accordance with WAC 67-25-220; or

(d) The individual makes an informed choice to not pursue a competitive and integrated employment outcome, as defined in WAC 67-25-093.

(2) The department then must:

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual of:

(i) The ineligibility determination, including the reasons for that determination;

(ii) The requirements under this section; and

(iii) The means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of department determinations in accordance with WAC 67-25-600.

(c) Provide the individual with a description of services available from a client assistance program established under 34 C.F.R. Part 370 and information on how to contact that program;

(d) Refer the individual:

(i) To other programs that are part of the workforce development service delivery system under the Workforce Innovation and Opportunity Act that can address the individual's training, employment-related and/or subsistence needs; or

(ii) To federal, state, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is

incapable of achieving, a competitive and integrated employment outcome as defined in WAC 67-25-093.

(e)(i) Review annually if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome due to significance of disability;

(ii) This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(f) The department may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the department has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

AMENDATORY SECTION (Amending WSR 10-11-007, filed 5/6/10, effective 6/6/10)

**WAC 67-25-060 Eligibility—Criteria for ((~~nonsignificant disability, significant disability and most significant~~) categorization of significance of disability.** (1) An individual with a ((~~nonsignificant~~) most significant) disability is an individual who:

(a) ((~~Who has at least one functional limitation related to~~) Has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) ((~~Requires one or more substantial types of services~~)) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(2) An individual with a significant disability is an individual who:

(a) ((~~Who has at least two functional limitations related to~~) Has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) ((~~Requires one or more substantial types of~~) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services ((~~provided~~)) over an extended period of time.

((~~3~~) An individual with a most significant disability is an individual:

(a) Who has at least three functional limitations related to employment; and

(b) Requires two or more substantial types of services provided over an extended period of time.))

## NEW SECTION

**WAC 67-25-061 Vocational rehabilitation—Informed choice.** Applicants and recipients of services (or, as appropriate, their representatives) are provided information and support services to assist the individual in exercising informed choice throughout the rehabilitation process consistent with the following provisions:

(1) Inform each applicant and recipient of services (including students and youth with disabilities), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assist applicants and recipients of services in exercising informed choice in decisions related to the provision of assessment services;

(3) Develop and implement flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford recipients of services meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assist eligible individuals (or, as appropriate, the individuals' representatives) in acquiring information that enables them to exercise informed choice in the development of their individualized plans for employment with respect to the selection of the:

- (a) Employment outcome;
- (b) Specific vocational rehabilitation services needed to achieve the employment outcome;
- (c) Entity that will provide the services;
- (d) Employment setting and the settings in which the services will be provided;
- (e) Methods available for procuring the services; and
- (f) Ensure that the availability and scope of informed choice is consistent with the obligations of the department under this section.

(5) The department must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the:

- (a) Cost, accessibility, and duration of potential services;
- (b) Participant satisfaction with those services to the extent that information relating to participant satisfaction is available;
- (c) Qualifications of potential service providers;
- (d) Types of services offered by the potential providers; and
- (e) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(6) In providing or assisting the individual or the individual's representative in acquiring the information required, the department may use, but is not limited to, the following methods or sources of information:

- (a) Lists of services and service providers;
- (b) Periodic participant satisfaction surveys and reports;
- (c) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers;
- (d) Relevant accreditation, certification, or other information relating to the qualifications of service providers;
- (e) Opportunities for individuals to visit or experience various work and service provider settings.

(7) The department must provide information to an eligible individual or participant who is interested in becoming employed, but is uncertain of the impact work income may have on any disability benefits and entitlements being received, and/or is not aware of benefits, such as access to health care, that might be available to support employment efforts.

(a) This typically involves an analysis of an individual's current benefits, such as SSDI and SSI, the individual's financial situation, and the effect different income levels from work will have on the individual's future financial situation. This assistance is intended to provide the individual an opportunity to make an informed choice regarding the pursuit of employment;

(b) Ongoing assistance may also be provided as the individual decides on employment goals, searches for jobs, and becomes employed.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

**WAC 67-25-065 Eligibility—Trial work experience.**

(1) Trial work experience is a process of providing assessment and related vocational rehabilitation services to an applicant with significant disabilities, for the limited purpose of collecting information necessary to make an eligibility determination, if there is concern that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability.

(2) Trial work experience allows the individual to explore his or her abilities, capabilities, and capacities to perform in a realistic work situation, while addressing identified barriers to employment through the provision of appropriate vocational rehabilitation services, including supported employment, on-the-job training, rehabilitation technology and personal assistance services in order to accommodate the rehabilitation needs of the individual during the trial work experience.

(3) Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability or that the individual is ineligible for vocational rehabilitation services, the department must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations.

(a) The department must develop a written ((trial work)) plan, ((including periodic assessments, must be developed to determine)) to assess the individual's abilities, capabilities, and ((capabilities,)) capacity to perform in competitive and

integrated work situations through the use of trial work experiences((-

(4) If a trial work experience is provided, it must occur in a variety of work environments, include an appropriate range of tasks, must occur in the most integrated settings possible and be consistent with the individual's informed choice and rehabilitation needs)), which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

(b) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(c) Trial work experiences must be of sufficient variety and over a sufficient period of time for the department to determine that:

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that due to the severity of the individual's disability, the individual is incapable of benefiting from the provision of vocational rehabilitation services in terms of an employment outcome.

(d) The department must provide appropriate supports including, but not limited to, assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

NEW SECTION

**WAC 67-25-083 Vocational rehabilitation—Information and referral services.** The department will implement an information and referral system, using appropriate modes of communication, adequate to ensure that an individual with disabilities is provided with information and referral services that may assist the individual in securing services and benefits that he or she might qualify for and/or benefit from.

(1) Information and referral services are available to any individual who is an applicant for agency services; is potentially eligible, eligible, or ineligible for services; and/or is an active participant of agency services. This also includes any individual who is awaiting services if the department is operating under an order of selection, in accordance with WAC 67-25-193.

(2) The department will refer an individual with disabilities to other appropriate federal, state and/or community programs, including the client assistance program (CAP) and other components of the statewide workforce development system.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-255 Assessment—Comprehensive ((assessment)).** (1) The department must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or if the department is operating under an order of selection, for each eligible individual to whom the department is able to provide services.

(2) The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, in accordance with WAC 67-25-230.

(3) To the extent possible, current data is to be used for the comprehensive assessment, including: ((That))

(a) Data provided by the ((customer)) eligible individual and his or her family;

(b) Information available from other programs and providers such as schools and the Social Security Administration; ((and))

(c) Information utilized for the determination of eligibility ((, must be used to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, in accordance with WAC 67-25-260. If)).

(4) When additional data is necessary, ((there must be a)) the comprehensive assessment ((of)) must consider the unique strengths, resources, priorities, concerns, abilities, capacities, interests, informed choice, and the need for supported employment services of the ((customer)) eligible individual.

(a) Any activities, if necessary, utilized to provide comprehensive assessment data must be conducted in the most integrated setting possible.

((2)) (b) The comprehensive assessment must be limited to information necessary to identify the rehabilitation needs and develop the individualized plan for employment with the eligible individual, and, as necessary, may ((, if necessary,)) include:

((a)) (i) A comprehensive analysis of pertinent medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors affecting the employment and rehabilitation needs of the individual;

((b)) (ii) An analysis of the individual's personality, interests, interpersonal skills, intelligence and related functions, educational achievements, work experience, vocational aptitudes, personal, cultural, environmental, and recreational adjustments, and employment opportunities;

((c)) (iii) Work in a real job situation or use of other available data to evaluate or develop work behaviors and capacities necessary to achieve ((a)) a competitive and integrated employment outcome. This includes an appraisal of the ((customer's)) eligible individual's pattern of work behaviors and identification of services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance;

((d)) (iv) Assessment of the need for the provision of rehabilitation technology to develop the capacities of the individual to perform in a competitive and integrated work environment, ((including in an integrated setting, to the maximum extent feasible,)) consistent with the individual's informed choice.

((3)) (5)(a) Information pertaining to conditions or circumstances, such as criminal record, INS identity and work status that restricts the type of employment the customer can legally perform must be disclosed to the department prior to development of the individualized plan for employment.

((4) If a customer desires an employment outcome in a field that customarily requires a background check as a condition of employment, the department must obtain a criminal history background check verifying that the customer is not excluded from employment in the field or specific job prior to development of the individualized plan for employment.

((5)) (b) Background checks may be secured as a vocational rehabilitation assessment service for a participant who is seeking employment in a field that customarily requires a background check as a condition of employment. The department may obtain a federal criminal history background check verifying that the participant is not excluded from employment in the field or specific job as part of the eligible individual's informed choice in exploring or selecting an employment goal.

(6) If the department becomes aware of a condition or circumstance that may affect the customer's ability to achieve ((a)) a competitive and integrated employment outcome after the individualized plan for employment has been developed, the vocational rehabilitation counselor will conduct necessary assessment services, including ((trial)) a work ((experience or extended evaluation)) skills assessment, in accordance with WAC ((67-25-065 and 67-25-070)) 67-25-220, to determine whether the ((customer)) individual is capable of achieving the employment outcome identified in the individualized plan for employment.

((6)) (7) If ((a customer)) an eligible individual declines to authorize the release of information or to participate in vocational rehabilitation services necessary to collect pertinent information for development of an appropriate individualized plan for employment, the vocational rehabilitation counselor will close the case service record in accordance with WAC 67-25-575 and 67-25-593.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-257 Assessment—Adaptive skills of blindness.** (1) As a part of the assessment to determine vocational rehabilitation service needs, there must be a determination of each individual's use of and ability to benefit from adaptive skills of blindness. Rehabilitation objectives and service needs identified with the ((customer)) eligible individual during this assessment process shall be incorporated into the individualized plan for employment.

(2) Adaptive skills of blindness assessment include, as appropriate in each case:

- (a) Communications, including braille and keyboarding;
- (b) Personal management;
- (c) Orientation and mobility;
- (d) Home management;
- (e) Activities of daily living;
- (f) Personal adjustment to blindness, and if applicable, adjustment to other disabilities;
- (g) Ability to benefit from rehabilitation technology; and
- (h) Use of residual vision and ability to benefit from low vision devices and related training.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-260 Individualized plan for employment —Timeline and criteria.** (1) The individualized plan for employment is a written agreement that documents important decisions made between the ~~((customer))~~ participant and a vocational rehabilitation counselor concerning ~~((the customer's employment outcome including,))~~ activities towards achievement of the participant's competitive and integrated employment goal including responsibilities agreed upon by the department and the ~~((customer))~~ participant, and ~~((the))~~ vocational rehabilitation services to be provided.

(2) The individualized plan for employment is developed and implemented in a timely manner for each eligible individual, and no later than ninety days after eligibility except:

(a) When the department is operating under an order of selection, in accordance with WAC 67-25-193; or

(b) The eligible individual and VR counselor agree to a delayed plan completion, with specific expected date of completion documented.

(3) The ~~((customer))~~ participant must be actively involved in developing the individualized plan for employment including making meaningful and informed choices about the selection of the employment outcome, ~~((intermediate))~~ objectives, ~~((the))~~ vocational rehabilitation services ~~((provided))~~, service providers, ~~((settings,))~~ and methods of procuring services.

~~((3))~~ (4) The competitive and integrated employment outcome the ~~((customer))~~ participant chooses must be consistent with the information and results of the assessment of the individual's vocational rehabilitation needs.

~~((4))~~ (5) The department supports ~~((customers))~~ participants to achieve ~~((an))~~ a competitive and integrated employment outcome as defined in WAC ~~((67-25-005))~~ 67-25-009. If a ~~((customer))~~ participant chooses another type of employment outcome, the department will, to the extent possible, refer the ~~((customer))~~ participant to other programs or organizations that may offer the type of employment that the ~~((customer))~~ participant desires.

~~((5))~~ (6) The individualized plan for employment must be agreed upon and signed by the ~~((customer))~~ participant, or as appropriate, the ~~((individual's))~~ participant's representative, and a vocational rehabilitation counselor.

~~((6))~~ (7) The individualized plan for employment shall be designed to achieve the competitive and integrated employment outcome of the ~~((customer))~~ participant consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, and interests ~~((of the individual. To the extent possible, consistent with the informed choice of the individual, the plan shall include placement in an integrated setting))~~ and informed choice of the participant.

~~((7))~~ (8) The plan shall include:

(a) The ~~((individual's))~~ participant's long-term competitive and integrated employment outcome, based on the assessment for determining vocational rehabilitation needs and the career interests of the individual in accordance with WAC 67-25-205 and 67-25-210;

(b) Specific and measurable ~~((intermediate))~~ rehabilitation objectives to achieve the competitive and integrated

employment outcome, based on the assessment for determining vocational rehabilitation needs;

(c) ~~((Specific))~~ Vocational rehabilitation services to be provided to achieve the ~~((intermediate))~~ rehabilitation objectives;

(d) Projected initiation dates and the anticipated duration of each service;

(e) Objective criteria, and an evaluation procedure and schedule to determine whether goals and objectives are being achieved;

(f) The views of the ~~((individual, in the words of the individual,))~~ participant in their own words or, as appropriate, in the words of the individual's representative, describing how he or she was informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services ~~((including alternatives in integrated settings));~~

(g) How, to the maximum extent possible, information will be provided to the ~~((individual))~~ participant, or if appropriate, to the ~~((individual's))~~ participant's representative, in his or her native language if necessary, and using appropriate modes of communication;

(h) Terms and conditions for the ongoing provision of vocational rehabilitation services, including:

(i) Responsibilities the ~~((customer))~~ participant has agreed to, including steps the ~~((customer))~~ participant will take to achieve the competitive and integrated employment outcome, and services the ~~((customer))~~ participant agrees to apply for and use that are available at no cost from another program;

(ii) ~~((The extent to which goods and services shall be provided in integrated settings, consistent with the informed choices of the individual;~~

~~((The extent to which))~~ Ongoing exploration for comparable services and benefits, in accordance with WAC ~~((67-25-360, are))~~ 67-25-283, that may be available to the ~~((individual))~~ participant under any other program;

~~((iv) The))~~ (iii) Participant's active involvement through informed choice in selection of the entity or entities that will provide services and the process ~~((and setting to be used))~~ to provide or procure services;

~~((v) Assessment of the need for post employment services, in accordance with WAC 67-25-444, prior to closing the case service record, of a customer who has achieved an employment outcome and, if appropriate, a statement of how post employment services are to be arranged or provided using comparable services and benefits, in accordance with WAC 67-25-360;~~

~~((vi))~~ (iv) Information regarding the right to appeal any decision made by the department on behalf of the ~~((individual))~~ participant including the procedure for mediation, fair hearing, and judicial review, in accordance with WAC ~~((67-25-570))~~ 67-25-600;

~~((vii))~~ (v) A description of client assistance program services; and

~~((viii))~~ (vi) The basis on which the ~~((individual))~~ participant is determined to have achieved ~~((an))~~ a competitive and integrated employment outcome.

~~((8))~~ (9) An individualized plan for employment that includes a supported employment outcome, in accordance with WAC ~~((67-25-436))~~ 67-25-430 must also document:

(a) The supported employment services to be provided by the department;

(b) Extended services or natural supports that are likely to be needed;

(c) The source of extended services or, to the extent that it is not possible to identify the source of extended services when the plan is developed, a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(d) A goal for the number of hours per week the ~~((customer))~~ participant is expected to work and a plan to monitor the ~~((customer's))~~ participant's progress toward meeting that expectation;

(e) A description of how the services on the individualized plan for employment are to be coordinated with other individualized plans established under other federal or state services;

(f) If job skills training is provided, the individualized plan for employment must reflect that the training is provided ~~((on-site))~~ on the job site; and

(g) Placement in ~~((an))~~ a competitive and integrated setting for the maximum number of hours possible based on the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the ~~((customer))~~ participant.

~~((9))~~ (10) Transition ~~((students))~~ youth who are determined eligible for vocational rehabilitation services must have an individualized plan for employment ~~((prior to leaving school))~~ developed within the same timelines and criteria as any eligible individual. An individualized plan for employment for a transition ~~((student))~~ youth who is receiving special education or accommodation services should be coordinated, to the extent possible, with the participant's school individualized education plan ((of the individual)) or 504 Accommodation Plan in terms of identified goals, objectives, and services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-270 Individualized plan for employment—Participation of the ~~((customer))~~ eligible individual.** (1) ~~((A customer))~~ An eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment:

(a) Independently, without any assistance from the department or another entity;

(b) With assistance from a vocational rehabilitation counselor employed by the department;

(c) With assistance from a vocational rehabilitation counselor who is not employed by the department but who meets the minimum qualifications for a vocational rehabilitation counselor as established by the department; and/or

(d) Other resources such as a representative, family member, advocate, or other individual.

(2) The department shall provide, as appropriate to each ~~((customer))~~ eligible individual, information to assist the

individual or the individual's representative in developing the individualized plan for employment, including:

(a) Information describing the full range of components that must be included in an individualized plan for employment;

(b) Information on assistance available for completing required forms; and

(c) Additional information that the ~~((customer))~~ eligible individual requests or the department determines to be necessary for development of the individualized plan for employment.

(3)~~(a)~~ The department will provide assistance to ~~((customers))~~ individuals who choose to develop their individualized plan for employment with someone other than a department vocational rehabilitation counselor, and will identify individuals, to the extent possible, who may be of help in that process.

~~(b)~~ However, the department will not pay fees or other expenses associated with obtaining assistance from such individuals.

(4) Substantive changes to the individualized plan for employment must be jointly made and agreed upon by the ~~((customer))~~ participant and the department vocational rehabilitation counselor.

(5) A copy of the individualized plan for employment and copies of any revisions and amendments shall be provided, using appropriate modes of communication, to the ~~((customer))~~ participant or, as appropriate, to the individual's representative.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-275 Individualized plan for employment—Amendments and annual reviews.** (1) The individualized plan for employment shall be reviewed as necessary but at least annually. The ~~((customer))~~ participant, or if appropriate, the ~~((individual's))~~ participant's representative, shall be given an opportunity to review the plan and jointly redevelop and agree to its terms.

(2) Services shall be modified as needed and incorporated into the plan. The addition of services as agreed to by participant and VR counselor does not require participant signature.

(3) If it is determined that the employment outcome of the ~~((customer))~~ participant will be changed, or that services will be deleted from the plan, the new plan shall not take effect until agreed upon and signed by the ~~((customer))~~ participant, or if appropriate, the individual's representative, and the vocational rehabilitation counselor.

(4) If a ~~((customer's))~~ participant's vision is restored so that he or she is not blind, as defined in WAC ~~((67-25-005))~~ 67-25-009, further services shall be limited to those identified in an assessment of vocational rehabilitation service needs in accordance with WAC ~~((67-25-255))~~ 67-25-205.

(5) If the ~~((customer))~~ participant has other disabilities, which result in an impediment to employment, the individual will be referred to the appropriate ~~((organization))~~ organization(s) for assistance.

~~((5))~~ (6) The individualized plan for employment review may be conducted with a qualified vocational rehabilitation counselor who is not employed by the department.

(a) However, in such cases, the department vocational rehabilitation counselor shall have final signature authority on the review and any changes to the plan.

(b) The department will not pay fees or other expenses associated with obtaining assistance from such individuals.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

~~WAC 67-25-284 ((Individualized plan for employment—Termination for reasons other than ineligibility.))~~

VR program exit—Other reasons. (1) Vocational rehabilitation services provided under an individualized plan for employment shall be terminated prior to completion if a ~~((customer))~~ participant:

(a) Has died;

(b) Cannot be located by the department after reasonable efforts to do so;

(c) Has been institutionalized under circumstances which preclude provision of services for a substantial or indefinite period of time;

(d) Has moved to another jurisdiction and the department is unable to continue provision of services;

(e) Declines to accept or utilize vocational rehabilitation services after reasonable efforts have been made to encourage participation.

(2) A decision to terminate services for any reason described in subsection (1) of this section does not require a review and reconsideration after twelve months pursuant to WAC ~~((67-25-056))~~ 67-25-575.

#### NEW SECTION

**WAC 67-25-290 Vocational rehabilitation services—Preemployment transition for students.** (1) The department, in collaboration with the local educational agencies involved, must provide, or arrange for the provision of, preemployment transition services for all students with visual disabilities not older than twenty-one years of age who are in need of such services, without regard to the type of visual disability. Reserved and available funds may be used for the required, authorized, and preemployment transition coordination activities.

(2) Preemployment transition services must be made available statewide to all students with visual disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(3) The department must provide the following required preemployment transition service activities:

(a) Job exploration counseling;

(b) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;

(c) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(d) Workplace readiness training to develop social skills and independent living; and

(e) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(4) Each local office of the department must carry out preemployment transition coordination responsibilities consisting of:

(a) Attending individualized education program meetings for students with disabilities, when invited;

(b) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(c) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of preemployment transition services under this section;

(d) When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(5) Funds available and remaining after the provision of the required activities described above may be used to improve the transition of students with visual disabilities from school to postsecondary education or an employment outcome by the following authorized activities:

(a) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(b) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(c) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(d) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(e) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(f) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(g) Developing model transition demonstration projects;

(h) Establishing or supporting multistate or regional partnerships involving states, local educational agencies, designated state units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(i) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.



NEW SECTION**WAC 67-25-335 Vocational rehabilitation services—**

**Other training.** The department may support miscellaneous training programs that are necessary to the achievement of the participant's employment goal, such as:

(1) Basic academic remedial course work and literacy training that are needed to function on the job in the integrated and competitive labor market, including GED or secondary school training leading to a diploma.

(2) Training and course work to support small business ownership or preparation for the Randolph-Sheppard Act (20 U.S.C. Sec 107) opportunities.

(3) Courses taken at four-year, junior or community colleges not leading to a certificate or diploma that are needed to function on the job in the integrated and competitive labor market.

(4) A training program designed to meet the special requirements of an employer who has entered into an agreement with a service delivery area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

(5) A registered apprenticeship program.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-350 Vocational rehabilitation(~~(—)~~ser-  
vices (~~provided~~))—Nature and scope.** (~~Based on the vocational rehabilitation needs of each customer, the department will make the following vocational rehabilitation services available to assist the customer~~) (1) The provision of the department's VR services is based on the rehabilitation needs of each individual as identified in that participant's individualized plan for employment and is consistent with the participant's informed choice.

(2) The department's policy on VR service provision does not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve a competitive and integrated employment outcome.

(3) The department's policy on VR service provision has been developed in accordance with the following provisions:

(a)(i) The department has established a preference for in-state services, provided that the preference does not effectively deny an individual a necessary service.

(ii) If the individual chooses an out-of-state service at a higher cost than an in-state service, if either service would meet the individual's rehabilitation needs, the department is not responsible for those costs in excess of the cost of the in-state service.

(b) The department maintains a fee schedule designed to ensure a reasonable cost to the program for each service, provided that the schedule established is:

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and will permit exceptions so that individual needs can be addressed.

(c) The department may establish reasonable time period limits for the provision of services, provided that the time limits are:

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(d) While an option through the federal regulations, the department will not apply a financial needs test, or require the financial participation of the individual, in order to receive services.

(e) The department must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(f) Substantive changes to department policy that directly impact the nature, scope, or delivery of the services provided to individuals with disabilities require a public participation process. The public input must be gathered:

(i) In an in-person meeting format (which might include face-to-face, phone, and/or remote access video or chat);

(ii) Be separate and distinct from the state rehabilitation council public input process.

(4) Preemployment transition services are made available statewide to all students with visual and other disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services, in accordance with WAC 67-25-290.

(5) VR services are made available as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's individualized plan for employment. The following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining (~~(an)~~) a competitive and integrated employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

~~((1))~~ (a) Assessment for determining eligibility (~~(in accordance with WAC 67-25-020, and order of)~~) and/or priority for services in accordance with WAC (~~(67-25-460)~~) 67-25-130 and 67-25-183;

~~((2))~~ (b) Assessment for determining vocational rehabilitation needs in accordance with WAC (~~(67-25-255 and 67-25-257)~~) 67-25-205 and 67-25-210;

~~((3))~~ (c) Vocational rehabilitation counseling and guidance including information and support services to assist an individual in exercising informed choice in accordance with WAC (~~(67-25-380)~~) 67-25-273;

~~((4))~~ (d) Referral and (~~related~~) other services (~~(to help the)~~) necessary to assist applicants and eligible individuals to secure needed services from other agencies (~~(including other partners in the statewide workforce investment system and referral to the client assistance program;~~

~~(5))~~ or client assistance programs, including other components of the statewide workforce development system, in accordance with WAC 67-25-073.

(e) Physical and mental restoration services in accordance with WAC (~~(67-25-384;~~

~~(6))~~ 67-25-310, to the extent that financial support is not readily available from a source other than the department (such as through health insurance or a comparable service or benefit as defined in WAC 67-25-283).

~~(f)(i)~~ Vocational and other training ((in accordance with WAC 67-25-388, 67-25-390, 67-25-394, 67-25-396, and 67-25-398, subject to limitations in WAC 67-25-360;

~~(7))~~ services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science, medicine, law, or business); books, tools, and other training materials in accordance with WAC 67-25-320, 67-25-330, 67-25-340, 67-25-265, and 67-25-365.

~~(ii)~~ No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the department and the individual to secure financial and grant assistance in whole or in part from other sources to pay for that training.

~~(g)~~ Maintenance ((related)) in connection to the provision of vocational rehabilitation services in accordance with WAC ((67-25-400)) 67-25-370;

~~((8))~~ (h) Transportation ((related)) in connection to the provision of a vocational rehabilitation service(s) in accordance with WAC ((67-25-404)) 67-25-383;

~~((9))~~ (i) Vocational rehabilitation services to family members ((in accordance with WAC 67-25-408;

~~(10))~~ as defined in WAC 67-25-485, if necessary to enable the applicant or eligible individual to achieve an employment outcome.

~~(j)~~ Interpreter and translation services ((in accordance with WAC 67-25-412;

~~(11)~~ Reader services in accordance with WAC 67-25-408;

~~(12)~~ Assessment and training in adaptive skills of blindness in accordance with WAC 67-25-257 and 67-25-398;

~~(13))~~ , including language translation services, sign language and oral interpreter services for individuals who are deaf or hard of hearing, and tactile interpreting services for individuals who are deaf-blind, provided by qualified personnel in accordance with WAC 67-25-393.

~~(k)~~ Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind in accordance with WAC 67-25-365 and 67-25-403.

~~(l)~~ Job-related services, including job search and placement assistance((, and)) job retention services ((in accordance with WAC 67-25-440;

~~(14))~~ , follow-up services, and follow-along services in accordance with WAC 67-25-340, 67-25-355, and 67-25-440.

~~(m)~~ Supported employment services in accordance with WAC ((67-25-436)) 67-25-430;

~~((15))~~ (n) Personal assistance services((, including training in managing, supervising, and directing these services)) in accordance with WAC ((67-25-418)) 67-25-410;

~~((16))~~ (o) Post-employment services in accordance with WAC ((67-25-444)) 67-25-450;

~~((17))~~ (p) Occupational licenses, tools, equipment, initial stocks, and supplies ((in accordance with WAC 67-25-448)), and technical assistance and other consultation services to participants who are pursuing self-employment or establishing a small business operation as an employment outcome, in accordance with WAC 67-25-465;

~~((18))~~ (q) Rehabilitation technology ((and telecommunications)) services in accordance with WAC ((67-25-448)) 67-25-425;

~~((19))~~ (r) Preemployment transition services that provide careers and work preparation exploration and experiences for students with disabilities, in accordance with WAC 67-25-290.

~~(s)~~ Transition services for ((students in accordance with WAC 67-25-399;

~~(20)~~ Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self employment or telecommuting or establishing a small business operation as an employment outcome; and

~~(21))~~ youth with disabilities to facilitate the transition from school to postsecondary life, such as entry into a postsecondary training program and/or achievement of an employment outcome in competitive integrated employment, in accordance with WAC 67-25-305.

~~(t)~~ Customized employment in accordance with WAC 67-25-440.

~~(u)~~ Other goods and services determined necessary for the ((customer)) individual with a disability to achieve ((an)) a competitive and integrated employment outcome in accordance with WAC ((67-25-452)) 67-25-475.

**AMENDATORY SECTION** (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-360 Vocational rehabilitation services—Comparable services ((and benefits)).** (1) Consideration of comparable services and benefits is required by ((Section 101(a)(8) of)) the Rehabilitation Act (as amended). Therefore, this section prevails over all other sections describing conditions under which vocational rehabilitation services shall be provided.

(2) Comparable services and benefits include any financial or other resource for which a ((customer)) participant is legally qualified, or entitled, or meets the criteria for obtaining without undue contingencies. The resource must be an organized, ongoing form of service provision or financial assistance, whether public or private. It must be free or may require a deductible, co-insurance feature, token payment or personal claim.

(3) ((Customers)) Participants are required to apply for and accept comparable services and benefits which they are entitled to receive before vocational rehabilitation funds can be expended, except as provided in subsections (5) and (6) of this section.

(4) The vocational rehabilitation counselor has an obligation to inform ((customers)) participants of known sources

for comparable services and benefits and shall assist with application for these services when necessary.

(5) The following services are provided without consideration of comparable services and benefits:

(a) Assessment in accordance with WAC ~~((67-25-020, 67-25-055 and 67-25-057))~~ 67-25-130, 67-25-160, 67-25-183, 67-25-205, 67-25-210, and 67-25-220;

(b) Counseling and guidance in accordance with WAC ~~((67-25-380))~~ 67-25-273 including information and support services to assist an individual in exercising informed choice in accordance with WAC 67-25-073;

(c) Referral and other services to secure needed services from other agencies, including other components of the workforce development system, if those services are not available under this subsection, in accordance with WAC 67-25-061;

(d) ~~((Training services including work skills building and work readiness training, books, and other training materials in accordance with WAC 67-25-388, 67-25-394, 67-25-396, 67-25-398;))~~ Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services in accordance with WAC 67-25-340, 67-25-355, and 67-25-440;

(e) ~~((Placement services in accordance with WAC 67-25-440;~~

~~(f))~~ Rehabilitation technology services in accordance with WAC ~~((67-25-448))~~ 67-25-425;

~~((g))~~ (f) Services listed in (a) through ~~((f))~~ (e) of this subsection as post-employment services in accordance with WAC ~~((67-25-444))~~ 67-25-450.

(6) Determination of comparable services and benefits shall not be required if:

(a) Utilization of such a service would delay provision of vocational rehabilitation services to an individual determined to be at extreme medical risk, based on medical evidence provided by a qualified medical professional, indicating a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously; or

(b) An immediate job placement would be lost due to a delay resulting from utilization of comparable services and benefits.

(7) The following services may be provided only after consideration of comparable services and benefits:

(a) Physical and mental restoration services in accordance with WAC ~~((67-25-384))~~ 67-25-310;

(b) Maintenance in accordance with WAC ~~((67-25-400))~~ 67-25-370;

(c) Transportation in accordance with WAC ~~((67-25-404))~~ 67-25-383;

(d) Services to family members in accordance with WAC ~~((67-25-408))~~ 67-25-485;

(e) Interpreter and translation services in accordance with WAC ~~((67-25-412))~~ 67-25-393;

(f) Reader services in accordance with WAC ~~((67-25-416))~~ 67-25-403;

(g) Training at institutions of higher education in accordance with WAC ~~((67-25-388 and 67-25-390))~~ 67-25-320 and 67-25-330;

(h) Supported employment services in accordance with WAC ~~((67-25-436))~~ 67-25-430;

(i) Personal assistance services in accordance with WAC ~~((67-25-418))~~ 67-25-410;

(j) Post-employment services, in accordance with WAC ~~((67-25-444))~~ 67-25-450, except as specified in subsection (5) of this section;

(k) Occupational licenses, tools, equipment, initial stocks and supplies in accordance with WAC ~~((67-25-448))~~ 67-25-465;

(l) Transition services for ~~((students))~~ youth in accordance with WAC ~~((67-25-299))~~ 67-25-305;

(m) Other goods and services not specified in this section.

(8) Consideration of comparable services and benefits shall be documented in the customer's case services record and shall include sources of assistance considered, whether the customer applied, acceptable reasons for failure to apply, outcome of application, and basis for the decision to expend vocational rehabilitation funds for services described in subsection (7) of this section.

(9) Vocational rehabilitation funds shall not be expended to purchase services for a participant when another agency has primary responsibility for providing the needed service.

**AMENDATORY SECTION** (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-380 Vocational rehabilitation services—Counseling and guidance.** (1) Counseling and guidance services, based on needs of the individual, shall be available throughout all phases of the rehabilitation process to assist the participant with:

(a) Adjustment to blindness and other disabilities; understanding the importance of developing and using adaptive skills of blindness; and, identifying strategies to overcome negative social attitudes regarding disability;

(b) Identifying ~~((his or her))~~ the participant's unique strengths, resources, priorities, concerns, abilities, and capabilities related to planning for and achieving ~~((an))~~ a competitive and integrated employment outcome;

(c) Identifying and overcoming potential barriers to achieving ~~((an))~~ a competitive and integrated employment outcome, including disability-related, personal, and social factors;

(d) Selecting ~~((an))~~ a competitive and integrated employment outcome consistent with ~~((his or her))~~ the participant's abilities, capabilities, and interests;

(e) Obtaining and utilizing resource information to make meaningful and informed choices regarding selection of vocational rehabilitation goals, objectives, services, and providers;

(f) Overcoming potential barriers and achieving ~~((an))~~ a competitive and integrated employment outcome through development of skills such as: Study and work habits; grooming; management of finances; preparation for job interviews and tests; self-advocacy; and effective interpersonal relationships.

(2) Counseling and guidance services may also be provided to:

(a) Assist family members to effectively participate in the rehabilitation process;

(b) Assist prospective employers to develop positive attitudes regarding hiring and accommodating individuals who are blind.

(3) Counseling and guidance shall be provided without consideration of comparable services and benefits in accordance with WAC ((67-25-360)) 67-25-283.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

**WAC 67-25-384 Vocational rehabilitation services—Physical and mental restoration ((services)).** (1) Physical and mental restoration services shall be provided to a ((~~customer~~)) participant under an individualized plan for employment when the vocational rehabilitation counselor determines that such services are likely, within a reasonable period of time, to substantially correct or modify a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to competitive and integrated employment for the ((~~customer~~)) participant.

(2) All authorized physical and mental restoration services shall be provided by qualified personnel who meet state licensing requirements.

(3) When receiving physical and mental restoration services, the ((~~customer~~)) participant may choose the physician or other health professional and appropriate facilities. Service providers and facilities should, to the maximum extent appropriate, be selected from those who will accept reimbursement in accordance with the *Washington State Department of Labor and Industries Schedule of Maximum Allowances and Program Descriptions*.

(4) Physical and mental restoration services may be provided to an applicant or customer during trial work experience or ((~~extended evaluation~~)) work skills assessment, in accordance with WAC ((67-25-065 and 67-25-070)) 67-25-140 and 67-25-220, if it is necessary to stabilize or halt progression of a chronic illness for purposes of determining eligibility or continued eligibility.

(5) Physical and mental restoration services include but are not limited to:

- (a) Surgical and therapeutic treatment;
- (b) Diagnosis and treatment for mental or emotional disorders;
- (c) Dental treatment;
- (d) Nursing services;
- (e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;
- (f) Convalescent or nursing home care;
- (g) Drugs and supplies;
- (h) Prosthetic, orthopedic or other assistive devices;
- (i) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by qualified medical practitioners;

(j) Podiatry;

(k) Physical therapy;

(l) Occupational therapy;

(m) Speech or hearing therapy;

(n) Mental health services;

(o) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment (34 C.F.R. 365.1 (c)(39));

(p) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies;

(q) Other medical or medically related rehabilitation services; and

(r) Medical care for acute conditions arising during rehabilitation and constituting a barrier to the achievement of an employment outcome.

(6) Physical and mental restoration services shall be provided only after consideration of comparable services and benefits except as specified in WAC ((67-25-360)) 67-25-283.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

**WAC 67-25-388 Vocational rehabilitation services—General training provisions.** (1) The individualized plan for employment may include any organized form of instruction providing the knowledge and skills necessary for a customer to perform ((~~competitively in an occupation and achieve an~~)) to market expectations in an occupation or career field and achieve a competitive and integrated employment outcome. Knowledge and skills may be acquired through training in an institution, on the job, by correspondence or online technology, by tutors, or through a combination of these methods. Training may be given for any occupation, except as prohibited in subsection (2) of this section.

(2) Article I, Subsection 11 of the Washington state Constitution forbids the use of public funds to support an individual in education or training for an employment goal that is religious in nature.

(3) Programs or schools used to provide training shall be limited to those which are accredited, licensed, or approved either by a legal authority, or are recognized as adequate by the professional or trade group with which they are associated.

(4) The department may provide tuition, fees, books, tools and other training materials and shall periodically establish guidelines for determining the provision of these services.

(5) Training services shall be provided only after consideration of comparable services and benefits as specified in WAC 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-390 Vocational rehabilitation services—Post-secondary training((~~Institutions of higher education~~)).** (1) Training at a university, college, community col-

lege, vocational school, technical institute, ~~((or hospital))~~ school of nursing or other accredited training program may be provided if necessary to achieve the competitive and integrated employment outcome agreed upon by the ~~((customer))~~ participant and vocational rehabilitation counselor except as prohibited in accordance with WAC ~~((67-25-388))~~ 67-25-320.

(2) No training or training services in institutions of higher education shall be paid for with vocational rehabilitation funds unless the ~~((customer))~~ participant has applied for financial aid and other grant assistance from other sources to pay for the training in whole or in part. If the ~~((customer))~~ participant has applied for financial aid and is waiting for the results, and denial of training funds by the department would result in interruption or delay of the progress of the ~~((customer))~~ participant toward achieving his or her employment outcome, the vocational rehabilitation counselor may pay training costs on an interim basis until the results of the financial aid application is known.

(3) A ~~((customer))~~ participant may attend private or out-of-state institutions of higher education in preparation for an employment outcome; however, financial assistance shall be limited to the tuition amount at the University of Washington or the actual cost, whichever is less. Exceptions may be made when required training is not available in the state, or if other significant factors preclude the ~~((customer))~~ participant from attending an available training program at a public institution of higher education in the state.

(4) The department may provide financial assistance to a ~~((customer))~~ participant wishing to obtain a postgraduate degree when the training is necessary to achieve the individual's employment outcome. ~~((However, financial assistance shall not be provided to a customer pursuing a graduate program for the sole purpose of achieving upward mobility unless it can be determined that the customer is not currently employed in work that is consistent with his or her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and the individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment of this nature.))~~

(5) A ~~((customer))~~ participant receiving training at an institution of ~~((higher))~~ post-secondary education must meet established scholastic standards required by the program. If the ~~((customer's))~~ participant's grades fall below minimum standards, it shall be necessary, through assessment, counseling, and planning with the ~~((customer))~~ participant, to revise the individualized plan for employment including the possible selection of a new employment outcome.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-394 Vocational rehabilitation services—~~((Training—))~~On-the-job training.** (1) On-the-job training (OJT) is a training service ~~((an employer provides to a customer))~~ provided in collaboration among the department, employer and participant, after the individual is placed in a job, to assist the ~~((customer))~~ participant to learn the skills needed to perform the work. On-the-job training may be provided as a vocational rehabilitation service to achieve the

~~((customer's))~~ participant's competitive and integrated employment outcome.

(2) OJT services shall be provided as a program of organized training resulting in the competitive and integrated employment of the ~~((customer))~~ participant, giving the individual the opportunity to learn an occupation under actual conditions of commercial, industrial, or other on-the-job employment. The department will pay for ~~((the))~~ training costs, and the employer is responsible for costs related to employment.

(3) OJT services shall be provided to a ~~((customer))~~ participant only when the vocational rehabilitation counselor establishes that the following conditions have been met:

(a) The training program has been prepared in advance and outlined in detail;

(b) The ~~((customer's))~~ participant's training will follow a definite schedule of specified operations, instructions, and practices which will insure well-rounded preparation for the ~~((customer's))~~ participant's selected occupation;

(c) A mutual understanding has been reached between the ~~((trainee—customer, the trainer—employment training))~~ trainee/participant, the employer/training provider, and the vocational rehabilitation counselor regarding the ~~((customer's))~~ participant's employment training plan including: Length of the training period; financial arrangements; and operations and skills to be learned;

(d) The employer agrees to closely supervise the ~~((customer's))~~ participant's work and shall submit regular reports on the ~~((customer's))~~ participant's progress and performance to the vocational rehabilitation counselor;

(e) The training program meets any requirements for licensing in the trade or occupation in which the ~~((customer))~~ participant is to be employed;

(f) The employment training program for the ~~((customer))~~ participant is acceptable to other employees of the training provider.

(4) A business or industrial establishment utilized by the department to provide OJT services shall:

(a) Have personnel qualified with appropriate knowledge, skills, and ~~((personality))~~ aptitude to provide instruction;

(b) Have sufficiently diversified operations and adequate, suitable materials and equipment to ~~((insure a))~~ ensure the trainee thorough preparations and training within the scope and limits of his or her occupational objective;

(c) Ensure that training vocational rehabilitation ~~((customer's))~~ participants is only incidental to the business activity of the facility;

(d) Ensure that the training program shall be consistent with the informed choice of the ~~((customer))~~ participant, and designed to assist him or her to achieve ~~((an))~~ a competitive and integrated employment outcome ~~((in an integrated setting))~~.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-396 Vocational rehabilitation services—~~((Training—))~~Work readiness skills ~~((building))~~.** (1) Work readiness skill building and related employment train-

ing services may be provided to a ~~((customer through an employment service provider))~~ participant. This ~~((option))~~ service may be appropriate if a ~~((customer is not ready for, or does not wish to receive training in an integrated setting))~~ participant has gaps in readiness for job-finding skills or workplace expectations within a competitive and integrated work environment.

(2) Work readiness skill building training may be provided to assist the ~~((customer))~~ participant with foundational work skills, such as:

(a) Understanding the meaning, value, and demands of work;

(b) Gaining skills in understanding and capability around the cultural expectations of the workplace;

(c) Developing appropriate attitudes, habits, and work behaviors~~((; and~~

~~((e))), and organizational tools and systems;~~

(d) job finding skills;

(e) Developing functional capacities necessary to achieve an optimum employment outcome~~((;~~

(3) ~~Prior to provision of work skill building, there shall be an assessment of the individual's patterns of work behavior, and the services needed for him or her to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, social skills, and behavior patterns suitable for successful job performance.~~

(4) Work skill building shall meet the following criteria:

(a) ~~The training program shall be outlined in detail and agreed upon by the customer, or if appropriate, his or her representative, the vocational rehabilitation counselor, and the employment service provider, and shall include: Anticipated length of training; methods to be used; and objectives to be achieved.~~

(b) ~~The training program shall, consistent with the informed choice of the customer, be designed to assist him or her to achieve an employment outcome in an integrated setting.~~

(c) ~~The employment service provider agrees to closely supervise the customer's training and submit regular reports on the customer's progress and performance to the vocational rehabilitation counselor.~~

(d) ~~The employment service provider is certified by the department of social and health services division of vocational rehabilitation to provide work skill building training); and~~

(f) Gaining effective workplace self-advocacy skills.

(3) Work readiness skills may be provided as part of job placement services.

(4) A paid or unpaid internship that allows a student or participant direct career experience may also be provided as a work readiness skills service. An internship is distinguished from an OJT in that there is no formal expectation that the employer will hire the participant after the period of work experience and training.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-398 Vocational rehabilitation services—**~~((Training—))~~**Adaptive skills of blindness.** (1) Adaptive

skills of blindness are those skills necessary for individuals who are blind to function independently, distinguished from the vocational skills necessary to perform a specific occupation. Adaptive skills include:

(a) Communications, including Braille and keyboarding;

(b) Personal management;

(c) Orientation and mobility;

(d) Adjustment to blindness;

(e) Home management;

(f) Activities of daily living;

(g) Use of rehabilitation technology; and

(h) Use of residual vision and related devices.

(2) Training in adaptive skills of blindness shall be provided to a ~~((customer))~~ participant in accordance with standards established by the department for instruction of the specific adaptive skill.

(3) Training in adaptive skills of blindness may be provided to a ~~((customer))~~ participant under an individualized plan for employment in accordance with WAC ~~((67-25-260))~~ 67-25-230, or during the assessment to determine rehabilitation needs in accordance with WAC ~~((67-25-257))~~ 67-25-210.

(4) The department may operate and maintain an orientation and training center as a structured setting to provide assessment and training in adaptive skills of blindness for ~~((customers))~~ participants who may benefit from intensive adaptive skills training.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-399 Vocational rehabilitation services—**~~((Transition ((services for students)) for youth.))~~ **Transition ((services for students)) for youth.** (1) Transition services are a coordinated set of ~~((outcome-based activities for blind students, age fourteen to twenty-one, designed to facilitate school to employment.~~

(2) ~~Activities shall be based on the individual student's needs, taking into account the student's preferences and interests. Activities shall include instruction, community experience, functional assessment, employment development, instruction in daily living skills, and development of other post-school adult living objectives. Additional activities may include post-secondary education, vocational training, integrated employment (including supported employment), adult services, and independent living.~~

(3) ~~Students, age sixteen to twenty-one, who choose to seek an employment outcome will be referred to the vocational rehabilitation program.~~

(4) ~~Case management activities for students who apply for vocational rehabilitation services will be coordinated between the child and family program of the department and the vocational rehabilitation program until the student leaves the K-12 school system)) activities for a youth with a disability not older than twenty-four years of age, designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, work exploration and experience, vocational training, continuing and adult education, adult services, adaptive skills training and independent living, community participa-~~

tion, all leading to competitive and integrated employment (with or without long-term supports).

(a) Transition services are based upon the individual youth's needs, taking into account the youth's preferences and interests, and includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(b) Promotes or facilitates the achievement of the employment outcome identified in the youth's individualized plan for employment and includes outreach to and engagement of the parents, or, as appropriate, the representative of such a youth with a disability.

(2)(a) Transition services are distinguished from pre-employment transition services because they are specific, individualized, and planned services for eligible VR participants.

(b) Preemployment transition services are more general and exploratory, and may be provided to individuals who are potentially eligible for VR services, and are not older than twenty-one years of age (WAC 67-25-290).

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-400 Vocational rehabilitation services—Maintenance.** (1) Maintenance for living expenses may be provided only when these expenses are short-term in duration, in excess of the normal subsistence expenses of a ((~~customer~~)) participant, and only when necessary for the individual to participate in services under an individualized plan for employment. Maintenance includes monetary support for food, shelter, clothing and other subsistence items.

(2) Maintenance shall be provided only after consideration of comparable services and benefits in accordance with WAC ((~~67-25-360~~)) 67-25-283.

(3) Individuals with emergency needs for shelter, food, financial support, etc. will be referred to community sources ((~~who may~~)) that may provide these services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-404 Vocational rehabilitation services—Transportation.** (1) Transportation services for travel and related expenses may be authorized if necessary for an applicant ((~~or a customer~~)), eligible individual, or participant to receive any vocational rehabilitation service.

(2) Transportation may include:

(a) Fares or travel costs associated with using public or private vehicle;

(b) Food and lodging while in travel status;

(c) Wages, travel, and related expenses for a driver, attendant or aide if the services of that person are necessary for the ((~~customer~~)) individual to travel;

(d) Relocation and moving expenses, if necessary for ((~~the vocational rehabilitation of the individual~~)) securing a competitive and integrated employment outcome.

(3) Transportation services shall be provided only after consideration of comparable services and benefits in accordance with WAC ((~~67-25-360~~)) 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-408 Vocational rehabilitation services—((Services)) To family members.** (1) A family member is an individual:

(a) Who is a relative or guardian of a customer, or who lives in the same household as a ((~~customer~~)) participant;

(b) Who is integrally involved in the vocational rehabilitation of the ((~~customer~~)) participant; and

(c) Whose receipt of vocational rehabilitation services would further the vocational rehabilitation of the ((~~customer~~)) participant.

(2) Services provided to family members may include any vocational rehabilitation services available to customers in accordance with WAC ((~~67-25-350. However,~~)) 67-25-265.

(a) The services must be directly related to the vocational rehabilitation of the ((~~customer~~)) participant.

(b) Family members of any age may be served.

(3) A vocational rehabilitation service provided to family members shall be terminated when it no longer substantially contributes to the vocational rehabilitation of the ((~~customer~~)) participant.

(4) Services to family members shall be provided only after consideration of comparable services and benefits in accordance with WAC ((~~67-25-360~~)) 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-412 Vocational rehabilitation services—Interpreter and translation((s-services)).** (1) Interpreter services include sign language or oral interpretation services for individuals who are deaf(;) or hard of hearing, and tactile interpretation services for individuals who are deaf-blind.

(a) Interpreter services must be provided by qualified personnel.

(b) Interpreter services shall be authorized, to the maximum extent possible, in accordance with the department of social and health services schedule of maximum allowances and program descriptions.

(2) Translation services are provided to non-English speaking individuals, and for the individual's representative if appropriate, during all phases of the rehabilitation process including mediation, fair hearing, and judicial review.

(a) Translation services include oral translation of English into the primary language of an individual.

(b) Upon request, the following written communication shall be translated into the primary language of an applicant or customer:

(i) Application for services;

(ii) Notification of eligibility or ineligibility;

(iii) Individualized plan for employment;

(iv) Notification of case closure;

(v) Notification of annual review, if appropriate; and

(vi) Any notice requiring a response or a signature from an individual to continue receiving services.

(c) The department shall translate the Washington Administrative Code (WAC) regarding VR services or ser-

vice providers into the primary language of an applicant or customer upon his or her request.

(d) Translation services shall be authorized in accordance with procedures and fee schedules established by the department.

(3) Vocational rehabilitation expenditures for interpreter or translation services for applicants ~~((and customers)), eligible individuals and participants~~ will be authorized ~~((in accordance with WAC 67-25-360))~~ only after consideration of comparable services and benefits in accordance with WAC 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-416 Vocational rehabilitation services—Reader ((services)).** (1) Reader services may be provided to an applicant ~~((or customer)), eligible individual, or participant~~ when necessary to the provision of other vocational rehabilitation services.

(2) Reader services consist of orally reading to the blind individual print material ~~((to the blind customer))~~ which is not available through other appropriate modes of communication.

(3) If reader services are necessary beyond the initial stages of employment, the department shall, if desired by the individual, assist him or her to negotiate with the employer for reader services as a reasonable accommodation.

(4) Reader services shall be purchased in accordance with the department's procedures and shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-418 Vocational rehabilitation services—Personal assistance ((services)).** (1) Personal assistance services include a range of services provided by at least one person to assist an individual with a disability to perform daily living activities, on or off the job, that the individual typically would perform if he or she did not have a disability, and will not be able to perform even after receiving adaptive skills training.

This includes personal attendant services~~((+))~~, which are personal services that an attendant performs for an individual with a disability~~((+))~~ including, but not limited to, bathing, feeding, dressing, providing mobility and transportation.

(2) These services shall, to the extent appropriate and desired by the ~~((customer))~~ participant, include training in managing, supervising, and directing their personal assistance services.

~~((2))~~ (3) Personal assistance services may be provided, if necessary, for the ~~((customer))~~ participant to achieve ~~((an))~~ a competitive and integrated employment outcome, and shall be provided only while the ~~((customer))~~ participant is receiving other vocational rehabilitation services.

~~((3))~~ (4) The case service record must document how personal assistance services will be provided after the completion of vocational rehabilitation services or, to the extent that it is not possible to identify how personal assistance ser-

vices will be provided when the individualized plan for employment is developed, there must be a description of the basis for concluding that there is a reasonable expectation that resources will become available.

~~((4))~~ (5) Personal assistance services are provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-432 Vocational rehabilitation services—Rehabilitation technology ((and telecommunications)).**

(1) Rehabilitation technology is the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address barriers ~~((confronted by customers))~~ that might be experienced by a participant in education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(2) The department will provide, as appropriate, rehabilitation technology services throughout all phases of the vocational rehabilitation process for ~~((customers))~~ participants.

(3) Rehabilitation technology services may include:

(a) Assessment to determine rehabilitation technology needs;

(b) Job site and training site analysis including testing and research;

(c) Rehabilitation engineering services;

(d) Comprehensive training in the use of assistive technology devices;

(e) Procurement, installation and follow-up related to assistive technology devices.

~~((3))~~ (4) Any assistive technology device requiring an individualized prescription or fitting must be provided by a professional who meets any licensing or certification requirements to fill the prescription or to perform the fitting. Aids and devices not requiring individual fittings must meet engineering and safety standards recognized by experts in the field.

~~((4))~~ Telecommunications services include telecommunication devices and relay services for individuals who are deaf or hearing-impaired. Telecommunications) (5) Rehabilitation technologies and relay services for individuals who are deaf or hearing-impaired shall be utilized as necessary for service delivery.

~~((5))~~ (6) Rehabilitation technology services shall be provided without consideration of comparable services and benefits pursuant to WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-436 Vocational rehabilitation services—Supported employment ((services and extended services)).**

(1) Supported employment is competitive employment in an integrated setting, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, with ongoing support services for ~~((customers))~~ participants with



the most significant disabilities who ~~((need))~~ require intensive, ongoing support to perform in a work setting.

~~(2) ((A customer may be employed in an extended employment setting in which he or she is working toward competitive employment as a planned step in the process of completing an employment outcome in supported employment. While the customer is working toward competitive employment, he or she may be certified to be paid subminimum wages, consistent with provisions of the Fair Labor Standards Act, based on his or her productivity.~~

~~(3))~~ An individual shall be eligible to receive supported employment services if:

(a) The individual is eligible for vocational rehabilitation services in accordance with WAC ~~((67-25-030))~~ 67-25-130;

(b) The individual needs intensive supported employment services from the department and ongoing services from other resources to perform competitive and integrated work due to the nature and significance of his or her disabilities; and

(c) Supported employment is an appropriate employment outcome, with or without customized job tasks as defined in WAC 67-25-009, for the individual based on a comprehensive assessment of his or her rehabilitation needs in accordance with WAC ~~((67-25-255))~~ 67-25-205.

~~((4) A customer))~~ (3) A participant with an employment outcome of supported employment may receive any vocational rehabilitation service described in WAC ~~((67-25-350))~~ 67-25-265.

~~((5))~~ (4) Supported employment must occur in ~~((an))~~ a competitive and integrated work setting (as defined in WAC 67-25-009) for the maximum number of hours possible, based on the unique strengths, resources, interests, concerns, abilities, and capabilities of the ~~((customer))~~ participant with significant disabilities. ~~((An integrated setting, in the context of supported employment, is one where:~~

~~(a) Most coworkers are not disabled and the customer is not part of a work group of individuals with disabilities; or~~

~~(b) Most coworkers are not disabled, and if a job site as described in (a) of this subsection is not possible, the customer is part of a small work group of not more than eight individuals with disabilities; or~~

~~(c) If there are no coworkers, or the only coworkers are members of a small work group of not more than eight individuals all of whom have disabilities, the customer has regular contact with nondisabled individuals (other than personnel providing support services) in the immediate work setting.~~

~~(6) The department shall provide intensive training and support services during the first eighteen months of supported employment to facilitate the customer's adjustment at the worksite and determine the need for extended services from other resources. Additional services beyond eighteen months may be authorized with supervisory approval based on evidence that additional ongoing support is needed to stabilize the individual in employment. If such evidence is not available, the department must close the case. Support must include:~~

~~(a) Ongoing assessment of the customer's employment situation, or under special circumstances or request of the customer, an assessment regarding the customer's employ-~~

~~ment situation that takes place away from the worksite to: Determine what is needed to maintain job stability; and coordinate services or provide specific intensive services that are needed at or away from the customer's worksite to assist the individual in maintaining job stability.~~

~~(b) Intensive job skill training for the customer at the job site by skilled job trainers.~~

~~(c) Job development, job placement and job retention services.~~

~~(d) Social skills training.~~

~~(e) Regular observations or supervision.~~

~~(f) Follow-up services such as regular contacts with the customer's employer, the customer, or the customer's representative, and other appropriate individuals to help strengthen and stabilize the job placement.~~

~~(g) Facilitation of natural supports at the worksite.~~

~~(h) Other services similar to services described in (a) through (g) of this subsection.~~

~~(i) Any other vocational rehabilitation services.~~

~~(7) The customer shall transition to extended services after receiving supported employment services from the vocational rehabilitation program. Extended services are ongoing support services and other appropriate services needed to support and maintain the customer in supported employment. Long-term funding for extended services may be provided through cooperative agreements with public agencies, nonprofit agencies or organizations, employers, natural supports, and any resource other than federal vocational rehabilitation funds.)~~

(5) The determination to provide long-term supports must include:

(a) Ongoing assessment of the participant's employment situation to:

(i) Determine what is needed to maintain job stability; and

(ii) Coordinate services or provide specific intensive services that are needed at or away from the participant's worksite to assist the individual in maintaining job stability.

Under special circumstances and request of the participant, such an assessment might take place away from the worksite.

(b) Job development, job placement, and job retention services, with or without customization of job tasks;

(c) Intensive job skill training for the participant at the job site by qualified providers;

(d) Social skills training;

(e) Regular observations or supervision;

(f) Follow-up services, such as regular contacts with the participant's employer, the participant, or the participant's representative, and other appropriate individuals to help strengthen and stabilize the job placement;

(g) Facilitation of natural supports at the worksite;

(h) Other services similar to services described in (a) through (g) of this subsection; and

(i) Any other required vocational rehabilitation services.

(6) The participant shall transition to extended services after receiving supported employment services from the vocational rehabilitation program.

(a) Extended services are ongoing support services necessary to support and maintain the participant in competitive

and integrated employment, with or without customization of job tasks.

(b) Long-term funding for extended services may be provided through cooperative agreements with public agencies, nonprofit agencies or organizations; employers; natural supports; and any resource other than federal vocational rehabilitation funds.

(7) The department may provide intensive training and support services during the period which extended services from other resources are identified and implemented as follows:

(a) The department can provide intensive training and support services for up to twenty-four months to facilitate the participant's adjustment at the worksite while resources for extended services are being finalized;

(b) If the individual who requires long-term supports is a youth with a disability, the department may provide intensive training and support services for up to forty-eight months;

(c) If resources for extended services are not identified and implemented within those time frames, the department must close the case and exit the individual from department services per WAC 67-25-565.

(8) An individualized plan for employment with ~~((an))~~ a competitive and integrated employment outcome ~~((of supported employment))~~ with long-term supports must specify the expected extended services needed and, must identify the source, including natural supports, of extended services. If the source of extended services cannot be identified when the individualized plan for employment is developed, supported employment services shall be initiated while resources to provide extended services are sought per the limits described in this section.

(9) A ~~((customer))~~ participant with an employment outcome of supported employment may receive post-employment services in accordance with WAC ~~((67-25-444))~~ 67-25-450 when the services to be provided are not the responsibility of the extended services provider.

(10) The department shall provide transitional employment services as supported employment services for a ~~((customer))~~ participant with a significant disability due to mental illness. Transitional employment is a series of temporary ~~((competitive))~~ job placements in competitive and integrated work settings with ongoing support services. In transitional employment, ongoing support services must include continuing sequential job placements until job permanency is achieved.

(11) Supported employment services are provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-440 Vocational rehabilitation services—Job placement.** (1) Job placement services shall be provided to a ~~((customer))~~ participant under an individualized plan for employment to assist the individual with obtaining and retaining appropriate competitive and integrated employment consistent with his or her employment ~~((outcome))~~ goal.

(2) The department and ~~((customer))~~ participant shall be mutually responsible to find and secure suitable employment for the individual.

(a) The individualized plan for employment shall describe the nature and scope of job placement services to be provided by the department, and the participant's responsibility to actively and independently conduct job-seeking efforts.

(b) The individualized employment plan shall also describe if customized employment services, as defined in WAC 67-25-093, are expected to be a necessary job placement service.

(3) Job placement services include the following range of activities:

(a) ~~((Job development and employer relations (which may or may not be on behalf of a specific customer);~~

(b) ~~Job task analysis to determine how a person who is blind can be accommodated in a position;~~

(c) ~~Job-seeking skills training to prepare a customer for employment;~~

(d) ~~Communication and negotiation with a variety of employment resources and other community resources regarding employment of people who are blind;~~

(e) ~~Work skill building, counseling, and other follow-up and follow-along services to stabilize the customer in employment until the employment outcome has been satisfactorily achieved.)~~ Job-search skills training to prepare a participant for competitive and integrated employment;

(b) Communication and negotiation with a variety of employment resources and other community resources regarding employment of people who are blind;

(c) Job task analysis to determine how a person who is blind can be accommodated in a position and to identify if customization of the job is necessary for an individual;

(d) Work readiness skill building, counseling, and other follow-up and follow-along services to stabilize the participant in competitive and integrated employment until the employment outcome has been satisfactorily achieved;

(e) Job development and employer engagement (which may or may not be on behalf of a specific participant);

Employer engagement may include negotiation of a proposed job customization and integration of long-term supports, as necessary.

(4) Placement services may be provided using the following methods:

(a) Vocational rehabilitation counselors or staff employed by the department.

(b) An ~~((employee))~~ individual specializing in business ~~((relations))~~ engagement may provide placement services through communication and negotiation with a variety of employers and community resources, regarding employment of people who are blind.

(c) No-cost placement resources in the community such as ~~((one-stop WorkSource centers, projects with industry))~~ WIOA partners in the American job centers, registered apprenticeship programs, and other entities shall be utilized whenever possible.

(d) Job placement services may be purchased when it is in the ~~((customer's))~~ participant's vocational interests, when the department's services are not otherwise available, or

when placement is offered by an employment service provider as part of a service package.

(5) Job placement services shall be terminated when the ~~((customer))~~ participant has been provided vocational rehabilitation services, in accordance with an individualized plan for employment, which have enabled the individual to obtain and retain employment in ~~((an))~~ a competitive and integrated setting consistent with his or her capacities and abilities, with job stability achieved for at least ninety days.

(6) Job placement services shall be provided without consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-444 Vocational rehabilitation services—Post-employment ~~((services))~~.** (1) Post-employment services may be provided to a ~~((customer, subsequent to))~~ participant after achieving ~~((an))~~ a competitive and integrated employment outcome, if they are necessary for the ~~((customer))~~ participant to maintain, regain, or advance in employment consistent with the individual's abilities, capabilities, and interests.

(2) Post-employment services are intended to provide short-term and discrete intervention related to the established competitive and integrated employment outcome. ~~((Accordingly,))~~

(3) Post-employment services do not require a new determination of eligibility, and may be provided ~~((as long as the established individualized plan for employment and necessary documentation are available and pertinent))~~ within three years of case closure.

~~((3))~~ (4) Post-employment services include all vocational rehabilitation services identified in WAC ~~((67-25-350))~~ 67-25-265 and are subject to any conditions affecting provision of that vocational rehabilitation service.

AMENDATORY SECTION (Amending WSR 06-18-049, filed 8/30/06, effective 9/30/06)

**WAC 67-25-446 Vocational rehabilitation services—~~((Services))~~ To groups.** (1) The department may provide the following vocational rehabilitation services to groups of individuals:

(a) Establishment, development, or improvement of a public or other nonprofit employment service provider providing services that promote integration and competitive employment~~((:));~~

(b) Development and implementation of services that enhance the use of modes of communication or telecommunications for individuals with disabilities~~((:));~~

(c) Technical assistance and support services, such as job site modification and other reasonable accommodations, for businesses not subject to Title I of the Americans with Disabilities Act of 1990 that are seeking to employ individuals with disabilities~~((:));~~

(d) Establishment of small business enterprises, operated by individuals with the most significant disabilities under supervision of the department, including, management ser-

vices and supervision, and the acquisition of vending facilities, equipment, initial stocks, and supplies~~((:));~~

(e) Consultation services to assist educational agencies in transition of students with disabilities to post-school activities, including employment~~((:));~~

(f) Other services that promise to contribute substantially to the rehabilitation of a group of individuals, but that are not related directly to the individualized plan for employment of any one individual.

(2) Services to groups are provided in accordance with department procedures for the provision of these services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-448 Vocational rehabilitation services—Occupational licenses, tools, equipment, initial stocks and supplies and other technical assistance for self-employment.** (1) Goods and services described in this section may be provided only under an individualized plan for employment when necessary for the ~~((customer))~~ participant to achieve an employment outcome~~((The department will pay for a customer to be bonded if the employment he or she is entering requires a bond and the customer supplies all necessary information to the bonding firm.~~

(2) Occupational licenses are licenses, permits, or certificates showing that the individual meets certain standards, has accomplished certain achievements, or has paid dues, fees, or has other written authority required by a state, city, or other government unit that qualifies the individual to engage in a business, specific trade, or other work.

(3) Occupational tools include those customarily required for a worker to perform efficiently on the job, and which workers in the same or similar trade or profession are normally provided. These may include specialized tools adapted to accommodate the individual's disability.

(4) Occupational equipment includes occupational fixtures normally found in places of business. These include machinery, and appliances that are usually stationary during utilization. However, self-powered vehicles may also be provided.

(5) Initial stocks include the initial inventory of merchandise or goods necessary for a participant to enter self-employment. It may also include the initial purchase of live-stock as a base stock, and stocks of seed, fertilizer, fuel, etc., for farming or agricultural self-employment.

(6) Initial supplies include expendable items necessary for the customer to carry out day-to-day business operations, and which are consumed on the premises in the course of the customer's self-employment business or in a business enterprise location.

(7) Purchase, accountability, legal title, insurance, maintenance, and other considerations regarding provision of goods and services described in this section are addressed in the department's procedures governing their provision.

(8) Goods and services described in this section shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360) or establish a small business, including:

(a) A participant to be bonded if the employment he or she is entering requires a bond and the participant supplies all necessary information to the bonding firm;

(b) Occupational licenses, permits, or certificates showing that the individual meets certain standards, has accomplished certain achievements, or has paid dues, fees, or has other written authority required by a state, city, or other government unit that qualifies the individual to engage in a business, specific trade, or other work;

(c) Occupational tools which are customarily required for a worker to perform efficiently on the job, and which workers in the same or similar trade or profession are normally provided. These may include specialized tools adapted to accommodate the individual's disability;

(d) Occupational equipment and occupational fixtures normally found in places of business. These include machinery, and appliances that are usually stationary during utilization. However, self-powered vehicles may also be provided as occupational equipment;

(e) Initial stocks such as the initial inventory of merchandise or goods necessary for a participant to enter self-employment. It may also include the initial purchase of livestock as a base stock, and stocks of seed, fertilizer, fuel, etc., for farming or agricultural self-employment;

(f) Initial supplies including expendable items necessary for the participant to carry out day-to-day business operations, and which are consumed on the premises in the course of the participant's self-employment business or in a business enterprise location;

(g) Technical assistance including consultation and other services provided to conduct market analyses, to develop business plans, and to provide resources to individuals in the pursuit of self-employment, telecommuting and small-business operations.

(2) Goods and services described in this section shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-452 Vocational rehabilitation services ~~((provided))—Other ((goods and services)).~~** (1) Other goods and services not described in this chapter may be provided to a ~~((customer))~~ participant when necessary to determine the individual's eligibility for services and rehabilitation needs, or when necessary for the individual to achieve an appropriate competitive and integrated employment outcome.

(2) Other goods and services, except those required for assessment of the individual, shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-460 Eligibility—Order of ~~((priority))~~ selection.** (1) The purpose of an order of ~~((priority))~~ selection is to establish an equitable and organized system which, when resources are not sufficient to meet the demand for ser-

VICES, gives ~~((the first))~~ priority to those eligible vocational rehabilitation ~~((customers who meet the definition of most significantly disabled, in accordance with WAC 67-25-460))~~ individuals who are most in need of services.

(2) When the order of ~~((priority))~~ selection is in effect, eligible individuals will be assigned to one of ~~((two))~~ three priority categories:

(a) ~~((First))~~ Immediate priority: New ~~((eligible customers who meet the definition of most significantly disabled.~~

~~((b))~~ Second priority: New eligible customers who do not meet the definition of most significantly disabled) applicants who meet eligibility criteria of at least significant disability, and who require immediate services or tools to maintain a current job;

(i) Only the immediate services or tools required to maintain the current job can be provided under this immediate priority;

(ii) Once the immediate services or tools are provided and the job is stable, any further service provision requires being placed on the wait list and served in the priority and order for the significance of disability category that the individual qualifies for;

(b) First priority: New applicants who meet eligibility criteria of most significantly disabled, per WAC 67-25-183.

(c) Second priority: New applicants who do not meet the definition of most significantly disabled, per WAC 67-25-183.

(3) The department's executive director shall decide when to implement an order of ~~((priority))~~ selection, if necessary, and will determine which priority categories will be open or closed for the development of new individualized plans for employment. In the event sufficient funds or other resources become available to serve all eligible individuals, the order of ~~((priority))~~ selection will be revoked by the director.

(4) Eligible individuals can develop and carry out an individualized plan for employment based on:

(a) The priority of the category to which they are assigned;

(b) Whether or not that category is open for development of new plans; and

(c) The order in which they applied for vocational rehabilitation services as indicated by the date of application.

(5) ~~((Customers))~~ Eligible individuals will be placed in the highest priority category for which they are qualified. The date of application will be used whenever it is determined that a waiting list is required for a category.

(6) ~~((Customers))~~ Eligible individuals will be notified in writing of their category status when they are notified of their eligibility, as well as of the conditions pertaining to that category:

(a) Whether the category is currently open or closed.

(b) ~~((Their position on any))~~ The current status of an existing waiting list within that category.

(7)(a) The only services to individuals in a closed order of priority category will be information and referral services. These individuals will not receive counseling and guidance, assessment and training, job placement, or other vocational rehabilitation services until their category is reopened ~~((and)),~~ they come off the waiting list and they complete an

individualized plan for employment with an agency vocational rehabilitation counselor.

(b) Preemployment transition services as described in WAC 67-25-290 may be available to qualified students with a disability without consideration for priority categories or wait lists for the duration of an order of selection for the department.

~~(8) ((Customers))~~ Eligible individuals will be notified of the right to appeal the category decision, in accordance with WAC ~~((67-25-570))~~ 67-25-600, and of their responsibility to notify the department if their situation changes in a way that may affect their priority category placement.

~~(9) ((Individuals))~~ Participants who are receiving services under an individualized plan for employment at the time an order of ~~((priority))~~ selection is implemented will continue to receive services as planned. They are not subject to the order of ~~((priority))~~ selection and are not a category within that order.

~~(10) The order of ((priority))~~ selection will not affect the provision of services needed to determine eligibility for vocational rehabilitation services, ~~((WAC 67-25-010 through 67-25-030))~~ in accordance with WAC 67-25-125.

#### NEW SECTION

**WAC 67-25-503 Vocational rehabilitation services—Limitations on use of subminimum wage.** (1) Section 511 of WIOA Title IV limits the use of subminimum wage. Individuals age twenty-four or younger may not begin work that pays a subminimum wage (less than federal minimum wage) unless the following actions have been completed:

(a) The individual received preemployment transition services or transition services under IDEA; and

(b) The individual applied for VR services and has been found ineligible for services; or

(c) The individual has been determined eligible for VR services but has not been successful towards achieving a specific planned competitive integrated employment goal, with or without supports and/or customization, and client record of services closed; and

(d) The individual has been provided career counseling and information and referral to other resources designed to assist the person in attaining competitive integrated employment in a manner that:

(i) Is understandable to the individual with a disability;

(ii) Facilitates independent decision making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment (WAC 67-25-183);

(iii) The career counseling and information and referral services provided under this section may include benefits counseling, particularly with regard to the interplay between earned income and income-based financial, medical, and other benefits.

(2) When an individual has refused to participate in an activity required by this section, documentation must be provided to the individual within ten calendar days of the individual's refusal to participate.

(a) Such documentation must, at a minimum, contain the:

(i) Name of the individual;

(ii) Description of the refusal and the reason for such refusal;

(iii) Signature of the individual or, as applicable, the individual's representative;

(iv) Signature of the department personnel documenting the individual's refusal;

(v) Date of signatures; and

(vi) Date and method (e.g., hand delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the individual.

(b) The department must retain a copy of all documentation required by this part in a manner consistent with the department's case management system and the requirements of WAC 67-25-073.

(3) Upon a referral by an entity that has fewer than fifteen employees of an individual with a disability who is employed at a subminimum wage by that entity, DSB will also inform the individual within thirty calendar days of the referral by the entity, and of self-advocacy, self-determination, and peer mentoring training opportunities available in the community.

(4) Nothing in this section will be construed as requiring the department to provide the services required by this section directly. The department may contract with other entities, i.e., other public and private service providers, as appropriate, to fulfill the requirements of this section. The contractor providing the services on behalf of the designated state unit may not be an entity holding a special wage certificate under Section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-540 ((Individualized plan for employment—Successful rehabilitation.)) VR program exit—Employment outcome.** ~~((1) An individual shall be considered successfully rehabilitated when he or she has maintained an employment outcome for at least ninety days that is:~~

~~(a) The result of services provided under an individualized plan for employment;~~

~~(b) Commensurate with the individual's unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice; and~~

~~(c) Whenever possible, employment achieved is competitive as defined by being in the competitive labor market, performed on a full-time or part-time basis in an integrated setting, and the individual is compensated at or above the minimum wage, and the individual's wage and level of benefits are not less than that paid by the employer for the same or similar work performed by nondisabled individuals;~~

~~(d) In the most integrated setting possible, consistent with the individual's informed choice; and~~

~~(e) Considered to be a satisfactory employment outcome by both the customer and vocational rehabilitation counselor with agreement that the customer is performing satisfactorily on the job.~~

~~(2) The individual shall be notified of the termination decision and appeal procedures in accordance with WAC 67-25-545.)~~ (1) The record of services of an individual who has achieved a competitive and integrated employment outcome may be closed only if all of the following requirements are met:

(a) The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with WAC 67-25-240 and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and in a competitive and integrated employment setting.

(b) The individual has maintained the competitive and integrated employment outcome for an appropriate period of time, having achieved job stability not less than ninety days, and the individual no longer needs vocational rehabilitation services.

(c) At the end of the appropriate period under (b) of this subsection, the individual and the department's rehabilitation counselor consider the competitive and integrated employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) The individual is informed through appropriate modes of communication of the availability of post-employment services in accordance with WAC 67-25-593 and 67-25-450.

(2) The individual shall be notified of the decision to exit services and appeal procedures in accordance with WAC 67-25-600.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-545 VR program exit—Notification ~~(of termination)~~.** (1) The department shall provide written notification to every individual who has applied for services, in the individual's primary language if necessary, and using appropriate modes of communication, when a determination is made to ~~((terminate services to))~~ exit the individual from the VR program and end further activity, in accordance with WAC 67-25-553, 67-25-565 and 67-25-575.

(2) The written notice shall specify in detail the reasons for the decision to ~~((terminate))~~ end services and shall clearly inform the individual of the right to mediation and fair hearing in accordance with WAC ~~((67-25-570))~~ 67-25-600. A description of client assistance program services shall also be provided.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-550 Vocational rehabilitation—Confidential information—Protection~~(of)~~ and use ~~((and release))~~.** (1) Confidential information refers to all documented and undocumented personal information, including lists of names and photographs, about any past or present applicant or customer in the vocational rehabilitation program, given or made available to the department, its representatives, or its agents in the course of the administration of the program.

(2) Customers, their representatives as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and policies governing its use. This information shall be provided to the applicant or customer, and to the individual's representative in the individual's primary language if necessary, using appropriate modes of communication, and shall include:

(a) Identification of the authority under which information is collected;

(b) Explanation of the principal purposes for which the department intends to use or release information;

(c) Explanation of whether providing requested information is mandatory or voluntary and the effects of not providing requested information;

(d) Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

(e) Identification of other agencies to which information is routinely released.

(3) All personal information must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Personal information shall not be shared with an organization, agency or individual not having official responsibility for administration of the program, except as provided for in subsection (6) of this section.

(4) Except as provided in (a) and (b) of this subsection, the department shall, upon receipt of a written request by a customer, release all information in that individual's record, to the individual or the individual's representative within fifteen working days.

(a) Medical, psychological, or other information that the department determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual's representative or to a qualified medical or psychological professional or to a person appointed by the court to act as that individual's representative.

(b) Personal information obtained from service providers and cooperating agencies under assurances that the information shall not be further divulged may be released only under conditions established by the other agency or organization except as provided in subsections (5) and (6) of this section.

(5) The customer may request that misleading or inaccurate information in his or her record of services be amended and that such request for amendment be documented in the individual's record.

(6) Personal information may be released to an organization, agency, or individual for purposes of audit, evaluation, or research directly connected with administration of the vocational rehabilitation program, such as the department's rehabilitation council or for purposes that would significantly improve the quality of life for customers, and only if the organization, agency, or individual assures that:

(a) Information shall be used only for the purposes for which it is being provided;

(b) Information shall be released only to persons officially connected with the audit, evaluation, or research;

(c) Information shall not be released to the customer;

(d) Information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the customer or the individual's representative.

(7) The department may release personal information to other agencies and programs under the following conditions:

(a) Upon receiving the informed written consent of the customer, or, the individual's representative if appropriate, the department may release personal information to another agency or organization only to the extent that the information may be released to the customer, and only to the extent that the agency or organization demonstrates that the information requested is necessary for its program.

However, medical or psychological information that the department determines may be harmful to the individual may be released if the agency or organization assures the department that information shall be used only for the purpose for which it is being provided and shall not be released to the customer.

(b) The department shall release personal information if required by federal law or regulation.

(c) The department shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, or in response to judicial order.

(d) The department may release personal information to protect the participant or others if the individual poses a threat to his or her safety or to the safety of others.

#### NEW SECTION

**WAC 67-25-565 VR program exit—Supported employment.** (1) The service record of an individual with a most significant disability who has achieved a competitive and integrated employment outcome that requires long-term supports (with or without customization of job tasks) will be closed concurrently with the achievement of the employment outcome when the individual:

(a) Satisfies requirements for case closure, as set forth in WAC 67-25-051; and

(b) The department is not (or is no longer) providing extended services or any other vocational rehabilitation service to the individual.

(2) The service record of a youth with a most significant disability who is receiving extended services provided by the department will be closed when:

(a) The youth with a most significant disability achieves a competitive and integrated employment outcome with supports (with or without customization of job tasks); and

(b) Is no longer eligible to receive extended services provided by the department because the individual:

(i) No longer meets age requirements established in the definition of a youth with a disability in accordance with 67-25-093;

(ii) Has received extended services for a period of forty-eight months; or

(iii) Has transitioned to extended services provided with funds by an entity other than the department prior to meeting the age or time restrictions established under (b)(i) and (ii) of this subsection, respectively.

(c) The individual satisfies requirements for case closure, in accordance with WAC 67-25-051; and

(d) The individual is no longer receiving any other vocational rehabilitation service from the department.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

**WAC 67-25-570 Resolving a disagreement about vocational rehabilitation services.** (1) If at any time during the vocational rehabilitation process(~~(-)~~) the department makes a decision relating to the provision of vocational rehabilitation services that a (~~(customer)~~) participant does not agree with, the (~~(customer)~~) participant or the (~~(customer's)~~) participant's representative has the right to use one or more of the following options to resolve the issue:

(a) Talk to the vocational rehabilitation counselor or to the counselor's supervisor to resolve the disagreement;

(b) Ask for help or information from the client assistance program;

(c) Request mediation; and/or

(d) Request a fair hearing.

(2) Efforts to reach agreement with the vocational rehabilitation counselor or supervisor will not be used to deny or delay mediation or a fair hearing.

(3) Mediation is voluntary and must be agreed to by both the (~~(customer)~~) participant and the department. Mediation is not used to deny or delay a fair hearing. A (~~(customer)~~) participant may request both mediation and a fair hearing at the same time(~~(-)~~) if agreement is:

(a) Reached during mediation, the fair hearing is canceled.

(b) Not reached during mediation, the fair hearing is held as scheduled.

(4) Mediation is conducted by a trained mediator who knows the laws and rules about vocational rehabilitation services and who does not work for the department. The mediator does not make case service decisions.

(5) During mediation, the mediator:

(a) Allows each party to present information or evidence;

(b) Helps each party listen to and understand the other party's position;

(c) Reviews and explains any laws that apply; and

(d) Facilitates an agreement, if possible, between the parties.

(6) If agreement is reached during mediation, the department will provide a written statement of the agreement to the (~~(customer)~~) participant. Agreements made through mediation are not legally binding.

(7) The (~~(customer)~~) participant may choose to be represented by a family member, advocate or other individual at the mediation meeting.

(8) The department schedules mediation sessions in a timely manner at a convenient location to all parties.

(9) The department pays for costs related to mediation, except costs related to a representative or attorney engaged by the (~~(customer)~~) participant.

(10) The department will pay for vocational rehabilitation services necessary for the (~~(customer to participate)~~) par-

participant to engage in mediation, such as transportation or child care.

(11) Information discussed during mediation is kept confidential and may not be used in a later hearing or civil proceeding, if one is held. Before beginning a mediation session, all parties must sign a statement of confidentiality.

(12) A fair hearing is a proceeding as outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC. An administrative law judge who works for the office of administrative hearings holds a fair hearing.

(13) A ~~((customer))~~ participant who does not agree with a decision made by the department about eligibility or vocational rehabilitation services may ask for a fair hearing within forty-five calendar days of that decision.

(14) To ask for a fair hearing, the ~~((customer))~~ participant must send a written request to the office of administrative hearings. The written request must include:

(a) The ~~((customer's))~~ participant's name, address, and telephone number;

(b) A written statement about the decision and the reasons for disagreement; and

(c) Any other information that supports the ~~((customer's))~~ participant's position.

(15) The office of administrative hearings must hold a formal hearing within sixty days of receipt of written request for a hearing, unless:

(a) The ~~((customer))~~ participant or the department ask for a delay; and

(b) There is a reasonable cause for the delay.

(16) After the ~~((customer))~~ participant submits a request for a fair hearing, the department will offer the ~~((customer))~~ participant a prehearing meeting. The prehearing is optional for the ~~((customer))~~ participant and can be conducted in person, by telephone, or by another method agreeable to both parties. The purpose of the prehearing meeting is to:

(a) Clarify the decision with which the ~~((customer))~~ participant disagrees;

(b) Provide copies of laws, rules or other information to be presented in the fair hearing;

(c) Explain how the fair hearing is conducted; and

(d) Settle the disagreement, if possible.

(17) During the formal hearing, the ~~((customer))~~ participant and the department may present information, witnesses and/or documents to support their position.

(18) The ~~((customer))~~ participant may choose to be represented by an attorney, a relative, or someone else;

(19) The administrative law judge makes a decision after:

(a) Hearing all of the information presented;

(b) Reviewing any documents submitted; and

(c) Reviewing relevant federal and state laws and regulations.

(20) The office of administrative hearings sends a written report of the findings and decisions to the customer and to the department within thirty days of the formal hearing.

(21) The office of administrative hearings decision is final and the department must implement the decision.

(22) If a ~~((customer))~~ participant does not agree with the office of administrative hearings decision, the individual may

pursue civil action through superior court to review that decision.

(23) The department will not suspend, reduce, or terminate services to a ~~((customer))~~ participant while waiting for a formal hearing decision, unless the department believes the ~~((customer))~~ participant:

(a) Provided false information to obtain vocational rehabilitation services; or

(b) Committed fraud or other criminal action to obtain vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

**WAC 67-25-590 Vocational rehabilitation—Case service records.** The department shall maintain for each applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) ~~((If an applicant has been determined ineligible:~~

~~(a) Documentation specifying reasons for the ineligibility determination; and~~

~~(b) Documentation of a review of the determination in twelve months after the determination was made, except as provided in WAC 67-25-056.~~

~~((2) When an applicant is determined eligible:))~~ When an applicant's eligibility has been determined:

(a) A written and dated statement of eligibility determination signed by the vocational rehabilitation counselor; and

(b) Supporting rationale for the determination, including documentation from the assessment for determining eligibility, in accordance with WAC ~~((67-25-020))~~ 67-25-130.

~~((3))~~ (2) If it is determined that a trial work experience ~~((or an extended evaluation))~~ for an individual with a significant disability is necessary to make an eligibility determination in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-140:

(a) A written and dated statement of this determination signed by the vocational rehabilitation counselor;

(b) Supporting documentation, including the determination that the individual is an individual with a significant disability; and

(c) Documentation of periodic assessments in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-140.

(3) If an applicant has been determined ineligible:

(a) Documentation specifying reasons for the ineligibility determination; and

(b) Documentation of a review of the determination in twelve months after the determination was made, except as provided in WAC 67-25-575 and 67-25-580.

(4) The individualized plan for employment for the ~~((customer))~~ participant in accordance with WAC ~~((67-25-260))~~ 67-25-230.

(5) Documentation from the assessment for determining vocational rehabilitation needs in accordance with WAC ~~((67-25-255 and 67-25-257))~~ 67-25-205 and 67-25-210 to support:

(a) The determination of the employment outcome and ~~((intermediate))~~ rehabilitation objectives for the individual; and



(b) The nature and scope of services needed to achieve the ~~((intermediate))~~ objectives and employment outcome.

(6) Documentation of how the ~~((customer))~~ participant was provided information necessary to make informed choices in selecting the competitive and integrated employment outcome, ~~((intermediate))~~ rehabilitation objectives, rehabilitation services, and providers of services identified in the individualized plan for employment.

(7) ~~((Documentation of how the customer was provided information regarding the level of integration of service provision and job placement options.~~

~~((8))~~ (8) If physical and mental restoration services were provided, in accordance with WAC ~~((67-25-384))~~ 67-25-310, documentation supporting the determination that the clinical status of the customer was stable or slowly progressive.

~~((9))~~ (9) Documentation supporting any decision to provide services to family members in accordance with WAC ~~((67-25-408))~~ 67-25-485.

~~((10))~~ (10) Documentation of the individual's participation in the cost of any vocational rehabilitation services.

~~((11))~~ (11) Documentation of the individual's eligibility for and use of any comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

~~((12))~~ (12) Documentation that the individual has been advised of the confidentiality of all personal information, and that any information about the individual has been released with the individual's informed written consent, in accordance with WAC ~~((67-25-550))~~ 67-25-051.

~~((13))~~ (13) Documentation of the reason for ~~((terminating))~~ exit from services ~~((to a customer))~~, in accordance with WAC ~~((67-25-545))~~ 67-25-575 and 67-25-580, and, if ~~((customer was determined rehabilitated))~~ participant was exited for having achieved a competitive and integrated employment outcome, the basis for that determination in accordance with WAC ~~((67-25-540))~~ 67-25-553.

~~((14))~~ (14) Documentation of any plans to provide post-employment services after the competitive and integrated employment outcome has been achieved, the basis on which these plans were developed, and a description of services provided and outcomes achieved in accordance with WAC ~~((67-25-444))~~ 67-25-450.

~~((15))~~ (15) Documentation concerning any action and decision resulting from a request for a fair hearing in accordance with WAC ~~((67-25-570))~~ 67-25-600.

~~((16))~~ (16) If a ~~((customer))~~ participant has been provided vocational rehabilitation services under an individualized plan for employment, but after the initiation of these services he or she has been determined no longer capable of achieving an employment outcome, documentation of any reviews of this determination in accordance with WAC ~~((67-25-056))~~ 67-25-220 and 67-25-575.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

**WAC 67-25-595 Assessment—Work skills ~~((assessment))~~.** (1)(a) A work skills assessment is a process of providing assessment and related vocational rehabilitation services, after eligibility, to a ~~((customer))~~ participant with significant disabilities, for the purpose of collecting information

necessary to assess his or her capability to continue benefiting, in terms of ~~((an))~~ a competitive and integrated employment outcome, from vocational rehabilitation services due to the significance of his or her disability.

(b) The individualized plan for employment, developed in accordance with WAC ~~((67-25-260))~~ 67-25-230, must be inactivated while the ~~((individual))~~ participant is involved in the work skills assessment.

(2) A work skills assessment plan will be created by the VR counselor and the VR ~~((customer))~~ participant and include:

(a) Intermediate objectives that outline steps or activities that will determine what barriers are preventing the ~~((customer))~~ participant from making successful progress in their individual plan for employment;

(b) Responsibilities of the ~~((customer))~~ participant and VR counselor for the achievement of each individual objective;

(c) Methods for evaluating progress;

(d) Vocational services which support the achievement of each intermediate objective;

(e) Timelines for the overall work skills assessment plan and each service;

(f) Cost for each service with consideration of comparable benefits per WAC 67-25-283;

(g) Comments from the ~~((customer))~~ participant regarding the objectives, services and service providers;

(h) A statement that the individualized plan for employment can be amended at any time during the life of the individualized plan for employment; and

(i) Signatures of both the ~~((customer))~~ participant and VR counselor. The signature date ~~((shall))~~ will reflect the date the work skills assessment plan is signed.

(3) A work skills assessment may take place more than once and may extend as long as necessary to determine that:

(a) There is sufficient evidence that the ~~((customer))~~ participant can benefit from vocational rehabilitation services and achieve ~~((an))~~ a competitive and integrated employment outcome and is to continue to receive vocational rehabilitation services; or

(b) There is ~~((sufficient))~~ clear and convincing evidence based on functional and situational assessments that the ~~((customer))~~ participant cannot benefit from vocational rehabilitation services and achieve ~~((an))~~ a competitive and integrated employment outcome, due to the significance of his or her disability, and is no longer eligible for vocational rehabilitation services, and the case is closed in accordance with WAC 67-25-575 and 67-25-593.

#### NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
67-25-005	67-25-009
67-25-010	67-25-093
67-25-015	67-25-103
67-25-020	67-25-130

Old WAC Number	New WAC Number	<u>REPEALER</u>
67-25-025	67-25-115	<p>The following sections of the Washington Administrative Code are repealed:</p> <p>WAC 67-25-055 Eligibility determination—Notice to applicant.</p> <p>WAC 67-25-070 Extended evaluation.</p> <p>WAC 67-25-077 Certification of trial work experience or extended evaluation.</p> <p>WAC 67-25-280 Individualized plan for employment—Termination due to ineligibility.</p> <p>WAC 67-25-325 Services available from other agencies.</p>
67-25-030	67-25-125	
67-25-050	67-25-160	
67-25-056	67-25-575	
67-25-060	67-25-183	
67-25-065	67-25-140	
67-25-255	67-25-205	
67-25-257	67-25-210	
67-25-260	67-25-230	
67-25-270	67-25-240	
67-25-275	67-25-250	
67-25-284	67-25-580	
67-25-350	67-25-265	
67-25-360	67-25-283	
67-25-380	67-25-273	
67-25-384	67-25-310	
67-25-388	67-25-320	
67-25-390	67-25-330	
67-25-394	67-25-340	
67-25-396	67-25-355	
67-25-398	67-25-365	
67-25-399	67-25-305	
67-25-400	67-25-370	
67-25-404	67-25-383	
67-25-408	67-25-485	
67-25-412	67-25-393	
67-25-416	67-25-403	
67-25-418	67-25-410	
67-25-432	67-25-425	
67-25-436	67-25-430	
67-25-444	67-25-450	
67-25-446	67-25-490	
67-25-448	67-25-465	
67-25-452	67-25-475	
67-25-460	67-25-193	
67-25-540	67-25-553	
67-25-545	67-25-593	
67-25-550	67-25-051	
67-25-570	67-25-600	
67-25-590	67-25-073	
67-25-595	67-25-220	

**WSR 18-11-104**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Consumer Services)

[Filed May 21, 2018, 1:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-034.

Title of Rule and Other Identifying Information: Chapter 208-620 WAC implementing the Consumer Loan Act, chapter 31.04 RCW, specifically including amendments to provisions on residential mortgage loan servicing.

Hearing Location(s): On June 26, 2018, at 10:00-11:00 a.m., at the Department of Financial Institution (DFI), 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: July 24, 2018.

Submit Written Comments to: Sara Rietcheck, P.O. Box 41200, Olympia, WA 98504-1200, email sara.rietcheck@dfi.wa.gov, by June 26, 2018, 5:00 p.m. Sign up for the Gov-Delivery email subscription system from the DFI web site. Access the rule-making page on the DFI web site at www.dfi.wa.gov.

Assistance for Persons with Disabilities: Contact Sara Rietcheck, phone 360-902-8793, TTY 360-664-8126, email sara.rietcheck@dfi.wa.gov, by June 26, 2018, 5:00 p.m. Sign up for the GovDelivery email subscription system from the DFI web site. Access the rule-making page on the DFI web site at www.dfi.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to clarify the roles of parties investing in, owning, and servicing residential mortgage loans. The rules will provide additional detail to industry to help them comply with the law. Technical changes are also being made.

Reasons Supporting Proposal: Amending the rules to clarify the roles of the parties will be helpful to industry. What residential mortgage loan servicing activities can be conducted outside the United States will also be helpful to industry. The restructuring of WAC 208-620-900 will make it easier to read. Amending the rules to detail the require-

ments of the compliance management system will educate and provide a resource to industry.

Statutory Authority for Adoption: RCW 43.320.040, 31.04.165. Proposed in compliance with OFM Guidance 3.a. dated October 12, 2011.

Statute Being Implemented: Chapter 31.04 RCW.

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

Name of Proponent: DFI, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8800; Implementation and Enforcement: Charlie Clark, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-0511.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to these rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

May 21, 2018  
Charles Clark, Director  
Division of Consumer Services

**AMENDATORY SECTION** (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; internet pages, social media, instant messages, or electronic bulletin boards.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026, implementing the Truth in Lending Act.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the bor-

rower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Part 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower." See WAC 208-620-011.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. Part 1026.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. Sec. 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 and Regulation B, 12 C.F.R. Part 1002.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692, 12 C.F.R. Part 1006.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, National Credit Union Administration, Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes step-parents, stepchildren, stepsiblings, and adoptive relationships.

~~"Individual servicing a mortgage loan," ((means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed or exempt lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.~~

~~For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.)) See WAC 208-620-011(2).~~

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as mortgage loan originator.

"Loan processor." See WAC 208-620-011.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146-010. A licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

Mortgage loan originator does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

Mortgage loan originator does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state

law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure

trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other consensual security interest on a dwelling, as defined in the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC 208-620-011.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"Senior officer" means an officer of a consumer loan company at the vice president level or above.

"Service or servicing a loan." See WAC 208-620-011.

"Simple interest method." See WAC 208-620-011.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. Sec. 6101 to 6108.

"Telemarketing Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agen-

cies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026.

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

"Underwriter." See WAC 208-620-011.

**AMENDATORY SECTION** (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015? (1) "Borrower"** means an individual who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

**(2) "Individual servicing a residential mortgage loan"** means a person who on behalf of a lender or servicer licensed or exempt from licensing in this state: Collects or attempts to collect payments on existing obligations due and owing to the licensed or exempt lender or servicer, including payments of principal, interest, escrow amounts, and other amounts due; works with borrowers to collect data and make decisions necessary to modify either temporarily or permanently terms of the obligations; or otherwise finalizes collection through the foreclosure process. For the purpose of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from borrowers for performing the described activities.

**(3) "Loan processor" or "underwriter"** means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. A residential mortgage loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

**(4) "Residential mortgage loan modification services"** means activities conducted for compensation or gain by persons not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another person performing mortgage loan modification services or to a residential mortgage loan servicer.

**(5) "Service" or "servicing a loan"** means, with respect to residential mortgage loans, the following:

(a) Regulated activities.

(i) Collecting or attempting to collect payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

~~((b))~~ (ii) Collecting fees due to the servicer for the servicing activities;

~~((c))~~ (iii) Working with the borrower to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; or

~~((d))~~ (iv) Otherwise finalizing collection through the foreclosure process.

(b) Regulated persons.

(i) "Servicer." Persons directly engaged in servicing.

(ii) "Master servicer." Persons responsible for ongoing servicing administration either by directly servicing or through servicing agreements with licensed or exempt subservicers. Except that the director may issue a license waiver to a master servicer servicing or administering the servicing of fewer than twenty-five loans.

(iii) "Subservicer." Persons directly servicing pursuant to a servicing agreement with a master servicer.

(c) Persons not regulated.

(i) "Investor." Persons holding securities or other types of instruments backed by pools of residential mortgage loans. Investors are not servicers, master servicers, or subservicers.

(ii) "Note buyers." Persons who purchase mortgage loans without servicing rights and who are not servicers, master servicers, or subservicers.

**(6) "Simple interest method"** means the method of computing interest payable on a loan by applying the rate of interest specified in the note or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Interest may not be compounded or payable in advance.

(a) Each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

(b) The prohibition on compounding interest does not apply to reverse mortgage loans made in compliance with the Washington State Reverse Mortgage Act within this chapter.

**AMENDATORY SECTION** (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-104 Who is exempt from licensing as a consumer loan company?** (1) See RCW 31.04.025 (2)(a), (b), (d), (g) through (i), and (k) through (m).

(2) Under RCW 31.04.025 (2)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) Under RCW 31.04.025 (2)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary dwelling.

(4) Under RCW 31.04.025 (2)(f), a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as

a contractor for the construction of residential dwellings. See also WAC 208-620-232.

(5) Under RCW 31.04.025 (2)(j), a nonprofit housing organization seeking exemption must meet the following standards:

(a) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides home ownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(g) Meets other standards as prescribed by the director.

(6) Under RCW 31.04.025(3), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025(3), individuals who extend credit on the sale of their primary dwelling.

(8) Investors or note buyers. See WAC 208-620-011(2).

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-231 Who must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents?** (1) Persons servicing loans they originated.

(2) Persons servicing loans purchased post closing.

(3) Persons servicing loans owned by other persons.

(4) ~~((You must comply with the annual assessment requirements for your residential mortgage loan servicing activity. See WAC 208-620-440.~~

~~((5)) See also WAC 208-620-011(5) and 208-620-104.~~

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-251 Are there any additional requirements for out-of-state licensees?** (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310. The main office (headquarters), wherever located, must be licensed.

(2) **Keeping records out-of-state.** ~~((The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC~~

~~208-620-590.)) You must keep your books and records location information updated in the NMLS and provide the director with access to the books and records.~~

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington?** Yes. You may broker residential mortgage loans under the Consumer Loan Act. Brokered loans are subject to the annual assessment. See WAC ~~((208-620-440)) 208-620-441.~~

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-440 How do I calculate ~~((my)) the annual assessment for my nonmortgage activity in Washington?~~** (1)~~((a))~~ **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

~~((b)) **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses not paid through the examination or investigation process, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the regulatory cost based on the total annual volume of Washington residential mortgage loans serviced on January 1st. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any licensee will not exceed one hundred thousand dollars.))~~

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all Washington loans you made~~((, brokered, or purchased))~~ during the assessment year.

~~((3)) **Reverse mortgages.** Each reporting year, you will report and be assessed on:~~

~~((a) The dollar amount of advances made; and~~

~~((b) The dollar amount of accrued interest.))~~

#### NEW SECTION

**WAC 208-620-441 How do I calculate the annual assessment for my residential mortgage activity in Washington?** (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual

assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** Master servicers must report their MSR volume but will not be assessed for residential mortgage loan servicing conducted by a subservicer licensed under this chapter pursuant to a servicing agreement. Each licensee will pay an amount based on the total annual volume of Washington residential mortgage loans serviced during the reporting year multiplied by .XXXXXXXXXX. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any licensee will not exceed one hundred thousand dollars.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31st of the prior year; plus

(b) The total principal loan amount of all Washington loans you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) Prior notification required.** You must amend your NMLS record at least ten days prior to a change of your:

(a) Principal place of business or any of branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of your registered agent if you are located outside the state;

(d) Legal or trade name; or

(e) Ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your NMLS record within ten days after an occurrence of any of the following:

(a) A change in mailing address, telephone number, fax number, or email address;

(b) A cancellation or expiration of your Washington state business license;

(c) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator;

(g) Receipt of notification of a claim against your bond;

(h) A change in primary company contact (~~(☞)~~), primary consumer complaint contact, location of your books and records; (~~(☞)~~)

(i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response;

(j) For residential mortgage loan servicers servicing for a GSE, you must notify the department through the NMLS within ten days of the occurrence of your GSE capital requirements falling below the required minimum; or

(k) For residential mortgage loan servicers servicing for a GSE, you must notify the department through NMLS within ten days of receiving notification of a breach of contract, waiver, nonperformance, or termination from the GSE.

(3) **Post notification within twenty days.** You must amend your NMLS record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of license revocation procedures against your license in any state;

(b) The filing of a felony indictment or information related to lending or brokering activities against you or any officer, board director, or principal or an indictment or information involving dishonesty against you or any officer, board director, or principal;

(c) Conviction of you or any officer, director, or principal for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the company.

(4) See WAC 208-620-499 for the requirements when you close your business.

(5) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-620-573.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license?** If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLS within ten days of closing the company or surrendering the license; and

(2) File the final closure form, annual reports, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

(3) If your license has expired or you are otherwise locked out of the NMLS database, you must provide the documents described in subsection (2) of this section directly to the department.

(4) If you are a residential mortgage loan servicer, you must provide the department with a description of the disposition of your servicing volume, including the name of the purchaser and the specific notice to consumers about the sale of their servicing.



Any Washington loans in your portfolio and activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-520** (~~(How long must I maintain my records under the Consumer Loan Act?) What are the records I must maintain and for how long must I maintain them? (What are the records I must maintain? Licensees must maintain the following records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.)~~) Unless otherwise indicated in this section, you must maintain the following records for a minimum of three years after making the final entry, or the period of time required by federal law, whichever is longer:

(1) **General records.** Each licensee must maintain electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to making loans or servicing residential mortgage loans.

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any electronic advertising distributed by facsimile computer, or other electronic or wireless network.

(3) **Other specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures under RESPA;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1, HUD-1A or federal closing disclosure);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders;

(n) All documents used to support the underwriting approval; and

(o) All documents that evidence a financial commitment made to protect a rate of interest during a rate lock period.

(4) Loan servicing documents. (~~(See subsection (1) of this section.)~~)

(a) You must maintain servicing agreements as part of your records.

(b) You must maintain all notices from GSEs, if applicable.

(c) You must maintain recorded telephone conversations with consumers for three years after the date of the call or longer if required by another law.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format((;)) or proper destruction of the records. Compliance management system (CMS). Your CMS must be maintained as part of your books and records.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-530 Can I maintain my records electronically?** Yes. (1) You may maintain records electronically if you also maintain the electronic display equipment and make it available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) You must provide records in hard copy upon request of the director.

(4) If you use a cloud service for records maintenance, the servers underlying that service must be located in the United States or its territories.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-550 What business practices are prohibited?** In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within seven business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Collecting more than forty-five days of prepaid interest at the time of loan closing;

(4) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(6) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(7) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(8) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(9) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(10) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(11) Willfully filing a lien on property without a legal basis to do so;

(12) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(13) Failing to reconvey title to collateral, if any, within ~~(thirty)~~ sixty business days when the loan is paid in full ~~((unless conditions exist that make compliance unreasonable))~~;

(14) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

(15) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

(16) Failing to indicate on all residential mortgage loan applications, initial and revised, the company's unique identifier, the loan originator's unique identifier, and the date the application was taken or revised;

(17) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a

profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

(18) Receiving compensation for making the loan and for brokering the loan in the same transaction((-);

(19) Charging a fee in a residential mortgage loan transaction that is more than the fees allowed by the state or federal agency overseeing the specific type of loan transaction. Examples include, but are not limited to, loans insured or guaranteed by the Veterans Administration, Home Equity Conversion Mortgages insured by HUD, and loans offered through the United States Department of Agriculture Rural Development((-);

(20) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted((-);

(21) Servicing a usurious loan.

**AMENDATORY SECTION** (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited?** (1) In addition to being subject to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender or investor.

(2) As to force placed insurance you are prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing two prior written notices to the homeowner's last known address seeking verification of existing insurance coverage. The notices must state:

(i) How the homeowner provides proof there is insurance coverage in place;

(ii) That without proof of insurance the servicer may obtain coverage at the homeowner's expense, that such coverage may only protect the mortgage holder, and that the cost of the coverage may be higher than that the homeowner may be able to obtain privately;

(iii) That the homeowner may request the servicer to set up an escrow account to advance insurance payments and that upon establishment of an escrow account the servicer may charge the borrower the amount of the insurance payments advanced on the borrower's behalf respecting the mortgaged property including a cushion amount (see WAC 208-620-900 (4)(b));

(iv) The second written notice must be sent thirty days after the first written notice.

(b) Failing to advance payments to a property insurer regardless of the homeowner making a payment to the servicer when the homeowner has an escrow account for the payment of insurance.

(c) Purchasing force placed insurance at a price that is not commercially reasonable. You must terminate force placed insurance within thirty days of receiving evidence from the homeowner of the existence of coverage. You must refund to the homeowner all premiums for force placed insurance collected during any period of time for which the homeowner's private insurance was in place.

(3) You are additionally prohibited from:

(a) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(b) Knowingly misapplying or recklessly applying payments to escrow accounts.

(c) Charging excessive or unreasonable fees to provide loan payoff information.

(d) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(e) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

(4) You are prohibited from referring a delinquent mortgage to foreclosure if you have received the homeowner's loan modification application and you have not evaluated the homeowner for all available loan modifications.

(5) You are prohibited from using any funds in a suspense account to pay your own fees for servicing.

(6) You are prohibited from pursuing any collection activities while a complete loan modification application is being reviewed or while the borrower is making payments pursuant to a trial or permanent modification. This prohibition includes activities conducted by others on your behalf.

(7) You are prohibited from collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(8) You are prohibited from failing to service the loan pursuant to the loan terms and conditions unless agreed to in writing by the borrower.

(9) You are prohibited from knowingly or recklessly improperly onboarding a residential mortgage loan into your loan servicing system.

#### NEW SECTION

**WAC 208-620-553 Conducting residential mortgage loan servicing activities in the United States or outside the United States.** (1) You are prohibited from conducting the following activities from any location outside the United States or its territories:

(a) Receiving payments and maintaining the payment records;

(b) Collection activities;

(c) Any communications with consumers; or

(d) Receipt of data from or disbursement of data to borrowers.

(2) The following activities may be conducted from a location outside the United States or its territories:

(a) Data entry;

(b) Document review;

(c) Recommendation for action;

(d) Records searches;

(e) Credit dispute analysis; or

(f) Escrow account analysis.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

**WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act?** (1) You may charge servicing fees authorized by the loan documents, by the act, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by the loan documents or as allowed under WAC 208-620-560(2), and wire transfer fees for wire transfers requested by the borrower.

(2) You may only charge a fee for a default related service that is usual and customary or reasonable in light of the service provided.

(3) You may not charge a consumer for fees you paid to third parties in excess of the fee ((charged by)) you paid to the third party.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

**WAC 208-620-825 What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages?** (1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

(a) All costs and charges to the consumer;

(b) All advances to and for the benefit of the consumer;

(c) Any shared appreciation or equity in the dwelling that you are entitled to receive under the contract to receive;

(d) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);

(e) Each of the assumed annual appreciation rates for the dwelling:

(i) Zero percent;

(ii) Four percent;

(iii) Eight percent((±)).

(f) Each of the following assumed loan periods:

(i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday((±)).

(g) Reserved.

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policies.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

(12) A copy of audited financial statements and unaudited balance sheet and income statement for the most recent end quarter for the last two years of audited financial statements. If you are relying on your parent company's capital to satisfy WAC 208-620-810(2), you must also include the parent company's last two years of audited financial statements and the most recent end quarter unaudited balance sheet and income statement.

(13) Copies of your residential mortgage loan servicing policies and procedures.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

**WAC 208-620-900** (~~What requirements must I comply with when~~) **Servicing residential mortgage loans** (~~(?)~~)—**General requirement.** (~~In addition to complying with all other provisions of this act you must:~~) (1) Other applicable laws, regulations, and programs. A violation of an applicable state or federal law, regulation, or program is a violation of this act. In addition to complying with all other provisions of this act, you must comply with the following:

(a) Chapter 61.24 RCW and any other applicable state or federal law, regulation, and program.

(b) (~~Comply with~~) The federal Servicemembers Civil Relief Act.

(~~(e) A violation of an applicable state or federal law, regulation, or program is a violation of this act.~~)

(2) Servicing and ownership transfers or sales.

(a) When acquiring servicing rights from another servicer you must:

(i) Continue processing loan modification requests and honoring trial and permanent modifications;

(ii) Designate the homeowner as a third-party intended beneficiary in any subsequent contract for transfer or sale, unless doing so would violate another state law or (~~federal HAMP or~~) GSE modification program(~~(s)~~) requirements; and

(b) When transferring or selling the servicing of loans with pending modification requests or trial or permanent modifications you must:

(i) Inform the successor servicer if a loan modification is pending;

(ii) Obligate the successor servicer to accept and continue processing loan modification requests and to honor trial and permanent loan modification agreements; and

(iii) Designate the homeowner as a third-party intended beneficiary in any contract for transfer or sale, unless doing so would violate state law or (~~federal HAMP or~~) GSE modification program(~~(s)~~) requirements.

(3) Payment processing and fees.

(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided, that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. You must apply the payment as specified in the loan documents.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available before crediting them to the borrower's account.

(c) You must notify the borrower if a payment is received but not credited and instead placed in a suspense account. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. In the event of a conflict between this subsection (3)(c) or (d) of this section immediately following or both, and the requirements of an applicable bankruptcy court order, compliance with the bankruptcy court requirements are considered compliance with the subsections.

(d) When the suspense account contains enough money to make a full payment, you must apply that payment to the mortgage as of the date the full amount became available in the suspense account.

(e) You must assess any incurred fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement.

(~~(f) If you provide monthly or more frequent statements that include the information required under this subsection, you have until January 1, 2013, to program these changes. On and after January 1, 2013, you must be in compliance with this subsection.~~)

~~(4) Maintenance of the escrow account.~~

~~(a)(i) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.~~

~~(ii) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if~~

you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower. You must comply with (a)(ii) of this subsection beginning on January 1, 2013.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.

(c) You must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

(5) Borrower requests for information.

(a) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(i) Maintaining written or electronic records of each written request for information involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(ii) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(b) You must provide at a minimum the following information to a borrower's request described in subsection (5) of this section:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(iii) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(iv) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes.

(c) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(d) If the content of your response meets the requirements under RESPA for a response to a qualified written

request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with (e) of this subsection.

(e) In addition to the statement described in (a) of this subsection, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(i) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(ii) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(iv) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(6) Loss mitigation.

(a) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

(i) Explain loss mitigation options and requirements;

(ii) Track documents submitted by the homeowner and documents provided to the homeowner;

(iii) Inform the homeowner of the status of their loss mitigation process;

(iv) Ensure the homeowner is considered for all loss mitigation options; and

(v) Access individuals with the authority to delay or stop foreclosure proceedings.

(b) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. If not using a HAMP or GSE loan modification program, you must:

(i) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days. You have until April 1, 2013, to develop the system described in (a)(i) of this subsection. On and after April 1, 2013, you must be in compliance with (a)(i) of this subsection.

(ii) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(iii) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See (b) of this subsection for additional requirements on borrower appeals.

(iv) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(v) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(vi) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (a)(viii) and (ix) of this subsection.

(vii) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(viii) Review and consider a complete loan modification application if received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(ix) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the

borrower may fail to perform the terms of the loan modification.

(e) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

- (A) An ineligible mortgage;
- (B) An ineligible property;
- (C) The borrower did not accept the offer; or
- (D) The loan was previously modified.

(ii) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(iii) Respond to the borrower's appeal within thirty days of receipt.

(iv) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

(d) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

(e) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(f) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

(g) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

(h) You must make public all necessary information to inform homeowners about your short sale requirements.

(i) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.

(7) Foreclosure.

(a) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(b) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.

(8)) (4) Disclosures.

(5) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as

part of your books and records and must provide them to the department when directed to do so.

~~((9))~~ (6) See also WAC 208-620-551.

#### NEW SECTION

**WAC 208-620-905 Servicing residential mortgage loans—Maintenance of the escrow account.** (1)(a) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(b) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower.

(2) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.

(3) You must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

#### NEW SECTION

**WAC 208-620-920 Servicing residential mortgage loans—Borrower requests for information.** (1) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(a) Maintaining written or electronic records of each written request for information involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(b) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(2) You must provide at a minimum the following information:

(a) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(b) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(c) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(d) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes.

(3) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(4) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with subsection (3) of this section.

(5) In addition to the statement described in subsection (1)(b) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(c) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(d) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one

free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

#### NEW SECTION

**WAC 208-620-930 Servicing residential mortgage loans—Loss mitigation.** (1) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

- (a) Explain loss mitigation options and requirements;
- (b) Track documents submitted by the homeowner and documents provided to the homeowner;
- (c) Inform the homeowner of the status of their loss mitigation process;
- (d) Ensure the homeowner is considered for all loss mitigation options; and
- (e) Access individuals with the authority to delay or stop foreclosure proceedings.

(2) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. For any modification program, you must:

(a) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days.

(b) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(c) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See subsection (3) of this section for additional requirements on borrower appeals.

(d) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(e) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(f) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (h) and (i) of this subsection.

(g) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(h) Review and consider a complete loan modification application if received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(i) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(3) As to borrower appeals of loan modification denials you must:

(a) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

- (i) An ineligible mortgage;
- (ii) An ineligible property;
- (iii) The borrower did not accept the offer; or
- (iv) The loan was previously modified.

(b) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(c) Respond to the borrower's appeal within thirty days of receipt.

(d) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

(4) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

(5) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(6) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

(7) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

(8) You must make public all necessary information to inform homeowners about your short sale requirements.

(9) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.



NEW SECTION

**WAC 208-620-935 Servicing residential mortgage loans—Foreclosure.** (1) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(2) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.

NEW SECTION

**WAC 208-620-940 Servicing residential mortgage loans—Compliance management system (CMS).** Your CMS must contain, at a minimum, the following functionalities:

- (1) Board and management oversight;
- (2) Compliance program;
- (3) Consumer complaint response; and
- (4) Compliance audits.

For the details of each component, see the *Supervision and Examination Manual* from the Consumer Financial Protection Bureau (CFPB) at the following link: <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/>. The CMS-specific procedures can be used by an entity to self-assess the effectiveness of its CMS.

**WSR 18-11-108**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**  
 [Filed May 21, 2018, 8:27 a.m.]

Supplemental Notice to WSR 17-23-177.

Preproposal statement of inquiry was filed as WSR 16-20-019.

Title of Rule and Other Identifying Information: The following sections of chapter 180-105 WAC, Performance improvement goals: WAC 180-105-020 Reading and mathematics, 180-105-040 Definitions, and 180-105-060 High school graduation.

Hearing Location(s): On July 11, 2018, at 11:45 a.m., at ESD 101, Conference Center, 4202 South Regal Street, Spokane, WA.

Date of Intended Adoption: July 12, 2018.

Submit Written Comments to: Andrew Parr, 600 Washington Street S.E., P.O. Box 47206, Olympia, WA 98504, email [Andrew.parr@k12.wa.us](mailto:Andrew.parr@k12.wa.us), fax 360-586-2357, by July 11, 2018.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-725-6047, fax 360-586-2357, TTY 360-664-3631, email [parker.teed@k12.wa.us](mailto:parker.teed@k12.wa.us), by July 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make various amendments to chapter 180-105 WAC, Performance improvement goals, to align performance improvement goals to long-term goals described in the

Washington Every Student Succeeds Act (ESSA) state accountability plan. The proposed amendments also make certain technical corrections to this chapter.

Reasons Supporting Proposal: The need to ensure that chapter 180-105 WAC, Performance improvement goals, is consistent in language and provisions with RCW 28A.305.-130.

Statutory Authority for Adoption: RCW 28A.305.130.

Statute Being Implemented: RCW 28A.305.130.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting: Andrew Parr, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6063; Implementation and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

<b>WSR:</b>	<b>Title of Rule:</b> Performance improvement goals.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI.
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**Part I: Estimates: No fiscal impact,** the proposed rule change will have no fiscal impact on school districts.

**Estimated Cash Receipts to:** No estimated cash receipts.

**Estimated Expenditures From:** No estimated expenditures.

**Estimated Capital Impact:** No estimated capital impact.

**Part II: Narrative Explanation:**

**II. A - Brief Description Of What the Measure Does That Has Fiscal Impact:** *Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

None.

**II. B - Cash Receipts Impact:** *Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

None.

**II. C - Expenditures:** *Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

None.

**Part III: Expenditure Detail****III. A - Expenditures by Object or Purpose:** None.**Part IV: Capital Budget Impact:** None.

A copy of the statement may be obtained by contacting Thomas J. Kelly, 600 Washington Street S.E., Room 433, Olympia, WA 98504, phone 360-725-6301.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Chapter 28A.305 RCW, Performance improvement goals, requires the alignment of district and school improvement goals to long-term goals described in ESSA state accountability plan.

April 25, 2018  
Randy Spaulding  
Executive Director

AMENDATORY SECTION (Amending WSR 07-07-052, filed 3/14/07, effective 4/14/07)

**WAC 180-105-020 ((Reading and mathematics.))**  
**Performance improvement goals.** (((1) Each school district board of directors shall by December 15, 2003:

(a) Adopt district wide performance improvement goals using the federal requirements to determine the increase in the percentage of students who meet or exceed the standard on the Washington assessment of student learning for reading and mathematics in grades four, seven, and ten; and

(b) Direct each school in the district that administers the Washington assessment of student learning for grade four, seven, or ten to adopt performance improvement goals using the federal requirements to determine the increase in the percentage of students meeting the standard for its fourth, seventh, or tenth grade students in reading and mathematics.

(2) School districts and schools shall establish separate district wide and school reading and mathematics improvement goals using the federal requirements to determine the increase in requirements under subsection (1) of this section for each of the following groups of students:

- (a) All students;
- (b) Students of each major racial and ethnic group;
- (c) Economically disadvantaged students;
- (d) Students with disabilities; and
- (e) Students with limited English proficiency.

(3) School districts and schools are not required to publish numerical improvement goals in a grade level for reading and mathematics for 2004 or in any year thereafter for any student group identified in subsection (2) of this section in which there were fewer than ten students eligible to be assessed on the Washington assessment of student learning in the prior year. However, this subsection shall not be construed to affect WAC 180-16-220 (2)(b) or any other requirements for school and school district improvement plans.

(4) Annual performance improvement goals for both school districts and schools shall be determined:

(a) By using the starting point and annual goals established using the federal requirements for determining starting points in the 2003 Washington State No Child Left Behind (NCLB) Accountability Plan.

(b) If the performance improvement goals established by using the federal requirements to determine the increase for assessments administered in the spring of 2003 and each year thereafter through and including assessments administered in the spring of 2013 are not met, but the other indicator is met [the other indicator for high schools is the graduation goal (WAC 180-105-040(4)) and the other indicator for elementary and middle schools is the unexcused absences goal (Washington State Accountability System under NCLB 2001)] then a substitute calculation may be made. That substitute calculation representing satisfactory progress shall not be less than the sum of:

(i) The percentage of students meeting standard on the assessments administered in the spring of the preceding year for the relevant student group, grade level and subject; and

(ii) The percentage of students who did not meet standard on the assessments administered in the spring of the preceding year for the relevant student group, grade level and subject, multiplied by ten percent.

(c) The performance improvement goals for assessments administered in the spring of 2014 shall be that all students eligible to be assessed meet standard on the Washington assessment of student learning.

(5) School districts and schools shall be deemed to have met the performance improvement goals established pursuant to this chapter if the school district or school achieves the minimum improvement goal required under subsection (4) of this section, even if the school district or school does not achieve the performance improvement goals established by using the federal requirements to determine the increase.

(6) No performance improvement goal for a group in a subject and grade established pursuant to this section shall be used for state or federal accountability purposes if fewer than thirty students in the group for a subject and grade are eligible to be assessed on the Washington assessment of student learning.) (1) As part of the district and school improvement plan required in WAC 180-16-220 each school district board of directors shall by September 1, 2019, and annually thereafter:

(a) Adopt district-wide performance improvement goals for the measures included in the Washington school improvement framework.

(b) Direct each school in the district that enrolls students in grades three through eight and/or high school to establish goals to increase the measures included in the Washington school improvement framework consistent with state and district goals.

(2) School districts and schools shall establish separate district-wide and school English language arts and mathematics improvement goals using the federal requirements to determine the increase in requirements under subsection (1) of this section for the all students group and each of the groups of students required under the federal requirements.

(3) School districts and schools are not required to publish numerical improvement goals in a grade level or student group referenced in subsection (2) of this section for any year in which there were fewer than the minimum number of reportable students identified in the Washington accountability plan approved by the U.S. Department of Education. However, this subsection shall not be construed to affect WAC 180-16-220 (2)(b) or any other requirements for school and school district improvement plans.

AMENDATORY SECTION (Amending WSR 05-15-036, filed 7/11/05, effective 7/11/05)

**WAC 180-105-040 Definitions.** ((As used in Title 3 WAC:

(1) "High school" means a public school in the state enrolling students in any of grades nine through twelve.

(2) "Graduation rate" means the percentage of students who receive a regular high school diploma within four academic years of having enrolled for the first time as ninth grade students. Students who transfer to another school less than four academic years after initial enrollment in the ninth grade shall not be included in the calculation of the graduation rate for the school from which the student transfers. Students who become deceased shall not be included in the calculation of the graduation rate for the school last attended. Students who earn a regular high school diploma after their four academic years will be included in additional calculations and reports for the year a regular high school diploma is completed.

(3) "Graduation rate goal" means the expected minimum graduation rate reported in a particular year for the prior year's graduating class. For example, the graduation rate goal for 2006 relates to students in the class of 2005.

(4) "Graduating class" or "class of" or "cohort" of any particular year means the group of students who are scheduled to graduate in that particular year after having completed grades nine through twelve in four or fewer academic years.))

(1) "High school" means a public school in the state enrolling students in any of grades nine through twelve.

(2) "Graduation rate" means the four-year adjusted cohort graduation rate expressed as the percentage of students who receive a regular high school diploma within four academic years of having enrolled for the first time as ninth grade students. Students who transfer to another school less than four academic years after initial enrollment in the ninth grade shall not be included in the calculation of the graduation rate for the school from which the student transfers. Students who become deceased shall not be included in the calculation of the graduation rate for the school last attended. Students who earn a regular high school diploma after their four academic years will be included in additional calculations and reports for the year a regular high school diploma is completed.

(3) "Performance improvement goals" means the long-term goals described in the Washington accountability plan approved by the U.S. Department of Education for the academic achievement indicator, high school graduation indicator, and English learner progress indicator.

(4) "School and school district improvement plans" means the data-driven plan for the district and each school described and required under WAC 180-16-220 that promotes a positive impact on student learning and includes a continuous improvement process.

(5) "Federal requirements" means the accountability and other requirements specified by the U.S. Department of Education in the Elementary and Secondary Education Act of 1965, as amended.

(6) "Washington school improvement framework" or "WSIF" means the system of school differentiation described in the Washington accountability plan approved by the U.S. Department of Education as meeting federal requirements. The framework methodology establishes a summative score for the all students group and the reportable student groups specified in WAC 180-105-020(2) from up to five indicators broadly categorized as academic achievement, student academic growth, English learner progress, high school graduation, and school quality or student success.

(7) "Washington school improvement framework indicators" includes the following indicators:

(a) "Academic achievement indicator" means the measure of the percentage of students who are proficient on the assessments of student learning in reading/English language arts and mathematics included as part of the system of differentiation described in the Washington accountability plan approved by the U.S. Department of Education.

(b) "Student growth indicator" means a measure of academic growth or academic improvement derived from the Washington assessments of student learning included as part of the system of differentiation described in the Washington accountability plan approved by the U.S. Department of Education.

(c) "High school graduation indicator" means the graduation rate and adjustments if any included as part of the system of differentiation described in the Washington accountability plan approved by the U.S. Department of Education. This indicator only applies to high schools as defined in subsection (3) of this section.

(d) "English learner progress indicator" means a measure of the progress in achieving English language proficiency for English learners included as part of the system of differentiation as described in the Washington accountability plan approved by the U.S. Department of Education.

(e) "School quality or student success indicator" means the measure or combination of measures of student engagement and school climate included as part of the system of differentiation described in the Washington accountability plan approved by the U.S. Department of Education.

(i) "Regular school attendance" is a measure of school quality or student success in the Washington school improvement framework. The measure is the percentage of students at a school who had fewer than eighteen full-day absences (ten percent) during the school year.

(ii) "9th graders on track" is a measure of school quality or student success in the Washington school improvement framework. The measure is the percentage of first-time ninth graders at a school who pass all the credits attempted. This indicator only applies to high schools as defined in subsection (3) of this section.

(iii) "Advanced course-taking" is a measure of school quality or student success in the Washington school improvement framework. The measure is the percentage of all enrolled students (grades nine through twelve) who complete a dual credit course. This indicator only applies to high schools as defined in subsection (3) of this section.

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

AMENDATORY SECTION (Amending WSR 07-07-052, filed 3/14/07, effective 4/14/07)

**WAC 180-105-060 (~~(High school graduation)~~)**  
**Establishing goals.** ~~((1) Each school district board of directors shall by December 15, 2005, revise district wide graduation rate goals for 2006 and each year thereafter and shall direct each high school in the district to revise graduation rate goals for 2006 and each year thereafter, subject to approval by the board.~~

~~(2) The minimum graduation rate goals through 2013 shall be as follows for each of the nine groups of students listed in WAC 180-105-040(4):~~

~~(a) Sixty-six percent in 2005, one percentage point above the previous year's goal from 2006 through 2009, and three percentage points above the previous year's goal in 2010 through 2013; or~~

~~(b) For any student group whose graduation rate falls below sixty-six percent in 2005, the minimum goal for 2005 is two percentage points above that group's graduation rate in 2004, an additional two percentage points per year above the previous year's goal in 2006 through 2009, and an additional four percentage points per year above the previous year's goal in 2010 through 2013, until the rate for that group meets or exceeds the goal described in (a) of this subsection.~~

~~(3) Graduation rate goals in 2014 and each year thereafter for each group of students listed in WAC 180-105-040(4) shall be not less than eighty-five percent.~~

~~(4) School district boards of directors are authorized to adopt district wide graduation rate goals and to approve high school graduation rate goals that exceed the minimum level required under this section. However, district wide and high school graduation rate goals that exceed the minimum level required under this section shall not be used for federal or state accountability purposes.)~~ (1) Annual performance improvement goals for both school districts and schools established pursuant to WAC 180-105-020 shall be determined:

(a) Using the most recently available school improvement framework results as the starting point and annual increments to reach the goals outlined in (b) of this subsection.

(b) The performance improvement goals for assessments administered in the spring of 2027 shall be consistent with the goals outlined in the state consolidated plan. At a minimum schools and districts must include the following goals:

(i) Ninety percent of students eligible to be assessed meet standard on the required state assessments.

(ii) Graduation rate for all students, and each group of students referenced in WAC 180-105-020(2) shall be not less than ninety percent.

(iii) In the districts that administer the Washington English language proficiency assessment described in the Washington accountability plan approved by the U.S. Department of Education to adopt performance improvement goals using the federal requirements to determine the increase in the percentage of students making progress toward English language proficiency included in the Washington school improvement framework.

(c) Districts and schools shall establish goals for each of the Washington school improvement framework indicators as defined in WAC 180-105-040(7) for all students and each group of students referenced in WAC 180-105-020(2).

(2) School district boards of directors are authorized to adopt district-wide and school goals that exceed the minimum level required under this section. However, district-wide and school goals that exceed the minimum level required under this section shall not be used for federal or state accountability purposes.

## WSR 18-11-109

### PROPOSED RULES

### HEALTH CARE AUTHORITY

[Filed May 22, 2018, 8:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-133.

Title of Rule and Other Identifying Information: WAC 182-559-100 Foundational community supports program—General, 182-559-150 Foundational community supports program—Definitions, 182-559-200 Foundational community supports program—Eligible providers, 182-559-300 Foundational community supports program—Eligibility for community support services, 182-559-350 Foundational community supports program—Eligibility for supported employment services, 182-559-400 Foundational community supports program—Payment, and 182-559-600 Foundational community supports program—Grievance and appeals system.

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at [www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than June 27, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 26, 2018.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by June 22, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the following rules to align with changes to the foundational community supports program protocol that was approved by the Centers for Medicare and Medicaid Services: WAC 182-559-100 Foundational community supports program—General, 182-559-150 Foundational community supports program—Definitions, 182-559-200 Foundational community supports program—Eligible providers, 182-559-300 Foundational community supports program—Eligibility, and 182-559-400 Foundational community supports program—Payment. The agency is revising the name of WAC 182-559-300 to reflect that this section contains eligibility for community support services (also known as supportive housing services) only. The agency is adding new WAC 182-559-350 Foundational community supports program—Eligibility for supported employment services, to provide more detailed information, which is reflected in the protocol [protocol]. The agency is adding new WAC 182-559-600 Foundational community supports program—Grievance and appeals system, to clarify the grievance and appeals process for clients receiving services through the foundational community supports program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Jon Brumbach, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1535.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The updates to these rules do not impose additional compliance costs or requirements on existing providers. Most of the amendments pertain to clients and their eligibility to receive services. The amendments to WAC 182-559-200 provide additional details about how providers qualify to enroll as foundational community support program providers, but they do not financially impact providers during or after the enrollment process.

May 22, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

**WAC 182-559-100 (~~Foundational community supports program~~)**General. (1) Under the authority of the medicaid transformation project, RCW 71.24.385, and subject to available funds, the medicaid agency covers targeted foundational community supports to eligible medicaid beneficiaries, which include the following benefits:

(a) (~~Supportive housing~~) Community support services; and

(b) Supported employment services.

(2) (~~Supportive housing~~) Community support services (~~may~~) include:

~~((a) One time community transition services to eligible clients moving from institutional to community settings and those who meet an institutional level of care, such as:~~

~~(i) Security deposits;~~

~~(ii) Essential furnishings;~~

~~(iii) Moving expenses;~~

~~(iv) Set up fees or deposits for utility or service access;~~

~~and~~

~~(v) Health and safety assurances such as pest eradication, allergen control, or a one-time cleaning prior to occupancy.~~

~~(b) Ongoing community support services, including:~~

~~(i) Individual housing transition services which provide direct support to eligible clients.~~

~~(ii) Individual housing and tenancy support services that promote housing success, foster community integration and inclusion, develop natural support networks, and assist clients to maintain their housing.~~

~~(3) Supportive housing services do not include rental support or other room and board related expenses.~~

~~(4) Supportive housing)) (a) Pretenancy supports:~~

~~(i) Conducting a functional needs assessment to:~~

~~(A) Identify the participant's preferences related to housing (type, location, living alone or with someone else, identifying a roommate, accommodations needed, or other important preferences); and~~

~~(B) Identify the participant's needs for support to maintain community integration. This includes what type of setting works best for the client, assistance in budgeting for housing/living expenses, assistance in connecting the client with social services to assist with filling out applications and submitting appropriate documentation in order to obtain sources of income necessary for community living and establishing credit, and in understanding and meeting obligations of tenancy.~~

~~(ii) Assisting clients to connect with social services to help with finding and applying for housing necessary to support the clients in meeting their medical care needs;~~

~~(iii) Developing an individualized community integration plan based upon the assessment as part of the overall person-centered plan;~~

~~(iv) Identifying and establishing short and long-term measurable goal(s), and establishing how goals will be achieved and how concerns will be addressed;~~

~~(v) Participating in person-centered plan meetings at redetermination and revision plan meetings, as needed;~~

~~(vi) Providing supports and interventions according to the person-centered plan.~~

(b) Tenancy-sustaining services:

(i) Service planning support and participating in person-centered plan meetings at redetermination and revision plan meetings as needed;

(ii) Coordinating and linking the client to services including:

(A) Primary care and health homes;

(B) Substance use treatment providers;

(C) Mental health providers;

(D) Medical, vision, nutritional and dental providers;

(E) Vocational, education, employment and volunteer supports;

(F) Hospitals and emergency rooms;

(G) Probation and parole;

(H) Crisis services;

(I) End of life planning; and

(J) Other support groups and natural supports.

(ii) Entitlement assistance including assisting clients in obtaining documentation, navigating and monitoring application process and coordinating with the entitlement agency;

(iv) Assistance in accessing supports to preserve the most independent living, including skills coaching, financing counseling, anger management, individual and family counseling, support groups, and natural supports;

(v) Providing supports to assist the client in communicating with the landlord and/or property manager regarding the participant's disability (if authorized and appropriate), detailing accommodations needed, and addressing components of emergency procedures involving the landlord and/or property manager;

(vi) Coordinating with the client to review, update and modify their housing support and crisis plan on a regular basis to reflect current needs and address existing or recurring housing retention barriers; and

(vii) Connecting the client to training and resources that will assist the client in being a good tenant and lease compliance, including ongoing support with activities related to household management.

(c) The community support services benefit does not include:

(i) Payment of rent or other room and board costs;

(ii) Capital costs related to the development or modification of housing;

(iii) Expenses for utilities or other regular occurring bills;

(iv) Goods or services intended for leisure or recreation;

(v) Duplicative services from other state or federal programs; and

(vi) Services to clients in a correctional institution or an institute for mental disease (IMD).

(d) Community support services must be provided:

~~((+))~~ (i) In an integrated setting of the client's choice; and

~~((+))~~ (ii) In a manner that ensures the client's individual right of privacy, dignity, respect, and freedom from coercion and restraint;

~~((+))~~ (iii) Post tenancy, in settings consistent with home and community-based services, as defined in 42 C.F.R. Sec. 441.530, such as those that:

~~((+))~~ (A) Do not have the qualities of an institution;

~~((+))~~ (B) Are not located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment;

~~((+))~~ (C) Are not on the grounds of, or immediately adjacent to a public institution;

~~((+))~~ (D) Do not have the effect of isolating the client from community members who are not receiving medicaid services; and

~~((+))~~ (E) Are not a licensed residential care facility such as an adult family home or assisted living facility.

~~((+))~~ (3) Supported employment, such as individual placement and support (IPS) services, ~~(are)~~ is individualized and ~~(may include any combination)~~ includes one or more of the following services:

~~(a)~~ (Vocational/job related discovery and assessment;

~~(b)~~ Person-centered employment planning;

~~(c)~~ Career advancement services;

~~(d)~~ Individualized job development and placement;

~~(e)~~ Negotiation with and follow along supports to employers;

~~(f)~~ Job analysis;

~~(g)~~ Job carving;

~~(h)~~ Job coaching;

~~(i)~~ Benefits support, training, and planning;

~~(j)~~ Transportation (only in conjunction with the delivery of an authorized service);

~~(k)~~ Asset development; or

~~(l)~~ Other workplace support services including services not specifically related to job skill training that enable the program participant to be successful in integrating into the job setting.

~~(6)~~ Supported employment services do not include wages or wage enhancements for clients.

~~(7))~~ Preemployment services:

~~(i)~~ Prevocational/job-related discovery or assessment;

~~(ii)~~ Person-centered employment planning;

~~(iii)~~ Individualized job development and placement;

~~(iv)~~ Job carving;

~~(v)~~ Benefits education and planning; or

~~(vi)~~ Transportation (only in conjunction with the delivery of an authorized service).

~~(b)~~ Employment sustaining services:

~~(i)~~ Career advancement services;

~~(ii)~~ Negotiation with employers;

~~(iii)~~ Job analysis;

~~(iv)~~ Job coaching;

~~(v)~~ Benefits education and planning;

~~(vi)~~ Transportation (only in conjunction with the delivery of an authorized service);

~~(vii)~~ Asset development; or

~~(viii)~~ Follow-along supports.

~~(c)~~ The IPS benefit does not include:

~~(i)~~ Generalized employer contacts that are not connected to a specific enrolled individual or an authorized service;

~~(ii)~~ Employment support for individuals in subminimum wage, or sheltered workshop settings; and

~~(iii)~~ Facility-based habilitation or personal care services.

~~(d)~~ Supported employment services must be provided in settings consistent with settings defined in 42 C.F.R. 441.530 (a)(1)(i) through (v) and (a)(2).

(4) Clients who meet the eligibility criteria for both community support services and supported employment services are able to receive both services concurrently. See WAC 182-559-300 for community support services eligibility criteria and WAC 182-559-350 for supported employment eligibility criteria.

(5) In order to ensure the demand for services remains within available funds, the agency may impose enrollment wait lists for services. The wait list for foundational community supports services is considered on a first-come first-serve basis using the date the client requests community support services.

(6) Services described in this chapter must be approved under the explicit authority of the medicaid transformation project.

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

**WAC 182-559-150 ((Foundational community supports program—))Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter.

("Community transition services" means one-time supports that cover certain costs necessary for a client to transition from an institution to a community-based setting, or prevent a client's placement in an institution.-)

"Adverse benefit determination" means one or more of the following:

(a) The denial or limited authorization of a requested foundational community support services, including determinations based on the type of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a service;

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

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

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

(e) The failure of the third-party administrator (TPA) to act within the time frames provided in WAC 182-559-600 for standard resolution of grievances and appeals.

"Community support services (also called supportive housing services)" means active search and promotion of access to, and choice of, safe and affordable housing that is appropriate to the client's age, culture and needs. These services include:

(a) Providing services to eligible clients who are homeless or at risk of becoming homeless through outreach, engagement and coordination of services with shelter and housing;

(b) Ensuring the availability of community support services, with an emphasis on supporting clients in their own home or where they live in the community; and

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

"Individual placement and support (IPS)" refers to an evidence-based approach to supported employment services based on the following principles:

(a) Services are open to all eligible clients who wish to work;

(b) Competitive employment is the goal;

(c) Integrated with other services provided to the client;

(d) Personalized benefits planning;

(e) Job search begins soon after the client expresses interest in working;

(f) Job search based on client preferences;

(g) Supports are not time-limited; and

(h) Client preferences are honored.

"Supported employment" means coordination with state and local entities to provide assistance and support, such as skills assessment, training, education and counseling to eligible clients who want to work.

(("Supportive housing" means active search and promotion of access to, and choice of, safe and affordable housing that is appropriate to the client's age, culture and needs. This includes:

(a) Providing services to eligible clients who are homeless or at risk of becoming homeless through outreach, engagement and coordination of services with shelter and housing;

(b) Ensuring the availability of community support services, with an emphasis on supporting clients in their own home or where they live in the community; and

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

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

**WAC 182-559-200 ((Foundational community supports program—))Eligible providers.** (1) Providers of ((supportive housing)) community support services and supported employment services under this authority must be:

(a) Health care professionals, entities, or contractors as defined by WAC 182-502-0002;

(b) Agencies, centers, or facilities as defined by WAC 182-502-0002;

(c) Health home providers as described in WAC 182-557-0050;

(d) Behavioral health providers licensed and certified according to chapter 388-877 WAC; or

(e) Housing, employment, social service, or related agencies with ((at least one year of)) demonstrated experience and ability to provide ((supportive housing)) community support services, supported employment, or equivalent services.

(i) Community support services experience may be demonstrated by:

(A) Two years' experience in the coordination of supportive housing or in the coordination of independent living services in a social service setting under qualified supervision; or

(B) Certified in supportive housing services (WAC 388-877-0720 or 388-877-0722) by the department of social and health services/division of behavioral health and recovery (DSHS/DBHR).

(ii) Supported employment experience may be demonstrated by one or more of the following:

(A) Accredited by the commission on accreditation of rehabilitation facilities (CARF) in employment services;

(B) Certified in employment services (WAC 388-877-0718 or 388-877-0720) by DSHS/DBHR; or

(C) All staff that will be performing supported employment services meet one of the following criteria:

(I) Be a certified employment support professional (CESP) by the employment support professional certification council (ESPCC);

(II) Be a certified rehabilitation counselor (CRC) by the commission of rehabilitation counselor certification (CRCC);

(III) Have a bachelor's degree or higher in human or social services from an accredited college or university and at least two years of demonstrated experience providing supported employment or similar services; or

(IV) Have four or more years of demonstrated experience providing supported employment or similar services.

(2) Providers of ~~((supportive housing))~~ community support services or supported employment services must ~~((either))~~:

(a) Obtain a core provider agreement in accordance with WAC 182-502-0005;

(b) Enroll with the medicaid agency as a nonbilling provider in accordance with WAC 182-502-0006; or

(c) Be qualified to bill for aging and long-term support administration services to provide ~~((supportive housing))~~ community support services or supported employment services.

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

~~WAC 182-559-300 ((Foundational community support program))~~ **Eligibility for community support services.** ~~((+))~~ To be eligible for ~~((supportive housing))~~ community support services, a client must:

~~((a))~~ (1) Be age eighteen or older;

~~((b))~~ (2) Be eligible for Washington apple health (medicaid);

~~((c))~~ Be assessed by a qualified provider and determined to have a functional need for the services; and

~~((d))~~ Meet one of the following population criteria:

~~((i))~~ Be chronically homeless as defined by the federal Department of Housing and Urban Development;

~~((ii))~~ Have) (3) Meet at least one of the following health criteria and be expected to benefit from community support services:

(a) Clients assessed by a licensed behavioral health agency, under chapter 388-877 WAC, to have a behavioral health need, which is defined as one or both of the following criteria:

(i) Mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning (including the ability to live independently without support) resulting from the presence of a mental illness; or

(ii) Substance use needs determined by an assessment using the American Society of Addiction Medicine (ASAM) criteria indicates that the client meets at least ASAM level 1.0, indicating the need for outpatient substance use disorder (SUD) treatment. The ASAM is a multi-dimensional assess-

ment approach for determining a client's need for SUD treatment.

(b) Clients assessed via a CARE assessment, per WAC 388-106-0050, to have a need for assistance demonstrated by:

(i) The need for assistance with at least three activities of daily living (ADLs) defined in WAC 388-106-0010, one of which may be body care; or

(ii) Hands-on assistance with at least one ADL which may include body care.

(c) Clients assessed to be a homeless person with a disability, according to 24 C.F.R. 578.3, which is defined as a long continuing or indefinite physical condition requiring improvement, stabilization, or prevention of deterioration of functioning (including ability to live independently without support).

(4) Exhibit at least one of the following risk factors:

(a) Homeless clients who:

(i) Have been homeless for at least twelve months; or

(ii) Have been homeless on at least four separate occasions in the last three years, as long as the combined occasions equal at least twelve months.

Homeless is defined as living in a safe haven, an emergency shelter, or a place not meant for human habitation. See 24 C.F.R. 578.3.

(b) A history of frequent or lengthy institutional contact(~~;~~

~~((iii))~~ Have frequent or lengthy).

(i) Institutional care facilities include jails, substance abuse or mental health treatment facilities, hospitals, or other similar facilities, as defined in 24 C.F.R. 578.3, or skilled nursing facilities as defined in WAC 388-97-0001.

(ii) Frequent means more than one contact in the past twelve months.

(iii) Lengthy means ninety or more consecutive days within an institutional setting in the past twelve months.

(c) A history of frequent stays at adult residential care facilities as defined by WAC 388-110-020 ~~((and))~~ or residential treatment facilities as defined by WAC 246-337-005(~~;~~

~~((iv))~~ . Frequent means more than one contact in the past twelve months.

(d) Have frequent turnover of in-home caregivers as defined by WAC 388-106-0040(~~;~~

~~((v))~~ , where within the last twelve months the client utilized three or more different in-home caregiver providers and the current placement is not appropriate for the client.

(e) Have a predictive risk score of 1.5 or above. See WAC 182-557-0225.

~~((2))~~ To be eligible for community transition services, a client must meet the criteria described in subsection (1) of this section and be determined by a qualified provider to meet an institutional level of care standard for admission to either:

(a) A nursing facility, as described in WAC 388-106-0355; or

(b) An inpatient medical hospital, not including institutes for mental disease (IMD), as described in WAC 182-513-1320.

(3) To be eligible for supported employment services, a client must:

(a) Be age sixteen or older;

(b) Be eligible for apple health (medicaid);



- (c) Desire to obtain employment;
- (d) Be assessed by a qualified provider and determined to have a functional need for the services; and
- (e) Meet one of the following population criteria:
  - (i) Be enrolled in the aged, blind and disabled program as defined in WAC 388-449-0001, or the housing and essential needs program as defined in WAC 388-400-0065;
  - (ii) Be diagnosed with at least one of the following:
    - (A) A severe and persistent mental illness;
    - (B) Substance use disorder with multiple episodes of treatment;
    - (C) Co-occurring mental health and substance use disorders.
  - (iii) Be age sixteen through twenty-four with a behavioral health diagnosis; or
  - (iv) Be receiving long-term services and supports as defined in chapter 388-106 WAC.
- (4) Clients who meet the eligibility criteria for both supportive housing and supported employment are able to receive both services concurrently.
- (5) In order to ensure the demand for services remains within available funds, the medicaid agency may impose enrollment wait lists for services.)

AMENDATORY SECTION (Amending WSR 17-11-136, filed 5/24/17, effective 7/1/17)

**WAC 182-559-400 (~~Foundational community supports program~~))** **Payment.** The medicaid agency pays for ~~((supportive housing))~~ community support services and supported employment described in WAC 182-559-100 when no other public funds are already dedicated to providing comparable services to the client, unless the provider can demonstrate that the client requires services that are:

- (1) Outside the scope of services provided by the program already in place or for which the client is otherwise eligible; and
- (2) Within the scope of the services identified as reimbursable in this section.

NEW SECTION

**WAC 182-559-350 Eligibility for supported employment services.** To be eligible for supported employment services, a client must:

- (1) Be age sixteen or older;
- (2) Be eligible for apple health (medicaid);
- (3) Desire to obtain employment;
- (4) Meet at least one of the following health criteria and is expected to benefit from supported employment services:
  - (a) Clients assessed by a licensed behavioral health agency, under chapter 388-877 WAC, to have a behavioral health need, which is defined as one or both of the following criteria:
    - (i) Mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning (including ability to live independently without support) resulting from the presence of a mental illness; or
    - (ii) Substance use needs determined by an assessment using the American Society of Addiction Medicine (ASAM) criteria indicates that the client meets at least ASAM level

1.0, indicating the need for outpatient substance use disorder (SUD) treatment. The ASAM is a multi-dimensional assessment approach for determining a client's need for SUD treatment.

(b) Clients assessed via a CARE assessment, per WAC 388-106-0050, to have a need for assistance demonstrated by:

(i) The need for assistance with at least three activities of daily living (ADLs) defined in WAC 388-106-0010, one of which may be body care; or

(ii) Hands-on assistance with at least one ADL which may include body care.

(c) There is objective evidence, as defined by the progressive evaluation process in chapter 388-447 WAC, of physical impairments because of which the client needs assistance with basic work-related activities, including one or more of the following: Sitting, standing, walking, lifting, carrying, handling, manipulative or postural functions (pushing, pulling, reaching, handling, stooping or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

(5) Exhibit at least one of the following risk factors:

(a) Unable to be gainfully employed for at least ninety consecutive days due to a mental or physical impairment, as demonstrated by eligibility for the aged, blind and disabled program as defined in WAC 388-449-0001, or the housing and essential needs program as defined in WAC 388-400-0065;

(b) More than one instance of treatment for a substance use disorder within the past two years;

(c) At risk of deterioration of mental illness and substance use disorder, or both, including one or more of the following:

(i) Persistent or chronic risk factors such as social isolation due to a lack of family or social supports, poverty, criminal justice involvement, or homelessness;

(ii) Care for mental illness and substance use disorder, or both, requires multiple provider types, including behavioral health, primary care, long-term services and supports, or other supportive services; or

(iii) Past psychiatric history, with no significant functional improvement that can be maintained without treatment and/or supports.

(d) Dysfunction in role performance due to a behavioral health condition, including one or more of the following:

(i) Behaviors that disrupt employment or schooling, or put employment at risk of termination or schooling suspension;

(ii) A history of multiple terminations from work or suspensions/expulsions from school;

(iii) Cannot succeed in a structured work or school setting without additional support or accommodations; or

(iv) Performance significantly below expectations for cognitive/developmental level.

(e) An inability to obtain or maintain employment resulting from age, physical disability, or traumatic brain injury.

NEW SECTION**WAC 182-559-600 Grievance and appeals system.** (1)

This section contains information about the third-party administrator (TPA) grievance and appeal system and the medicaid agency's administrative hearing process for clients under the foundational community supports program.

(a) The TPA must have a grievance and appeal system and access to an agency administrative hearing to allow clients to file grievances and seek review of a TPA adverse benefit determination as defined in WAC 182-559-150.

(b) The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by a client to review the resolution of a client's appeal of a TPA adverse benefit determination.

(c) If a conflict exists between the requirements of this chapter and specific program rules, the requirements of this chapter prevail.

(d) The TPA's policies and procedures regarding the grievance system must be approved by the agency.

(e) The TPA must maintain records of grievances and appeals.

(2) TPA grievance and appeal system. The TPA grievance and appeal system includes:

(a) A grievance process for addressing complaints about any matter that is not an adverse benefit determination;

(b) A TPA appeals process to address a client's request for review of a TPA adverse benefit determination;

(c) Access to the agency's administrative hearing process for review of a TPA's resolution of an appeal; and

(d) Allowing clients and the client's authorized representatives to file grievances and appeals orally or in writing. The TPA cannot require clients to provide written follow up for a grievance or an appeal that the TPA received orally.

(3) Notice requirements. The TPA must follow notice and timeline requirements under chapter 182-518 WAC. The TPA sends written notice when they:

(a) Approve the client's foundational community supports eligibility and authorize the delivery of services;

(b) Deny the client's foundational community supports eligibility; and

(c) Approve the client's foundational community supports eligibility without authorization of services due to necessary funding being unavailable. Clients must be notified of placement on a waitlist until funding becomes available.

(4) The TPA grievance process.

(a) A client or client's authorized representative may file a grievance with the TPA. A provider may not file a grievance on behalf of a client without the client's written consent.

(b) Clients do not have a right to an agency administrative hearing regarding the resolution of a grievance.

(c) The TPA must acknowledge receipt of each grievance either orally or in writing within two business days.

(d) The TPA must notify clients of the resolution of grievances within five business days of determination.

(5) The TPA appeals process.

(a) A client, the client's authorized representative, or a provider acting on behalf of the client with the client's written consent may appeal a TPA adverse benefit determination.

(b) The TPA treats oral inquiries about appealing an adverse benefit determination as an appeal to establish the

earliest possible filing date for the appeal. The TPA confirms the oral appeal in writing.

(c) The TPA must acknowledge in writing the receipt of each appeal to both the client and the requesting provider within five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the TPA serves as written confirmation of an appeal filed orally by a client.

(d) The client must file an appeal of a TPA action within sixty calendar days of the date on the TPA's notice of adverse benefit determination.

(e) The TPA must continue services pending the results of an appeal or subsequent agency administrative hearing.

(f) The TPA internal appeal process:

(i) Provides the client a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing;

(ii) Provides the client and the client's representative the client's case file, other documents and records, and any new or additional evidence considered, relied upon, or generated by the TPA (or at the direction of the TPA) in connection with the action. This information must be provided free of charge in advance of the resolution time frame for appeals as specified in this section; and

(iii) Includes as parties to the appeal:

(A) The client and the client's authorized representative; and

(B) The legal representative of the deceased client's estate.

(g) The TPA ensures that the people making decisions on appeals were not involved in any previous level of review or decision making.

(h) Time frames for resolution of appeals.

(i) The TPA resolves each appeal and provides notice as expeditiously as the client's health condition requires and no longer than three calendar days after the day the TPA receives the appeal.

(ii) The TPA may extend the time frame by an additional fourteen calendar days if it is necessary in order to complete the appeal.

(i) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the client and the requesting provider;

(ii) Include the results of the resolution of the appeal process and the date it was completed; and

(iii) Include information on the client's right to request an agency administrative hearing and how to do so as provided in the agency hearing rules under WAC 182-526-0095, if the appeal is not resolved wholly in favor of the client.

(j) Deemed completion of the TPA appeal process. If the TPA fails to adhere to the notice and timing requirements for appeals, the client is deemed to have completed the TPA's appeals process and may request an agency administrative hearing under WAC 182-526-0095.

(6) Agency administrative hearing.

(a) Only a client or the client's authorized representative may request an agency administrative hearing. A provider may not request a hearing on behalf of a client.

(b) If the client does not agree with the TPA's resolution of an appeal at the completion of the TPA appeal process, the

client may file a request for an agency administrative hearing based on the rules in this section and the agency hearing rules in chapter 182-526 WAC. The client must request an agency administrative hearing within ninety calendar days of the notice of resolution of appeal.

(c) The TPA is an independent party and responsible for its own representation in any administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(7) Effect of reversed resolutions of appeals. If the TPA or a final order as defined in chapter 182-526 WAC reverses a decision to deny or limit services, the TPA must authorize or provide the disputed services promptly and as expeditiously as the client's health condition requires.

(8) Funding unavailable. When a client receives approval for services and funding is unavailable, the client may appeal the determination that funding is unavailable.

**WSR 18-11-110**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed May 22, 2018, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-017.

Title of Rule and Other Identifying Information: WAC 415-02-130 Will I receive retirement account information?

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at the Department of Retirement Systems (DRS), Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502.

Date of Intended Adoption: June 27, 2018.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by June 25, 2018.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by June 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the process of providing annual notification to members in accordance with RCW 41.50.065.

Reasons Supporting Proposal: This amendment reflects the department's current practice of making service credit information available to members on demand through online account access, rather than once each year in the form of an annual statement.

Statutory Authority for Adoption: RCW 41.50.050, 41.50.065.

Statute Being Implemented: RCW 41.50.065.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504, 360-664-7304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

May 22, 2018

Jilene Siegel

Rules and Contracts Manager

AMENDATORY SECTION (Amending WSR 12-12-047, filed 6/1/12, effective 7/2/12)

**WAC 415-02-130 Will I receive retirement account information?** (1) ~~((DRS will make annual statements available to all members who have a balance of service credit or dollars in accordance with RCW 41.50.065.~~

(2) ~~If you are a member of Plan 1 or 2, the information will include, but is not limited to, the following:~~

~~(a) Service credit;~~

~~(b) Contributions; and~~

~~(c) Regular interest.~~

(3) ~~If you are a member of Plan 3, the information will be provided through two sources.~~

~~(a) Service credit information, used in the calculation of the defined benefit component, will be made available annually by DRS.~~

~~(b) Information regarding the defined contribution component of your plan will be provided on quarterly statements from the recordkeeper. The statements include, but are not limited to, contributions and account activity.~~

~~(4) Information on annual and quarterly statements are)~~

Your total service credit, earned by calendar month, is available in accordance with RCW 41.50.065 via a personal account on the DRS web site. DRS will remind you of the availability of service credit information in your online account with an annual notification on the DRS web site.

The department will provide you with a paper copy of your service credit upon request.

(2) ~~Service credit is based on information provided to ((the department))~~ DRS by your employer, and ~~((are))~~ is subject to correction.

**WSR 18-11-111**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed May 22, 2018, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-072.

Title of Rule and Other Identifying Information: WAC 458-19-090 Fire protection district formation—Cities and towns—Highest lawful levy. This new rule was written

because of legislation passed in 2017, ESSB 5628, which allows a city or town to form a fire protection district under certain conditions.

Hearing Location(s): On June 27, 2018, at 10:00 a.m., in Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: July 3, 2018.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by June 27, 2018.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule provides a comprehensive example to cities and towns on how to calculate their highest lawful levy, if the city or town forms a fire protection district under RCW 52.02.160.

Reasons Supporting Proposal: Providing an example of how to calculate the highest lawful levy for cities or towns that establish a fire protection district under RCW 52.02.160 will assist the county assessor's office in its levy calculations and assist the affected taxing districts with budgeting.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.55.060.

Statute Being Implemented: RCW 52.02.160 and 84.55.092.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed language for this new rule clarifies the calculation of the highest lawful levy already described in RCW 52.02.160 and 84.55.092. This proposed new rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute.

May 22, 2018  
Erin T. Lopez  
Rules Coordinator

## NEW SECTION

**WAC 458-19-090 Fire protection district formation—Cities and towns—Highest lawful levy.** (1) **Introduction.** RCW 52.02.160 provides that a city or town may establish a fire protection district, subject to voter approval, within the same corporate boundaries of the city or town, for the pro-

vision of fire prevention services, fire suppression services, emergency medical services, and for the protection of life and property within the city or town. This rule explains the calculation of the highest lawful levy for cities or towns that create a fire protection district under these conditions.

(2) **Definitions.** The definitions found in WAC 458-19-005 apply to this rule.

(3) **Examples.** This rule includes an example that identifies a number of facts and then states a conclusion. This example should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(4) **Levy limit calculation.** A city or town that establishes a fire protection district under RCW 52.02.160 must reduce its highest lawful levy since 1986 by the total amount levied in the first year by the newly established fire protection district. This reduced amount will become the new highest lawful levy since 1986 for the city or town, and will be used for subsequent levy limit calculations under chapter 84.55 RCW. This reduction in the highest lawful levy for the city or town must occur in the first year the newly established fire protection district imposes its property tax levy.

The city or town must further reduce its highest lawful levy in subsequent years if the fire protection district did not impose all regular property tax levies as allowed under RCW 52.16.130, 52.16.140, and 52.16.160. The maximum statutory dollar rate for fire protection districts is one dollar and fifty cents per one thousand dollars of assessed value.

**Example.** City A establishes a fire protection district under RCW 52.02.160. Prior to the formation, City A annually levied an amount of \$200,390, which is equal to its highest lawful levy since 1986. In this example, the maximum statutory dollar rate of the city is \$3.375 per \$1,000 of assessed value. In its first year, the newly established fire protection district determines it will need to levy \$57,000 and its total assessed value is \$59,375,000 (the same total assessed value as City A). This levy amount is the equivalent to a levy rate for the fire protection district of \$0.96 per \$1,000 of assessed value, thus the district is imposing regular levies under RCW 52.16.130 and 52.16.140. Therefore, City A must reduce its highest lawful levy by \$57,000. City A's reduced highest lawful levy amount is the amount it will use for subsequent levy calculations.

Two years later, the fire protection district requests an increased levy amount of \$74,000 and its total assessed value, along with the total assessed value of City A, has increased to \$60,655,738. The increased levy amount is the equivalent to a levy rate for the fire protection district of \$1.22 per \$1,000 of assessed value, thus the district is imposing regular levies under RCW 52.16.130, 52.16.140, and 52.16.160. Therefore, City A must further reduce its highest lawful levy by the amount resulting from the fire district imposing its third regular levy under RCW 52.16.160. The additional amount resulting from the initial imposition of the fire protection district's third regular levy under RCW 52.16.160 is \$13,344 (\$0.22 per \$1,000 of assessed value multiplied by the total assessed value of \$60,655,738). City A must make a final reduction of \$13,344 to its highest lawful levy. City A's newly reduced highest lawful levy is the amount it will use for subsequent levy calculations. In subse-

quent years, if the fire protection district's levy rate increases beyond \$1.22 per \$1,000 of assessed value, City A is not required to further reduce its highest lawful levy because the fire protection district had already initially imposed all three regular levies under RCW 52.16.130, 52.16.140, and 52.16.160.

(5) **Constitutional one percent limit and five dollars and ninety cents aggregate dollar limit.** Fire protection district levies are subject to the constitutional one percent limit for regular property taxes and the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. If a reduction in a fire protection district levy is required because it exceeds these limits, it is reduced in the manner described in RCW 84.52.010, 84.52.043, and 84.52.125.

**WSR 18-11-112**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed May 22, 2018, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-135.

Title of Rule and Other Identifying Information: Amendments to the apprenticeship rules, chapter 296-05 WAC, Apprenticeship rules.

Hearing Location(s): On June 29, 2018, at 10:00 a.m., at the Tukwila L&I Office, 12806 Gateway Drive South, Tukwila, WA, for directions [www.lni.gov/Main/ContactInfo/OfficeLocations/tukwilla](http://www.lni.gov/Main/ContactInfo/OfficeLocations/tukwilla); and on July 2, 2018, at 10:00 a.m., at Spokane Community College, Apprenticeship and Journeyman Training Center, 2110 North Fancher Road, Spokane, WA, for directions [www.scc.spokane.edu/?apprent](http://www.scc.spokane.edu/?apprent).

Date of Intended Adoption: August 21, 2018.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, email [Beverly.Clark@lni.wa.gov](mailto:Beverly.Clark@lni.wa.gov), fax 360-902-4988, by 5:00 p.m., on July 2, 2018.

Assistance for Persons with Disabilities: Contact Beverly Clark, phone 360-902-6272, fax 360-902-4988, email [Beverly.Clark@lni.wa.gov](mailto:Beverly.Clark@lni.wa.gov), by 5:00 p.m., on June 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The apprenticeship system in Washington state is authorized under the federal system of apprenticeship, specifically 29 C.F.F. [C.F.R.] Part[s] 29 and 30. The purpose of this rule making is to review the apprenticeship rules for changes in order to further clarify and reorganize the rules for ease of use by regulated parties.

Reasons Supporting Proposal: The apprenticeship program worked with the Washington state apprenticeship and training council (WSATC), with representation from business, labor, and the public, regarding employer compliance with apprenticeship rules. WSATC has endorsed the proposed changes.

Statutory Authority for Adoption: RCW 49.04.010 and 19.285.040.

Statute Being Implemented: RCW 49.04.010 and 19.285.040.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jody Robbins, Tumwater, Washington, 360-902-5321.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The changes in the proposed rule will not alter any current agency practice or interpretation of law. The changes in the proposed rule do not place any new obligation on employers and they do not require employers to incur additional costs.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 22, 2018

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

**WAC 296-05-001 Purpose, scope, and authority.** (1) These rules apply to apprenticeships in Washington. The intent of these rules is to carry out the purposes of chapter 49.04 RCW, the National Apprenticeship Act 29 U.S.C. 50, and 29 C.F.R. Parts 29 and 30 to promote apprenticeship, labor standards and to protect the welfare of apprentices.

(a) The Washington ((State Apprenticeship and Training Act (chapter 49.04 RCW) establishes the Washington)) state apprenticeship and training council (WSATC) ((as regulatory and designates as its administrative arm the apprenticeship section of the department of labor and industries. The WSATC, acting in compliance)) regulates apprenticeships for state and federal purposes. These rules explain how the WSATC regulates apprenticeships.

(b) The apprenticeship section of the department of labor and industries administers apprenticeships for state and federal purposes. These rules explain how the apprenticeship program administers apprenticeships.

(2) These rules establish procedures for administering and regulating apprenticeships. These rules are intended to be read in conjunction with chapter 49.04 RCW ((and in harmony with)), 29 U.S.C. 50, 29 C.F.R. Parts 29 and ((29 C.F.R. Part)) 30, ((has adopted these rules to:

(a) Establish operating procedures for the WSATC;

(b) Establish standards for apprenticeship programs;

(c) Implement the intent and purpose of the Washington State Apprenticeship and Training Act;

(d) Perform other duties directed by the statute;

~~(e) Promote labor standards and the registration of approved programs to protect the welfare of the apprentice; and~~

~~(f) Encourage the establishment of apprenticeship programs and agreements.~~

~~(2) These rules are necessary to:~~

~~(a) Strengthen apprenticeship and training in the state of Washington;~~

~~(b) Facilitate approval and registration of apprenticeship and training programs;~~

~~(c) Explain factors related to apprenticeship and training in Washington state and federal laws;~~

~~(d) Establish procedures for presenting matters to the WSATC;~~

~~(e) Govern the WSATC's operation and ability to carry out its statutory obligations;~~

~~(f) Establish a specific procedure to resolve an impasse if a tie vote occurs on the WSATC; and~~

~~(g) Regulate registered apprenticeship and training programs)) and other applicable laws as described in these rules.~~

AMENDATORY SECTION (Amending WSR 14-23-065, filed 11/18/14, effective 12/19/14)

**WAC 296-05-003 Definitions.** The following definitions apply to this chapter:

**Adjudicative proceeding:** A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

**Apprentice:** ~~((Is))~~ A worker at least sixteen years of age ~~((who is))~~ employed to learn an apprenticeable occupation and ~~((is))~~ registered with a sponsor in an approved apprenticeship program ~~((according to))~~ under chapter 49.04 RCW and these rules. Building and construction trade occupations require an apprentice to be at least seventeen years of age to register with a sponsor in an approved apprenticeship.

~~((Exception: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations.))~~

**Apprenticeable occupation:** ~~((Is a skilled))~~ A specified occupation which ~~((is recognized by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship or the WSATC and meets the criteria established in WAC 296-05-305))~~ must:

(a) Involve skills customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical, or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least two thousand hours of on-the-job learning to attain;

(d) Require a minimum of one hundred forty-four hours of related instruction per program year to supplement on-the-job work experience;

(e) Involve sufficient skill to establish career sustaining employment;

(f) Not be part of an occupation previously recognized by the registering agency as apprenticeable.

**Apprenticeship agreement:** A written agreement between an apprentice and either the apprentice's ~~((employer(s)))~~ program sponsor, or an apprenticeship committee acting as agent for ~~((employer(s), containing))~~ the program sponsor(s), which contains the terms and conditions of the employment ~~((and)),~~ training and education of the apprentice.

**Apprenticeship cohort:** The group of individual apprentices registered to a specific program during a one year time frame, not including those whose agreements have been canceled during the initial probationary period.

**Apprenticeship committee:** A quasi-public entity approved by the WSATC to administer and perform apprenticeship and training services ~~((for employers and employees)).~~

**Apprenticeship program:** A plan for administering an apprenticeship ~~((agreement(s). The plan must contain))~~ agreement containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices ~~((, including such matters as the requirement for a written)).~~ Apprenticeship programs must include apprenticeship agreements.

~~((Approved: Approved by the WSATC or a person or entity authorized by the WSATC to do so.~~

~~(C.F.R.: The Code of Federal Regulations.))~~ **Apprenticeship section:** The division of the department of labor and industries administering registered apprenticeships for state and federal purposes.

**Cancellation:** The termination of ~~((the))~~ registration or cancellation of approval ~~((status of a))~~ for an apprenticeship program at the request of the supervisor or sponsor ~~((Cancellation also refers to)),~~ or the termination of registration or approval of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

**Certificate of completion:** A record of the successful completion of a term of apprenticeship ~~((see WAC 296-05-323))~~ issued by the department on behalf of the WSATC.

**Certification:** Written approval ~~((by))~~ from the WSATC ~~((of))~~ that:

~~((+))~~ (a) A set of apprenticeship standards established by an apprenticeship program sponsor ~~((and))~~ substantially ~~((conforming to the))~~ complies with standards established by the WSATC ~~((-~~

~~(2))~~; and

(b) An individual ~~((as))~~ is eligible for probationary employment as ~~((an))~~ a registered apprentice ~~((under a registered))~~ as part of an apprenticeship program.

~~((Committee program: All apprenticeship programs as further described in WAC 296-05-309.))~~ **C.F.R.:** Code of Federal Regulations.

**Competent instructor:** An instructor providing related supplemental instruction who has demonstrated ~~((a))~~ satisfactory ~~((employment))~~ performance in ~~((his/her))~~ the occupation for a minimum of three years beyond the customary learning period for that occupation and who:

~~((+))~~ (a) Meets the requirements of the state board for community and technical colleges ~~((requirements))~~ for a vocational-technical instructor ~~((, or be a subject matter~~

expert, which is an individual, such as a journey worker, who); or

(b) Is recognized within an industry as having expertise in a specific occupation and is a subject matter expert; and

(c) Has training in teaching techniques and adult learning styles, which may occur before or after the training may be acquired before, or within one year after, the competent instructor begins to provide the related technical supplemental instruction.

**Competitor:** An apprenticeship program providing training in the same or similar occupation as one already existing in a certain geographic area. In determining whether an occupation is the same or overlapping as the proposed program's, to determine whether a program provides training in the same or similar occupation, the WSATC may consider the following:

(1) Washington state apprenticeship and training council

(a) Approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice;

(f) Scope of work descriptions issued by the department.

**Completion rate:** The percentage of an apprenticeship cohort receiving a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been canceled during the initial probationary period.

**Compliance review:** A comprehensive review conducted by the apprenticeship section of the department of labor and industries regarding all aspects of an apprenticeship program's performance including, but not limited to, determining if apprentices are receiving: On the job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this chapter.

**Current instruction:** The related/supplemental instructional content is and remains reasonably consistent with the latest occupational practices, improvements, and technical advances.

**Department:** The Department of labor and industries.

**Employer:** Any person or organization with a valid Washington state unified business identifier (UBI) number employing an apprentice (whether or not such person or organization is a party to an apprenticeship agreement with

the apprentice. "Employer" includes both union and open shop employers).

**Federal purposes:** Any federal contract, grant, agreement, or arrangement dealing with apprenticeship. Includes any federal financial or other assistance, benefit, contribution, privilege, allowance, exemption, preference, or right pertaining to apprenticeship. See e.g., 29 C.F.R. Part 29.2.

**File:** To send to:

Supervisor of Apprenticeship and Training  
Department of Labor and Industries  
Apprenticeship Section  
Post Office Box 44530  
Olympia, Washington 98504-4530

Or deliver to and receipt at:  
Department of Labor and Industries  
7273 Linderson Way S.E.  
Tumwater, Washington 98501

Filing is complete upon deposit in the United States mail, properly addressed, postage prepaid, or personal service.

**First full training cycle:** A full training cycle begins with the registration of the first apprentice and continues for one calendar year regardless of completion, cancellation and/or suspension of the apprentice.

**Individual agreement:** A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

**Industry-wide standards:** The current, acceptable practices, including technological advancements, being used in the different occupations.

**Journey level:** An individual having sufficient skills and knowledge of an occupation (either through formal apprenticeship training or through practical on-the-job work experience) to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the occupation. An individual can be fully qualified either through formal apprenticeship training or practical on-the-job work experience (must be) equal to or greater than the term of apprenticeship.

**Notice:** Where not otherwise specified, notice means posted in United States mail to the last known address of the person to be notified. Notice may be given by telefacsimile where copies are mailed simultaneously or by a commercial parcel delivery company.

**On-the-job training program:** A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC 296-05-311.

**Petitions, requests, and correspondence:** Any written business brought before the WSATC (examples may include: (1) Requests for new committees; (2) Requests for revisions to the standards; and (3) Appeals) 296-05-013.

**Probationary period:** A period of time during which the apprentice has not yet reached full status or is subject to corrective action.

(a) Initial probationary period: A period of time (reasonable) in relation to the full apprenticeship term, with full

credit given for such period toward completion of apprenticeship (~~(-The initial probationary period)~~), which cannot exceed twenty percent of the apprenticeship term ((of the program)), or one year from the date of registration, whichever is shorter. Apprentices within the initial probationary ((apprentices are not subject to an appeal under the complaint review procedures as defined in WAC 296-05-009. Transferred apprentices)) period may not file apprenticeship complaints with the program sponsor. Apprentices transferring from another program are not subject to additional initial probationary periods.

~~((2))~~ (b) Disciplinary probationary period: A period of time ((assessed when)) after the initial probationary period during which the apprentice's progress is not satisfactory. ((During this time)) The program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. Apprentices subject to a disciplinary ((probation may only be assessed after the initial probation is completed. During the disciplinary probation, the apprentice has the right to file an appeal of the committee's action with the WSATC (as described in WAC 296-05-009))) probationary period may file complaints with the program sponsor.

**Provisional registration:** ~~((The one year))~~ Initial one-year approval of ((newly)) a registered program ((s that meet)) meeting the required standards for ((program)) registration ((, after which the program approval)). After one year, the provisional registration may be made permanent ((;) or continued as provisional through the first full training ((cycle/term)) cycle, or rescinded following a compliance review ((by the apprenticeship section of the department)).

**RCW:** ~~((The))~~ Revised Code of Washington.

**Registration:** ~~((1) For the purposes of an))~~ Both apprenticeship agreements and apprenticeship program standards are registered.

(a) Apprenticeship agreement ((means)) registration: The acceptance and recording of an ((apprenticeship)) agreement by the apprenticeship section of the department of labor and industries as evidence of the apprentice's participation in a particular registered apprenticeship program.

~~((2) For the purposes of an))~~ (b) Apprenticeship program ((means the acceptance)) registration: The approval and recording of ((such)) the program standards by the WSATC and the apprenticeship section ((of the department of labor and industries, as meeting the basic standards and requirements of the department for approval of such program. Approval is evidenced by a certificate of registration or other written indicia)) as meeting the basic standards and requirements for such approval.

**Registration agency:** The apprenticeship section of the ~~((Washington state))~~ department of labor and industries ~~((is))~~ responsible for registering apprenticeship programs and apprentices ~~((;))~~, providing technical assistance ~~((;))~~, and conducting reviews for compliance with ~~((29 C.F.R. parts 29 and 30,))~~ chapter ~~((s))~~ 49.04 RCW and ~~((296-05 WAC))~~ these rules.

~~((Regular quarterly meeting: A public meeting held quarterly by the WSATC as described in WAC 296-05-200.))~~

**Related/supplemental instruction (RSI):** An organized and systematic form of instruction designed to provide

the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. ~~((Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the registration agency.))~~ It may be provided in any form approved in advance by the WSATC. Apprentices must receive not less than one hundred forty-four hours of RSI per program year.

**Secretary:** The individual appointed by the director of the department according to RCW 49.04.030.

~~((Special meeting: A public meeting of the council as described in WAC 296-05-203.))~~

**Sponsor:** Any person, firm, association, committee, or organization operating as an apprenticeship and training program and in whose name the program is registered ~~((or is to be registered)).~~

**Standards:** ~~((Is))~~ A written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as further defined in WAC ((296-05-316)) 296-05-015.

**Supervision:** The necessary education, assistance, and control provided by a journey-level employee ~~((that is))~~ to an apprentice. Apprentices must be supervised by a journey-level worker on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC.

**Supervisor:** The individual appointed by the director of the department ~~((according to RCW 49.04.030))~~ who acts as the secretary of the WSATC. ~~((Where))~~ When these rules ((indicate)) create a duty of the supervisor or secretary of the WSATC, the supervisor may designate ((a)) department of labor and industries' employees to assist in the performance of those duties subject to the supervisor's oversight and direction.

**Trainee:** An individual enrolled in an on-the-job training program, but who is not registered with ((the supervisor according to WAC 296-05-311)) a sponsor in an approved apprenticeship program under chapter 49.04 RCW and these rules.

**Training agent:** Employer of registered apprentices approved by the program sponsor to furnish on-the-job training ~~((to satisfy the approved apprenticeship program standards who agrees to employ registered apprentices in that work process)).~~ The training agent shall use only registered apprentices to perform ~~((the))~~ work processes ~~((of the))~~ in accordance with approved program standards.

**Training agreement:** A written agreement between a training agent and a program sponsor ~~((that contains))~~ containing the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

**Transfer:** A shift of apprenticeship registration from one sponsor to another ~~((where there is))~~ with a written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

**WAC:** ~~((The))~~ Washington Administrative Code.



**WSATC:** ((The)) Washington state apprenticeship and training council.

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

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

**WAC 296-05-005 ((Rule development.)) WSATC officers, members, and administrator duties.** ~~((1) In developing and adopting rules, the director of labor and industries:~~

~~(a) Seeks the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.~~

~~(b) Promotes the operation of apprenticeship programs to satisfy the needs of employers and employees for high quality training.~~

~~(c) Recognizes that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.~~

~~(d) Recognizes employers will benefit if graduates of state approved apprenticeship programs are skilled workers trained to industry wide standards rather than the exclusive standards of an individual employer or group of employers.~~

~~(e) Acknowledges that approved apprenticeship programs should be organized and administered to assure the maximum protection of apprentices' rights.~~

~~(f) Recognizes that the number of apprentices in an occupation or group of occupations in any geographic area must be sufficient to meet the needs of all employers.~~

~~(g) Promotes comprehensive training and a variety of work experiences relevant to the occupations and seeks to assure that during the approval process all apprenticeship standards are open to employers on an equal and nondiscriminatory basis.~~

~~(h) Recognizes that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are best provided by registered apprenticeship programs.~~

~~(2) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04 RCW, Apprenticeship Act; chapter 34.05 RCW, Administrative Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.~~

~~(3) The specific procedure(s) and form(s) for petitions requesting the making, amendment, or repeal of a rule are in chapter 34.05 RCW, as are the specific procedure and form for requesting declaratory rulings.~~

~~(4) Such petitions and requests must be addressed to:~~

~~The Washington State Apprenticeship and Training Council~~

~~Attention: Supervisor of Apprenticeship and Training  
Department of Labor and Industries  
Post Office Box 44530~~

~~Olympia, Washington 98504-4530~~

~~Or email address: [apprentice@LNI.wa.gov](mailto:apprentice@LNI.wa.gov)) (1) Officers: The WSATC shall have three officers. The chair and vice chair shall be elected by majority vote of the WSATC members present. Election takes place in odd-numbered years at the regular quarterly meeting in April. Once elected, officers remain in office for a term of two years, until the successor is elected, or until resignation, incapacitation, or death. Officers follow *Robert's Rules of Order* to conduct meetings. Officers may have other powers and duties as provided in these rules and by law. The secretary, chair, and vice chair are required officers, as described in chapter 49.04 RCW and these rules:~~

~~(a) Secretary: The supervisor of the apprenticeship section of the department of labor and industries is the secretary of the WSATC. The secretary, with the assistance of a recording secretary, takes minutes of all special and regular meetings. Minutes are kept in the supervisor's office.~~

~~(b) Chair: The presiding officer at all meetings. The chair may vote on and participate in discussion about all matters before the WSATC as a regular member.~~

~~(c) Vice chair: Presides over meetings in the absence of the chair. Holds all the powers of the chair when the chair is absent.~~

~~(2) Members: WSATC members are appointed for three-year terms and remain on the council until replaced by a qualified successor. When vacancies occur, vacancies must be filled.~~

~~(a) Voting members: The director of the department of labor and industries appoints three voting members from employer organizations, three voting members from employee organizations, and a public member.~~

~~(b) Nonvoting members: The WSATC may also include members who may participate in discussion of matters before the WSATC, but they may not vote.~~

~~(3) Administrator: The supervisor serves as the WSATC administrator and is the supervisor of the apprenticeship section of the department of labor and industries.~~

~~(4) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04 RCW, Apprenticeship Act; chapter 34.05 RCW, Administrative Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.~~

AMENDATORY SECTION (Amending WSR 14-23-065, filed 11/18/14, effective 12/19/14)

**WAC 296-05-007 ((Rules of procedure.)) Duties of the apprenticeship supervisor.** ~~((All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapter 34.05 RCW, the Administrative Procedure Act and chapter 10-08 WAC, Model Rules of Procedure. The chair (or designee) is the presiding officer for adjudicative proceedings, held before the WSATC. The~~

WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication has been held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(1) The WSATC upon its own motion determines that the initial order should be reviewed; or

(2) A party to the proceedings files a petition for review of the initial order.

The WSATC, upon review of the initial order shall enter the final order. The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

(3) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal.

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt.

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in WAC 296-05-321(11).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.) (1) In addition to serving as the WSATC administrator, the duties of the supervisor and their designee may include, but are not limited to:

(a) Conducting compliance reviews of apprenticeship programs;

(b) Notifying the program sponsor when there is a finding that a program is not in compliance with required standards;

(c) Investigating complaints from individual apprentices;

(d) Assisting in resolving complaints against apprenticeship programs, committees, and entities administering agreements;

(e) Recommending sanctions against programs, committees, and entities administering agreements.

(2) The apprenticeship supervisor provides general information and assistance about apprenticeships and training programs to interested parties.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-008 ((Process for objections to apprenticeship program standards.)) Meetings and adjudicative proceedings.** ((1) If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must provide timely and specific written objections. Objections shall be submitted to the department for WSATC consideration twenty calendar days prior to the regular quarterly WSATC meeting on a form provided by the department and approved by the WSATC.

(2) The department shall notify the petitioning program sponsor of objections no more than two business days after the department receives the objection.

(3) In accordance with WAC 296-05-007, the WSATC may either adjudicate matter(s) itself or refer matter(s) to the office of administrative hearings for initial adjudication.

(a) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(b) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(4) The department may attempt to facilitate a resolution to any objections during the process identified in this section.) (1) Regular meetings: Convened on the third Thursday of January, April, July, and October, held at locations within Washington, and open to the general public. Members of the public cannot be required to register their name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, Open Public Meetings Act and chapter 34.05 RCW, Administrative Procedure Act.

(a) Notice of regular meetings: The supervisor must distribute notice not later than thirty calendar days prior to the meeting date to anyone who has requested notice of the regular meetings.

(b) The supervisor must send notices to all WSATC members, including ex officio members, and approved program sponsors.

(c) The following WSATC activities must take place in open public meetings:

- (i) All transactions of official business;
- (ii) All commitments or promises;
- (iii) All collective discussions;
- (iv) All collective decisions; and
- (v) All council actions.

(d) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting.

(2) Special meetings: Called at the request of the chair or by a majority of the WSATC members, and open to the general public.

(a) Procedure for special meetings: To call a special meeting, the calling members must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the business to be transacted at the meeting, either personally or by mail, at least seven calendar days before the specified date of the meeting, to each member of the WSATC, all approved program sponsors, and those who have requested prior notice of special meetings.

(ii) Waiver: The notice requirements to WSATC members may be waived in writing at or prior to the meeting, but all members must agree to waive notice and file the waiver with the supervisor.

(b) Content of special meetings: The subject matter of the special meeting must not exceed the scope of the written notice. If the WSATC takes action on a matter exceeding the scope of the written notice, the action is not final even if the members waive notice.

(c) Special meetings for rule changes: To call a special meeting to consider rule changes, the WSATC must:

(i) Mail a written notice with the date, time, and location of the meeting that specifies the rules to be changed at the meeting, either personally or by mail, at least twenty calendar days before the meeting.

(ii) Waiver: The notice requirements may not be waived for special meetings when rule changes are contemplated.

(3) Registered apprenticeship standards actions: When a party requests specific action from the WSATC related to apprenticeship standards, such request must:

(a) Be in writing; and

(b) Signed by the committee's elected chair and secretary, or by an authorized signer approved by the petitioning sponsor;

(c) Sent to the apprenticeship supervisor at least forty-five days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting.

(4) Other actions: When a party requests specific action or consideration from the WSATC on other issues, such requests must:

(a) Be in writing; and

(b) Sent to the apprenticeship supervisor at least fifteen business days prior to the date of the regular quarterly meeting.

Requests that are untimely are deferred to the next quarterly meeting unless waived by the supervisor.

(5) Voting: All council members, except ex officio members, appointed by the director of the department of labor and industries are voting members of the council.

(a) A quorum is two-thirds of the WSATC members entitled to vote.

(b) The chair shall establish a standing tie-breaker committee comprised of three WSATC members entitled to vote:

(i) An employer representative;

(ii) An employee representative; and

(iii) A public member.

(c) The apprenticeship supervisor or designee shall act as secretary to the tie-breaker committee and furnish all information necessary for a decision.

(d) In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within thirty calendar days.

(6) Adjudicative proceedings: All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapters 34.05 RCW and 10-08 WAC. The chair (or designee) is the presiding officer for adjudicative proceedings held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication is held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

(a) The WSATC upon its own motion determines that the initial order should be reviewed; or

(b) A party to the proceedings files a petition for review of the initial order.

(7) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal;

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt;

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final

decision by the director (or director's designee) by following the procedures in 29 C.F.R. 29.8(b)(5).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

(8) Limitations: Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(b) Any special provision for veterans, minority person, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

(9) Retroactivity: The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-009 ((Complaint review procedures.) Apprenticeship committees—Composition, duties, responsibilities, and standards.** ((If a local committee or other organization administering the agreement cannot satisfactorily resolve a complaint, any apprentice who has completed his/her initial probationary period may submit the complaint to the apprenticeship program for resolution. Complaints that involve matters covered by a collective bargaining agreement are not subject to the complaint review procedures in this section. The investigation or review of any controversy by the supervisor or the WSATC will not affect any action taken or decision made by a committee or other organization until a final decision resolving the matter is issued.

(1) Within thirty calendar days of documented, written notification of the action leading to the complaint, the apprentice must request the local committee or other organization to reconsider action.

(2) The local committee or other organization must, within thirty calendar days of the apprentice's request, provide written notification to the apprentice of its decision on the request for reconsideration. This notification shall be considered the final action of the committee.

(3) If the apprentice chooses to pursue the complaint further, the apprentice must submit a written complaint describing the controversy to the supervisor of the apprenticeship division within thirty calendar days of the final action taken on the matter by the local committee or other organization. The written complaint must be specific and include all relevant facts and circumstances contributing to the complaint. Any documents or correspondence relevant to the complaint must be attached to the complaint. The apprentice must send a copy of the complaint to the interested local committee or other organization.

(4) The supervisor must investigate complaints received from an apprentice. The supervisor must complete the investigation within thirty business days. During the investigation, the supervisor must attempt to effect a settlement between the

parties. During the investigation the apprentice and the committee or other organization must fully cooperate with the supervisor by providing any relevant information or documents requested. The supervisor may delegate the investigation to any employee in the apprenticeship division. If the controversy is not settled during the investigation, the supervisor must issue a written decision resolving the controversy when the investigation is concluded.

(5) If the apprentice, committee or other organization is dissatisfied with the decision of the supervisor, they may request the WSATC to review the decision. The request must be in writing and made within thirty calendar days of the supervisor's decision. It must specify the reasons supporting the request. The party requesting review must provide a copy of the request to the other parties involved in the controversy. The WSATC must conduct an informal hearing to consider the request for review of the supervisor's decision. Unless special circumstances dictate, the hearing must be held in conjunction with the regular quarterly meeting.

At the hearing, the WSATC must review the supervisor's decision and all records of the investigation. The WSATC may also accept testimony or documents from any person, including the supervisor and the supervisor's staff, who has knowledge relating to the controversy. Parties at the informal hearing may be represented by counsel and may, at the WSATC's discretion, present argument concerning the controversy. The WSATC must not apply formal rules of evidence.

(6) Within thirty calendar days after the hearing, the WSATC must issue a written decision resolving the controversy. The WSATC's decision may be to affirm the decision of the supervisor. In that case, the supervisor's decision becomes the decision of the WSATC. All parties to the informal hearing must be sent a copy of the WSATC's decision. The chair may sign the decision for the WSATC.)) (1) A sponsoring apprenticeship committee is responsible for the day-to-day operations of the apprenticeship and training program and operating the program consistent with the standards of the WSATC. Committees may be either:

(a) Group: Representing more than one employer or employer association; or

(b) Individual: Representing an individual employer.

(2) An apprenticeship committee consists of at least four but not more than twelve members, of an equal number of management and worker representatives, and may be either:

(a) Joint: Composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s); or

(b) Nonjoint: Composed of an equal number of employer and employee representatives but does not have a bona fide collective bargaining agent as a participant.

(3) Apprenticeship committee members must:

(a) At least fifty percent of the members must hold journey-level status, or greater, in their specific occupation when representing one occupation;

(b) Be qualified by education and experience in the areas the committee represents and able to represent the interests of the multiple occupations when representing multiple occupations;

(c) Familiar with the applicable apprenticeship standards.

(4) In order to be considered for approval by the WSATC, a sponsoring apprenticeship committee must ensure as follows for:

(a) Employers: That signing a collective bargaining agreement as a condition of participation in an apprenticeship program is not required; and that a request for approved training agent status requires compliance with WSATC approved agreements and all federal and state apprenticeship rules and standards.

(b) Apprentices: That apprentices work only for approved training agents.

(c) Program sponsors: That training agent agreements are approved and signed; that copies of agreements and lists of approved employers/training agents are furnished to the department within thirty calendar days of approval; and that when training agent agreements are rescinded, notice is sent to the department within thirty calendar days.

(5) An apprenticeship committee must offer apprenticeship and training opportunities on an equal basis to all eligible apprentices and employers, unless the committee represents individual or plant programs. If an existing group committee fails to do so, the WSATC may take action to ensure compliance with chapter 49.04 RCW and these rules.

(6) Apprenticeship committees must meet at least three times per year and elect a chair and secretary to conduct and record meetings. Records of meetings must be kept and forwarded to the department.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-011 ((Compliance reviews-)) Apprenticeship and training programs—Approval, registration, and objections.** ((1) The purpose of a compliance review is to systematically and periodically review apprenticeship programs to ensure that the sponsor is complying with the approved program standards and these rules. Compliance reviews consist of a comprehensive analysis and evaluations of each aspect of the apprenticeship program. They must include on-site investigations and audits.

(2) A compliance review may be required:

(a) For all existing programs on a regular and comprehensive basis.

(b) When the WSATC receives a complaint, which has not been referred to a private review body. (See WAC 296-05-009.)

(c) When a sponsor seeks to reregister a program.

(d) When a sponsor seeks to register a new program.

(3) If a compliance review indicates that the sponsor is not operating as required by these rules, the supervisor must notify the sponsor in writing of the results of the review. The supervisor must:

(a) Make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before penalizing as authorized in WAC 296-05-013.

(b) Provide recommendations to the sponsor to assist in achieving compliance.) (1) The WSATC approves and registers apprenticeship and training programs. At the regular

quarterly meeting, the proposed committee and/or standards will be considered by the WSATC. The WSATC will approve provided the sponsor accepts changes recommended by the WSATC, or disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

(a) Approval: The WSATC may approve an apprenticeship program when:

(i) If applicable, an apprenticeship and training committee is organized consistent with WAC 296-05-009;

(ii) Standards are proposed by the committee consistent with WAC 296-05-015;

(iii) Standards are presented to the WSATC consistent with WAC 296-05-008;

(b) The WSATC approves the following types of apprenticeship and training programs:

(i) Group joint: Sponsored by both a group of employers and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(ii) Individual joint: Sponsored by an individual employer and a labor organization with an equal number of representatives from workers and management on the apprenticeship and training committee.

(iii) Group nonjoint: A program sponsored only by an employer association and administered only by the employer association.

(iv) Individual nonjoint: A program sponsored and administered by an individual employer with no labor organization.

(v) Group waiver: A program sponsored by an employer association and a labor organization but one group waives participation in administering the program.

(vi) Individual waiver: A program sponsored by an individual person or plant and a labor organization, but one party waives participation in administering the program.

(vii) Plant: A program sponsored by the owner of a plant or plants at a particular location or locations. Plant programs are administered in accordance with chapter 49.04 RCW and these rules.

(c) Registration: If a program is approved, it is registered with the WSATC. An initial registration is provisional and lasts one year.

(i) If a program is not approved, the department will inform the sponsor in writing and explain the reasons for denying approval.

(ii) If a program is not initially approved, the WSATC may ask a sponsor to modify the program. The program may be approved with modifications.

(d) Waiver: A party may seek to waive labor union participation in administering a program when apprentices will be union members.

(i) If a program includes labor union participation, the program sponsor must obtain a written statement, known as a

"no objection" statement, from the union in support of the program.

(ii) When a labor union chooses not to participate in administering the program, the employer or employers' association must furnish copies of the registration application and the proposed program standards to the union serving as the collective bargaining agent of the employees to be trained. Before taking a final action on the application, the supervisor must give the union forty-five calendar days to respond before final action is taken on the registration.

(iii) If the union fails to comment within forty-five days, it will have waived its right to participate in the program and the supervisor will grant the waiver.

(e) Nonjoint and waiver committees - Additional requirements.

(i) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.

(ii) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.

(iii) Unrelated occupations shall be submitted under separate standards.

(f) Related/supplemental instruction: The WSATC may approve apprentice related/supplemental instruction for apprenticeable occupations based on recommendations from the state board for community and technical colleges. Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-05-015 (11).

(2) Objections: If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must:

(a) Provide timely and specific objections in writing to the apprenticeship supervisor twenty calendar days prior to the next regular quarterly WSATC meeting on a form provided by the department;

(b) Upon receipt of a competitor's objections, the apprenticeship supervisor notifies the program sponsor within two business days and forwards the matter to the WSATC.

(c) The WSATC may adjudicate the matter itself or refer the matter to the office of administrative hearings for initial adjudication:

(i) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(ii) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide findings and conclusions for the initial order.

(d) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

(3) Reciprocity: The WSATC may recognize out-of-state apprenticeship programs when:

(a) The program complies with federal requirements; or

(b) The program is recognized by a recognized state apprenticeship agency; and

(c) The program sponsor agrees to comply with Washington wage and hour laws; and

(d) The program sponsor asks for recognition from the WSATC.

The WSATC may revoke reciprocity agreements at any time.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-013 (~~(Sanctions for noncompliance-)~~ On-the-job training programs.)** ~~((The WSATC is responsible to take the necessary action to bring a noncomplying program into compliance with these rules.~~

~~When the apprenticeship supervisor, based upon a compliance review or other reason, concludes that an apprenticeship program is not in compliance with the rules of this chapter and that the sponsor will not take voluntary corrective action, the WSATC must:~~

~~(1) Institute proceedings to withdraw the program registration;~~

~~(2) Refer the matter to the equal employment opportunity commission;~~

~~(3) Refer the matter to the attorney general with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or~~

~~(4) Refer the matter to the attorney general for other court action as authorized by law.~~

~~(5) For provisionally approved programs (see WAC 296-05-003) the WSATC may continue approval as provisional through the first full training cycle/term, or rescind approval following a compliance review by the apprenticeship section of the department of labor and industries.)~~ (1) An on-the-job training program involves two thousand or fewer hours of employment in an occupation for which there is no registered apprenticeship program established in accordance with these rules.

(2) On-the-job training programs may be established in accordance with these rules.

(3) The supervisor of apprenticeship may approve on-the-job training programs. The WSATC may review the supervisor's approval, or make exceptions to these rules for on-the-job training programs.

AMENDATORY SECTION (Amending WSR 11-23-138, filed 11/22/11, effective 12/31/11)

**WAC 296-05-015 (~~(Decisions against training agent for violating ratio, supervision and/or approved work process requirements-)~~ Apprenticeship program standards.)** ~~((Based on a complaint, compliance review, or other reason, the supervisor may investigate, in accordance with the rules in this chapter, whether a training agent is in compliance with the program standards relating to the ratio, supervision, or approved work processes requirements for purposes of responsible bidder status for public works under RCW~~

39.04.350 (1)(e), or for purposes of prohibitions on bidding on public works contracts under RCW 39.12.055(3):

(1) The supervisor shall notify the training agent and the program sponsor that an investigation has commenced.

(2) The supervisor shall prepare a report identifying the results of the investigation. If the results indicate that the training agent is not operating as required by the program standards, the supervisor will notify the training agent and program sponsor in writing of the results, with a copy of the report to the WSATC. Additionally:

(a) The supervisor will make a reasonable effort to secure compliance on the part of the training agent by requiring the training agent to submit to the supervisor a proposed plan identifying voluntary corrective action. The supervisor shall review the proposed corrective action plan and approve it, or work with the training agent to modify it, before its implementation. If the supervisor does not receive notice, within sixty calendar days, that action has been taken to correct violations, the supervisor may refer the matter to the WSATC for action. The program sponsor shall assist the training agent in developing a proposed corrective action plan and shall assist the supervisor in monitoring the training agent's compliance with the terms of the approved corrective action plan.

(b) If the supervisor is unable to obtain compliance from the training agent under (a) of this subsection, or if a second investigation within one year of the initial inspection reveals the training agent is not operating as required by the program standards, the supervisor shall refer the matter to the WSATC for action.

(3) The WSATC will take action upon the supervisor's referral under subsection (2)(b) of this section. After a hearing, the WSATC will decide by a majority vote of the members present whether to issue a determination under RCW 39.04.350 (1)(e) and 39.12.055(3) that the training agent is out of compliance with program standards relating to the ratio, supervision, or approved work processes requirements.

(4) A determination by the WSATC that a training agent is out of compliance with program standards relating to the ratio, supervision, or approved work processes requirements shall be stated in writing, along with the reasons supporting it, and shall be served upon the training agent, program sponsor, and supervisor as provided by RCW 34.05.010(19). Judicial review of the WSATC's written decision under this section shall be as provided in chapter 34.05 RCW.

(5) The supervisor shall place WSATC determinations under this section on file for public review. The supervisor shall maintain a list of all training agents who, as a result of a determination they are out of compliance pursuant to RCW 39.04.350 (1)(e) and 39.12.055(3), are ineligible to bid on a public works contract, or to have a bid accepted. The supervisor shall make the list available to the public upon request.)) Apprenticeship program standards govern apprenticeship agreements between a program sponsor and an individual apprentice and define the term of the apprenticeship. The WSATC develops, administers, and enforces apprenticeship program standards, which are incorporated into apprenticeship agreements. Proposed standards must be reasonably consistent with existing standards in the trade or occupation. Proposed standards are reasonably consistent with existing

standards when standards meet or exceed the minimum number of hours approved by the United States Department of Labor in the trade or occupation, if approval has been made. If not, the WSATC may use its discretion to determine whether standards are reasonably consistent with existing standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the occupation to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee;

**Exception:** This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Disciplinary action may only be taken at a face-to-face meeting;

(c) Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established under these rules and a plan to include reasonable continuous employment;

(d) Establish minimum standards of education and skilled occupational experience required of apprentices;

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker;

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards;

**Exception:** This does not apply to plant programs.

(g) Recommend competent instructors as defined in WAC 296-05-003 and related/supplemental instruction in accordance with state board for community and technical college requirements;

(h) Coordinate related/supplemental instruction with on-the-job work experience;

(i) Hear and adjust all complaints of violations of apprenticeship agreements;

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules;

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period;

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules (see WAC 296-05-100).

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, genetic information, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an equal employment opportunity plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in a collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, and hours of study per year. Related/supplemental instruction shall not be less than one hundred forty-four hours per year and shall be defined in the standards per:

- (a) Twelve-month period from date of registration; or
- (b) Defined twelve-month school year; or
- (c) Two thousand hours of on-the-job training.

If a sponsor does not prescribe hours of study, the WSATC shall adopt (a) of this subsection for compliance purposes.

(7) An attendance policy which includes the following provisions:

(a) If the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement.

(b) That time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not required to be paid for the classroom time.

(c) That all hours of actual attendance by the apprentice in related/supplemental instruction classes must be reported to the department on a quarterly basis.

(d) That the hours reported to the department will clearly identify unpaid, supervised related/supplemental instruction time versus paid or unsupervised time for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the supervisor.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including: Certificate of completion; additional credit; suspension; military service; reinstatement; cancellation; and corrections.

(11) A provision for granting of advanced standing or credit for demonstrated competency, acquired experience, training, education, or skills in or related to the occupation and:

(a) In licensed trades regulated by electrical, plumbing, and elevator programs at the department, apprenticeship sponsors may give advanced credit or grant hours to apprentices only up to the hours that have been approved by the appropriate licensing entity prior to the sponsor granting credit to the registered apprentice. Programs are not required to use all hours granted by the regulatory section of the department.

(b) All apprenticeship programs need to ensure that a fair and equitable process is applied to apprentices seeking advanced standing or credit.

(12) A provision for the transfer of an apprentice from one training agent to another training agent of the sponsor in order to provide to the extent possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04 and 34.05 RCW, and these rules.

(15) A statement of the processes within the occupation in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction. For competency based and hybrid models, the program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age.

**Note:** Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established apprenticeship standards procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.



(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

- (a) Withhold periodic wage advancements;
- (b) Suspend or cancel the apprenticeship agreement;
- (c) Take further disciplinary action; or
- (d) The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal of the committee's action to the WSATC.

(22) A provision for an initial probation period. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause.

(23) Provisions prohibiting discrimination on the race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, genetic information, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(25) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry occupation in question. The goal is to achieve general statewide uniformity of standards in each industry occupation. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship for a given occupation. If the United States Department of Labor has not established a minimum number of hours for an occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve reasonably consistent skills as existing standards within the state for that industry occupation.

(26) A provision to ensure progressively increasing wage scales based on specified percentages of journey-level wage. Sponsors must submit the journey-level wage at least annually or whenever changed to the department. Wage reports may be submitted on a form provided by the department.

(27) A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

(28) An apprenticeship term may be:

(a) Time-based: Measured by skill acquisition. The apprentice must complete at least two thousand hours of on-the-job learning as described in a work process schedule; or

(b) Competency-based: The apprentice successfully demonstrates acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify

an appropriate means of testing and evaluation for such competencies; or

(c) Hybrid: The apprentice acquires skills through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

**~~((PART A — WSATC MEMBERS — COMPOSITION, OFFICERS, AND DUTIES))~~**

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

**WAC 296-05-100 Records required by the WSATC ((composition)).** ~~((1) The director of the department appoints three voting representatives each from employer and employee organizations, respectively. Each member shall be appointed for a three-year term.~~

~~(2) The director of labor and industries shall also appoint a public member to the apprenticeship council for a three-year term.~~

~~(3) The WSATC may also include ex officio members. These members have the right to participate in the discussion of any matter before the council but they may not vote.~~

~~(4) An appointed member shall remain on the council until replaced by a qualified successor. When a vacancy does occur, it shall be filled for the remaining portion of the vacated term.)~~ (1) Program sponsors must keep adequate records including, but not limited to, the following:

(a) Selection of applicants;

(i) A summary of the qualifications of each applicant;

(ii) The basis for evaluation and for selection or rejection of each applicant;

(iii) The records pertaining to the interviews of applicants; and

(iv) The original application for each applicant.

(b) Operation of the apprenticeship program:

(i) On-the-job training assignments;

(ii) Promotion, demotion, layoff, or termination;

(iii) Rates of pay or other forms of compensation or conditions of work;

(iv) Hours of training provided on-the-job by work process and in related/supplemental instruction in accordance to the sponsor's approved plan;

(v) Signed and approved training agency agreement forms; and

(vi) Any other records needed by the WSATC to determine compliance with these rules.

(2) Equal employment opportunity plans:

(a) A copy of the program's complete equal employment opportunity plan. All data and analysis made to determine enrollment deficiencies;

(b) Evidence that equal employment opportunity plans are reviewed on an annual basis; and

(c) Evidence that equal employment opportunity plans, goals, and timetables are updated when necessary.

(3) Documentation necessary to establish a sponsor's good faith effort in implementing its equal employment opportunity plan:

(a) Who was contacted;

- (b) When the contacts were made;
- (c) Where the contacts occurred;
- (d) How the contacts were made; and
- (e) The content of each contact.

(4) Qualification standards: Evidence that the sponsor's qualification standards meet the requirements of WAC 296-05-015.

Program sponsors must keep adequate records related to operations of the apprenticeship program including, but not limited to, records reflecting selection of applicants, equal employment opportunity plans and implementation of plans for a minimum of five years. Program sponsors must provide access to records when requested by the WSATC or the apprenticeship supervisor.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-103 ((Officers-)) Apprenticeship agreements.** ~~((1) To carry out the business of the WSATC and to conduct business efficiently the WSATC has three officers:~~

- ~~• Chair;~~
- ~~• Vice chair; and~~
- ~~• Secretary.~~

~~(2) The chair and vice chair shall be elected by majority vote of the WSATC members present. This election will take place in odd numbered years at the April regular quarterly meeting. They shall hold office for a term of two years and until the successor(s) are elected, or until death, resignation, or incapacitation. The supervisor of apprenticeship shall be the secretary of the WSATC-)) (1) Individual apprentices enter into apprenticeship agreements with the program sponsor. Agreements must be filed with the apprenticeship supervisor. The apprenticeship supervisor approves and registers the agreements.~~

~~(2) The WSATC recognizes apprenticeship agreements as follows:~~

- ~~(a) Between an employer association and an employee organization;~~
- ~~(b) Between an individual employer and an employee organization;~~
- ~~(c) Between an individual apprentice and an apprenticeship program.~~

~~(3) When a program is canceled by the WSATC, agreements under the program are also canceled.~~

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-105 ((Officer duties-)) Individual apprentice complaints—Procedures.** ~~((1) The chair shall preside over all meetings, conducting them in accordance with *Robert's Rules of Order* as modified by these rules and regulations. The chair may vote in all matters before the WSATC as a regular member and may participate in discussion of all matters before the WSATC. The chair may also have other powers and duties that are provided in these rules; and are usual or necessary with the office of the chair; and as provided in *Robert's Rules of Order*.~~

~~(2) The vice chair shall preside over all WSATC meetings in the absence of the chair. When presiding, the vice chair shall have all of the powers and duties of the chair.~~

~~(3) The secretary, with the assistance of a recording secretary, must take and keep minutes of all special and regular meetings on file in the supervisor's office. The secretary must forward copies of minutes of all meetings to all regular and ex officio members of the WSATC. The secretary must also make copies of the minutes of all meetings available to the public upon written request. The secretary may also have other powers and duties that are provided in these rules or are usual or customary to the office of secretary; and as provided in *Robert's Rules of Order*.) (1) Except as provided otherwise by federal or state law, the apprentice must complete the initial probationary period in order to be eligible to appeal the program sponsor's decision on a complaint.~~

~~(2) Complaints involving matters covered by a collective bargaining agreement are not subject to the complaint procedures in this section.~~

~~(3) Complaints regarding nondisciplinary matters must be filed with the program sponsor within thirty calendar days from the date of the last occurrence. Complaints must be in writing.~~

~~(4) If the apprentice disagrees with the resolution of the complaint or wishes to contest the outcome of a disciplinary action by the program sponsor, the apprentice must file a written request for reconsideration with the program sponsor within thirty calendar days from the date the apprentice received written notice of action by the program sponsor.~~

~~(5) The program sponsor must reply, in writing, to the request for reconsideration within thirty calendar days from the date the program sponsor receives the request. The program sponsor must send a copy of the written reply to the apprentice within the thirty calendar days.~~

~~(6) Appeal to apprenticeship section: If the apprentice disagrees with the program sponsor's decision, the apprentice may file an appeal with the apprenticeship section within thirty days from the date the program sponsor provides the decision to the apprentice.~~

~~(a) If the apprentice does not file an appeal within thirty days, the decision of the program sponsor is final.~~

~~(b) Appeals must describe the subject matter of the appeal in detail and include a copy of the decision of the program sponsor being appealed along with any documents or correspondence relevant to the complaint. The apprentice must send a copy of the complaint to the interested local committee or other organization. The apprenticeship section will complete an investigation within thirty days from the date the appeal is received and attempt to resolve the appeal. If the controversy is not settled during the investigation, the supervisor must issue a written decision resolving the controversy when the investigation is concluded.~~

~~(7) Request for review to WSATC: Following an appeal to the apprenticeship section, either party may file a request for review to the WSATC. Requests for review to the WSATC must be in writing. Requests for review must be filed within thirty days from the date the decision is mailed to the parties. The WSATC will conduct an informal hearing to consider the request for review. The WSATC will issue a written decision resolving the request for review, which is the~~

final decision of the WSATC. All parties will receive a copy of the WSATC's written decision. The WSATC conducts hearings as described in WAC 296-05-008.

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

**WAC 296-05-107 ((Additional duties for the supervisor-administrator of WSATC:)) Decisions against training agents for violating ratio, supervision and/or approved work process requirements. (((1) In addition to being the council secretary, the apprenticeship supervisor (supervisor) is the WSATC administrator. As WSATC administrator, the supervisor must:**

- (a) Perform the duties listed in RCW 49.04.030;
- (b) Register all apprenticeship agreements that comply with the rules in this chapter;
- (c) Review apprenticeship programs and recommend cancellation of any committee program, or plant program previously registered which is not operated in conformity with its apprenticeship standards; and
- (d) Receive all documents concerning apprenticeship or training agreements (including revisions to) or any other matters affecting apprenticeship or training.

All written correspondence to the supervisor should be addressed to:

Supervisor of Apprenticeship and Training  
Department of Labor and Industries  
Apprenticeship Section  
P.O. Box 44530  
Olympia, Washington 98504-4530

- (2) The supervisor and the supervisor's staff:
  - (a) May be consulted on any matters concerning apprenticeship and training and will provide on request, any information concerning apprenticeship and training available to them.
  - (b) Will conduct systematic reviews of the operation of all programs and investigate any discrepancies between the actual and required operations of any program. The supervisor will notify the noncompliant program sponsor of any violation.
  - (c) May recommend sanctions including cancellation of a program not in compliance with its approved program standards.
  - (d) Assists in the resolution of any complaints against committees or other organizations administering apprenticeship agreements, filed with the WSATC by apprentice(s) who have completed his/her initial probationary period.
  - (e) Must investigate any discrepancies of all complaints as specified in WAC 296-05-009.
  - (f) Conducts compliance reviews as specified in WAC 296-05-011-)) The supervisor may investigate whether a training agent is in compliance with RCW 39.04.350 (1)(e) and/or 39.12.055(3).

(1) The supervisor shall notify the training agent and the program sponsor that an investigation has commenced.

(2) When the investigation is complete, the supervisor shall prepare a report identifying the results. If the results indicate that the training agent has violated RCW 39.04.350

(1)(e) and 39.12.055(3), the supervisor will notify the training agent and program sponsor in writing, and provide a copy of the report to the WSATC.

(a) Following an investigation, the supervisor may require a training agent to submit and implement a voluntary corrective action plan to the department.

(b) If the training agent does not follow the voluntary corrective action plan or if a second investigation within one year of the initial inspection reveals the training agent is not operating as required by the program standards, the supervisor shall refer the matter to the WSATC for a hearing.

(3) The WSATC will conduct a hearing and issue a determination whether the training agent has violated RCW 39.04.350 (1)(e) and 39.12.055(3).

(4) A determination by the WSATC that a training agent has violated RCW 39.04.350 (1)(e) and 39.12.055(3) shall be stated in writing, along with the reasons supporting it, and shall be served upon the training agent, program sponsor, and supervisor as provided by RCW 34.05.010(19). Judicial review of the WSATC's written decision under this section shall be as provided in chapter 34.05 RCW.

(5) The supervisor shall place WSATC determinations under this section on file for public review. The supervisor shall maintain a list of all training agents who, as a result of a determination, are out of compliance pursuant to RCW 39.04.350 (1)(e) and 39.12.055(3) and are ineligible to bid on a public works contract, or to have a bid accepted. The supervisor shall make the list available to the public upon request.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-109 ((Merit awards:)) Apprenticeship program compliance reviews and sanctions. ((The WSATC may issue awards when appropriate.)) (1) The apprenticeship section conducts reviews as required by RCW 49.04.030 to determine a program's compliance with chapter 49.04 RCW, 29 C.F.R. Parts 29 and 30, and these rules. Compliance reviews consist of a comprehensive analysis and evaluation, including an on-site visit and performance review. Compliance reviews may be required for all existing programs on a regular and comprehensive basis.**

(2) Compliance reviews may be conducted when:

(a) The WSATC receives a complaint about a program that has not been referred to a private review body;

(b) A sponsor seeks to register a new program or reregister an existing program;

(c) A review is necessary, within the discretion of the apprenticeship section or the WSATC.

(3) When a compliance review finds a program is not in compliance with its approved program standards or these rules, the supervisor of apprenticeship must:

(a) Notify the program sponsor of the results of the compliance review in writing and identify steps the program sponsor can make to be in compliance;

(b) Provide a reasonable opportunity for the program sponsor to correct any deficiencies identified in the compliance review;

(c) Provide notice of potential sanctions, if any, for non-compliance.

(4) Sanctions: When a program sponsor has not taken corrective action to address material deficiencies identified by the apprenticeship section in a compliance review, and the apprenticeship supervisor determines the program sponsor refuses to correct deficiencies, the WSATC must, at the request of the supervisor:

(a) Begin proceedings to cancel the program's registration IAW WAC 296-05-200;

(b) Refer the matter to the equal employment opportunity commission;

(c) Refer the matter to the attorney general with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or any other court action as authorized by law.

(5) When a program is provisionally approved, and the supervisor identifies deficiencies in a performance review, the WSATC may continue provisional program approval through the first full training term, or rescind program approval.

**~~((PART B WSATC MEETINGS TYPES, PROCEDURES, AND CONDUCT))~~**

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-200 ((Regular meetings.)) Apprenticeship programs—Cancellation.** ~~(((1) Each year, regular meetings of the WSATC shall be convened on the third Thursday of January, April, July, and October. These regular quarterly meetings shall be held at locations within the state of Washington. All meetings are open to the general public.~~

~~(2) Notice of each regular quarterly meeting shall be given to all WSATC members, ex officio members, and approved program sponsors.~~

~~In addition, notices of meetings may be sent to all persons, organizations, agencies, or interested parties whose presence is desired and to any newspaper, news service, television, radio station, or other interested parties who have requested notices of WSATC meetings. The supervisor must distribute the notice of the regular meeting at least thirty calendar days prior to the meeting date.)~~ (1) When the supervisor determines that a program is operating in violation of its program standards, these rules, or applicable laws, the supervisor may recommend a program's registration be canceled. Cancellation of a program also serves to cancel any apprenticeship agreements.

(2) The supervisor must:

(a) Provide notice of deficiencies to the program and sixty calendar days to correct the identified deficiencies;

(b) Provide notice that the program's registration may be canceled if the deficiencies are not corrected within sixty calendar days of receipt of the notice, and a notice of correction is sent to the supervisor within sixty calendar days of receipt of the notice;

(3) If the program does not correct identified deficiencies in a timely manner, the supervisor may begin the following procedures to cancel the program's registration. The supervisor must:

(a) Make a written recommendation to the WSATC that the program be canceled;

(b) Provide a record to the WSATC detailing the notice given to the program to correct identified deficiencies;

(c) Provide notice of the recommendation to the program sponsor and the apprenticeship committee responsible for administering the program;

(d) Provide the required notice thirty calendar days before the next regularly scheduled quarterly meeting for the WSATC to act on the supervisor's recommendation to cancel a program's registration. Absent an emergency, if notice is given fewer than thirty calendar days, the supervisor's recommendation to cancel a program's registration is heard at the subsequent regularly scheduled quarterly meeting.

(4) When the recommended program cancellation is heard before the WSATC, the supervisor or any interested party may present evidence or testimony to the WSATC regarding the recommended cancellation. The WSATC must vote on the supervisor's recommendation to cancel a program's registration. If a majority of the members approve the supervisor's recommendation, the WSATC provides written notice to all interested parties that the program's registration has been canceled. The program sponsor has thirty days from the date the WSATC mails its notice to the program sponsor to file an appeal with the director.

(5) When the supervisor recommends a program be canceled because the program violates federal law, and the WSATC cancels the program's registration as required by federal law, the program may also file an appeal with the U.S. Department of Labor, pursuant to 29 C.F.R. Parts 29 and 30.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-203 ((Special meetings.)) Equal opportunity in employment fundamentals.** ~~(((1) Special meetings of the WSATC may be called at the request of the chair or by a majority of the WSATC members. To call a special meeting, a written notice of the meeting must be personally delivered or mailed to:~~

~~(a) Each member of the WSATC;~~

~~(b) All approved program sponsors; and~~

~~(c) Each general circulation newspaper, television or radio station which has on file with the WSATC or the supervisor a written request to be notified of special meetings.~~

~~In addition, notices of meetings may be sent electronically to all persons, organizations, agencies, and interested parties whose presence is desired.~~

~~(2) To be valid, the written notice must list the date, time and location of the meeting and specify the business to be transacted by the WSATC. The WSATC cannot take final action on any matter that is not specified in the written notice. Special meetings must be open to the general public and adhere to the same open meeting requirements that apply to the regular quarterly WSATC meetings.~~

~~(3) Notices of special meetings must be delivered personally or by mail at least seven calendar days before the specified time of the meeting.~~

~~(4) The exception is when a special meeting is called to consider rule changes according to chapter 34.05 RCW. In~~

this case, the notice of the special meeting must be delivered at least twenty calendar days before the time specified in the notice.

(5) If the notice requirements in this section are not followed, any action taken by the WSATC at the special meeting will be null and void. However, the notice requirements can be waived if each regular WSATC member signs a written waiver of notice, at or prior to the meeting, and files it with the supervisor. With this filing, the notice shall be considered waived by any WSATC member present when the meeting convenes. Rule changes may not be made at special meetings where the notice requirements have been waived unless the requirements of chapter 34.05 RCW have been satisfied.) (1) The apprenticeship section is a state apprenticeship agency for federal purposes, as required by 29 C.F.R. Part 30.

(2) Registered apprenticeship programs are required to adopt written rules containing equal opportunity in employment standards required by 29 C.F.R. Part 30. Programs shall:

(a) Not discriminate on the basis of any category prohibited by federal law;

(b) Engage in affirmative recruiting action;

(c) Incorporate an equal opportunity pledge into its apprenticeship program standards;

(d) Adopt an affirmative action recruiting program;

(e) Adopt a defined selection procedure for apprentices.

(3) The standards required by 29 C.F.R. Part 30 do not apply to programs with fewer than five apprentices.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-205 ((Petitions, requests, and correspondence submitted to the WSATC.)) Reinstatement of program registration.** ~~((1) For the WSATC to act upon petitions or requests at a regular quarterly meeting, the petitions or requests must be submitted in writing to the supervisor at least forty five calendar days prior to the date of the regular quarterly meeting. Any petitions or requests not submitted forty five calendar days prior to a quarterly meeting must be deferred to the next regular quarterly meeting. If a petition or request is deferred, the supervisor must notify the petitioner.~~

(2) Generally, correspondence not related to apprenticeship and training agreements and meetings, petitions and requests, must be submitted in writing to the supervisor of apprenticeship at least fifteen business days before the quarterly meeting at which the WSATC's consideration is requested. However, if the WSATC determines that the correspondence is crucial to any deliberations regarding approval or disapproval of an apprenticeship agreement, the supervisor may waive this fifteen business day requirement.

(3) Nonracial correspondence submitted less than fifteen business days before the quarterly meeting must be considered by the WSATC at the next quarterly meeting.

(4) When an apprenticeship committee petitions the council or the supervisor, only the signature of the elected chair and secretary of the committee shall be accepted as a valid signature unless the petitioning committee has asked

the council to recognize and accept the signature of another person. A petition requesting the recognition of a signature other than that of the elected chair and secretary must be signed by a quorum of the members from the petitioning committee.) Any apprenticeship program deregistered as authorized by these rules may be reinstated upon presentation of adequate evidence to the WSATC that the apprenticeship program is operating in compliance with these rules.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-207 ((Other regulations that apply to council meeting conduct.)) Certification of apprentice labor standard on renewable energy projects.** ~~((1) All council meetings must be open to the general public. Members of the public cannot be required to register his/her name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, the Open Public Meetings Act and chapter 34.05 RCW, the Administrative Procedure Act. The following WSATC activities must take place in open public meetings:~~

(a) All transactions of official business;

(b) All commitments or promises;

(c) All collective discussions;

(d) All collective decisions; and

(e) All council actions.

(2) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting under WAC 296-05-203.) (1) The WSATC establishes minimum levels of apprentice labor hours to be met through apprenticeship programs so that utilities can qualify for renewable energy credits as defined in RCW 19.85.040.

(2) The WSATC certifies a renewable energy project meets the required minimum when an applicant can show:

(a) A minimum of fifteen percent of the total labor hours used to construct the project are apprentice hours;

(b) Labor hours meet the definition in RCW 39.04.-310(3). Hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wages must be reported and included in the total labor hours if the foreman, superintendent, or worker is counted in satisfying the required apprentice to journey supervision ratio as required by apprenticeship standards;

(c) The applicant requests certification within forty-five days of the start of the on-site construction for the project.

(3) Requests for certification are filed with the department and heard by the council at the council's next regular quarterly meeting. Requests for certification must include:

(a) The name, occupational title, and registration number for each registered apprentice;

(b) The number of apprentices and labor hours worked, categorized by occupational title and employer;

(c) The number of journey level workers and labor hours worked, categorized by occupational title and employer;

(d) Copies of weekly or monthly reporting forms and certified payroll records used to capture the required information;

(e) A statement affirming the hours reported meet the definition of "labor hours" as defined by subsection (2)(b) of this section.

(4) The department reviews requests for certification and recommends to the WSATC whether the request should be granted.

(5) The WSATC decides whether requests for certification are granted within thirty days from the date the matter is heard at the quarterly meeting. The WSATC can:

(a) Grant the request for certification;

(b) Deny the request for certification;

(c) Defer the request for certification and ask for additional information.

(6) If the request is granted, the WSATC certifies the apprentice labor hours on the project.

(7) If the request is denied, the aggrieved party may file an appeal pursuant to chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-400 Equal employment opportunity plan—Purpose, scope and authority.** The WSATC's equal employment opportunity plan is based on the statutory authority granted in chapter 49.04 RCW and according to the provisions of 29 C.F.R. Part 30. The purpose of the equal employment opportunity plan is to promote equality of opportunity in apprenticeship by:

- Prohibiting discrimination in apprenticeship programs based on race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law;

- Requiring equal employment opportunities in apprenticeship programs; and

- Coordinating the WSATC's equal employment opportunity programs with other affirmative action policies and procedures and equal opportunity programs.

The following sections contain the policies and procedures to promote equality of opportunity and equity of treatment of apprentices in apprenticeship programs approved by the WSATC. These policies and procedures are to be used to:

- Recruit and select apprentices;
- Review and revise apprenticeship programs;
- Process equal employment opportunity complaints;
- Take corrective action when appropriate; and

~~(• Deregister noncomplying apprenticeship programs; and)~~

- Continue recognition or withdraw recognition of apprenticeship programs.

An equal employment opportunity program must not be used to discriminate against any qualified applicant or apprentice on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-409 Affirmative action information required by WSATC.** In addition to the program standards required by WAC ((296-05-316)) 296-05-015, program sponsors seeking new program registration and approval by the WSATC must submit the following:

- (1) The proposed affirmative action plan;
- (2) The proposed selection procedures; and
- (3) Any other information about the sponsor's equal employment opportunity plan required by the WSATC.

The affirmative action plan and additional information is considered in conjunction with the program standards in the WSATC's decision whether to approve or disapprove an apprenticeship program. If the WSATC disapproves the apprenticeship program, it shall direct the department to inform the sponsor in writing the reason for disapproval.

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-411 Affirmative action plan.** An approved affirmative action plan must:

- (1) Be in writing.
- (2) Be more than passive nondiscrimination.
- (3) Include procedures, methods and programs to:
  - (a) Clearly identify present and potential minority and female apprentices.
  - (b) Establish affirmative action goals and timetables.
  - (c) Equalize opportunity in apprenticeship to allow full utilization of the work potential of minorities and women.
  - (d) Assure equal opportunity in apprenticeship for all individuals participating in or seeking entrance into Washington's labor force.

(4) Include provisions for outreach and positive recruitment to increase the participation of minorities and women in apprenticeship programs by expanding and promoting apprenticeship opportunities to minorities and women. (See WAC 296-05-413.)

Nothing in a sponsor's approved affirmative action plan may be used to discriminate against any qualified applicant or apprentice on the basis of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-413 Outreach and recruitment requirements—Specific.** To gain approval, an equal employment opportunity plan must include the following specific provisions for outreach and recruitment criteria:

- (1) To increase minority and female participation in apprenticeship, program sponsors are expected to strengthen program outreach and recruitment efforts. The equal employment opportunity plan must specify the activities they will use to achieve this result.

- (2) The program sponsor is not necessarily required to include all of the listed activities in its equal employment

opportunity program. The WSATC, when approving the sponsor's equal employment opportunity plan, will determine the number of specific activities a sponsor must implement to satisfy this outreach and recruitment requirement. The WSATC will consider all circumstances including the size and type of the program and its resources. When special circumstances exist, the WSATC may provide financial or other assistance it deems necessary to implement the requirements of this section from any funds made available to it for such purpose.

(3) Examples of positive outreach and recruitment activities are:

(a) Distributing information about the nature of apprenticeship programs, program admission requirements, current apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor.

For programs only accepting applications at specific intervals, such information shall be disseminated at least thirty calendar days in advance of each application date. For programs that accept applications throughout the year, this information must be distributed at least semiannually.

To be effective, the information described in this section must be given to the WSATC, local schools, employment service offices, women's centers, outreach programs and community organizations which effectively reach minorities and women. Also it must be published in newspapers which are circulated in the minority community and among women as well as the general areas in which the program sponsor operates.

(b) Participating in workshops conducted by employment service agencies, school districts, and community based organizations to increase apprenticeship program awareness of apprenticeship opportunities.

(c) Cooperating with local school districts, vocational education systems, and school employees to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(d) Increasing awareness of a sponsor's equal opportunity policy within the sponsor's organization. The goal of this increased awareness within the sponsor's organization is to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, employers, and members. This is to encourage the necessary active assistance in achieving the program's obligations required by these rules.

(e) Participating in existing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. Whenever possible, these should provide applicants with pretesting experience and training.

(f) Developing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. If apprenticeship outreach programs do not exist, the sponsor should attempt to develop them. This effort may require working with other sponsors and appropriate community organizations. It may require obtaining financial assistance from the WSATC. Also, the sponsor shall initiate programs that prepare and encourage women to enter traditionally male dominated apprenticeship programs and occupations.

(g) Encouraging the development and use of programs for apprenticeship preparation education or other work related experiences that prepare candidates for apprenticeship.

(h) Granting to all applicants, without prejudice, advance standing or credit for previously acquired experience, training, skills, or aptitude.

(i) Engaging in other activities to ensure that the recruitment, selection, employment, and training of apprentices without discrimination based upon race, color, religion, national origin, sex (including pregnancy and gender identity), sexual orientation, age, disability, genetic information, or as otherwise specified by law. Some examples of these activities include:

(i) General publication of advertisements, industry reports, articles on apprenticeship opportunities and advantages.

(ii) Use minority and female apprentices and journey-level workers as recruiters.

(iii) Provide career counseling to prospective applicants.

(iv) Periodically audit equal employment opportunity programs to see if goals are being met.

(v) Develop monitoring procedures to ensure that employers are granting equal employment opportunities to apprentices (these procedures may include reporting systems, on-site reviews, or briefing sessions).

AMENDATORY SECTION (Amending WSR 01-22-055, filed 10/31/01, effective 1/17/02)

**WAC 296-05-441 Noncompliance with federal and state equal opportunity requirements.** When a compliance review concludes that a sponsor is not operating according to the federal or state laws or regulations requiring equal opportunity, the apprenticeship supervisor must take action. Such action must include:

(1) Notifying the sponsor in writing of the review results;

(2) Making a reasonable effort to secure voluntary compliance from the program sponsor; and

(3) Giving the sponsor a reasonable amount of time to comply with the review recommendations before undertaking sanctions under WAC (~~(296-05-013)~~) 296-05-109.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

**WAC 296-05-443 Complaint filing.** (1) Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint. The basis of the complaint may be:

(a) Discrimination on the basis of race, sex (including pregnancy and gender identity), sexual orientation, color, religion, national origin, age, disability, genetic information, or as otherwise specified by law by a sponsor or a sponsor's program;

(b) The equal opportunity standards have not been followed; or

(c) The sponsor's equal employment opportunity plan does not comply with the requirements of this chapter.

(2) A complaint may be filed in person or through an authorized representative. The complainant may choose to

file a complaint with the WSATC or with a private review panel as established in WAC 296-05-445.

(3) A complaint must be in writing and shall be signed by the complainant. The complaint must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances leading to the complaint.

(4) The complaint must be filed not later than one hundred eighty calendar days from the date of the alleged discrimination or violation of the sponsor's equal employment opportunity plan or the rules of this chapter. If a complaint is initially filed with the private review panel and the complainant later wishes to refer the complaint to the WSATC, the referral must occur within one hundred eighty calendar days of the circumstances leading to the complaint or within thirty calendar days of the private review panel's final decision, whichever is later. If good cause is shown, the WSATC may extend these time periods.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-05-209 Voting.
- WAC 296-05-211 Rules of order.
- WAC 296-05-213 Retroactivity.
- WAC 296-05-215 Limitations.
- WAC 296-05-300 Apprenticeship and training programs—Approval.
- WAC 296-05-302 Apprenticeship committee/program approval process.
- WAC 296-05-303 Apprenticeship committees—Duties and responsibilities.
- WAC 296-05-305 Apprenticeable occupations.
- WAC 296-05-307 Types of apprenticeship agreements recognized by the WSATC.
- WAC 296-05-309 Apprenticeship programs approved by the WSATC.
- WAC 296-05-311 On-the-job training programs.
- WAC 296-05-313 Apprenticeship committees—Composition.
- WAC 296-05-314 Nonjoint and waiver committees—Additional requirements.
- WAC 296-05-315 Term of apprenticeship—Standards requirement.
- WAC 296-05-316 Apprenticeship agreements—Standards requirements.
- WAC 296-05-317 Related/supplemental instruction.
- WAC 296-05-318 Records required by the WSATC.
- WAC 296-05-319 Apprenticeship agreement—Individual registration.

- WAC 296-05-321 Apprenticeship agreement—Cancellation.
- WAC 296-05-323 Certificate of completion.
- WAC 296-05-325 Union waiver.
- WAC 296-05-327 Reciprocity.
- WAC 296-05-329 Certification of apprentice labor standard on renewable energy projects.
- WAC 296-05-449 Program registration cancellation procedures.
- WAC 296-05-451 Reinstatement of program registration.
- WAC 296-05-453 Adoption of consistent state plans.

#### **WSR 18-11-118**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed May 22, 2018, 11:14 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-172.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-833-0015 Who is eligible for the community crisis stabilization service (CCSS) program?

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than June 27, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 26, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by June 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending this rule in order to clarify the age limit for CCSS program eligibility and update the name of an existing DSHS administration with its new agency name.

Reasons Supporting Proposal: The proposed rule clarifies that a person is not eligible for the CCSS program if they are age twenty-one or older and changes the name "DSHS children's administration" to the entity's new agency name, "department of children, youth, and families."

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.20.010.



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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Nichole Jensen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1521.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from cost-benefit analysis requirements because the proposed amendments, as described under RCW 34.05.328 (5)(b)(iv), clarify the language of the rule without changing its effect.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

May 16, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-08-081, filed 3/31/15, effective 5/1/15)

**WAC 388-833-0015 Who is eligible for the community crisis stabilization service (CCSS) program?** ~~((To be))~~ A person is eligible for ((CCSS,)) the ((following conditions must be met)) community crisis stabilization services program if:

(1) The ~~((individual has been determined))~~ person is eligible for DDA services ~~((as defined in))~~ under chapter 388-823 WAC;

(2) The ~~((individual))~~ person is eligible for medicaid services;

(3) The ~~((individual))~~ person or their legal representative ~~((has provided voluntary))~~ voluntarily consents to ~~((participate))~~ community crisis stabilization services;

(4) The ~~((individual))~~ person is age eight ~~((to))~~ or older but under age twenty one;

(5) The ~~((individual))~~ person has no ~~((unresolved issues))~~ pending investigations of abuse or neglect ~~((pending))~~ with the ~~((DSHS children's administration))~~ department of children, youth, and families; and

(6) ~~((The))~~ DDA ~~((CCSS review team has determined that))~~ determines the ~~((individual))~~ person needs the level of service provided in the ~~((CCSS))~~ community crisis stabilization services program.

## WSR 18-11-120

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed May 22, 2018, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-078.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0040 Can I volunteer for an unpaid work program in order to meet the work requirements under WAC 388-444-0030?

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than June 27, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 26, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by June 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-444-0040 in order to update the eligibility policies of work registrants, including but not limited to the able-bodied adults without dependents population, bringing them into compliance with federal regulations.

Reasons Supporting Proposal: The proposed amendments comply with Washington's supplemental nutrition assistance program (SNAP) state plan.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, and 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.24, 7 C.F.R. 273.7.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, 360-725-4895.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

May 16, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-18-028, filed 8/26/14, effective 9/26/14)

**WAC 388-444-0040** ~~((Can))~~ May I volunteer for an unpaid work program in order to meet the work requirements under WAC 388-444-0030? ~~((The department makes))~~ May I volunteer for an unpaid work ~~((programs available for persons who need))~~ program to meet the work requirements under WAC 388-444-0030((-))?

(1) ~~((The following are considered unpaid work programs:~~

(a) ~~Workfare, which includes:~~

~~(i) Job search activities during the first thirty days beginning with the day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and~~

~~(ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows you to remain eligible for basic food benefits.~~

~~(iii) Workfare does not include enforced community service or for paying fines or debts due to legal problems.~~

~~(b) Work experience (WEX) which provides supervised, unpaid work for at least twenty hours a week. WEX is intended to improve a person's work skills and make them more competitive in the job market. WEX must be for a nonprofit organization, government agency, or tribal entity))~~ To meet the work requirements of WAC 388-444-0030, you may volunteer for workfare, an unpaid work program that includes work with public or private nonprofit agencies contracted with the department of social and health services.

(2) We determine the number of hours you must participate by taking the total amount of food benefits your assistance unit (AU) receives and divide it by the state or local minimum wage, whichever is higher.

~~((2))~~ (3) If there are multiple able-bodied adults without dependents (ABAWD) in your AU, they share the responsibility of meeting the required number of hours.

(4) Workfare does not include court-ordered community service.

(5) We ~~((may not require))~~ cannot require you to participate more than one hundred and twenty hours per month in an unpaid-work program, paid work, or a combination of activities. ABAWDs may choose to volunteer to participate in activities beyond one hundred and twenty hours per month.

~~((3))~~ The department may pay for some of the costs for you to participate in work programs. We set the standards for the amount we will pay for these expenses:))

**WSR 18-11-124  
PROPOSED RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed May 22, 2018, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-070.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability?, 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial limitations?, 388-823-1005 When does my eligibility as a DDA client expire?, and 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than June 27, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 26, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by June 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to align with the definition of "developmental disability" under RCW 71A.10.020.

Reasons Supporting Proposal: These amendments are necessary in order to remove developmental disabilities administration (DDA) eligibility as a barrier to accessing medically intensive children program (MICP) services under chapter 182-551 WAC, ensure that clients who became eligible for DDA due solely to MICP eligibility remain DDA eligible as long as they continue to receive fee-for-service MICP services, and simplify the review and expiration rules for clients turning age twenty.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.10.020.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Beth Krehbiel, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1547.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

May 21, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

**WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability?** In order to be considered for eligibility under the category of another neurological or other condition similar to intellectual disability you must (~~meet one of the three criteria below~~):

(1) (~~You are~~) Be age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that (~~is known by reputable authorities to cause intellectual and adaptive skills deficits. Your condition meets all of the following~~):

(a) Originated before age eighteen;

(b) Is known by reputable authorities to cause intellectual and adaptive skills deficits;

(c) Is expected to continue indefinitely without improvement;

(~~e~~) (d) Is other than intellectual disability, autism, cerebral palsy, or epilepsy;

(~~d~~) (e) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; and

(~~e~~) (f) Has resulted in substantial functional limitations.

(2) (~~You are under the age of eighteen and are eligible for DSHS paid in-home nursing through the~~) Be receiving fee-for-service medically intensive children program ((defined in WAC 182-551-3000-)) (MICP) services under chapter 182-551 WAC, and have been continuously eligible for DDA due solely to your MICP eligibility since before the effective date of this rule; or

(3) (~~You are~~) Be under the age of ten and have one or more developmental delays.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

**WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations?** If you have an eligible condition of another neurological or

other condition similar to intellectual disability, in order to meet the definition of substantial functional limitations you must have impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social or behavioral disorder.

(1) For WAC 388-823-0600(1) evidence of substantial functional limitations requires documentation of (a) and (b) below:

(a) For impairment in intellectual abilities, either (~~sub-item~~) subsection (i) or (ii) or (iii) ((below)) of this section:

(i) An FSIQ score of more than 1.5 standard deviations below the mean ((as described in)) under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730; ((or))

(ii) If you are under the age of twenty, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or

(iii) A statement by a licensed physician, a licensed psychologist, or a school psychologist that your condition is so severe that you are unable to demonstrate the minimal skills required to complete testing for an FSIQ.

(b) For impairment in adaptive skills, a score of more than two standard deviations below the mean (~~per~~) under WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) For WAC 388-823-0600(2) you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program ((offered through DDA and defined in WAC 182-551-3000)) under chapter 182-551 WAC.

(3) For WAC 388-823-0600(3) evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:

(a) You are under the age of three and have one or more developmental delays ((per)) under WAC 388-823-0770((; or));

(b) You are under the age of three and meet the ESIT eligibility requirements((;)); or

(c) You are under the age of ten and have three or more developmental delays ((per)) under WAC 388-823-0770.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

**WAC 388-823-1005 When does my eligibility as a DDA client expire?** (1) If you are determined eligible (~~prior to~~) before age three, your eligibility expires on your fourth birthday.

(2) If you are determined eligible at age three but under age ten under developmental delays or Down syndrome your eligibility expires on your tenth birthday.

(3) (~~If you are determined eligible under another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial limitations, your eligibility expires on your twentieth birthday.~~

~~(4) If your eligibility determination is based solely on your need for nursing through the medically intensive children program, your eligibility expires when you are no longer eligible for the program or your eighteenth birthday, whichever comes first.~~

~~(5))~~ DDA will notify you at least six months before your eligibility expiration date.

~~((6))~~ (4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.

~~((7))~~ (5) If you fail to reapply before your expiration date or if DDA receives your reapplication less than sixty days ~~((prior))~~ before your expiration date and DDA does not have sufficient time to make an eligibility determination by the date of expiration, DDA eligibility will expire and your DDA paid services will stop.

(a) If DDA determines you eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible ~~((pursuant to))~~ under WAC 388-823-0100.

(b) If DDA determines you eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.

~~((8))~~ (6) This expiration of eligibility takes effect even if DDA is unable to locate you to provide written notification that eligibility is expiring.

~~((9))~~ (7) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

**WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?** (1) DDA will review your eligibility ~~((at))~~:

~~(a) If you are age nineteen ((with termination occurring no sooner than your twentieth birthday if your most current)) and you have not received an eligibility determination ((was at sixteen or younger under intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.~~

~~(2) DDA will review your eligibility prior to the initial)) since on or before your sixteenth birthday;~~

~~(b) If you are age nineteen and were determined eligible under another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial functional limitations;~~

~~(c) Before authorization of any DDA-paid service ((from DDA when)) if you are not currently receiving paid services ((and you are age nineteen or older)) and your most current eligibility determination was made ((prior to)) before June 1, 2005((-~~

~~(3) DDA will review your eligibility if DDA discovers:~~

~~(a) Your eligibility determination was made in error));~~  
~~((or~~

~~((b))~~ (d) If the evidence used to make your most recent eligibility determination ~~((appears to be))~~ is insufficient, ~~((it))~~ contains an error, or appears fraudulent; ~~((or~~

~~((e))~~ (e) If new ~~((diagnostic))~~ information becomes available that does not support your current eligibility determination; or

~~(f) If you were determined eligible due solely to your eligibility for fee-for-service (FFS) medically intensive children's program (MICP) services and you are no longer eligible for FFS MICP services.~~

~~((4))~~ (2) If DDA requires additional information to make a determination of eligibility during a review and you do not ~~((respond to the request for additional))~~ provide sufficient information, DDA will terminate your eligibility ~~((and any DDA services you are receiving either))~~:

(a) On your twentieth birthday if the review is because you ~~((will be turning twenty))~~ are age nineteen; or

(b) Ninety days after DDA requests the information if the review is because:

~~(i) You have requested a paid service;~~

~~(ii) The evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;~~

~~(iii) New information is available that does not support your current eligibility determination; or~~

~~(iv) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.~~

**WSR 18-11-128**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed May 23, 2018, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-115.

Title of Rule and Other Identifying Information: WAC 392-700-035 Student eligibility, 392-700-065 Instruction, 392-700-137 Award of credit, 392-700-155 Annual reporting calendar, and 392-700-175 Required documentation and reporting.

Hearing Location(s): On June 28, 2018, at 10:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Olympia, WA 98501. Those planning to testify during the public hearing should arrive by 10:00 a.m.

Date of Intended Adoption: July 2, 2018.

Submit Written Comments to: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email becky.mclean@k12.wa.us, fax 360-664-3683, by June 28, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by June 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposes [proposed] rule making is to update provisions of chapter 392-700 WAC, Dropout reengagement, to meet the requirements of RCW 28A.150.260 (13)(c) and provide clarification for open doors programs.

Reasons Supporting Proposal: WAC 392-700-155 requires updating to increase the annual hours of instruction that must be provided by open doors programs from nine hundred to one thousand beginning with the 2018-19 school year as required under RCW 28A.150.260 (13)(c).

Additionally, WAC 392-700-035, 392-700-042, 392-700-065, 392-700-137, and 392-700-175 require updating to provide clarification for open doors programs.

Statutory Authority for Adoption: RCW 28A.175.010, 28A.175.115.

Statute Being Implemented: RCW 28A.150.260 (13)(c).

Name of Agency Personnel Responsible for Drafting: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6306; and Implementation: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6301.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

May 22, 2018  
Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-035 Student eligibility.** (1) A student is eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age at the beginning of the school year but whose sixteenth birthday occurs on or before September 1st;

(b) Has not yet met the high school graduation requirements of either the district, tribal compact school, charter school, or the college under RCW 28B.50.535; and

(c) At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than twenty-four months from their cohort graduation date and has earned less than sixty-five percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than sixty-five percent. A cohort is the group of students that enter the ninth grade in the same school year;

(ii) A student who is between twelve and twenty-four months from their cohort graduation date and has earned less than seventy percent of the high school credits expected to be

earned by their cohort or has a ratio of earned credits to attempted credits that is less than seventy percent;

(iii) A student who is less than twelve months from their cohort graduation date or who has passed their cohort graduation date by less than twelve months and has earned less than seventy-five percent of the high school credits expected to be earned by their cohort or has a ratio of earned credits to attempted credits that is less than seventy-five percent;

(iv) A student who is passed their cohort graduation date by twelve months or more and has not met their district, tribal compact school, or charter school graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

(d) If determined not to be credit deficient as outlined in subsection (1)(c) of this section, has been recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, a district, tribal compact school, or charter school designated school personnel, or staff from community agencies which provide educational advocacy services;

(e) Are not currently enrolled in any high school classes that receive state basic education funding, excluding an approved skill center program, a Jobs for Washington's Graduates program, or running start program;

(f) Students who are claimed for state funding by a district, tribal compact school, or charter school outside the district they live in, must be released by either a choice transfer or interdistrict agreement. When a choice transfer is in place, the student's resident district as defined in WAC 392-700-015(23) becomes the district operating the program.

(2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree; or

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-065 Instruction.** (1) All program instruction will meet the following criteria:

(a) Instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work.

(b) Instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(i) Instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(ii) Instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating FTE and will be designed to prepare students for course work that is at the ninth grade level or higher.

(c) Instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(d) The program will administer standardized tests to new students, as defined in WAC 392-700-015 (12)(a), and reenrolling student, as defined in WAC 392-700-015 (12)(d), within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(e) The program will provide all instruction, tuition, and required academic skills assessments at no cost to the students, but may collect mandatory fees as established by each program.

(i) Consumable supplies, textbooks, and other materials that are retained by the student do not constitute tuition or a fee.

(ii) Programs are encouraged to offer a waiver or scholarship process.

(2) Instruction for students enrolled in programs operated by a district, tribal compact school, charter school, or agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and high school equivalency certificate preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based academic and/or vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English (~~as a second~~) language learners instruction (~~(ESL)~~) (ELL); and

(v) Other course work approved by the district, tribal compact school, or charter school including cooperative work experience.

(c) Instruction will be scheduled so that enrolled students have the opportunity to attend and work with instructional staff during the hours of the program's standard instructional day.

(d) The program will maintain an instructor to student ratio as follows:

(i) The scheduled teaching hours of an instructional staff will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(ii) For any one instructional session, the program will assign instructional staff as needed to maintain an instructional staff to student ratio that does not exceed 1:25.

(iii) For programs that use noninstructional staff as part of the calculated instructional staff to student ratio, the following conditions must be met:

(A) Noninstructional staff may not be a replacement for the instructional staff and must work under the guidance and direct supervision of the instructional staff; and

(B) The ratio of total instructional and noninstructional staff to students may not exceed 2:50.

(3) Instruction for students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and, for vocational course, the classification of instructional program (CIP) code number assigned by OSPI to the approved career and technical education (CTE) course.

(b) The following instruction will be offered to all students, as appropriate for their goals, skills levels, and completion of prerequisites:

(i) Basic skills (~~remediation~~) courses and high school equivalency certificate preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(c) The program will maintain an instructor to student ratio as follows:

(i) Instructor to student ratio for any course open to both program students and nonprogram students will be determined by the college; and

(ii) Instructor to student ratio for classes designed exclusively for program students will not exceed 1:35.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-137 Award of credit.** (1) For programs operated by districts, tribal compact schools, charter schools, and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through ~~(November)~~ December;

(ii) ~~(December through February)~~ January through March;

(iii) ~~(March through May)~~ April through June; and

(iv) ~~(June)~~ July through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of ~~(0.5)~~ 1.0 high school ~~(elective)~~ subject area credit~~(s)~~ will be awarded when a student passes ~~(one or more)~~ a standardized high school equivalency cer-

tificate (~~(pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed)~~) test in the subject matter, as the student has demonstrated competency aligned to the common core standards. Additional credits may be awarded if the student has completed a course(s) of study to prepare for the test.

(ii) A 0.5 high school (~~(elective)~~) subject matter credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) A minimum of 0.25 high school elective credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies.

(iv) For students taking part in district-, tribal compact school-, or charter school-approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district, tribal compact school, or charter school.

(v) The district, tribal compact school, or charter school must award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district, tribal compact school, or charter school review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district, tribal compact school, or charter school, and the college will determine whether the high school diploma will be awarded by the district, tribal compact school, or charter school or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The college will determine the type of credit; and

(iii) 0.5 subject-specific credits will be awarded for successful completion of every five quarter or three semester

hours of high school equivalency certificate course work which is aligned to the common core standards.

(c) If the district, tribal compact school, or charter school is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district, tribal compact school, or charter school will determine the type of credit based on the articulation agreement between the college and district, tribal compact school, or charter school;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district, tribal compact school, or charter school will determine the type and amount of credit for each class based on the articulation agreement between the college and district, tribal compact school, or charter school; and

(iii) 0.5 subject-specific credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work.

(3) The district, tribal compact school, or charter school is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district, tribal compact school, or charter school will be provided by the college or agency as needed to facilitate this process.

(4) The district, tribal compact school, or charter school will ensure that the process for awarding high school credits under this scope of work is implemented as part of its policy regarding award of credits per WAC 180-51-050 (5) and (6).

**AMENDATORY SECTION** (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-155 Annual reporting calendar.** (1)

For programs operated by districts, tribal compact schools, charter schools or agencies and for below one hundred level classes offered in a college-operated program, the following requirements will be met in relation to the school calendar:

(a) A school year begins September 1st and ends August 31st.

(b) The program will provide the reporting district, tribal compact school, or charter school a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Prior to the 2018-19 school year, must have at a minimum of nine hundred planned hours of instruction for the school year. Beginning with the 2018-19 school year, must have at a minimum of one thousand planned hours of instruction for the school year.

(2) For programs operated by colleges and for college level classes, the school year calendar shall meet the following criteria:

(a) The specific planned days of instruction will be identified; and

(b) There must be a minimum of ten instructional months.

AMENDATORY SECTION (Amending WSR 17-01-125, filed 12/20/16, effective 1/20/17)

**WAC 392-700-175 Required documentation and reporting.** (1) Student documentation:

(a) The program shall submit to the reporting district, tribal compact school, charter school, or direct funded technical college monthly the program's enrollment and maintain and make available upon request the following documentation to support the monthly enrollment claimed:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district, tribal compact school, charter school, or direct funded technical college;

(B) Evidence of minimum attendance period; and

(C) Earned indicators of academic progress.

(D) Evidence of weekly status check.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, tribal compact school, charter school, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) CEDARS student reporting. Approved programs are responsible for submitting all required student information to OSPI in accordance with the CEDARS reporting guidance and reengagement operational instructions.

(3) Annual reporting.

(a) The program will prepare and submit an annual performance report to the district, tribal compact school, charter school, agency, or college under which the program is operating no later than October 1st.

(b) ~~The district, agency, or college~~ or direct funded technical college who reports the student enrollment for state funding will review and submit the program's annual performance report to OSPI no later than November 1st. The annual performance must be completed using the designated OSPI reporting tool.

(c)(i) The annual report will provide the previous school year's student level data:

~~((+))~~ (ii) A list of the program's enrolled students by:

(A) Gender, age, race/ethnicity;

(B) Earned credentials as defined in WAC 392-700-015(11);

(C) Attained indicators of academic progress as defined in WAC 392-700-015(15). For high school and college credit, detail the subject area;

(D) The number of months each enrolled student was claimed for state funding;

(E) The number of months each enrolled student was served;

(F) The status of each enrolled student at the end of the school year (graduated, continuing, exited by student choice, exited by program choice, or turned twenty-one during the school year).

~~((ii) Total number of instructional staff.~~

~~(A) For programs operated by a district, tribal compact school, charter school, or agency, report total number of instructional staff assigned to the program.~~

~~(B) For programs operated by a college, report the number of instructional staff teaching students for the program.))~~

**WSR 18-11-132  
PROPOSED RULES  
DEPARTMENT OF  
NATURAL RESOURCES**

[Filed May 23, 2018, 9:35 a.m.]

Supplemental Notice to WSR 17-15-076 and 17-23-071.  
Preproposal statement of inquiry was filed as WSR 17-11-074.

Title of Rule and Other Identifying Information: Topographic map requirements, the proposed rule is an addition to chapter 332-130 WAC creating a new section that provides requirements for the production of topographic maps prepared by licensed professionals. The department of natural resources is authorized by RCW 58.24.040(1) to "Set up standards of accuracy and methods of procedure."

Hearing Location(s): On June 29, 2018, at 1:30 p.m., at the Department of Natural Resources, Natural Resources Building, Room #342, 1111 Washington Street S.E., Olympia, WA.

Date of Intended Adoption: August 3, 2018.

Submit Written Comments to: Patrick J. Beehler, PLS, CFedS, 1111 Washington Street S.E., Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1178, 360-902-1181, by July 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Topographic surveys and the maps produced to document and display the results are a product of professional practice separate from boundary survey maps. Our intention in drafting the proposed WAC is to provide a set of requirements for a topographic map that can stand on its own apart from boundary survey map requirements as set in WAC 332-130-050. The proposed requirements are specifically for topographic maps.



Reasons Supporting Proposal: There are currently no requirements for the production of topographic maps by licensed professionals. Critical and pertinent information is often missing from the final map. This proposal will direct the professional to provide information that is needed for the intelligent interpretation of the final topographic map. The proposed rule will be used by the board of registration for engineers and land surveyors to assure compliance. The language shown below is a revision to the previous language as included with the CR-102 issued as WSR 17-15-076. The revisions eliminate certain items that may have been confusing and subject to interpretation.

Statutory Authority for Adoption: RCW 58.24.040(1).

Statute Being Implemented: RCW 58.24.040(1).

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

Name of Proponent: Department of natural resources, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1181; Implementation: Kristina Horton, PLS, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1190; and Enforcement: Board of Registration, PE and LS, 405 Black Lake Boulevard, Olympia, WA 98502, 360-664-1571.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There is little or no additional cost to the professional preparing the topographic map.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

May 21, 2018  
Duane Emmons  
Acting Deputy Supervisor  
State Uplands

#### NEW SECTION

#### **WAC 332-130-145 Topographic map requirements.**

For the purposes of this section, a topographic map is a type of map, drawn to scale, which depicts the horizontal and vertical positions of the features represented. Usually, contour lines and spot elevations are used to depict surface relief, but a variety of methods can be used to show changes in terrain. A contour line is a line connecting places of equal elevation.

A topographic map may show natural and/or fabricated features, existing terrain and/or design surfaces.

The following requirements shall apply to topographic maps prepared by professionals registered under chapters 18.43 and 18.210 RCW. Such requirements should be considered minimum only. The professional conducting the work will determine what precision and accuracy are expected to be utilized for topographic mapping services necessitating various levels of accuracy.

(1) The following elements must be included on every topographic map:

(a) Vertical datum used (such as "assumed," "NAVD 88," "NSRS," "unknown");

(b) North arrow;

(c) Map scale and graphic scale bar;

(d) Legend of symbols used;

(e) Licensee name and contact information;

(f) Seal and signature of licensee.

(2) Statements of clarification for additional information if it is shown on topographic map:

(a) Basis of elevations citing benchmark(s) used with elevation(s) (such as "city bench mark 20-01, elevation 456.32 feet, GPS observation including metadata");

(b) Purpose or intended use of the topographic map (such as "preliminary plat," "on-site septic design," "civil engineering design");

(c) A description of the source of the contours (such as "contours derived from direct field observations," or "contours shown are from Clallam County's GIS");

(d) Sufficient labeling to determine contour interval(s);

(e) Description of project benchmarks established;

(f) Statement of elevations and contour accuracy (such as "national mapping standards, one-half the contour interval");

(g) Statement on limitation of use (such as "preliminary-not for design");

(h) Source of boundary information (such as record of survey including auditor indexing information, county GIS, etc., and method(s) used to spatially relate area mapped to said boundaries).

(3) Statements of clarification of utility information if it is shown on the topographic map:

(a) Source of utility location (such as "surface markings," "as-built," "potholing," or "direct mapping");

(b) Statement of positional limitation of utility depiction (such as "locations of underground utilities shown hereon are based upon field mapping performed" or "locations of underground utilities shown hereon are based upon as-built maps");

(c) A statement of the scope of work between the project owner and the licensee regarding the comprehensiveness, exclusions, and limits of the utility investigations leading to these utility depictions.

**WSR 18-11-136**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed May 23, 2018, 10:45 a.m.]

Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-12 issue of the Register.

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-079.

Title of Rule and Other Identifying Information: The department is proposing to amend sections in chapter 388-71 WAC, Home and community services and programs, specifically related to adult day health and adult day care.

Hearing Location(s): On July 10, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than July 11, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., July 10, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by June 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend sections in chapter 388-71 WAC to define person-centered care. Proposed updates include person-centered language, equal access to care and services, client choice in activities and staff, and maintaining dignity, respect, and privacy while attending adult day programs.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Erika Parada, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2450.

A cost-benefit analysis is not required under RCW 34.05.328. Rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: Rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

May 17, 2018  
Katherine I. Vasquez

**WSR 18-11-137**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed May 23, 2018, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-093.

Title of Rule and Other Identifying Information: WAC 182-552-1000 Respiratory care—Covered—Respiratory and ventilator equipment and supplies.

Hearing Location(s): On June 26, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than June 27, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by June 26, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by June 22, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to (1) clarify the clinical criteria for the rental of a back-up ventilator; (2) revise the authorization requirements for ventilators; and (3) remove the outdated clinical criteria for ventilators for clients seventeen years of age and younger.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Joan Chappell, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1071.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The updates to these rules do not impose additional compliance costs or requirements on providers. The agency is reducing the requirements for authorization on all ventilators.

May 23, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

**WAC 182-552-1000 (~~Respiratory care~~) Covered—Respiratory and ventilator equipment and supplies.** (1) The ~~medicaid~~ agency covers the rental of a ventilator, equipment, and (~~related~~) disposable ventilator supplies when the (~~ventilator is~~) client requires periodic or continuous mechanical ventilation for the treatment of chronic respiratory failure (~~(chronic carbon dioxide retention))~~) resulting from hypoxemia or hypercapnia.

(2) The (~~medicaid~~) agency's payment for the monthly rental (~~rate~~) includes ventilator maintenance and accessories including, but not limited to, humidifiers, nebulizers, alarms, temperature probes, batteries, chargers, adapters, connectors, fittings, tubing, disposable circuits, and filters. The (~~medicaid~~) agency does not pay separately for ventilator accessories unless the client owns the ventilator system, see subsection (5) of this section.

(3) To receive payment, ventilators, equipment, and related disposable supplies must:

- (a) Be used exclusively by the client for whom it is requested;
- (b) Be FDA-approved; and
- (c) Not be included in any other reimbursement methodology such as, but not limited to, a diagnosis-related group (DRG).

(4) The (~~medicaid~~) agency pays for a back-up (secondary) ventilator at fifty percent of the monthly rental rate when one or more of the following clinical criteria are met:

- (a) The client cannot maintain spontaneous or adequate ventilations for four or more consecutive hours;
- (b) The client lives in an area where a replacement ventilator cannot be provided within two hours;
- (c) The client requires mechanical ventilation during mobility as prescribed in their plan of care.

(5) The (~~medicaid~~) agency pays for the purchase of the following replacement ventilator accessories only for client-owned ventilator systems:

- (a) Gel-cell battery charger - One every twenty-four months;
- (b) (~~(Gel-cell)~~) Gel-cell heavy-duty battery - One every twenty-four months;
- (c) Battery cables - Once every twenty-four months; and
- (d) Breathing circuits - Four every thirty days.
- (6) (~~Pressure support ventilators.~~

~~(a) For clients eighteen years of age and older, the medicaid agency requires prior authorization;~~

~~(b) For clients seventeen years of age and younger, the medicaid agency requires expedited prior authorization (EPA).~~

~~(i) The following criteria must be met in order to use the EPA process:~~

~~(A) The client is currently using a pressure support ventilator;~~

~~(B) The client must be able to take spontaneous breaths;~~

~~(C) There must be an authorized prescriber's order for the pressure support setting; and~~

~~(D) The client must be utilizing the ventilator in the pressure support mode.~~

~~(ii) If the client has no clinical potential for weaning, the medicaid agency's EPA is valid for twelve months; or~~

~~(iii) If the client has the potential to be weaned, then the medicaid agency's EPA is valid for six months;~~

~~(iv) To continue using EPA after the valid time period has lapsed, a vendor must document in the client's file that the client continues to meet the EPA criteria for a pressure support ventilator.)~~ All ventilators require expedited prior authorization (EPA), as described in WAC 182-552-1375.

(a) At the time of authorization, the following information must be documented in the client's record and made available to the agency upon request:

(i) Medical history, unless request is for continuation of services;

(ii) Diagnosis and degree of impairment;

(iii) Degree of ventilatory support required; and

(iv) Ventilator settings and parameters including mode and type of ventilator ordered at the time of the authorization.

(b) If the client has no clinical potential for being weaned from ventilatory support, the EPA is valid for twelve months;

(c) If the client has the potential to be weaned, the EPA is valid for six months.