

WSR 18-22-106
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 6, 2018, 9:28 a.m., effective December 7, 2018]

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

Purpose: The developmental disabilities administration (DDA) is amending chapter 388-829C WAC, Companion homes, to make several policy updates to how residential habilitation services are delivered in the companion home setting. These amendments are necessary because these rules have not been updated in seven or more years. Substantive changes to the companion home rules address the following subjects: The application and certification processes to become a companion home provider; the process for determining the provider's daily rate; provider responsibilities while using respite; the process for determining a companion home client's annual respite allocation; when a companion home provider may request additional respite hours; the effect of additional respite hours on the provider's daily rate; violations of the room and board agreement; requiring an individual financial plan; transferring client funds; protecting clients from water hazards; records the provider must maintain; and informal dispute resolution processes. Most of the chapter has been rewritten to clarify requirements and some sections have been repealed and their content added to other sections.

Citation of Rules Affected by this Order: New WAC 388-829C-042, 388-829C-044, 388-829C-061, 388-829C-062, 388-829C-063, 388-829C-064, 388-829C-065, 388-829C-066, 388-829C-131, 388-829C-231, 388-829C-232, 388-829C-233, 388-829C-234, 388-829C-275, 388-829C-305, 388-829C-315, 388-829C-325, 388-829C-345, 388-829C-449, 388-829C-492 and 388-829C-494; repealing WAC 388-829C-005, 388-829C-060, 388-829C-090, 388-829C-120, 388-829C-130, 388-829C-190, 388-829C-210, 388-829C-220, 388-829C-240, 388-829C-260, 388-829C-300, 388-829C-420, 388-829C-430, 388-829C-440, 388-829C-445, 388-829C-470 and 388-829C-500; and amending WAC 388-829C-010, 388-829C-020, 388-829C-030, 388-829C-040, 388-829C-050, 388-829C-070, 388-829C-080, 388-829C-110, 388-829C-140, 388-829C-150, 388-829C-160, 388-829C-170, 388-829C-180, 388-829C-200, 388-829C-230, 388-829C-250, 388-829C-270, 388-829C-280, 388-829C-290, 388-829C-310, 388-829C-320, 388-829C-330, 388-829C-340, 388-829C-350, 388-829C-360, 388-829C-370, 388-829C-380, 388-829C-390, 388-829C-400, 388-829C-410, 388-829C-450, 388-829C-460, 388-829C-480, and 388-829C-490.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.10.020, 71A.12.040.

Adopted under notice filed as WSR 18-17-155 on August 21, 2018.

Changes Other than Editing from Proposed to Adopted Version: DDA removed subsection (1)(h) from WAC 388-829C-044, which required a companion home provider to submit a background check form to DDA. The form is now completed electronically through the department's new online background check system, so the provider does not

have to submit a paper form to DDA. The information in the form is still required as part of a companion home provider's application.

A final cost-benefit analysis is available 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.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 21, Amended 34, Repealed 17.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 21, Amended 34, Repealed 17.

Date Adopted: November 5, 2018.

Cheryl Strange
Secretary

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-010 What definitions apply to this chapter? The following definitions apply to this chapter:

~~("ADSA" means the aging and disability services administration within DSHS and its employees and authorized agents.~~

~~"Adult protective services" or "APS" means the investigative body designated by ADSA to investigate suspected cases of abandonment, abuse, financial exploitation and neglect as defined in 74.34 RCW.~~

~~"Calendar year" means the twelve month period that runs from January 1 through December 31.)~~

~~"Case manager" means the ((DDD)) DDA case ((resource)) manager or DDA social worker assigned to a client.~~

"Certification" means a process used by DDA to determine if an applicant or service provider complies with the requirements of this chapter and the companion home contract.

"Client" means a person who has a developmental disability as defined in RCW ((71A.10.020(3))) 71A.10.020(5) and who ((also)) has been determined eligible to receive services by ((the division)) DDA under chapter ((71A.16 RCW)) 388-823 WAC.

~~("Competence" means the capacity to do what one needs and wants to do. There are two ways to be competent. A person may be self-reliant and able to do things for themselves or may have the power to identify and obtain the help needed from others))~~ "Companion home provider" means a provider of certified community residential support services under RCW 71A.10.020(2) who is contracted with DDA to

deliver residential habilitation services. A companion home provider does not have an individual provider contract.

"Consent" means express written consent granted by the client, or the client's legal representative if the client has one, after the client or the client's legal representative has been informed of the nature of a service being offered.

("DDD" or "the division") "DDA" means the ((division of)) developmental disabilities((, a division within the DSHS aging and disabilities services)) administration((, of the department of social and health services)).

("DDD specialty training" means department approved curriculum to provide information and instruction to meet the special needs of people with developmental disabilities:))

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

("Health and safety" means clients should live safely in environments common to other citizens with reasonable supports offered to simultaneously protect their health and safety while promoting community inclusion

"Individual support plan" or "ISP" is a document that authorizes and identifies the DDD paid services that meet a client's assessed needs.))

"Instruction" means goal-oriented teaching that is designed for acquiring and enhancing skills.

"Instruction techniques" means step-by-step instruction, mentoring, role modeling, and developing visual cues.

("Integration") "Integrated setting" means ((clients being present and actively participating in the)) typical community ((using the same resources and doing the same activities as other citizens)) settings not designed specifically for people with disabilities in which the majority of people employed and participating are people without disabilities.

("Mandatory reporter" means any person working with vulnerable adults required by law to report incidents of abandonment, abuse, neglect, financial exploitation, etc., per chapter 74.34 RCW.

"NA-R" means nursing assistant registered under chapter 18.88A RCW.

"NA-C" means nursing assistant certified under chapter 18.88A RCW.

"Positive recognition by self and others" means a client being offered assistance in ways which promote the client's status and creditability. Providers offer assistance in ways that are appropriate to the age of the client, typical to other members of the community and contribute to the client's feelings of self worth and positive regard by others.

"Positive relationships" means clients having friends and family that offer essential support and protection. Friends and family lend continuity and meaning through life and open the way to new opportunities and experiences.

"Power and choice" means clients experiencing power, control and ownership of personal affairs. Expression of personal power and choice are essential elements in the lives of people. Such expressions help people gain autonomy, become self-governing and pursue their own interests and goals.

"Registered nurse delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a registered or certified nursing

assistant in selected situations. (For detailed information, please refer to chapter 18.79 RCW and WAC 388-840-910 through 388-840-970.)

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"Respite" means care that is intended to provide short-term intermittent relief for persons providing care for companion home clients.

"RCW" means the Revised Code of Washington, which contains all laws governing the state of Washington.

"Service episode record" or "SER" means documentation by DDD of all client related contacts including contacts during the assessment, service plan, coordination and monitoring of care and termination of services.

"Unusual incidents" means a change in circumstances or events that concern a client's safety or well-being. Examples include, an increased frequency, intensity, or duration of any medical conditions, adverse reactions to medication, hospitalization, death, severe behavioral incidents, severe injury, running away, physical or verbal abuse to themselves or others.

"WAC" means the Washington Administrative Code, which contains the rules for administering the state laws (RCW:))

"Legal representative" means a parent of a client if the client is under age eighteen, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, application, or other means, to a client by a person legally authorized to do so under chapter 246-840 WAC.

"Medication assistance" means assistance with self-administration of medication under chapter 69.41 RCW and chapter 246-888 WAC, rendered by a non-practitioner to a person receiving certified community residential support services.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a registered or certified nursing assistant under chapter 18.79 RCW and WACs 246-840-910 through 246-840-970.

"Person-centered service plan" means a document that identifies a client's goals and assessed health and welfare needs. The person-centered service plan also indicates the paid services and natural supports that will assist the client to achieve their goals and address their assessed needs.

"Plan of correction" means a signed plan developed by the companion home provider and DDA resource manager.

"Representative payee" means a person or an organization appointed by the Social Security Administration to receive Social Security or SSI benefits for anyone who cannot manage or direct the management of their benefits.

"Residential habilitation services" has the same meaning as is under WAC 388-845-1500.

"Resource manager" means the DDA employee who establishes rates, monitors contract compliance, and acts as DDA's liaison with the service provider.

"Service provider" means a person or entity contracted by DSHS and authorized to deliver services and supports to meet a client's assessed needs.

"Support" means assistance a service provider gives a client based on needs identified in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-020 ~~((What are))~~ **How does a companion home provider provide residential habilitation services?** (1) A companion home ~~((is a DDD))~~ provider provides residential ~~((service offered in the provider's home))~~ habilitation services:

(a) To no more than one client;

(b) In a home the companion home provider owns or leases;

(c) In an integrated setting; and

(d) Based on the client's person-centered service plan.

(2) The companion home ~~((residential services provide))~~ provider must be available to the client twenty-four ~~((hour instruction))~~ hours a day to provide supervision and support ~~((services)).~~

~~((3) Companion home residential services are based on the client's ISP.~~

~~((4) Companion home residential services are provided by an independent contractor.))~~

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-030 Who may be eligible to receive residential habilitation services in a companion home ~~((residential services))~~? ~~((Clients who may))~~ To be eligible to receive ~~((companion home))~~ residential habilitation services in a companion home, a person must:

(1) Be ~~((at least))~~ eighteen ~~((years old))~~ or older; and

(2) Have an assessed need for ~~((companion home))~~ residential habilitation services~~((;))~~ and

~~((3) Meet one of the following conditions))~~:

(a) Be authorized by ~~((DDD))~~ DDA to receive ~~((companion home))~~ residential habilitation services~~((, as outlined in this chapter))~~ in a companion home; or

(b) Have a written agreement with the provider to purchase ~~((companion home))~~ residential habilitation services in a companion home using the client's own ~~((personal financial resources))~~ funds, including state supplemental payments.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-040 Who ~~((is eligible to contract with DDD to provide))~~ may become a companion home ~~((residential services))~~ provider? To ~~((be eligible to contract with DDD to provide))~~ become a companion home ~~((residential services))~~ provider, a person must:

(1) Be twenty-one ~~((years of age))~~ or older;

(2) Have a high school diploma or ~~((GED))~~ general equivalency diploma (GED);

(3) ~~((Clear))~~ Have a nondisqualifying background check ~~((conducted by DSHS as required by RCW 43.20A.710))~~ result under chapter 388-825 WAC;

(4) ~~((Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;))~~

~~((5))~~ Have a Washington state business ~~((ID number;))~~ license as an independent contractor; ~~((and~~

~~((6))~~ ~~((5))~~ Meet the ~~((minimum skills and abilities described in))~~ companion home provider qualifications and requirements under WAC 388-829C-080; and

~~((6))~~ Be selected by the client or the client's legal representative if the client has one.

NEW SECTION

WAC 388-829C-042 What are the qualifications for a person to provide residential habilitation services in a companion home? To provide residential habilitation services in a companion home a person must:

(1) Complete training required under chapter 388-829 WAC;

(2) Be certified by DDA as a companion home provider; and

(3) Be contracted with DDA as a companion home provider.

NEW SECTION

WAC 388-829C-044 What is the application process for a potential companion home provider? When a client identifies a person they want as their companion home provider, the prospective provider must:

(1) Submit to DDA:

(a) A resume;

(b) A letter of interest;

(c) A signed application form;

(d) All attachments required by the application;

(e) Contact information for three references unrelated to the provider;

(f) A signed outside employment disclosure and review form; and

(g) A copy of a current business license.

(2) Allow DDA staff to review the home for physical, safety, and accessibility requirements; and

(3) Participate in a DDA panel interview.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-050 ~~((Who may not provide))~~ When does DDA reject a client's choice of companion home ~~((residential services))~~ provider? ~~((DDD may not contract with any of the following to provide companion home residential services;))~~

(1) ~~((The))~~ DDA may reject a client's ~~((spouse))~~ choice of companion home provider if DDA has a reasonable, good-faith belief that:

(a) The provider is unable to appropriately meet the client's needs;

(b) The provider's home does not meet the client's needs;
or

(c) The provider's other obligations prevent the provider from being available to the client twenty-four hours a day.

(2) ((The)) DDA must deny a client's choice of companion home provider if the provider is the client's:

(a) Spouse;

(b) Natural, step, or adoptive ((parents)) parent; or

(c) Legal representative, unless the person has been the client's legal representative and companion home provider since on or before January 31, 2005.

(3) ((The)) DDA must deny a client's ((court-appointed legal representative.

(4) Any person providing department)) choice of companion home provider if the provider:

(a) Provides paid services to ((any other)) another DSHS client or a client of the department of children, youth, and families; or

(b) Fails to maintain certification as a companion home provider.

NEW SECTION

WAC 388-829C-061 What is initial certification? (1)

Initial certification is a document issued by DDA that indicates a provider meets the requirements under this chapter to deliver residential habilitation services in a companion home.

(2) To obtain initial certification, the companion home provider must:

(a) Meet requirements under WAC 388-829C-040;

(b) Complete the application process under WAC 388-829C-044;

(c) Meet training requirements under WAC 388-829C-110; and

(d) Comply with the physical and safety requirements under WAC 388-829C-320.

(3) An initial certification is valid for no more than one hundred and twenty days.

NEW SECTION

WAC 388-829C-062 What is standard certification?

(1) Standard certification is a document issued by DDA that:

(a) Allows a provider to deliver residential habilitation services in a companion home; and

(b) Verifies the provider is qualified.

(2) During the initial certification period, a DDA-contracted evaluator conducts an on-site evaluation of the home.

(3) Based on the findings of the evaluation, DDA may:

(a) Issue standard certification;

(b) Issue provisional certification; or

(c) Decertify the provider.

(4) A standard certification is valid for no more than twelve months.

NEW SECTION

WAC 388-829C-063 What is provisional certification? (1) If a companion home provider is not in compliance with this chapter or the companion home contract, DDA may

impose a provisional certification for a maximum of ninety days.

(2) DDA may impose a provisional certification if the provider:

(a) Fails to comply with this chapter or the companion home contract;

(b) Fails or refuses to cooperate with the evaluation and certification process;

(c) Prevents or interferes with a certification or monitoring visit, or complaint investigation by DSHS;

(d) Fails to comply with chapter 74.34 RCW;

(e) Knowingly makes a false statement of material fact to DSHS;

(f) Fails to implement a plan of correction; or

(g) Fails to cooperate during monitoring activities.

(3) At the end of the provisional certification, if the provider has complied with certification requirements, DDA may approve the provider for standard certification.

(4) At the end of the provisional certification, if the provider has not complied with certification requirements, DDA must decertify the companion home provider, unless DDA extends the provisional certification to develop or implement a transition plan for the client.

NEW SECTION

WAC 388-829C-064 What must a companion home provider comply with to maintain certification? (1) To maintain certification a companion home provider must comply with:

(a) Requirements under this chapter;

(b) Laws governing this chapter, including chapter 71A.12 RCW;

(c) Requirements under chapter 74.34 RCW;

(d) The companion home contract; and

(e) Other relevant federal, state and local laws, requirements, and ordinances.

(2) If a requirement in the companion home contract conflicts with any requirement under this chapter, the requirement in this chapter prevails.

NEW SECTION

WAC 388-829C-065 How does DDA monitor companion homes? (1) To ensure a client's needs are being met, a client's DDA case manager must:

(a) Review all written reports from the provider for compliance with the instruction and support goals specified in the client's person-centered service plan; and

(b) Conduct an in-home visit at least every twelve months.

(2) DDA monitors a companion home provider through certification evaluation to ensure that the client's needs are being met and the provider is in compliance with this chapter and the companion home contract. The DDA-contracted evaluator conducts the evaluation in the companion home.

NEW SECTION

WAC 388-829C-066 How must the companion home provider participate in the certification evaluation pro-

cess? The companion home provider must participate in the certification evaluation process with DDA staff and DDA-contracted evaluators by:

- (1) Allowing scheduled and unscheduled home visits;
- (2) Providing information and documentation as requested;
- (3) Cooperating in setting up appointments;
- (4) Responding to questions or issues identified; and
- (5) Participating in an exit conference.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-070 Who must have a background check ((in the companion home))? (1) All ((individuals living in the household)) people, except the client, must have a ((current DSHS)) background check if they are sixteen or older and:

- (a) ((Are at least sixteen years old; and)) Live in or routinely stay overnight in the companion home; or
- (b) ((Reside)) May have unsupervised access to the client in the companion home.

(2) ((Household residents who have not lived in Washington continuously for the previous three years must also have an FBI fingerprint based background check as required by RCW 43.20A.710)) Any person required to have a background check under this section must have a nondisqualifying background check result every two years, or more frequently if requested by DSHS.

((3) Background checks must be completed every two years or more frequently when requested by the department.))

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-080 What minimum skills and abilities must companion home providers demonstrate? A companion home ((providers)) provider must:

- (1) Be able to read, understand, and provide the services outlined in the ((ISP)) client's person-centered service plan;
- (2) Participate in the development of the ((ISP)) person-centered service plan;
- (3) Communicate with the client in the client's preferred language ((of the client served));
- (4) Accommodate the client's ((individual)) preferences;
- (5) Know the community resources, such as((:)) medical facilities, emergency resources, and recreational opportunities;
- (6) Enable the client to keep in touch with family and friends in a way preferred by the client;
- (7) Use instruction techniques appropriate for the client's learning style;

(8) Protect the client's financial interests;
 ((8) Fulfill) (9) Follow mandatory reporting requirements ((as required in this chapter and the companion home contract)) under chapter 74.34 RCW;

((9)) (10) Know how and when to contact the client's legal representative ((and the client's case manager));

((10) Successfully complete the training required in this chapter;)

(11) Know how and when to contact the client's case manager;

(12) Meet training requirements under chapter 388-829 WAC;

(13) Maintain all necessary license((; registration)) and certification ((required)) requirements under this chapter((; (see WAC 388-829C-110, 388-829C-130, 388-829C-190, and 388-829C-260)); and

((12)) (14) Comply with all applicable laws, regulations, and contract requirements; and

(15) Complete nurse delegation training if the client needs medication administration or delegated nursing tasks.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-110 ((What training)) When must a ((person have before becoming a contracted)) companion home provider complete their training requirements? (1) Before ((DDD may issue)) a companion home ((contract, the prospective)) provider may deliver services to a client, the provider must complete:

- ((1) Obtain CPR and first aid certification) (a) Five hours of safety and orientation training;
- (b) Forty hours of DDA-developed residential services curriculum;
- (c) Six hours of first aid certification and CPR training; and
- (d) Six hours of DDA companion home orientation.

(2) ((Successfully complete bloodborne pathogens training with HIV/AIDS information; and)) No more than one hundred twenty days after the effective date of the companion home provider's contract, the provider must complete eighteen hours of population-specific or client-specific training under chapter 388-829 WAC.

(3) ((Receive contract orientation and client specific training from DDD)) A companion home provider must complete twelve continuing education credits annually.

(4) If the client needs medication administration or delegated nursing tasks, the companion home provider must complete nurse delegation training before they deliver services to the client.

NEW SECTION

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate equals the sum of the client's support assessment scale scores multiplied by 12.5.

(2) The residential algorithm under chapter 388-829 WAC determines the level of services and supports a companion home client may receive.

(3) The CARE assessment assigns support levels of "none," "low," "medium," or "high" to each support assessment scale that correspond to the values below:

Category	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3

Category	None	Low	Medium	High
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

- (4) DDA assigns a behavior score of four if the client has a:
- (a) Behavior score of three on their support assessment scale;
 - (b) Challenging behavior documented on form DSHS 10-234; and
 - (c) Current positive behavior support plan.
- (5) DDA reviews a companion home daily rate annually and if a significant change assessment occurs during the plan year.
- (6) DDA may adjust a companion home daily rate if:
- (a) Any of the client's support assessment scale levels change;
 - (b) The multiplier changes due to a vendor rate change; or
 - (c) The annual cost of respite services increased because DDA approved additional respite hours under WAC 388-829C-234(3) and the client's assessed support needs remain unchanged since the most recent CARE assessment.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-140 ((Are)) Is a companion home ((providers mandatory reporters)) provider a mandated reporter? (1) A companion home ((providers are mandatory reporters. They must report all instances of suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults as defined in)) provider is a mandated reporter under chapter 74.34 RCW.

(2) As a mandated reporter, the companion home ((providers)) provider must ((comply with DDD's residential reporting requirements specified in the companion home contract)) notify adult protective services and law enforcement as required under chapter 74.34 RCW.

(3) ((Providers)) A companion home provider must ((retain a signed copy of the DDD policy on residential reporting requirements specified in the)) complete incident reports as required by the provider's companion home contract ((and submit a signed copy of the policy to DDD)).

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-150 How must a companion home ((providers)) provider report abuse and neglect? A companion home ((providers)) provider must immediately report suspected abandonment, abuse, financial exploitation or neglect of a vulnerable ((adults to)) adult:

(1) ((Adult protective services using the DSHS toll free telephone number, provided by the department. 1-866-END-HARM or 1-866-363-4276)) As required under chapter 74.34 RCW; and

(2) ((DDD)) In compliance with the ((DDD)) DDA residential reporting requirements ((as specified)) in the companion home contract((; and

(3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse)).

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-160 What health care ((assistance)) support must a companion home provider provide ((a client))? ((The companion home provider must)) To provide the client ((necessary)) health care ((assistance by)) support the companion home provider must:

(1) ((Arranging)) Schedule or assist the client in scheduling appointments and ((accessing health, mental health, and dental)) any follow-up appointments for dental, mental, and physical health services;

(2) ((Ensuring)) Ensure the client receives an annual physical and dental examination, unless the client has a written exemption from a physician or dentist ((gives a written exemption. For client refusal of services, see WAC 388-829C-310));

(3) ((Observing the client for changes(s)) Document the client's refusal of any annual physical or dental examination under WAC 388-829C-370;

(4) In the event of an emergency or a change in the client's health, ((taking appropriate action and responding to emergencies)) act in the client's best interest;

((4) Managing)) (5) If necessary, provide medication assistance ((per)) under chapter 246-888 WAC ((and));

(6) If necessary, perform delegated nursing tasks and medication administration ((per)) under WAC 246-840-910 ((to)) through 246-840-970 ((and per the DDD residential medication management requirements specified in the companion home contract));

((5) Maintaining)) (7) Maintain health care records ((see)) under WAC ((388-829C-280)) 388-829C-340;

((6) Assisting)) (8) Assist the client ((with any medical treatment prescribed by)) to understand and follow their health ((professionals that does not require registered nurse delegation or professionally licensed services)) care professional's instructions, referrals, and medication directions;

((7) Communicating)) (9) Communicate directly with the client's health care professionals ((when needed)), if necessary; ((and

(8) Providing)) (10) Provide a balanced((; nutritional)) and nutritious diet; and

(11) Assist the client to access health care benefits available through medicare, medicaid, private health insurance, and other resources while acting in the client's financial best interest and supporting client choice.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-170 ((How may a)) When can the companion home provider ((assist a client with medications)) provide medication assistance? ((+)) A companion home provider may provide medication assistance ((per)) under chapter 246-888 WAC((;)) if the client:

((+)) (1) Is able to put the medication into ((his or her)) their mouth or apply or instill the medication; and

~~((b))~~ (2) Is aware that they are ~~((receiving))~~ taking medication.

~~((2))~~ Some tasks that may be provided under the Medication assistance, chapter 246-888 WAC, are listed in the following chart. Medication assistance may only be provided if the client meets both criteria in (a) and (b) of this section.

Medication Assistance Task	May a companion home provider complete this task if the client meets both criteria in (a) and (b) of this section?
Remind or coach the client to take their medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand;	Yes
Transfer medication from a container to another for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device).	Yes
Alter a medication by crushing, mixing, etc.	Yes, if the client is aware that the medication is being altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.
Handing the client a prefilled insulin syringe.	Yes, but the client must be able to inject the insulin by him or herself.
Guide or assist client to apply or instill skin, nose, eye and ear preparations.	Yes, but hand-over-hand administration is not allowed.
Assistance with injectable or IV medications.	No, this is not allowed.
Hand-over-hand assistance with medication.	No, may only be done under registered nurse delegation.
Assistance with medication beyond the examples provided above.	No, may only be done under registered nurse delegation.)

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-180 ~~((What is required for))~~ When may a companion home provider ~~((to))~~ administer ~~((medications))~~ medication and provide delegated nursing tasks? (1) A companion home ~~((providers must meet the following requirements before administering medications))~~ provider may administer medication and ~~((providing))~~ perform delegated nursing tasks ~~((for their clients. The companion home))~~ if the provider ~~((must either))~~ is:

~~((1-Be))~~ (a) A registered nurse ~~((RN))~~ or licensed practical nurse ~~((LPN))~~; or

~~((2-Be))~~ (b) Delegated to perform nursing care tasks by a ~~((register))~~ registered nurse ~~((as described in WAC 388-829C-190))~~.

(2) To provide delegated nursing tasks, the companion home provider must:

(a) Provide the delegated nursing tasks under WAC 246-840-910 through 246-840-970;

(b) Receive client-specific training from the delegating registered nurse under WAC 246-840-930;

(c) Complete training requirements under WAC 246-840-930; and

(d) Be credentialed by the department of health under WAC 246-840-930.

(3) If the companion home provider is performing delegated nursing tasks as a nursing assistant-registered, the provider must complete seventy hours of basic training under chapter 388-829C WAC.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-200 When must a companion home provider ~~((become))~~ be delegated to perform nursing tasks? (1) ~~((If a client needs registered nurse delegation,))~~ The companion home provider must ~~((empty with the))~~ meet requirements ~~((necessary to perform delegated nursing tasks before offering services to the client. (Note: A companion home provider may not offer support to a client whose needs they are unable to meet.))~~ for nurse delegation no more than thirty days after the client's need for medication administration or a delegated nursing task is identified by a delegating nurse when a change in the client's health or ability to manage their own medications occurs.

(2) If the companion home provider is not ~~((eligible))~~ qualified to perform delegated nursing tasks, the task must be provided by a person legally authorized to do so ~~((such as an RN or LPN))~~ until the provider meets nurse delegation requirements.

~~((3))~~ The companion home provider must become eligible to perform nursing tasks within thirty days of the client being assessed to need medication administration.)

AMENDATORY SECTION (Amending WSR 09-20-004, filed 9/24/09, effective 10/25/09)

WAC 388-829C-230 ~~((Are companion home clients eligible to receive))~~ What is respite? ~~((Companion home clients are eligible to receive))~~ (1) Respite ~~((care to provide))~~ is short-term, intermittent ~~((relief))~~ care to provide relief for the companion home provider.

(2) The ~~((DD))~~ DDA assessment ~~((will determine how much))~~ determines a client's annual allocation of respite ~~((you can receive per chapter 388-828 WAC))~~ hours.

(3) Respite may be provided in:

(a) The companion home where the client lives;

(b) A community setting available to an adult, such as a camp, senior center, or adult day care center;

(c) An adult family home;

(d) An assisted living facility;

(e) A group home; or

(f) A group training home.

(4) To be a qualified respite provider, a person or agency must be contracted with DDA to provide respite services.

(5) A companion home client must not receive overnight planned respite services under chapter 388-829R WAC.

(6) A companion home client must not receive respite at a residential habilitation center.

NEW SECTION

WAC 388-829C-231 What are the companion home provider's responsibilities when using respite? (1) The companion home provider must review with the respite provider:

- (a) The support needs identified in the client's person-centered service plan;
 - (b) The need for the client to have access to their money as identified in their plan; and
 - (c) Record keeping requirements.
- (2) The companion home provider must inform the respite provider of any scheduled events and appointments that will occur during the planned respite period.

NEW SECTION

WAC 388-829C-232 How does DDA determine a companion home client's annual respite allocation? DDA determines a companion home client's annual respite allocation by adding the client's companion home services support score under WAC 388-828-6010 to their adjusted companion home services support score under WAC 388-828-6011.

NEW SECTION

WAC 388-829C-233 May the client or companion home provider request additional respite hours? (1) A client may request respite hours in addition to their annual respite allocation, or the companion home provider may request additional respite on behalf of the client in consultation with the client's legal representative if the client has one.

(2) DDA may approve additional respite hours if a temporary and unexpected event occurs in the client or the companion home provider's life, such as an illness or injury.

NEW SECTION

WAC 388-829C-234 Will DDA reduce the companion home daily rate if additional respite hours are approved? (1) If DDA approves additional respite hours under WAC 388-829C-233(2), the daily rate remains unchanged.

(2) If DDA approves additional respite hours for any reason not under WAC 388-829C-233(2), DDA may reduce the companion home daily rate.

(3) If DDA approves additional respite hours under subsection (2) of this section, DDA:

- (a) Divides the cost of the additional respite hours by the number of days remaining in the client's plan year; and
 - (b) Subtracts that amount from the companion home daily rate for the remaining number of days in the plan year.
- (4) The cost of the additional respite hours is based on the identified respite provider's hourly rate.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-250 ~~((Are))~~ When may a companion home ~~((providers responsible to))~~ provider transport a client? ~~((The companion home provider must ensure that all of the client's transportation needs are met, as identified in the client's ISP))~~ (1) The companion home provider may transport a client if the provider has:

- (a) A valid driver's license under chapter 46.20 RCW; and
 - (b) Automobile insurance under chapter 46.29 and 46.30 RCW
- (2) The companion home provider must ensure all transportation needs identified in the client's person-centered service plan are met.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-270 May a companion home provider manage a client's funds? A companion home provider may manage ~~((, disperse, and limit access to))~~ a client's funds if the provider:

- (1) ~~((There is))~~ Has written consent from the client, ~~((when the client has no court appointed))~~ or the client's legal representative if the client has one; or
- (2) ~~((There is written consent from))~~ Is the client's ~~((court appointed legal))~~ representative ~~((for making financial decisions for the client; or~~
- ~~((3) The companion home provider is the designated))~~ payee ~~((for the client's earned and unearned income)).~~

NEW SECTION

WAC 388-829C-275 When must a client have an individual financial plan and what components must be included? (1) The companion home provider must develop and implement an individual financial plan if:

- (a) The client's person-centered service plan identifies that the client needs support to manage their funds; and
- (b) The companion home provider manages any portion of the client's funds.

(2) The client's individual financial plan must be accurate and current, and:

- (a) List all of the client's income sources, such as wages, social security benefits, supplemental security disability income, retirement income, and the projected monthly amount of the income;
- (b) Identify all known client accounts and who manages each account, such as a checking account, savings account, and cash account;
- (c) Include a budget and describe how the client's funds will be spent during a typical month;
- (d) Identify all known client assets and who manages each asset, such as a burial plan, retirement funds, stocks, trusts, and vehicles; and
- (e) Include a plan for maintaining resources under WAC 182-513-1350.

(3) The companion home provider must review the individual financial plan with the client and the client's legal representative if the client has one:

- (a) At least every twelve months; and
- (b) If the client's income, expenses, or assets change, or if there is a change in who manages an asset.

(4) The provider, the client, and the client's legal representative if the client has one, must sign the individual financial plan when it is developed and each time it is revised.

(5) Every twelve months, or more often if the plan has been revised, the companion home provider must provide a copy of the individual financial plan to the:

- (a) Client;
- (b) Client's legal representative if the client has one; and
- (c) Client's case manager.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-280 What are the companion home provider's responsibilities when managing client funds?

(1) When managing ~~((the))~~ a client's funds, the companion home provider must:

~~((1) Keep the client's accounts current by maintaining a running balance;~~

~~(2) Reconcile the client's accounts, including cash accounts, on a monthly basis;~~

~~(3) Prevent the client's account from becoming overdrawn;~~

~~(4) Keep receipts for purchases over twenty five dollars;~~

~~(5) Assist the client with any checks, if applicable;~~

~~(6)) (a) Protect the client's financial interests; ((and~~

~~(7) Ensure that the client is informed regarding how his or her money is being spent and that the client participates to the maximum extent possible in the decision making regarding his or her funds, consistent with responsible management of funds))~~

(b) Include the client to the highest degree possible in decision making about how their funds are spent;

(c) Maintain a detailed ledger with a running balance for each account managed by the provider, including:

(i) Cash received from writing checks over the purchase amount; and

(ii) A list of where the money was spent or gift card funds were used;

(d) Deposit any client funds into the client's bank account within one week of receiving the funds;

(e) Reconcile the client's accounts, including cash and gift card accounts, on a monthly basis;

(f) Retain receipts, bills, and invoices for purchases over twenty-five dollars;

(g) Notify DDA if the client's resources reach one thousand seven hundred dollars; and

(h) Assist the client with writing checks, if needed.

(2) When managing a client's funds, the companion home provider must not:

(a) Comingle the client's funds with the provider's funds;

(b) Ask the client to sign a blank check unless stated otherwise in the client's individual financial plan;

(c) Let the client's bank account be overdrawn; or

(d) Let the client's cash funds exceed seventy-five dollars, unless stated otherwise in the client's individual financial plan.

(3) If the client manages their own funds and requests that the companion home provider hold their checkbook, debit card, or credit card:

(a) The provider is not considered to be managing the client's funds;

(b) The client must continue to have access to their funds; and

(c) The provider must document the request in the client's individual financial plan.

(4) Social security administration requirements for managing the client's social security benefits take precedence over these rules if:

(a) The service provider is the client's representative payee; and

(b) The social security administration requirement conflicts with these rules.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-290 What ~~((happens if a companion home provider mismanages a client's))~~ is mismanagement of client funds?

~~(1) ((The companion home provider must reimburse the client, when responsible for mismanagement of client funds. The reimbursement includes any fees incurred as a result of the mismanagement, such as fees due to late payments.~~

~~(2) DDD may terminate the companion home contract if the provider has mismanaged client funds.~~

~~(3) Suspected exploitation of client finances must be reported to law enforcement and adult protective services))~~

Mismanagement of client funds includes any action or inaction by the companion home provider when managing a client's funds that results in:

(a) Interest charges;

(b) Late payment fees;

(c) Overdraft and non-sufficient funds fees;

(d) A violation of the room and board agreement;

(e) Any stolen, missing, or misplaced funds;

(f) Expenditures over twenty-five dollars without documentation; or

(g) Past-due financial obligations.

(2) No more than fourteen days after a companion home provider becomes aware of an error that resulted in mismanagement of client funds, the provider must:

(a) Reimburse the client for any mismanagement, including punitive charges, under subsection (1)(a) through (1)(f) of this section;

(b) Pay for past-due financial obligations under subsection (1)(g) of this section; and

(c) Submit proof of the transaction to the client's case manager.

NEW SECTION

WAC 388-829C-305 When must the companion home provider transfer the client's funds? (1) If a client

chooses a new service provider and the current provider manages the client's funds, the current provider must:

(a) Establish a written agreement with the client, before the client moves, that states the amount of money the provider may withhold to cover any unpaid bills and room and board;

(b) Provide to the client's case manager a copy of any agreement under subsection (1)(a) of this section;

(c) Give the client, and the client's legal representative if the client has one, a ledger of all known client funds;

(d) Transfer the funds to the client or the client's designee as soon as possible, but no more than thirty days after the client leaves the companion home;

(e) Give the new provider a ledger of all transferred client funds if the new provider manages the client's funds; and

(f) Obtain a written receipt for all transferred funds.

(2) If the companion home provider manages a client's funds and the client's whereabouts are unknown, the provider must transfer the client's funds no more than ninety days after notifying DDA the client's whereabouts are unknown to:

(a) The client's legal representative, if the client has one; or

(b) The department of revenue, unclaimed property.

(3) If the companion home provider manages the client's funds and the client dies, the provider must transfer the client's funds within ninety days to:

(a) The client's legal representative;

(b) The requesting governmental entity; or

(c) The DSHS office of financial recovery if the client does not have a legal heir.

(4) The social security administration's requirements for managing the client's social security benefits take precedence over these rules for transferring client funds if:

(a) The service provider is the client's representative payee; and

(b) The social security administration requirement conflicts with these rules.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-310 Must ~~((clients))~~ a client pay for room and board in the companion home? (1) ~~((Clients))~~ A client who ~~((receive))~~ receives residential habilitation services in a companion home ~~((residential services))~~ must pay monthly room and board ~~((directly))~~ to the companion home provider ~~((from their personal financial resources)).~~

(2) The monthly room and board the client pays to the provider ~~((is))~~ must be specified in a room and board agreement ~~((and))~~ that includes:

(a) Rent~~((:))~~;

(b) Utilities~~((, and))~~;

(c) Food costs; and

(d) The date the provider collects the room and board payment each month.

(3) The room and board agreement must be:

(a) Developed by the provider, the client ~~((and)), or the ~~((provider))~~ client's legal representative if the client has one;~~

(b) Developed before the client moves into the companion home;

~~((b))~~ (c) Signed by the client~~((, the))~~ or the client's legal representative ~~((and the provider))~~ if the client has one; ~~((and))~~

~~((c))~~ (d) Signed by the provider; and

(e) Submitted to ~~((DDD))~~ DDA for ~~((approval))~~ review.

(4) Before implementing any changes to the room and board agreement, the companion home provider must ~~((be submitted))~~ submit the proposed agreement to ~~((DDD))~~ DDA for ~~((approval))~~ review.

NEW SECTION

WAC 388-829C-315 What is a violation of the room and board agreement? (1) A provider violates the room and board agreement if the provider:

(a) Requests the client's room and board payment earlier than the due date established in the room and board agreement; or

(b) Requests a payment other than the amount established in the room and board agreement.

(2) If the provider violates the room and board agreement, the provider must reimburse the client under WAC 388-829C-290.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-320 What are the physical and safety requirements ~~((exist))~~ for companion homes? (1) A companion home ~~((providers))~~ must ~~((ensure that the following physical and safety requirements are met for the client)):~~

(a) ~~((A safe and healthy environment))~~ Be accessible to the client;

(b) ~~((A separate bedroom))~~ Provide the client direct, unrestricted access to all common areas;

(c) ~~((Accessible telephone equipment with local 911 access))~~ Have adequate space for mobility aids, such as a wheelchair, walker, or lifting device;

(d) ~~((A list of emergency contact numbers accessible to the client))~~ Have unblocked exits;

(e) ~~((An evacuation plan developed, posted, and practiced monthly with the client))~~ Be maintained in a safe and healthy manner;

(f) ~~((An entrance and/or exit that does not rely solely upon windows, ladders, folding stairs, or trap doors;~~

~~((g) A safe storage area for))~~ Safely store flammable and combustible materials;

~~((h) Unblocked exits;~~

~~((i))~~ (g) Have a working smoke ~~((detectors which are))~~ detector, located close to the client's ~~((room))~~ bedroom ~~((and meet the specific needs of)), that meets the ~~((client))~~ client's specialized needs, including any vision or hearing loss;~~

~~((j) A flashlight or other non-electrical light source in working condition;~~

~~((k))~~ (h) Have a five-pound 2A:10B-C fire extinguisher ~~((meeting the fire department standards)); ~~((and~~~~

~~((Basic))~~ (i) Have a first-aid ~~((supplies))~~ kit;

(j) Provide the client access to a telephone;

(k) Provide the client access to a working flashlight or alternative light source;

(l) Display emergency contact information in a manner accessible to the client;

(m) Display an evacuation plan, which must be practiced monthly with the client; and

(n) Have a railing for any patio, deck, porch, or balcony that is more than twelve inches off the ground.

(2) The companion home client must ~~((be accessible to meet the client's needs))~~ have a private bedroom with:

(a) A door that locks from the inside, unless the client's person-centered service plan indicates that it is unsafe for the client to have a locking door; and

(b) An exit that does not rely solely on a window, ladder, folding stairs, or trap door.

NEW SECTION

WAC 388-829C-325 How must a companion home provider protect a client from risks associated with bodies of water? (1) Any body of water at the companion home over twenty-four inches deep must be enclosed by a fence at least forty-eight inches high.

(2) Any door or gate that directly leads to the body of water must have an audible alarm.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-330 ~~((How))~~ Must a companion home ~~((providers))~~ provider regulate the water temperature at ~~((their residence))~~ the companion home? The companion home ~~((providers))~~ provider must ~~((regulate the water temperature at their residence.))~~:

(1) Maintain the water temperature in the ~~((household must be kept between 105 degrees and))~~ home no higher than 120 degrees Fahrenheit~~((-))~~;

(2) ~~((The provider must))~~ Check the water temperature when the client ~~((first))~~ moves into the ~~((household and at least every six months from then on. (Note: The water temperature is best measured two hours after substantial hot water usage.))~~ home and monthly thereafter; and

(3) ~~((The companion home provider must))~~ Document compliance with this requirement under WAC 388-829C-345.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-340 What ~~((information must companion home providers keep in their))~~ client records must the companion home provider maintain? A companion home ~~((providers))~~ provider must ~~((keep))~~ maintain all of the following ~~((information in their))~~ client records:

(1) ~~((Client information:~~

~~((a))~~ The client's name, address, and social security number~~((;))~~.

~~((b))~~ (2) The name, address, and telephone number of the client's legal representative, if the client has one, and any of the client's relatives that the client chooses to include~~((;~~

~~((c) Client health records))~~;

(3) Appropriate documents establishing the legal representative's legal authority to act on behalf of the client, if applicable.

(4) Signed authorization for release of information forms.

(5) Health care information, including:

~~((i))~~ (a) The name, address, and telephone number of the client's ~~((physician, dentist, mental health service provider, and any other))~~ health care ~~((service provider))~~ providers;

~~((ii))~~ (b) Instructions from the client's health care ~~((service))~~ providers ~~((about necessary health care, including appointment dates));~~

~~((iii))~~ Written documentation that ~~((c))~~ The ~~((instructions from))~~ client's health care ~~((service providers have been followed))~~ appointment dates;

~~((iv))~~ Medication, health, and surgery records; and

~~((v))~~ A record of ~~((d))~~ The client's known ~~((surgeries and))~~ major health events;

~~((d))~~ Copies of legal guardianship papers;))

~~((e))~~ ~~((A copy of))~~ The client's ~~((most recent ISP))~~ medication, health, and surgery records;

~~((f))~~ ~~((Copies of any positive behavior support plan or cross-systems crisis plan, if applicable))~~ Written documentation that instructions from the client's health care providers have been followed;

~~((g))~~ ~~((Financial records, if managing client funds (see WAC 388-829C-300))~~ A copy of the client's medical insurance card; and

~~((h))~~ ~~((Client property records (see WAC 388-829C-380;))~~ Refusals to participate in services under WAC 388-829C-370.

~~((i))~~ Signed release of information forms; and

~~((j))~~ Burial plans and wills.

(2) Provider information:

~~((a))~~ Water temperature monitoring records (see WAC 388-829C-330);

~~((b))~~ Provider training records (see WAC 388-829C-110 through 388-829C-130);

~~((c))~~ Evacuation plan and practice records;

~~((d))~~ Emergency response plan (see WAC 388-829C-410);

~~((e))~~ All written reports submitted to DDD (see WAC 388-829C-350);

~~((f))~~ Signed DDD policy on residential reporting requirements (see WAC 388-829C-140);

~~((g))~~ Nurse delegation records (see WAC 388-829C-210); and

~~((h))~~ (6) If the client receives nurse delegation services, nurse delegation records including:

~~((i))~~ ~~((Payment records))~~ (a) A signed consent for nurse delegation;

~~((b))~~ Written instructions from the delegating nurse for performing each delegated nursing task; and

~~((c))~~ A log of each delegated nursing task performed in the last six months.

(7) Current service and support plans, including the client's:

~~((a))~~ Person-centered service plan;

~~((b))~~ Individual education plan, if the client is in school;

~~((c))~~ Individual employment plan, if the client has one;

- (d) Positive behavior support plan, if the client has one; and
- (e) Cross-systems crisis plan, if the client has one.
- (8) Financial information, including:
- (a) The client's individual financial plan under WAC 388-829C-270;
- (b) Documentation of any money management and instruction provided to the client;
- (c) The client's property records under WAC 388-829C-380;
- (d) The client's burial plan, if the client has one; and
- (e) The client's will, if the client has one.

NEW SECTION

WAC 388-829C-345 What records must the companion home provider maintain? The companion home provider must maintain:

- (1) Client records under WAC 388-829C-340;
- (2) Water temperature monitoring records under WAC 388-829C-330;
- (3) Provider training records under WAC 388-829C-110;
- (4) An evacuation plan and practice records under WAC 388-829C-320;
- (5) An emergency response plan under WAC 388-829C-410;
- (6) Quarterly reports under WAC 388-829C-350;
- (7) A signed copy of form DSHS 10-403;
- (8) Nurse delegation records under WAC 388-829C-340;
- (9) The room and board agreement under WAC 388-829C-310; and
- (10) Financial records under WAC 388-829C-270 through 388-829C-280, if the provider is managing any portion of the client's funds.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-350 What ~~((written))~~ quarterly reports must ~~((be submitted to DDD))~~ the companion home provider submit to DDA? (1) The companion home provider must submit ~~((the following written reports to DDD))~~ a quarterly report to DDA that describes the instruction and support activities performed as identified in the person-centered service plan.

(2) The quarterly report must:

- (a) ~~((Reports that describe the instruction and support activities performed as identified in the ISP. These reports must))~~ Be submitted every ~~((six))~~ three months ~~((or more frequently))~~ and upon DDA's request ~~((of DDD))~~;
- (b) ~~((Reports on unusual incidents and emergencies as required in the DDD residential reporting requirements specified in the companion home contract.))~~ Include a list of community and other activities the client has participated in;
- (c) ~~((Reports on client refusal of services as described in this chapter (WAC 388-829C-370))~~ List health care appointments that have occurred during the quarter;
- (d) Document the client's progress toward each goal identified in the client's person-centered service plan;

(e) Document the client's progress toward their habilitation goal; and

(f) Document the review of any client refusal under WAC 388-829C-370.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-360 What are the requirements for record entries? (1) The companion home provider must ensure all record entries are:

- (a) ~~((Note all record entries in ink or electronically; (b) Make entries))~~ Made at the time of or immediately following the ~~((occurrence of the))~~ event ~~((recorded));~~
 - ~~((e) Make entries in legible writing; and (d) Initial and date entries))~~ (b) Made electronically or written legibly in ink;
 - (c) Signed and dated by the person making the entry;
 - (d) Stored securely; and
 - (e) Kept confidential.
- (2) ~~((If a provider makes a mistake on the))~~ To correct an error in a record entry, the provider must ~~((show both the original and corrected entries))~~ strike through the error in a way that the underlying text remains legible.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-370 When must a companion home provider document a client's refusal to participate in services? (1) ~~((A))~~ The companion home provider must document a client's refusal to participate in:

- (a) ~~((Physical and safety requirements as outlined in))~~ Monthly evacuation drills under WAC 388-829C-320; and
 - (b) Health ~~((services as outlined in))~~ care support under WAC 388-829C-160.
- (2) ~~((When))~~ If a client refuses ~~((to participate in these services))~~ a service, the companion home ~~((providers))~~ provider must document:

- (a) ~~((Record a description of))~~ Events ~~((relating))~~ related to the client's refusal to participate in ~~((these services))~~ the service;
 - (b) ~~((Inform))~~ That the client was informed of the benefits of ~~((these services))~~ the service and the possible risks of refusal; ~~((and))~~
 - (c) ~~((Provide the client or the client's legal representative and DDD with: (i) A description of))~~ The service provider's efforts to ~~((give))~~ provide or acquire the ~~((services to))~~ service for the client; and
 - ~~((ii))~~ (d) Any health or safety ~~((concerns that the refusal may pose))~~ risks posed by the refusal.
- (3) The companion home ~~((providers))~~ provider must ~~((submit this information to DDD in a))~~ give written ~~((report as soon as possible following))~~ notice to the client's case manager and legal representative, if the client has one, if the client's health and safety is adversely affected by their refusal to participate in a service.

(4) The companion home provider must:

(a) Review the refusal of service document with the client, or the client's legal representative if the client has one, at least every six months;

(b) Request that the client, or the client's legal representative if the client has one, sign and date the document after reviewing it; and

(c) Document the review in the quarterly report under WAC 388-829C-350.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-380 Must a companion home ((provid-ers)) provider keep a record of a client's property ((records))? ((The)) (1) A companion home provider must assist ((clients in maintaining)) a client to maintain a current, written ((property records)) record of the client's property.

(2) The property record must include:

((+)) (a) A descriptive list of items ((including a description, and serial numbers of items that are valued at seventy-five)) with an original purchase price of twenty-five dollars or ((over, and were owned by)) more that the client owned when ((moving into the program.)) residential habilitation services in the companion home began;

((2)) (b) A descriptive list of items ((including a description, date of purchase and cost of items that are valued at seventy-five)) with an original purchase price of twenty-five dollars or ((over and have been)) more that the client has acquired ((by the client)) while living ((with)) in the companion home ((provider)); and

(c) A date, explanation, and review by the client's legal representative if the client has one, for any item with an original purchase price of twenty-five dollars or more that is removed from the client's property record.

(3) For any item originally purchased for seventy-five dollars or more, the companion home provider must record ((must contain dates and reasons for all items removed from)) the item's serial number in the client's property record if the item has one.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-390 ((Are clients' records consid-ered confidential)) May a provider share information about a client? ((The companion home provider must consider all client record)) To transfer or access information ((privileged and confidential.-

(1) Any transfer or inspection of records, to parties other than DSHS, must be authorized by a release of information form that:

(a) Specifically gives information about the transfer or inspection; and

(b) Is signed by the)) about a client ((or the client's legal representative.

(2) A signed)), the provider must have a legally valid authorization for release of information ((is valid for up to one year and must be renewed annually from the signature date)).

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-400 How long must a companion home provider keep client and provider records? A companion home provider must keep ~~((a client's))~~ client and provider records for ((a period of)) six years.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-410 What must a companion home ((providers)) provider do ((when emergencies occur)) in an emergency? (1) The companion home provider must develop an emergency response plan ((to address natural and other disasters)) and practice it with the client.

(2) In ((an)) a medical emergency, the companion home provider must:

(a) Immediately call 911((;)) in a life threatening emergency;

(b) Provide ((emergency services,)) first aid or CPR if necessary, unless limited by physician orders for life-sustaining treatment (POLST) or an advance directive;

(c) Follow the emergency response plan then notify:

(i) The client's legal representative if the client has one; and

(ii) The ((division of developmental disabilities)) client's case manager.

((+)) (3) Following an emergency, the companion home provider must submit a written incident report to ((DDD, as required by the DDD residential reporting requirements specified in the companion home contract)) the client's case manager.

NEW SECTION

WAC 388-829C-449 When must DDA immediately decertify a companion home provider? DDA must immediately decertify a companion home provider if the provider or another person age sixteen or older living in the companion home:

(1) Has been convicted of, or has a pending charge for a crime that is disqualifying under chapter 388-113 WAC; or

(2) Has a negative action under WAC 388-825-640.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-450 What ((happens)) if the companion home provider ((is found to be out of compliance)) fails to comply with this chapter or the companion home contract? (1) If ((an evaluation finds the)) a companion home provider ((out of compliance)) fails to comply with any part of this chapter or the ((DDD)) companion home contract, the provider ((and DDD)) and DDA resource management must develop a ((corrective action)) plan of correction.

((+)) (2) The ((corrective action)) plan of correction must:

(a) Outline methods for the provider to ((comply with the required corrections)) complete corrective actions; and

(b) Provide a time frame for the provider to complete the corrective actions.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-829C-460 ~~When ((may)) must DDA ((stop the authorization for)) deny payment ((or)) and terminate a ((contract for)) companion home ((services)) provider's contract? DDA ((may stop the authorization for)) must deny payment ((or)) and terminate a companion home provider's contract ((for the services of a companion home)) if the provider ((, when that provider)):~~

(1) Is no longer ((the client's choice of provider)) providing paid services to the client; or

(2) ~~((Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy;~~

(3) ~~Is unable to clear a background check or other individuals living in the companion home are unable to clear a background check required by RCW 43.20A.710;~~

(4) ~~Has been convicted of, or has a pending charge for a crime that is disqualifying under chapter 388-113 WAC;~~

(5) ~~Has been subject to a negative action described in WAC 388-825-0640;~~

(6) ~~Does not successfully complete the training requirements within the time limits required in this chapter;~~

(7) ~~Does not complete the corrective actions within the agreed upon time frame; or~~

(8) ~~Fails to comply with the requirements of this chapter or the)) Fails to maintain certification as a companion home ((contract)) provider.~~

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-480 What if the companion home provider is no longer ((wants)) willing or able to provide services to a client? (1) ((When)) If a companion home provider is no longer ((wants)) willing or able to provide services to a client, they must provide a sixty-day written notice to:

(a) ~~((Give at least thirty days written notice to:~~

(i)) The client;

(ii)) (b) The client's legal representative if the client has one; and

~~((iii) DDD)) (c) DDA.~~

(2) ~~If ((an emergency occurs and services must be terminated immediately, the provider must give immediate notice to DDD, the client, and the client's representative.~~

(3) ~~The)) a companion home provider ((will be expected to continue working for thirty days unless otherwise determined by DDD)) must terminate services immediately due to unforeseen circumstances, the provider must give a three business days' written notice to:~~

(a) The client;

(b) The client's legal representative if the client has one; and

(c) DDA.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-490 ~~What are ((the)) a client's ((appeal rights if DDD denies, or terminates a companion home services contract)) administrative hearing rights? ((If DDD denies, or terminates a companion home services contract, the)) A client has the right to an administrative hearing to appeal ((the decision, per chapter 388-02 WAC and)) department decisions under WAC 388-825-120.~~

NEW SECTION

WAC 388-829C-492 What if the companion home provider disagrees with a certification evaluation or certification decision? If a companion home provider disagrees with a certification evaluation or certification decision under this chapter, the companion home provider may request an informal dispute resolution meeting with DDA by:

(1) Submitting a written request to DDA no more than ten days after receiving the final certification letter and report; and

(2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

NEW SECTION

WAC 388-829C-494 What if the companion home provider disagrees with a certification action or the outcome of an informal dispute resolution? (1) If a companion home provider disagrees with a certification action or the outcome of an informal dispute resolution, the companion home provider may request an administrative hearing under chapter 388-02 WAC.

(2) To request an administrative hearing the companion home provider must submit a written request to the office of administrative hearings no more than twenty-eight days after receiving the written notice of the outcome of the informal dispute resolution.

(3) The administrative hearing request must include:

(a) A copy of the contested certification action; and

(b) The reason the provider is contesting the certification action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-829C-005 What is the purpose of this chapter?

WAC 388-829C-060 Where are companion home residential services provided?

WAC 388-829C-090 What values must companion home providers focus on when implementing the ISP?

WAC 388-829C-120 What training must a companion home provider complete within the first ninety days of serving the client?

WAC 388-829C-130	What training must a companion home provider complete after the first year of service?	Citation of Rules Affected by this Order: New WAC 388-826-0011, 388-826-0016, 388-826-0041, 388-826-0071, 388-826-0072, 388-826-0078, 388-826-0079, 388-826-0133 and 388-826-0205; repealing WAC 388-826-0015, 388-826-0020, 388-826-0025, 388-826-0030, 388-826-0035, 388-826-0045, 388-826-0055, 388-826-0060, 388-826-0065, 388-826-0080, 388-826-0085, 388-826-0129, 388-826-0135, 388-826-0136, 388-826-0210, 388-826-0220 and 388-826-0250; and amending WAC 388-826-0001, 388-826-0005, 388-826-0010, 388-826-0040, 388-826-0050, 388-826-0070, 388-826-0075, 388-826-0077, 388-826-0130, 388-826-0138, 388-826-0145, 388-826-0150, 388-826-0160, 388-826-0170, 388-826-0175, 388-826-0200, 388-826-0230, 388-826-0240, and 388-845-1515.
WAC 388-829C-190	What is required for a companion home provider to perform nursing tasks under the registered nurse delegation program?	Statutory Authority for Adoption: RCW 71A.12.030. Other Authority: RCW 74.13.350.
WAC 388-829C-210	What records must the companion home provider keep regarding registered nurse delegation?	Adopted under notice filed as WSR 18-12-108 on June 6, 2018.
WAC 388-829C-220	What is an individual support plan (ISP)?	Changes Other than Editing from Proposed to Adopted Version: The developmental disabilities administration (DDA) replaced references to chapter 388-145 WAC with references to chapter 110-145 WAC and WAC 110-145-1670 because the department of children, youth, and families recently recodified its rules under Title 110 WAC.
WAC 388-829C-240	Where may respite care be provided?	WSR 18-12-108 proposed new WAC 388-826-0131 and 388-826-0132 and proposed the repeal of WAC 388-826-0090 and 388-826-0095. As a result of comments received on these proposed changes, DDA will schedule changes for these sections for a second public hearing.
WAC 388-829C-260	What requirements must be met before a companion home provider transports a client?	DDA made nonsubstantive changes to new WAC 388-826-0133. The changes remove "countable" from the section because a representative payee manages the client's income in general, not just countable income. The changes to subsections (1) and (2) are as follows: The representative payee: (1) Receives and m Manages the client's countable income; (2) Uses the client's countable income to contribute toward the cost of the client's participation and room and board;
WAC 388-829C-300	What documents must companion home providers keep to protect a client's financial interests?	A final cost-benefit analysis is available by contacting Chantelle Diaz, DDA, 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.
WAC 388-829C-420	How must DDD monitor and provide oversight for companion home services?	Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.
WAC 388-829C-430	How often must the companion home be evaluated?	Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.
WAC 388-829C-440	How must the companion home provider participate in the evaluation process?	Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.
WAC 388-829C-445	What occurs during the review and evaluation process?	Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 19, Repealed 17.
WAC 388-829C-470	When may DDA deny the client's choice of a companion home provider?	Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 19, Repealed 17.
WAC 388-829C-500	Does the provider of companion home services have a right to an administrative hearing?	

WSR 18-23-004**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed November 7, 2018, 3:33 p.m., effective December 8, 2018]

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

Purpose: The department is amending these rules to update program requirements, clarify training requirements, and simplify eligibility based on statute[s] governing the program. The chapter has been rewritten using plain language principles, and some content has been moved and sections repealed to improve organization and readability of the chapter.

Date Adopted: November 7, 2018.

Cheryl Strange
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-24 issue of the Register.

WSR 18-23-008
PERMANENT RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed November 8, 2018, 10:21 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

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

Purpose: To establish a 2019 annual tariff for pilotage services in the Grays Harbor pilotage district.

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

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 18-18-066 on August 31, 2018.

Changes Other than Editing from Proposed to Adopted Version: The proposed decrease in the *Pension Charge* from \$500 to \$450 was adopted.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 18, 2018.

Jaimie Bever
Executive Director

AMENDATORY SECTION (Amending WSR 17-22-128, filed 11/1/17, effective 1/1/18)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours January 1, (~~2018~~) 2019, through 2400 hours December 31, (~~2018~~) 2019.

CLASSIFICATION

RATE

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

Draft and Tonnage Charges:

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

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

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

Boarding Charge:

Per each boarding/deboarding from a boat or helicopter \$1,092.00

Harbor Shifts:

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage \$803.00

Delays per hour \$189.00

CLASSIFICATION	RATE
Cancellation charge (pilot only)	\$315.00
Cancellation charge (boat or helicopter only)	\$944.00

Two Pilots Required:

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

Pension Charge:

Charge per pilotage assignment, including cancellations	\$((500.00) <u>450.00</u>)
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Travel Allowance:

Transportation charge per assignment	\$105.00
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Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$1,064.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:

Charge for each bridge transited	\$346.00
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Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam	\$946.00
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Miscellaneous:

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

**WSR 18-23-009
PERMANENT RULES
BOARD OF**

PILOTAGE COMMISSIONERS

[Filed November 8, 2018, 10:39 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

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

Purpose: To establish a 2019 annual tariff for pilotage in the Puget Sound pilotage district. The purpose of the proposal is [to] update the effective year of the tariff only. The tariff rates and language will remain as is.

Citation of Rules Affected by this Order: Amending WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 18-20-033 on September 25, 2018.

Changes Other than Editing from Proposed to Adopted Version: The proposed change in the date range was adopted.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: November 7, 2018.

Jaimie Bever
Executive Director

AMENDATORY SECTION (Amending WSR 17-23-123, filed 11/17/17, effective 1/1/18)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours January 1, ((2018)) 2019, through 2400 hours December 31, ((2018)) 2019.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	

Per LOA rate schedule in this section.

CLASSIFICATION	RATE
Pilot boat fee:	\$348.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone

LOA of tug + LOA of tow + beam of tow

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$359.00
Radio Direction Finder Calibration	\$359.00
Launching Vessels	\$540.00
Trial Trips, 6 hours or less (minimum \$1,014.00)	\$169.00 per hour
Trial Trips, over 6 hours (two pilots)	\$338.00 per hour
Shilshole Bay - Salmon Bay	\$211.00
Salmon Bay - Lake Union	\$164.00
Lake Union - Lake Washington (plus LOA zone from Webster Point)	\$211.00
Cancellation Charge	LOA Zone I
Cancellation Charge - Port Angeles:	LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of \$266.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$127.00 per bridge.

Ships 90' beam and/or over:

A charge of \$361.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$251.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus \$274.00 per hour standby. No charge if delay is 60 minutes or less. If the delay

is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$274.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival - Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$274.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in

addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of \$0.0814 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be \$0.0974 per gross ton.

Notwithstanding the above tonnage charges, there shall be a minimum tonnage charge of \$500.00 applied to:

(1) All LOA Zone I assignments other than assignments of an additional pilot(s) on ship movements involving more than one pilot jointly piloting the vessel; and

(2) All LOA Zone II and greater assignments.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Payment Terms and Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge	\$2,107.00
Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.	\$283.00 per hour
Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.	\$283.00 per hour
Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.	\$525.00
Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.	\$514.00
Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.	\$649.00

Training Surcharge:

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
UP to 449	263	381	650	968	1,304	1,692
450 - 459	274	388	653	983	1,325	1,700
460 - 469	276	392	665	999	1,343	1,708
470 - 479	285	404	672	1,020	1,347	1,711
480 - 489	294	410	675	1,038	1,355	1,719
490 - 499	298	416	685	1,057	1,371	1,728
500 - 509	313	423	695	1,068	1,383	1,738
510 - 519	315	431	702	1,085	1,398	1,744
520 - 529	319	447	712	1,090	1,410	1,758
530 - 539	329	452	721	1,102	1,432	1,778
540 - 549	334	458	738	1,114	1,454	1,795
550 - 559	341	474	742	1,130	1,466	1,812
560 - 569	353	493	757	1,141	1,479	1,828
570 - 579	361	496	760	1,146	1,495	1,841
580 - 589	376	505	778	1,154	1,503	1,859
590 - 599	393	516	782	1,160	1,526	1,882
600 - 609	408	532	794	1,164	1,544	1,890
610 - 619	431	537	807	1,169	1,559	1,907
620 - 629	447	543	814	1,183	1,577	1,929
630 - 639	468	552	824	1,186	1,591	1,946
640 - 649	486	566	832	1,188	1,604	1,960
650 - 659	520	575	847	1,197	1,624	1,981
660 - 669	530	582	854	1,205	1,642	1,996
670 - 679	550	597	863	1,226	1,660	2,009
680 - 689	557	607	874	1,237	1,674	2,028
690 - 699	574	616	888	1,258	1,692	2,071
700 - 719	599	637	904	1,275	1,725	2,093
720 - 739	634	653	927	1,292	1,758	2,128
740 - 759	659	685	945	1,304	1,795	2,167
760 - 779	685	707	968	1,325	1,828	2,194
780 - 799	719	738	983	1,343	1,859	2,234
800 - 819	748	760	1,002	1,350	1,890	2,268
820 - 839	771	788	1,025	1,371	1,929	2,293
840 - 859	804	820	1,046	1,387	1,958	2,333
860 - 879	834	847	1,064	1,423	1,996	2,367
880 - 899	863	871	1,085	1,455	2,028	2,402
900 - 919	889	900	1,103	1,494	2,071	2,434
920 - 939	917	927	1,130	1,526	2,091	2,468
940 - 959	950	952	1,147	1,559	2,128	2,498
960 - 979	971	980	1,167	1,591	2,167	2,535

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
980 - 999	1,003	1,002	1,187	1,624	2,194	2,568
1000 - 1019	1,065	1,067	1,240	1,710	2,299	2,678
1020 - 1039	1,094	1,098	1,279	1,758	2,368	2,757
1040 - 1059	1,127	1,125	1,316	1,812	2,435	2,838
1060 - 1079	1,161	1,165	1,355	1,866	2,511	2,922
1080 - 1099	1,196	1,197	1,394	1,920	2,585	3,011
1100 - 1119	1,230	1,234	1,437	1,980	2,662	3,102
1120 - 1139	1,268	1,274	1,481	2,037	2,742	3,194
1140 - 1159	1,304	1,310	1,523	2,098	2,825	3,291
1160 - 1179	1,343	1,347	1,571	2,161	2,909	3,388
1180 - 1199	1,384	1,388	1,616	2,226	2,997	3,491
1200 - 1219	1,427	1,430	1,664	2,293	3,087	3,593
1220 - 1239	1,467	1,473	1,713	2,362	3,177	3,701
1240 - 1259	1,511	1,516	1,763	2,432	3,274	3,811
1260 - 1279	1,555	1,561	1,817	2,505	3,373	3,925
1280 - 1299	1,602	1,609	1,872	2,580	3,471	4,044
1300 - 1319	1,651	1,655	1,927	2,657	3,576	4,164
1320 - 1339	1,701	1,705	1,986	2,736	3,682	4,290
1340 - 1359	1,749	1,756	2,045	2,817	3,792	4,419
1360 - 1379	1,803	1,807	2,106	2,903	3,905	4,549
1380 - 1399	1,855	1,861	2,171	2,989	4,022	4,687
1400 - 1419	1,912	1,918	2,233	3,077	4,142	4,826
1420 - 1439	1,968	1,976	2,301	3,171	4,268	4,971
1440 - 1459	2,029	2,035	2,371	3,265	4,395	5,120
1460 - 1479	2,086	2,094	2,440	3,362	4,527	5,270
1480 - 1499	2,150	2,157	2,512	3,462	4,661	5,429
1500 - Over	2,215	2,222	2,587	3,568	4,800	5,591

WSR 18-23-012
PERMANENT RULES
STATE BOARD OF EDUCATION

[Filed November 8, 2018, 1:11 p.m., effective December 9, 2018]

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

Purpose: To implement provisions of HB [SHB] 2824 (Laws of 2018) that have an effective date ninety days after sine die of the 2018 legislature, the state board of education is:

- Amending WAC 180-18-100 to transfer responsibility for processing applications for district waiver of career and technical education course equivalencies from state board of education to office of superintendent of public instruction.

- Repealing chapter 180-22 WAC to eliminate the role of the state board of education in establishing educational service district boundaries.

Citation of Rules Affected by this Order: Repealing chapter 180-22 WAC; and amending WAC 180-18-100.

Statutory Authority for Adoption: The authority for amendment of WAC 180-18-100 is RCW 28A.230.010. The authority for repeal of chapter 180-22 WAC is RCW 28A.310.020.

Adopted under notice filed as WSR 18-10-100 on May 2, 2018.

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

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

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

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

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

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

Date Adopted: November 8, 2018.

Dr. Randy Spaulding
Executive Director

AMENDATORY SECTION (Amending WSR 14-19-032, filed 9/8/14, effective 10/9/14)

WAC 180-18-100 District waiver from requirement for student access to career and technical education course equivalencies. (1) Any school district reporting, in any school year, an October P223 headcount of fewer than two thousand students as of January of that school year may apply to the ~~((state board of education))~~ superintendent of public instruction for a waiver of up to two years from the provisions of RCW 28A.230.010(2) for the subsequent school year.

(2) In any application for a waiver under this section, the district shall demonstrate that students enrolled in the district do not have and cannot be provided reasonable access, through high schools, interdistrict cooperatives, skill centers or branch or satellite skill centers, or through online learning or applicable running start vocational courses, to at least one career and technical education course that is considered equivalent to a mathematics course or at least one career and technical education course that is considered equivalent to a science course as determined by the superintendent of public instruction ~~((and the state board of education))~~ under RCW 28A.700.070.

(3) On a determination, in consultation with the office of the superintendent of public instruction, that the students enrolled in the district do not and cannot be provided reasonable access to at least one career and technical education course that is considered equivalent to a mathematics course or at least one career and technical education course that is considered equivalent to a science course under subsection (2) of this section, the ~~((state board of education))~~ superintendent of public instruction shall grant the waiver for the term of years requested.

(4) The ~~((state board of education))~~ office of superintendent of public instruction shall post on its web site an application form for use by a district in applying for a waiver under this section. A completed application must be signed by the chair or president of the district's board of directors and superintendent.

(5) In order to provide sufficient notice to students, parents, and staff, the application must be submitted to the ~~((state board of education))~~ superintendent of public instruction in

electronic form no later than January 15th of the school year prior to the school year for which the waiver is requested ~~((and no later than thirty days before the board meeting at which the application will be considered))~~. The ~~((board))~~ office of superintendent of public instruction shall post all applications received on its public web site.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 180-22-100 Purpose and authority.

WAC 180-22-140 Territorial organization of educational service districts.

WAC 180-22-150 Educational service districts—Criteria for organization.

WSR 18-23-021

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed November 13, 2018, 10:54 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: WAC 246-215-09150 Employee restrooms—Toilet facilities, the state board of health adopted a change that increases the maximum distance to a readily accessible employee restroom from within two hundred feet to within five hundred feet for mobile food units.

Citation of Rules Affected by this Order: Amending WAC 246-215-09150.

Statutory Authority for Adoption: RCW 43.20.050, 43.20.145.

Adopted under notice filed as WSR 18-16-078 on July 30, 2018.

A final cost-benefit analysis is available by contacting Peter Beaton, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-4031, TTY 360-833-6388 or 711, email Peter.Beaton@doh.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: November 9, 2018.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

WAC 246-215-09150 Employee restrooms—Toilet facilities. The PERMIT HOLDER shall ensure APPROVED toilet facilities are available for employees:

(1) Readily accessible and within ((200)) 500 feet of the MOBILE FOOD UNIT during times of operation, if at any one location for more than one hour; and

(2) Provided with handwashing facilities that meet the requirements specified under WAC 246-215-05210.

WSR 18-23-045

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed November 15, 2018, 9:04 a.m., effective December 21, 2018]

Effective Date of Rule: December 21, 2018.

Purpose: The purpose is to correct what documentation an employee seeking shared leave under the veterans' in-state service shared leave pool may be required to submit. A current member would not have a "DD Form 214" therefore other forms of documentation must be allowed.

Citation of Rules Affected by this Order: New [amending] WAC 357-31-805.

Statutory Authority for Adoption: Chapter 41.04 RCW.

Other Authority: RCW 41.04.672.

Adopted under notice filed as WSR 18-20-078 on September 28, 2018.

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

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

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

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

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

Date Adopted: November 15, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 17-18-030, filed 8/28/17, effective 10/2/17)

WAC 357-31-805 What documentation may an employee seeking shared leave under the veterans' in-state service shared leave pool be required to submit?

Employees seeking shared leave under the veterans' in-state service shared leave pool must provide a veterans affairs benefits summary letter from the U.S. Department of Veterans Affairs and a copy of "DD Form 214" or a letter from their command indicating the employee is a current member of the uniformed services and verifying that:

(1) The employee ((has)) is attending medical appointments or treatments for a service connected injury or disability including U.S. Department of Veterans Affairs compensation and pension examinations; or

(2) The employee is a spouse of a veteran who requires assistance while attending medical appointments or treatments for a service connected injury or disability including U.S. Department of Veterans Affairs compensation and pension examinations.

WSR 18-23-056

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed November 15, 2018, 3:55 p.m., effective December 16, 2018]

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

Purpose: WAC 246-100-011 Definitions, 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting, and 246-100-208 Counseling standard—AIDS counseling, the adopted rule reflects the repeal of consent and opt-out options specific to HIV testing. In addition, the term "AIDS counseling" is now referred to as "HIV counseling" to provide clarity and to focus on the disease (HIV) rather than the most advanced stage of the infection (AIDS).

Citation of Rules Affected by this Order: Amending WAC 246-100-011, 246-100-207, and 246-100-208.

Statutory Authority for Adoption: RCW 70.24.380.

Adopted under notice filed as WSR 18-14-090 on July 2, 2018.

Changes Other than Editing from Proposed to Adopted Version: In response to public comment, references to "AIDS counseling" contained within WAC 246-100-011 and 246-100-208 were updated to read "HIV counseling" to provide clarity and focus on the disease (HIV) rather than the most advanced stage of the infection (AIDS).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 8, 2018.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

WAC 246-100-011 Definitions. The ~~((following))~~ definitions ~~((shall))~~ in this section apply ~~((in the interpretation and enforcement of))~~ throughout chapter 246-100 WAC unless the context clearly requires otherwise:

(1) "Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality Weekly Report (MMWR), ~~((December 18, 1992))~~ April 11, 2014, Volume ~~((41))~~ 63, Number ~~((RR-17))~~ RR-03. A copy of this publication is available for review at the department and at each local health department.

(2) "~~((AIDS))~~ HIV counseling" means counseling directed toward:

(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and

(b) Assessing the individual's risk of HIV acquisition and transmission; and

(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.

(3) "Anonymous HIV testing" means that the name or identity of the individual tested for HIV will not be recorded or linked to the HIV test result. However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.

(4) "Board" means the Washington state board of health.

(5) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical or laboratory criteria or both.

(6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(7) "Communicable disease" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air.

(8) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.

(9) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.

(10) "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination.

(11) "Department" means the Washington state department of health.

(12) "Detention" or "detainment" means physical restriction of activities of an individual by confinement for the purpose of controlling or preventing a serious and imminent threat to public health and may include physical plant, facilities, equipment, and/or personnel to physically restrict activities of the individual to accomplish such purposes.

(13) "Disease control measures" means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

(14) "Health care facility" means:

(a) Any facility or institution licensed under chapter 18.20 RCW, assisted living facilities, chapter 18.46 RCW, birthing centers, chapter 18.51 RCW, nursing homes, chapter 70.41 RCW, hospitals, or chapter 71.12 RCW, private establishments, clinics, or other settings where one or more health care providers practice; and

(b) In reference to a sexually transmitted disease, other settings as defined in chapter 70.24 RCW.

(15) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

(16) "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including but not limited to, pre- and post-test counseling, ~~((consent))~~ and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

(a) Monitoring previously diagnosed infection with HIV;

(b) Monitoring organ or bone marrow transplants;

(c) Monitoring chemotherapy;

(d) Medical research; or

(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting such existence.

(17) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.

(18) "Isolation" means the separation, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible or who may spread the agent or contaminant to others.

(19) "Local health department" means the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW.

(20) "Local health officer" means the individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or his or her delegate appointed by the local board of health.

(21) "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

(22) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(23) "Post-test counseling" means counseling after the HIV test when results are provided and directed toward:

- (a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;
- (b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;
- (c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;
- (d) Assessing emotional impact of HIV test results; and
- (e) Appropriate referral for other community support services.

(24) "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

- (a) Helping an individual to understand:
 - (i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;
 - (ii) The nature, purpose, and potential ramifications of HIV testing;
 - (iii) The significance of the results of HIV testing; and
 - (iv) The dangers of HIV infection; and
- (b) Assessing the individual's ability to cope with the results of HIV testing.

(25) "Principal health care provider" means the attending physician or other health care provider recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or therapy for a patient.

(26) "Quarantine" means the limitation of freedom of movement of such well persons or domestic animals as have been exposed to, or are suspected to have been exposed to, an infectious agent, for a period of time not longer than the longest usual incubation period of the infectious agent, in such manner as to prevent effective contact with those not so exposed.

(27) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade twelve).

(28) "Sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) Chlamydia trachomatis infection;
- (d) Genital and neonatal herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus infection (HIV) and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

(29) "Spouse" means any individual who is the marriage partner of an HIV-infected individual, or who has been the marriage partner of the HIV-infected individual within the ten-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

(30) "State health officer" means the person designated by the secretary of the department to serve as statewide health officer, or, in the absence of such designation, the person having primary responsibility for public health matters in the state.

(31) "Suspected case" or "suspected to be infected" means the local health officer, in his or her professional judgment, reasonably believes that infection with a particular infectious agent is likely based on signs and symptoms, laboratory evidence, or contact with an infected individual, animal, or contaminated environment.

(32) "Veterinarian" means an individual licensed under provisions of chapter 18.92 RCW, veterinary medicine, surgery, and dentistry and practicing animal health care.

AMENDATORY SECTION (Amending WSR 13-03-110, filed 1/17/13, effective 2/17/13)

WAC 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting.

(1) Except for persons conducting seroprevalent studies under chapter 70.24 RCW, or ordering or prescribing an HIV test for another individual under subsections (4) and (5) of this section or under WAC 246-100-208(1), any person ordering or prescribing an HIV test for another individual, shall(:

~~(a) Obtain the consent of the individual, separately or as part of the consent for a battery of other routine tests provided that the individual is specifically informed verbally or in writing that a test for HIV is included; and~~

~~(b) Offer the individual an opportunity to ask questions and decline testing; and~~

~~(c) If the HIV test is positive for or suggestive of HIV infection, provide the name of the individual and locating information to the local health officer for follow-up (to pro-~~

vide)) and post-test counseling as required by WAC 246-100-209.

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings."

(3) Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.

(4) Any person authorized to order or prescribe an HIV test for another individual may offer anonymous HIV testing without restriction.

(5) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) ~~((Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;~~

~~((b)))~~ Explain that ~~((the reason for HIV testing is))~~ donations are tested to prevent contamination of the blood supply, tissue, or organ bank donations;

~~((c)))~~ ~~((b))~~ At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session; and

~~((d)))~~ ~~((c))~~ Inform the individual that the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer.

(6) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform an HIV test, provide written information to the individual tested explaining:

- (i) What an HIV test is;
- (ii) Behaviors placing a person at risk for HIV infection;
- (iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;
- (iv) The potential risks of HIV testing; and
- (v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

(iii) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.

(c) Establish procedures to inform an applicant of the following:

(i) Post-test counseling specified under WAC 246-100-209 is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.

(7) Laboratories and other places where HIV testing is performed must demonstrate compliance with all of the requirements in the Medical test site rules, chapter 246-338 WAC.

(8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

(9) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) The test or sequence of tests has been approved by the FDA or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) Such information consists of relevant facts communicated in such a way that it will be readily understood by the recipient.

(10) Persons may inform a tested individual of the unconfirmed reactive results of an FDA-approved rapid HIV test provided the test result is interpreted as preliminarily positive for HIV antibodies, and the tested individual is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

AMENDATORY SECTION (Amending WSR 10-01-082, filed 12/15/09, effective 1/15/10)

WAC 246-100-208 Counseling standard—((AIDS)) HIV counseling. (1) Principal health care providers providing care to a pregnant woman who intends to continue the pregnancy and is not seeking care to terminate the pregnancy or as a result of a terminated pregnancy shall:

(a) Provide or ensure the provision of ~~((AIDS))~~ HIV counseling as defined in WAC 246-100-011(2);

~~(b) ((When ordering or prescribing an HIV test, obtain the informed consent of the pregnant woman for confidential human immunodeficiency virus (HIV) testing, separately or as part of the consent for a battery of other routine tests provided that the pregnant woman is specifically informed verbally or in writing that a test for HIV is included;~~

~~(c) Offer the pregnant woman an opportunity to ask questions and decline testing;~~

~~(d) Order or prescribe HIV testing if the pregnant woman consents;~~

~~(e) If the pregnant woman refuses to consent, discuss and address her reasons for refusal and document in the medical record both her refusal and the provision of education on the benefits of HIV testing; and~~

~~(f)) If an HIV test is positive for or suggestive of HIV infection, provide the follow-up and reporting as required by WAC 246-100-209.~~

~~(2) ((Health care providers may obtain a sample brochure addressing the elements of subsection (1) of this section by contacting the department of health's HIV prevention program at P.O. Box 47840, Olympia, WA 98504-7840.~~

~~(3)) Principal health care providers shall counsel or ensure ~~((AIDS))~~ HIV counseling as defined in WAC 246-100-011(2) and offer and encourage HIV testing for each patient seeking treatment of a sexually transmitted disease.~~

~~((4)) (3) Drug treatment programs under chapter 70.96A RCW shall provide or ensure provision of ~~((AIDS))~~ HIV counseling as defined in WAC 246-100-011(2) for each person in a drug treatment program.~~

WSR 18-23-057

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed November 16, 2018, 9:41 a.m., effective December 17, 2018]

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

Purpose: WAC 246-851-550 Sexual misconduct, the board of optometry has added specific actions to the definition of sexual misconduct to provide clarify [clarity] for optometry providers. The adopted rule clarifies and updates the sexual misconduct rule to establish what forcible or non-consensual acts are within the definition of sexual misconduct by optometrists. The board's rule also adds acts of sexual misconduct which include sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense.

Citation of Rules Affected by this Order: Amending WAC 246-851-550.

Statutory Authority for Adoption: RCW 18.54.070(2), 18.130.050.

Other Authority: RCW 18.130.062 and Executive Order 06-03.

Adopted under notice filed as WSR 18-16-086 on July 30, 2018.

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

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

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

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

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

Date Adopted: September 7, 2018.

Dr. Dale Heaston, OD, Chair
Board of Optometry

AMENDATORY SECTION (Amending WSR 94-04-041, filed 1/27/94, effective 2/27/94)

WAC 246-851-550 Sexual misconduct. (1) ~~((An optometrist shall not engage in sexual contact or sexual activity with a current patient.~~

~~(a) A current patient is a patient))~~ The following definitions apply to this section:

(a) "Patient" means a person who has received professional services from the optometrist within the last three years and whose patient record has not been transferred to another optometrist or health care professional.

~~((b))~~ A referral of the patient record must be in writing and with the knowledge of both the patient and the optometrist or health care practitioner to whom the record is transferred.

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

(2) ((The)) An optometrist shall ~~((never engage in sexually harassing or demeaning behavior with current or former patients))~~ not engage, or attempt to engage, in sexual misconduct with a patient or key party, inside or outside the health care setting. Patient or key party initiation or consent does not excuse or negate the health care provider's responsibility. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part;

(c) Rubbing against a patient or key party for sexual gratification;

(d) Kissing, touching, fondling or caressing of a romantic or sexual nature;

(e) Encouraging masturbation or other sex act in the presence of the health care provider;

(f) Masturbation or other sex act by the health care provider in the presence of the patient or key party;

(g) Suggesting the possibility of a sexual or romantic dating relationship;

(h) Discussing the sexual history, preferences or fantasies of the health care provider;

(i) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(j) Making statements regarding the body, sexual history, or sexual orientation of the patient or key party;

(k) Any verbal or physical contact which may reasonably be interpreted as sexually demeaning;

(l) Taking sexually explicit photographs or films of a patient or key party;

(m) Showing a patient or key party sexually explicit photographs.

(3) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A-.030.

(4) An optometrist shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the optometrist's sexual needs.

(5) An optometrist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a former patient or key party if:

(a) There is a significant likelihood that the patient or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether an optometrist engaged, or attempted to engage, in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient;

(e) Communication between the health care provider and the patient between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the health care provider;

(g) Nature of the patient's health condition during and since the professional relationship;

(h) The patient's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

WSR 18-23-061

PERMANENT RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed November 16, 2018, 10:42 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The statute requires the rules to be effective on January 1, 2019.

Purpose: Chapters 246-918 WAC (allopathic) physician assistants and chapter 246-919 WAC (allopathic physicians) medical quality assurance commission, the medical quality assurance commission (commission) has adopted new sections, amendments, and repeal of sections to existing rule that establishes requirements and standards for prescribing opioid drugs by allopathic physicians and allopathic physician assistants. The adopted rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with the directives of ESHB 1427.

Citation of Rules Affected by this Order: New WAC 246-918-815, 246-918-820, 246-918-825, 246-918-830, 246-918-835, 246-918-840, 246-918-845, 246-918-850, 246-918-855, 246-918-860, 246-918-865, 246-918-870, 246-918-875, 246-918-880, 246-918-885, 246-918-890, 246-918-895, 246-918-900, 246-918-905, 246-918-910, 246-918-915, 246-918-920, 246-918-925, 246-918-930, 246-918-935, 246-919-865, 246-919-870, 246-919-875, 246-919-880, 246-919-885, 246-919-890, 246-919-895, 246-919-900, 246-919-905, 246-919-910, 246-919-915, 246-919-920, 246-919-925, 246-919-930, 246-919-935, 246-919-940, 246-919-945, 246-919-950, 246-919-955, 246-919-960, 246-919-965, 246-919-970, 246-919-975, 246-919-980 and 246-919-985; repealing WAC 236-918-803, 236-918-804, 236-918-805, 236-918-806, 236-918-807, 236-918-808, 236-918-809, 236-918-810, 236-918-811, 236-918-812, 236-918-813, 246-919-853, 246-919-854, 246-919-855, 246-919-856, 246-919-857, 246-919-858, 246-919-859, 246-919-860, 246-919-861, 246-919-862 and 246-919-863; and amending WAC 246-918-800, 246-918-801, 246-918-802, 246-919-850, 246-919-851, and 246-919-852.

Statutory Authority for Adoption: RCW 18.71.017, 18.71.800, and 18.71A.800.

Other Authority: ESHB 1427 (chapter 297, Laws of 2017), codified in part as RCW 18.71.800 and 18.71A.800.

Adopted under notice filed as WSR 18-15-055 on July 16, 2018.

Changes Other than Editing from Proposed to Adopted Version: The following nonsubstantial changes were adopted at the public hearing by the commission that differ from the proposed rules.

1. WAC 246-918-802(7) and 246-919-852(7), definitions. Final adopted language: "'Designee' means a licensed health care practitioner authorized by a prescriber to request and receive prescription monitoring program (PMP) data on their behalf." As a result of adding this definition, the commission deleted all references to "as defined in WAC 246-470-050" throughout the physician and physician assistant rules. Reasons for this change: A definition for "designee" was added as a new subsection (7). This term is used in rule so a definition is being added for clarification. The subsequent subsections were renumbered to reflect this addition.

Adding the definition of designee made the need for the phrase "as defined in WAC 246-470-050" no longer needed in the rest of the sections and was deleted.

2. WAC 246-918-895 (2)-(6), pain management specialist—Chronic pain. Final adopted language: "(2) If an allopathic physician, in accordance with WAC 246-919-945. (3) If an osteopathic physician, in accordance with WAC 246-853-750. (4) If a dentist, in accordance with WAC 246-817-965. (5) If a podiatric physician, in accordance with WAC 246-922-750. (6) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493." Reason for this change: The commission determined the MD and PA chapters should be substantially similar. Adding this new language makes them so.

3. WAC 246-918-802(13) and 246-919-852(13), definitions (formerly subsection (12) in the proposed rules, now adopted as renumbered subsection (13)). Final adopted language: "'Low-risk' is a category of patient at low risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, and dose of opioids of less than a fifty milligram morphine equivalent dose per day." Reason for this change: The commission determined adding "per day" to the end of the definition was necessary for clarification.

4. WAC 246-918-802(15) and 246-919-852(15), definitions (formerly subsection (14) in the proposed rules, now adopted as renumbered subsection (15)). Final adopted language: "'Moderate-risk' is a category of patient at moderate risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, past history of substance use disorder or abuse, aberrant behavior, and dose of opioids between fifty to ninety milligram morphine equivalent doses per day." Reason for this change: The commission determined adding "per day" to the end of the definition was necessary for clarification.

5. WAC 246-918-802(18) and 246-919-852(18), definitions (formerly subsection (17) in the proposed rules, now adopted as renumbered subsection (18)). Final adopted language: "'Opioid' means a drug that is either an opiate that is derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, tramadol, buprenorphine, and methadone when used to treat pain." Reason for this change: The commission determined adding "when used to treat pain" to the end of the definition was necessary for clarification.

6. WAC 246-918-820 Use of alternative modalities for pain treatment. Final adopted language: "The physician assistant shall exercise their professional judgment in selecting appropriate treatment modalities for acute nonoperative, acute perioperative, subacute, or chronic pain including the use of multimodal pharmacologic and nonpharmacologic therapy as an alternative to opioids whenever reasonable, clinically appropriate, evidence-based alternatives exist." WAC 246-919-870 Use of alternative modalities for pain treatment. Final adopted language: "The physician shall exercise their professional judgment in selecting appropriate treatment modalities for acute nonoperative, acute periopera-

tive, subacute, or chronic pain including the use of multimodal pharmacologic and nonpharmacologic therapy as an alternative to opioids whenever reasonable, clinically appropriate, evidence-based alternatives exist." Reason for change: The commission determined adding "or chronic pain" was necessary for clarification.

7. WAC 246-918-825(1), Continuing education requirements for opioid prescribing. Final adopted language: "To prescribe an opioid in Washington state, a physician assistant licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids or the opioid prescribing rules in this chapter." WAC 246-919-875(1), Continuing education requirements for opioid prescribing. Final adopted language: "To prescribe an opioid in Washington state, a physician licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids or the opioid prescribing rules in this chapter." Reason for this change: The commission determined adding "regarding best practices in the prescribing of opioids or" was necessary to add more options for providers to complete this CME requirement.

8. WAC 246-918-845 (2)(b) and 246-919-895 (2)(b), Patient evaluation and patient record—Subacute pain. Final adopted language: "The observed or reported effect on function or pain control forming the basis to continue prescribing opioids beyond the acute pain episode;". Reason for this change: The commission determined adding "or reported" was necessary for clarification.

9. WAC 246-918-850(2), Treatment plan—Subacute pain. Final adopted rule language: "During the subacute phase the physician assistant shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity." WAC 246-919-900(2), Treatment plan—Subacute pain. Final adopted rule language: "During the subacute phase the physician shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity." Reason for this change: The commission determined moving "During the subacute phase" to the beginning of the sentence was necessary for clarification.

10. WAC 246-918-855 (1)(c) and 246-919-905 (1)(c), Patient evaluation and patient record—Chronic pain. Final adopted language: "Current and relevant past treatments for pain, including opioids and other medications and their efficacy;". Reason for this change: The commission determined adding "and relevant" was necessary for clarification.

11. WAC 246-918-870(4) and 246-919-920(4), Periodic review—Chronic pain (formerly WAC 246-918-865(9) and 246-919-915(9)). Final adopted language: Subsections (9) in both MD and PA WAC 246-918-865 and 246-918-915 were moved to WAC 246-918-870(4) and 246-918-920(4), Periodic review—Chronic pain. No other changes were made. Reason for this change: WAC 246-918-865(9) and 246-919-915(9), Written agreement for treatment—Chronic pain were moved to WAC 246-918-870(4) and 246-919-920(4), Periodic review—Chronic pain, because the commission determined it aligned better with Periodic review—Chronic pain section.

12. WAC 246-918-800 through 246-918-935 and 246-919-850 through 246-919-985. Final adopted language: Changed the term "podiatrist" to "podiatric physician" throughout MD and PA chapters. Reason for this change: All references to podiatrist were changed to podiatric physician throughout the pain management sections because this is the proper term for these providers.

13. WAC 246-918-802(1) and 246-919-852(1), Definitions. Final adopted language: "'Aberrant behavior' means behavior that indicates current misuse, diversion, unauthorized use of alcohol or other controlled substances, or multiple early refills (renewals)." Reason for this change: The term "active opioid use disorder" was deleted from this definition because the commission determined opioid use disorder is not an aberrant behavior.

14. WAC 246-918-840(1), Treatment plan—Acute perioperative pain. Final adopted language: "The physician assistant should consider prescribing nonopioids as the first line of pain control in patients, unless not clinically appropriate, in accordance with the provisions of WAC 246-918-820." WAC 246-919-890(1), Treatment plan—Acute perioperative pain. Final adopted language: "The physician should consider prescribing nonopioids as the first line of pain control in patients, unless not clinically appropriate, in accordance with the provisions of WAC 246-919-870." Reason for this change: The word "shall" was changed to "should" for clarity and consistency with WAC 246-919-885(1).

15. WAC 246-918-870 (2)(c) Periodic review. Final adopted language: "If continuation or modification of medications for pain management treatment is necessary based on the physician assistant's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan." WAC 246-919-920 (2)(c), Periodic review. Final adopted language: "If continuation or modification of medications for pain management treatment is necessary based on the physician's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan." Reason for this change: The phrase "or maintenance of" was added for clarity to ensure that the goal for some patients is maintenance of pain level and functional level rather than improvement (progress).

16. WAC 246-918-870 (3)(b) and 246-919-920 (3)(b), Periodic review—Chronic pain. Final adopted language: "Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control;". Reason for this change: The phrase "or patient report from reliable patients" was added because it clarified accepted sources of information.

17. WAC 246-918-885 Consultation—Exemptions for exigent and special circumstances. Final rule language: WAC 246-918-885, "A physician assistant is not required to consult with a pain management specialist as defined in WAC 246-918-895 when the physician assistant has documented adherence to all standards of practice as defined in WAC 246-918-855 through 246-918-875 and when one or more of the following conditions are met:". WAC 246-919-935 Consultation—Exemptions for exigent and special circumstances. Final rule language: "A physician is not required to consult with a pain management specialist as defined in WAC 246-919-945 when the physician has documented adherence to all

standards of practice as defined in WAC 246-919-905 through 246-919-940, and when one or more of the following conditions are met:". Reason for this change: Updated the WAC numbers referenced in the first paragraph to align with the new WAC numbers used in the revised pain management sections.

18. WAC 246-918-915(2), Episodic care of chronic opioid patients. Final adopted rule language: "A physician assistant providing episodic care to a patient who the physician assistant knows is being treated with opioids for chronic pain should provide additional analgesics, including opioids when appropriate, to adequately treat acute pain." WAC 246-919-965(2), Episodic care of chronic opioid patients. Final adopted rule language: "A physician providing episodic care to a patient who the physician knows is being treated with opioids for chronic pain should provide additional analgesics, including opioids when appropriate, to adequately treat acute pain." Reason for this change: The phrase "when appropriate" was added to clarify that opioids should be prescribed only when appropriate.

19. WAC 246-918-925(1), Coprescribing of opioids for patients receiving medication assisted treatment. Final adopted language: "Where practicable, the physician assistant providing acute nonoperative pain or acute perioperative pain treatment to a patient who is known to be receiving MAT medications shall prescribe opioids for pain relief when appropriate for pain relief either in consultation with a MAT prescribing practitioner or a pain specialist." WAC 246-919-975(1), Coprescribing of opioids for patients receiving medication assisted treatment. Final adopted language: "Where practicable, the physician providing acute nonoperative pain or acute perioperative pain treatment to a patient who is known to be receiving MAT medications shall prescribe opioids for pain relief when appropriate for pain relief either in consultation with a MAT prescribing practitioner or a pain specialist." Reason for this change: The phrase "when appropriate" was added to clarify that opioids should be prescribed only when appropriate.

20. WAC 246-918-801 Exclusions. Final adopted language: "WAC 246-918-800 through 246-918-935 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care;
- (3) The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or
- (4) The provision of procedural medications."

Reason for this change: The commission determined the MD and PA chapters should be substantially similar. Adding this new language to the PA sections makes them so.

21. WAC 246-919-895 (2)(h), final adopted language: "The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable." Reason for this change: The "; and" should have been removed as it was inadvertently left in rule after editing subsection (2).

A final cost-benefit analysis is available by contacting Daidria Amelia Underwood, P.O. Box 47866, phone 360-236-2727, fax 360-236-2795, TTY 360-833-6388 or 711,

email daidria.underwood@doh.wa.gov, web site wmc.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 50, Amended 6, Repealed 22.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 50, Amended 6, Repealed 22.

Date Adopted: August 22, 2018.

Melanie de Leon
Executive Director

OPIOID PRESCRIBING—GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 11-12-025, filed 5/24/11, effective 1/2/12)

WAC 246-918-800 (~~(Pain management—)~~) Intent and scope. (~~(These)~~) The rules in WAC 246-918-800 through 246-918-935 govern the (~~(use)~~) prescribing of opioids in the treatment of (~~(patients for chronic noncancer)~~) pain.

(~~(Nothing in these rules in any way restricts the current scope of practice of physician assistants as set forth in chapters 18.71A and 18.57A RCW and the working agreements between the physician and physician assistant, which may include pain management.)~~)

The Washington state medical quality assurance commission (commission) recognizes that principles of quality medical practice dictate that the people of the state of Washington have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity, mortality, and costs associated with untreated or inappropriately treated pain. For the purposes of (~~(this)~~) these rules, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The commission encourages physician assistants to view pain management as a part of quality medical practice for all patients with pain, including acute (~~(or)~~), perioperative, subacute, and chronic (~~(and it is especially urgent for patients who experience pain as a result of terminal illness)~~) pain. All physician assistants should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing (~~(controlled substances)~~) opioids, including co-occurring prescriptions. Accordingly, (~~(this rule has been~~

~~developed to)~~ these rules clarify the commission's position on pain control, particularly as related to the use of controlled substances, to alleviate physician assistant uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from a physician assistant's lack of knowledge about pain management. Fears of investigation or sanction by federal, state, (~~(and)~~) or local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician assistant's responsibility. As such, the commission will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The commission recognizes that controlled substances including opioids (~~(analgesics)~~) may be essential in the treatment of acute, subacute, perioperative, or chronic pain due to disease, illness, trauma, or surgery (~~(and chronic pain, whether due to cancer or noncancer origins)~~). The commission will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and nonpharmacologic modalities according to the judgment of the physician assistant. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration, impact of the pain, and treatment outcomes. Physician assistants should recognize that tolerance and physical dependence are normal consequences of sustained use of opioids (~~(analgesics)~~) and are not the same as (~~(addiction)~~) opioid use disorder.

The commission is obligated under the laws of the state of Washington to protect the public health and safety. The commission recognizes that the use of opioids (~~(analgesics)~~) for other than legitimate medical purposes poses a threat to the individual and society (~~(and that)~~). The inappropriate prescribing of controlled substances, including opioids (~~(analgesics)~~), may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the commission expects that physician assistants incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Physician assistants should not fear disciplinary action from the commission for ordering, prescribing, dispensing or administering controlled substances, including opioids (~~(analgesics)~~), for a legitimate medical purpose and in the course of professional practice. The commission will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician assistant-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.

The commission will judge the validity of the physician assistant's treatment of the patient based on available docu-

mentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

These rules are designed to assist ~~((practitioners))~~ physician assistants in providing appropriate medical care for patients. ~~((They are not inflexible rules or rigid practice requirements and are not intended, nor should they be used, to establish a legal standard of care outside the context of the medical quality assurance committee's jurisdiction.~~

~~The ultimate judgment regarding the propriety of any specific procedure or course of action must be made by the practitioner based on all the circumstances presented. Thus, an approach that differs from the rules, standing alone, does not necessarily imply that the approach was below the standard of care. To the contrary, a conscientious practitioner may responsibly adopt a course of action different from that set forth in the rules when, in the reasonable judgment of the practitioner, such course of action is indicated by the condition of the patient, limitations of available resources, or advances in knowledge or technology subsequent to publication of these rules. However, a practitioner who employs an approach substantially different from these rules is advised to document in the patient record information sufficient to justify the approach taken.)~~

The practice of medicine involves not only the science, but also the art of dealing with the prevention, diagnosis, alleviation, and treatment of disease. The variety and complexity of human conditions make it impossible to always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment.

Therefore, it should be recognized that adherence to these rules will not ~~((assure))~~ guarantee an accurate diagnosis or a successful outcome. The sole purpose of these rules is to assist ~~((practitioners))~~ physician assistants in following a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care.

For more specific best practices, the physician assistant may refer to clinical practice guidelines including, but not limited to, those produced by the agency medical directors' group, the Centers for Disease Control and Prevention, or the Bree Collaborative.

AMENDATORY SECTION (Amending WSR 11-12-025, filed 5/24/11, effective 1/2/12)

WAC 246-918-801 Exclusions. ~~((The rules adopted under))~~ WAC 246-918-800 through ~~((246-918-813))~~ 246-918-935 do not apply to:

(1) ~~((To))~~ The treatment of patients with cancer-related pain;

(2) The provision of palliative, hospice, or other end-of-life care; ~~((or~~

~~((or~~ To the management of acute pain caused by an injury or surgical procedure.)

(3) The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or

(4) The provision of procedural medications.

AMENDATORY SECTION (Amending WSR 11-12-025, filed 5/24/11, effective 1/2/12)

WAC 246-918-802 Definitions. The definitions ~~((in this section))~~ apply ~~((in))~~ to WAC 246-918-800 through ~~((246-918-813))~~ 246-918-935 unless the context clearly requires otherwise.

(1) "Aberrant behavior" means behavior that indicates current misuse, diversion, unauthorized use of alcohol or other controlled substances, or multiple early refills (renewals).

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. ((It is generally time limited, often less than three months in duration, and usually less than six months.

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

~~((3))~~ Acute pain is of six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means tests of urine, hair, or other biological samples for various drugs and metabolites.

(4) "Cancer-related pain" means pain that is an unpleasant, persistent, subjective sensory and emotional experience associated with actual or potential tissue injury or damage or described in such terms and is related to cancer or cancer treatment that interferes with usual functioning.

(5) "Chronic ((noneaneer)) pain" means a state in which ((noneaneer)) pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. Chronic pain is considered to be pain that persists for more than twelve weeks.

~~((4))~~ "Comorbidity" (6) "Comorbidities" means a preexisting or coexisting physical or psychiatric disease or condition.

~~((5))~~ (7) "Designee" means a licensed health care practitioner authorized by a prescriber to request and receive prescription monitoring program (PMP) data on their behalf.

(8) "Episodic care" means noncontinuing medical or dental care provided by a ((practitioner)) physician assistant other than the designated primary ((care practitioner in the acute care setting, for example, urgent care or emergency department.

~~((6))~~ prescriber for a patient with chronic pain.

(9) "High dose" means a ninety milligram morphine equivalent dose (MED), or more, per day.

(10) "High-risk" is a category of patient at high risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral

comorbidities, polypharmacy, current substance use disorder or abuse, aberrant behavior, dose of opioids, or the use of any concurrent central nervous system depressant.

(11) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less. ~~(Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities).~~

((7)) (12) "Hospital" as defined in chapters 70.41, 71.12 RCW, and RCW 72.23.020.

(13) "Low-risk" is a category of patient at low risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, and dose of opioids of less than a fifty milligram morphine equivalent dose per day.

(14) "Medication assisted treatment" or "MAT" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(15) "Moderate-risk" is a category of patient at moderate risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, past history of substance use disorder or abuse, aberrant behavior, and dose of opioids between fifty to ninety milligram morphine equivalent doses per day.

(16) "Morphine equivalent dose" or "MED" means a conversion of various opioids to a morphine equivalent dose ~~(by the use of accepted)~~ using the agency medical directors group or other conversion table ~~(s)~~ approved by the commission. MED is considered the same as morphine milligram equivalent or MME.

((8)) (17) "Multidisciplinary pain clinic" means ~~(a clinic or office that provides comprehensive pain management and includes care provided by multiple available disciplines or treatment modalities, for example, medical care through physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, and physical therapy, occupational therapy, or other complementary therapies.~~

(9)) health care delivery facility staffed by physicians of different specialties and other nonphysician health care providers who specialize in the diagnosis and management of patients with chronic pain.

(18) "Opioid" means a drug that is either an opiate that is derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, tramadol, buprenorphine, and methadone when used to treat pain.

(19) "Palliative care" means care that maintains or improves the quality of life of patients and their families facing serious, advanced, or life-threatening illness. ~~(With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and~~

~~to the provision of psychological, spiritual, and emotional support.)~~

(20) "Perioperative pain" means acute pain that occurs surrounding the performance of surgery.

(21) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW. Other jurisdictions may refer to this as the prescription drug monitoring program or PDMP.

(22) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(23) "Refill" or "renewal" means a second or subsequent filling of a previously issued prescription.

(24) "Subacute pain" is considered to be a continuation of pain that is six to twelve weeks in duration.

(25) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance that is a normal physiological consequence of extended opioid therapy for pain. It is characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

NEW SECTION

WAC 246-918-815 Patient notification, secure storage, and disposal. (1) The physician assistant shall ensure the patient is provided the following information at the first issuance of a prescription for opioids and at the transition from acute to subacute, and subacute to chronic:

(a) Risks associated with the use of opioids as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) The safe and secure storage of opioid prescriptions; and

(c) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs.

(2) This requirement may be satisfied with a document provided by the department of health.

NEW SECTION

WAC 246-918-820 Use of alternative modalities for pain treatment. The physician assistant shall exercise their professional judgment in selecting appropriate treatment modalities for acute nonoperative, acute perioperative, subacute, or chronic pain including the use of multimodal pharmacologic and nonpharmacologic therapy as an alternative to opioids whenever reasonable, clinically appropriate, evidence-based alternatives exist.

NEW SECTION

WAC 246-918-825 Continuing education requirements for opioid prescribing. (1) To prescribe an opioid in Washington state, a physician assistant licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids or the opioid prescribing rules in this chapter. The continuing education must be at least one hour in length.

(2) The physician assistant shall complete the one-time continuing education requirement described in subsection (1) of this section by the end of the physician assistant's first full continuing education reporting period after January 1, 2019, or during the first full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing training in prescribing of opioids count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

OPIOID PRESCRIBING—ACUTE NONOPERATIVE PAIN AND ACUTE PERIOPERATIVE PAIN

NEW SECTION

WAC 246-918-830 Patient evaluation and patient record—Acute nonoperative pain. Prior to issuing an opioid prescription for acute nonoperative pain or acute perioperative pain, the physician assistant shall:

(1) Conduct and document an appropriate history and physical examination, including screening for risk factors for overdose and severe postoperative pain;

(2) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

(3) Inquire about any other medications the patient is prescribed or is taking.

NEW SECTION

WAC 246-918-835 Treatment plan—Acute nonoperative pain. The physician assistant shall comply with the requirements in this section when prescribing opioids for acute nonoperative pain.

(1) The physician assistant should consider prescribing nonopioids as the first line of pain control in patients unless not clinically appropriate in accordance with the provisions of WAC 246-918-820.

(2) The physician assistant, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-918-935.

(3) If the physician assistant prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids. A three-day supply or less will often be sufficient. The physician assistant shall not prescribe beyond a seven-day supply without clinical documentation in the patient record to justify the need for such a quantity.

(4) The physician assistant shall reevaluate the patient who does not follow the expected course of recovery, and reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This may include:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional indicated diagnostic evaluations.

(6) If a prescription results in the patient receiving a combination of opioids with a sedative medication listed in WAC 246-918-920, such prescribing must be in accordance with WAC 246-918-920.

(7) Long-acting or extended release opioids are not indicated for acute nonoperative pain.

(8) Medication assisted treatment medications must not be discontinued when treating acute pain, except as consistent with the provisions of WAC 246-918-925.

(9) If the physician assistant elects to treat a patient with opioids beyond the six-week time period of acute nonoperative pain, the physician assistant shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain in WAC 246-918-845 and 246-918-850 shall apply.

NEW SECTION

WAC 246-918-840 Treatment plan—Acute perioperative pain. The physician assistant shall comply with the requirements in this section when prescribing opioids for perioperative pain.

(1) The physician assistant should consider prescribing nonopioids as the first line of pain control in patients unless not clinically appropriate in accordance with the provisions of WAC 246-918-820.

(2) The physician assistant, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-918-935.

(3) If the physician assistant prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids. A three-day supply or less will often be sufficient. The physician assistant shall not prescribe beyond a fourteen-day supply from the time of discharge without clinical documentation in the patient record to justify the need for such a quantity.

(4) The physician assistant shall reevaluate a patient who does not follow the expected course of recovery and reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control should include objectives or metrics to be used to determine treatment success if opioids are to be continued. This may include:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional indicated diagnostic evaluations or other treatments.

(6) If a prescription results in the patient receiving a combination of opioids with a sedative medication listed in WAC 246-918-920, such prescribing must be in accordance with WAC 246-918-920.

(7) Long-acting or extended release opioids are not indicated for acute perioperative pain.

(8) Medication assisted treatment medications must not be discontinued when treating acute perioperative pain, except as consistent with the provisions of WAC 246-918-925.

(9) If the physician assistant elects to treat a patient with opioids beyond the six-week time period of acute perioperative pain, the physician assistant shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain, WAC 246-918-845 and 246-918-850, shall apply unless there is documented improvement in function or pain control and there is a documented plan and timing for discontinuation of all opioid medications.

OPIOID PRESCRIBING—SUBACUTE PAIN

NEW SECTION

WAC 246-918-845 Patient evaluation and patient record—Subacute pain. The physician assistant shall comply with the requirements in this section when prescribing opioids for subacute pain.

(1) Prior to issuing an opioid prescription for subacute pain, the physician assistant shall assess the rationale for continuing opioid therapy:

- (a) Conduct an appropriate history and physical examination;
- (b) Reevaluate the nature and intensity of the pain;
- (c) Conduct, or cause their designee to conduct, a query of the PMP in accordance with the provisions of WAC 246-918-935;
- (d) Screen the patient's level of risk for aberrant behavior and adverse events related to opioid therapy;
- (e) Obtain a biological specimen test if the patient's functional status is deteriorating or if pain is escalating; and
- (f) Screen or refer the patient for further consultation for psychosocial factors if the patient's functional status is deteriorating or if pain is escalating.

(2) The physician assistant treating a patient for subacute pain with opioids shall ensure that, at a minimum, the following is documented in the patient record:

- (a) The presence of one or more recognized diagnoses or indications for the use of opioid pain medication;
- (b) The observed or reported effect on function or pain control forming the basis to continue prescribing opioids beyond the acute pain episode;
- (c) Pertinent concerns discovered in the PMP;
- (d) An appropriate pain treatment plan including the consideration of, or attempts to use, nonpharmacological modalities and nonopioid therapy;
- (e) The action plan for any aberrant biological specimen testing results and the risk-benefit analysis if opioids are to be continued;
- (f) Results of psychosocial screening or consultation;
- (g) Results of screening for the patient's level of risk for aberrant behavior and adverse events related to opioid therapy, and mitigation strategies; and

(h) The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable.

(3) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional indicated diagnostic evaluations or other treatments.

NEW SECTION

WAC 246-918-850 Treatment plan—Subacute pain. The physician assistant, having recognized the progression of a patient from the acute nonoperative or acute perioperative phase to the subacute phase shall develop an opioid treatment plan.

(1) If tapering has not begun prior to the six- to twelve-week subacute phase, the physician assistant shall reevaluate the patient. Based on effect on function or pain control, the physician assistant shall consider whether opioids will be continued, tapered, or discontinued.

(2) If the physician assistant prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain that is severe enough to require opioids. During the subacute phase the physician assistant shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity.

(3) If a prescription results in the patient receiving a combination of opioids with a sedative medication listed in WAC 246-918-920, such prescribing must be in accordance with WAC 246-918-920.

(4) If the physician assistant elects to treat a patient with opioids beyond the six- to twelve-week subacute phase, the physician assistant shall document in the patient record that the patient is transitioning from subacute pain to chronic pain. Rules governing the treatment of chronic pain, WAC 246-918-855 through 246-918-905, shall apply.

OPIOID PRESCRIBING—CHRONIC PAIN MANAGEMENT

NEW SECTION

WAC 246-918-855 Patient evaluation and patient record—Chronic pain. When the patient enters the chronic pain phase, the patient shall be reevaluated as if presenting with a new disease. The physician assistant shall include in the patient's record:

- (1) An appropriate history including:
 - (a) The nature and intensity of the pain;
 - (b) The effect of pain on physical and psychosocial function;
 - (c) Current and relevant past treatments for pain, including opioids and other medications and their efficacy; and
 - (d) Review of comorbidities with particular attention to psychiatric and substance use.

- (2) Appropriate physical examination.
- (3) Ancillary information and tools to include:
 - (a) Review of the PMP to identify any medications received by the patient in accordance with the provisions of WAC 246-919-985;
 - (b) Any pertinent diagnostic, therapeutic, and laboratory results;
 - (c) Pertinent consultations; and
 - (d) Use of a risk assessment tool that is a professionally developed, clinically recommended questionnaire appropriate for characterizing a patient's level of risk for opioid or other substance use disorders to assign the patient to a high-, moderate-, or low-risk category.
- (4) Assessment. The physician assistant must document medical decision making to include:
 - (a) Pain related diagnosis, including documentation of the presence of one or more recognized indications for the use of pain medication;
 - (b) Consideration of the risks and benefits of chronic opioid treatment for the patient;
 - (c) The observed or reported effect on function or pain control forming the basis to continue prescribing opioids; and
 - (d) Pertinent concerns discovered in the PMP.
- (5) Treatment plan as provided in WAC 246-918-860.

NEW SECTION

WAC 246-918-860 Treatment plan—Chronic pain.

The physician assistant, having recognized the progression of a patient from the subacute phase to the chronic phase, shall develop an opioid treatment plan as follows:

- (1) Treatment plan and objectives including:
 - (a) Documentation of any medication prescribed;
 - (b) Biologic specimen testing ordered;
 - (c) Any labs, diagnostic evaluations, referrals, or imaging ordered;
 - (d) Other planned treatments; and
 - (e) Written agreement for treatment as provided in WAC 246-918-865.
- (2) The physician assistant shall complete patient notification in accordance with the provisions of WAC 246-918-815 or provide this information in the written agreement.

NEW SECTION

WAC 246-918-865 Written agreement for treatment—Chronic pain. The physician assistant shall use a written agreement that outlines the patient's responsibilities for opioid therapy. This written agreement for treatment must include the following provisions:

- (1) The patient's agreement to provide samples for biological specimen testing when requested by the physician assistant;
- (2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;
- (3) Reasons for which opioid therapy may be discontinued;
- (4) The requirement that all opioid prescriptions for chronic pain are provided by a single prescriber or a single

clinic, except as provided in WAC 246-918-915 for episodic care;

- (5) The requirement that all opioid prescriptions for chronic pain are to be dispensed by a single pharmacy or pharmacy system whenever possible;
- (6) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;
- (7) A violation of the agreement may result in a tapering or discontinuation of the prescription; and
- (8) The patient's responsibility to safeguard all medications and keep them in a secure location.

NEW SECTION

WAC 246-918-870 Periodic review—Chronic pain.

(1) The physician assistant shall periodically review the course of treatment for chronic pain. The frequency of visits, biological testing, and PMP queries in accordance with the provisions of WAC 246-918-935, must be determined based on the patient's risk category:

- (a) For a high-risk patient, at least quarterly;
- (b) For a moderate-risk patient, at least semiannually;
- (c) For a low-risk patient, at least annually;
- (d) Immediately upon indication of concerning aberrant behavior; and
- (e) More frequently at the physician assistant's discretion.

(2) During the periodic review, the physician assistant shall determine:

- (a) The patient's compliance with any medication treatment plan;
 - (b) If pain, function, and quality of life have improved, diminished, or are maintained; and
 - (c) If continuation or modification of medications for pain management treatment is necessary based on the physician assistant's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan.
- (3) Periodic patient evaluations must also include:
- (a) History and physical examination related to the pain;
 - (b) Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control; and

(c) Review of the Washington state PMP at a frequency determined by the patient's risk category in accordance with the provisions of WAC 246-918-935 and subsection (1) of this section.

(4) If the patient violates the terms of the agreement, the violation and the physician assistant's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-918-875 Long-acting opioids—Chronic pain. Long-acting opioids should only be prescribed by a physician assistant who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. The physician assistant prescribing long-

acting opioids should have a one-time completion of at least four hours of continuing education relating to this topic.

NEW SECTION

WAC 246-918-880 Consultation—Recommendations and requirements—Chronic pain. (1) The physician assistant shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic pain patients who are under eighteen years of age or who are potential high-risk patients.

(2) The mandatory consultation threshold is one hundred twenty milligrams MED. In the event a physician assistant prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED per day, a consultation with a pain management specialist as described in WAC 246-918-895 is required, unless the consultation is exempted under WAC 246-918-885 or 246-918-890.

(3) The mandatory consultation must consist of at least one of the following:

(a) An office visit with the patient and the pain management specialist;

(b) A telephone, electronic, or in-person consultation between the pain management specialist and the physician assistant;

(c) An audio-visual evaluation conducted by the pain management specialist remotely where the patient is present with either the physician assistant or a licensed health care practitioner designated by the physician assistant or the pain management specialist; or

(d) Other chronic pain evaluation services as approved by the commission.

(4) A physician assistant shall document each consultation with the pain management specialist.

NEW SECTION

WAC 246-918-885 Consultation—Exemptions for exigent and special circumstances—Chronic pain. A physician assistant is not required to consult with a pain management specialist as defined in WAC 246-918-895 when the physician assistant has documented adherence to all standards of practice as defined in WAC 246-918-855 through 246-918-875 and when one or more of the following conditions are met:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain, which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with an expected return to their baseline dosage level or below;

(3) The physician assistant documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalent dose (MED) per day without first obtaining a consultation; or

(4) The physician assistant documents the patient's pain and function are stable and the patient is on a nonescalating dosage of opioids.

NEW SECTION

WAC 246-918-890 Consultation—Exemptions for the physician assistant—Chronic pain. The physician assistant is exempt from the consultation requirement in WAC 246-918-880 if one or more of the following qualifications are met:

(1) The physician assistant is a pain management specialist under WAC 246-918-895;

(2) The physician assistant has successfully completed a minimum of twelve category I continuing education hours on chronic pain management within the previous four years. At least two of these hours must be dedicated to substance use disorders;

(3) The physician assistant is a pain management physician assistant working in a multidisciplinary chronic pain treatment center or a multidisciplinary academic research facility; or

(4) The physician assistant has a minimum of three years of clinical experience in a chronic pain management setting, and at least thirty percent of their current practice is the direct provision of pain management care.

NEW SECTION

WAC 246-918-895 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If an allopathic physician assistant or osteopathic physician assistant must have a delegation agreement with a physician pain management specialist and meets the educational requirements and practice requirements listed below:

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for an allopathic physician assistant or the Washington state board of osteopathic medicine and surgery for an osteopathic physician assistant;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the physician assistant's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) If an allopathic physician, in accordance with WAC 246-919-945.

(3) If an osteopathic physician, in accordance with WAC 246-853-750.

(4) If a dentist, in accordance with WAC 246-817-965.

(5) If a podiatric physician, in accordance with WAC 246-922-750.

(6) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

NEW SECTION

WAC 246-918-900 Tapering considerations—Chronic pain. The physician assistant shall consider tapering or referral for a substance use disorder evaluation when:

(1) The patient requests;

- (2) The patient experiences a deterioration in function or pain;
- (3) The patient is noncompliant with the written agreement;
- (4) Other treatment modalities are indicated;
- (5) There is evidence of misuse, abuse, substance use disorder, or diversion;
- (6) The patient experiences a severe adverse event or overdose;
- (7) There is unauthorized escalation of doses; or
- (8) The patient is receiving an escalation in opioid dosage with no improvement in their pain or function.

NEW SECTION

WAC 246-918-905 Patients with chronic pain, including those on high doses of opioids, establishing a relationship with a new physician assistant. (1) When a patient receiving chronic opioid pain medications changes to a new physician assistant, it is normally appropriate for the new physician assistant to initially maintain the patient's current opioid doses. Over time, the physician assistant may evaluate if any tapering or other adjustments in the treatment plan can or should be done.

(2) A physician assistant's treatment of a new high dose chronic pain patient is exempt from the mandatory consultation requirements of WAC 246-918-880 if:

- (a) The patient was previously being treated with a dosage of opioids in excess of a one hundred twenty milligram MED for chronic pain under an established written agreement for treatment of the same chronic condition or conditions;
- (b) The patient's dose is stable and nonescalating;
- (c) The patient has a history of compliance with treatment plans and written agreements documented by medical records and PMP queries; and
- (d) The patient has documented functional stability, pain control, or improvements in function or pain control at the presenting opioid dose.

(3) With respect to the treatment of a new patient under subsection (1) or (2) of this section, this exemption applies for the first three months of newly established care, after which the requirements of WAC 246-918-880 shall apply.

OPIOID PRESCRIBING—SPECIAL POPULATIONS

NEW SECTION

WAC 246-918-910 Special populations—Children or adolescent patients, pregnant patients, and aging populations. (1) Children or adolescent patients. In the treatment of pain for children or adolescent patients, the physician assistant shall treat pain in a manner equal to that of an adult but must account for the weight of the patient and adjust the dosage prescribed accordingly.

(2) Pregnant patients. The physician assistant shall not initiate opioid detoxification without consultation with a provider with expertise in addiction medicine. Medication assisted treatment for opioids, such as methadone or buprenorphine, must not be discontinued during pregnancy without consultation with a MAT prescribing practitioner.

(3) Aging populations. As people age, their sensitivities to and metabolizing of opioids may change. The physician assistant shall consider the distinctive needs of patients who are sixty-five years of age or older and who have been on chronic opioid therapy or who are initiating opioid treatment.

NEW SECTION

WAC 246-918-915 Episodic care of chronic opioid patients. (1) When providing episodic care for a patient who the physician assistant knows is being treated with opioids for chronic pain, such as for emergency or urgent care, the physician assistant, or their designee, shall review the PMP and document their review and any concerns.

(2) A physician assistant providing episodic care to a patient who the physician assistant knows is being treated with opioids for chronic pain should provide additional analgesics, including opioids when appropriate, to adequately treat acute pain. If opioids are provided, the physician assistant shall limit the use of opioids to the minimum amount necessary to control the acute pain until the patient can receive care from the practitioner who is managing the patient's chronic pain.

(3) The episodic care physician assistant shall coordinate care with the patient's chronic pain treatment practitioner, if possible.

OPIOID PRESCRIBING—COPRESCRIBING

NEW SECTION

WAC 246-918-920 Coprescribing of opioids with certain medications. (1) The physician assistant shall not knowingly prescribe opioids in combination with the following medications without documentation of medical decision making:

- (a) Benzodiazepines;
- (b) Barbiturates;
- (c) Sedatives;
- (d) Carisoprodol; or
- (e) Nonbenzodiazepine hypnotics.

(2) If, because of a prior prescription by another provider, a prescription written by a physician assistant results in a combination of opioids and medications described in subsection (1) of this section, the physician assistant issuing the new prescription shall consult with the other prescriber to establish a patient care plan surrounding these medications. This provision does not apply to emergency care.

NEW SECTION

WAC 246-918-925 Coprescribing of opioids for patients receiving medication assisted treatment. (1) Where practicable, the physician assistant providing acute nonoperative pain or acute perioperative pain treatment to a patient who is known to be receiving MAT medications shall prescribe opioids when appropriate for pain relief either in consultation with a MAT prescribing practitioner or a pain specialist.

(2) The physician assistant providing acute nonoperative pain or acute perioperative pain treatment shall not discon-

tinue MAT medications without documentation of the reason for doing so, nor shall the use of these medications be used to deny necessary operative intervention.

NEW SECTION

WAC 246-918-930 Coprescribing of naloxone. The opioid prescribing physician assistant shall confirm or provide a current prescription for naloxone when opioids are prescribed to a high-risk patient.

OPIOID PRESCRIBING—PRESCRIPTION MONITORING PROGRAM

NEW SECTION

WAC 246-918-935 Prescription monitoring program—Required registration, queries, and documentation. (1) The physician assistant shall register to access the PMP or demonstrate proof of having assured access to the PMP if they prescribe Schedule II-V medications in Washington state.

(2) The physician assistant is permitted to delegate performance of a required PMP query to an authorized designee.

(3) At a minimum, the physician assistant shall ensure a PMP query is performed prior to the prescription of an opioid or of a medication listed in WAC 246-918-920 at the following times:

(a) Upon the first refill or renewal of an opioid prescription for acute nonoperative pain or acute perioperative pain;

(b) The time of transition from acute to subacute pain; and

(c) The time of transition from subacute to chronic pain.

(4) For chronic pain management, the physician assistant shall ensure a PMP query is performed at a minimum frequency determined by the patient's risk assessment, as follows:

(a) For a high-risk patient, a PMP query shall be completed at least quarterly;

(b) For a moderate-risk patient, a PMP query shall be completed at least semiannually; and

(c) For a low-risk patient, a PMP query shall be completed at least annually.

(5) The physician assistant shall ensure a PMP query is performed for any chronic pain patient immediately upon identification of aberrant behavior.

(6) The physician assistant shall ensure a PMP query is performed when providing episodic care to a patient who the physician assistant knows to be receiving opioids for chronic pain, in accordance with WAC 246-918-915.

(7) If the physician assistant is using an electronic medical record (EMR) that integrates access to the PMP into the workflow of the EMR, the physician assistant shall ensure a PMP query is performed for all prescriptions of opioids and medications listed in WAC 246-918-920.

(8) For the purposes of this section, the requirement to consult the PMP does not apply when the PMP or the EMR cannot be accessed by the physician assistant or their designee due to a temporary technological or electrical failure.

(9) Pertinent concerns discovered in the PMP shall be documented in the patient record.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-918-803 Patient evaluation.

WAC 246-918-804 Treatment plan.

WAC 246-918-805 Informed consent.

WAC 246-918-806 Written agreement for treatment.

WAC 246-918-807 Periodic review.

WAC 246-918-808 Long-acting opioids, including methadone.

WAC 246-918-809 Episodic care.

WAC 246-918-810 Consultation—Recommendations and requirements.

WAC 246-918-811 Consultation—Exemptions for exigent and special circumstances.

WAC 246-918-812 Consultation—Exemptions for the physician assistant.

WAC 246-918-813 Pain management specialist.

((PAIN MANAGEMENT)) OPIOID PRESCRIBING—GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 11-12-025, filed 5/24/11, effective 1/2/12)

WAC 246-919-850 ((Pain management—))Intent and scope. ((These)) The rules in WAC 246-919-850 through 246-919-985 govern the ((use)) prescribing of opioids in the treatment of ((patients for chronic noncancer)) pain.

The Washington state medical quality assurance commission (commission) recognizes that principles of quality medical practice dictate that the people of the state of Washington have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity, mortality, and costs associated with untreated or inappropriately treated pain. For the purposes of ((this)) these rules, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The commission encourages physicians to view pain management as a part of quality medical practice for all patients with pain((;)) including acute ((or)), perioperative, subacute, and chronic((- and it is especially urgent for patients who experience)) pain ((as a result of terminal illness)). All physicians should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as become knowledgeable about the statutory requirements for prescribing ((controlled substances)) opi-

oids including co-occurring prescriptions. Accordingly, ~~((this rule has been developed to))~~ these rules clarify the commission's position on pain control, particularly as related to the use of controlled substances, to alleviate physician uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from a physician's lack of knowledge about pain management. Fears of investigation or sanction by federal, state, ~~((and))~~ or local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician's responsibility. As such, the commission will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The commission recognizes that controlled substances including opioids ~~((analgesics))~~ may be essential in the treatment of acute, subacute, perioperative, or chronic pain due to disease, illness, trauma or surgery ~~((and chronic pain, whether due to cancer or noncancer origins))~~. The commission will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain.

The medical management of pain should consider current clinical knowledge ~~((and)),~~ scientific research, and the use of pharmacologic and nonpharmacologic modalities according to the judgment of the physician. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration, impact of the pain, and treatment outcomes. Physicians should recognize that tolerance and physical dependence are normal consequences of sustained use of opioids ~~((analgesics))~~ and are not the same as ~~((addiction))~~ opioid use disorder.

The commission is obligated under the laws of the state of Washington to protect the public health and safety. The commission recognizes that the use of opioids ~~((analgesics))~~ for other than legitimate medical purposes poses a threat to the individual and society ~~((and that))~~. The inappropriate prescribing of controlled substances, including opioids ~~((analgesics))~~, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the commission expects that physicians incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Physicians should not fear disciplinary action from the commission for ordering, prescribing, dispensing or administering controlled substances, including opioids ~~((analgesics))~~, for a legitimate medical purpose and in the course of professional practice. The commission will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.

The commission will judge the validity of the physician's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

These rules are designed to assist ~~((practitioners))~~ physicians in providing appropriate medical care for patients. ~~((They are not inflexible rules or rigid practice requirements and are not intended, nor should they be used, to establish a legal standard of care outside the context of the medical quality assurance committee's jurisdiction.~~

~~The ultimate judgment regarding the propriety of any specific procedure or course of action must be made by the practitioner based on all the circumstances presented. Thus, an approach that differs from the rules, standing alone, does not necessarily imply that the approach was below the standard of care. To the contrary, a conscientious practitioner may responsibly adopt a course of action different from that set forth in the rules when, in the reasonable judgment of the practitioner, such course of action is indicated by the condition of the patient, limitations of available resources, or advances in knowledge or technology subsequent to publication of these rules. However, a practitioner who employs an approach substantially different from these rules is advised to document in the patient record information sufficient to justify the approach taken.)~~

The practice of medicine involves not only the science, but also the art of dealing with the prevention, diagnosis, alleviation, and treatment of disease. The variety and complexity of human conditions make it impossible to always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment.

Therefore, it should be recognized that adherence to these rules will not ~~((assure))~~ guarantee an accurate diagnosis or a successful outcome. The sole purpose of these rules is to assist ~~((practitioners))~~ physicians in following a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care.

For more specific best practices, the physician may refer to clinical practice guidelines including, but not limited to, those produced by the agency medical directors' group, the Centers for Disease Control and Prevention, or the Bree Collaborative.

AMENDATORY SECTION (Amending WSR 11-12-025, filed 5/24/11, effective 1/2/12)

WAC 246-919-851 Exclusions. ~~((The rules adopted under))~~ WAC 246-919-850 through ~~((246-919-863))~~ 246-919-985 do not apply to:

- (1) ~~((The))~~ The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care; ~~((or~~
- (2) ~~To the management of acute pain caused by an injury or surgical procedure.)~~

(3) The treatment of inpatient hospital patients who are patients who have been admitted to a hospital for more than twenty-four hours; or

(4) The provision of procedural medications.

AMENDATORY SECTION (Amending WSR 11-12-025, filed 5/24/11, effective 1/2/12)

WAC 246-919-852 Definitions. The following definitions ~~((in))~~ apply to WAC 246-919-850 through ~~((246-919-863 apply))~~ 246-919-985 unless the context clearly requires otherwise.

(1) "Aberrant behavior" means behavior that indicates current misuse, diversion, unauthorized use of alcohol or other controlled substances, or multiple early refills (renewals).

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. ~~((It is generally time limited, often less than three months in duration, and usually less than six months.~~

(2) "Addiction" means a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include:

(a) Impaired control over drug use;

(b) Craving;

(c) Compulsive use; or

(d) Continued use despite harm.

~~((3))~~ Acute pain is six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means tests of urine, hair, or other biological samples for various drugs and metabolites.

(4) "Cancer-related pain" means pain that is an unpleasant, persistent, subjective sensory and emotional experience associated with actual or potential tissue injury or damage or described in such terms and is related to cancer or cancer treatment that interferes with usual functioning.

(5) "Chronic ~~((nonacute))~~ pain" means a state in which ~~((nonacute))~~ pain persists beyond the usual course of an acute disease or healing of an injury, or ~~((that))~~ which may or may not be associated with an acute or chronic pathologic process that causes continuous or intermittent pain over months or years. Chronic pain is considered to be pain that persists for more than twelve weeks.

~~((4))~~ "Comorbidity" (6) "Comorbidities" means a preexisting or coexisting physical or psychiatric disease or condition.

~~((5))~~ (7) "Designee" means a licensed health care practitioner authorized by a prescriber to request and receive prescription monitoring program (PMP) data on their behalf.

(8) "Episodic care" means noncontinuing medical or dental care provided by a ~~((practitioner))~~ physician other than the designated primary ~~((care practitioner in the acute care setting, for example, urgent care or emergency department.~~

~~((6))~~ prescriber for a patient with chronic pain.

(9) "High dose" means a ninety milligram morphine equivalent dose (MED), or more, per day.

(10) "High-risk" is a category of patient at high risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, current substance use disorder or abuse, aberrant behavior, dose of opioids, or the use of any concurrent central nervous system depressant.

(11) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with a life expectancy of six months or less ~~((Hospice involves an interdisciplinary approach to provide health care, pain management, and emotional and spiritual support. The emphasis is on comfort, quality of life and patient and family support. Hospice can be provided in the patient's home as well as freestanding hospice facilities, hospitals, nursing homes, or other long-term care facilities)).~~

~~((7))~~ (12) "Hospital" means any health care institution licensed pursuant to chapters 70.41 and 71.12 RCW, and RCW 72.23.020.

(13) "Low-risk" is a category of patient at low risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, and dose of opioids of less than a fifty milligram morphine equivalent dose per day.

(14) "Medication assisted treatment" or "MAT" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(15) "Moderate-risk" is a category of patient at moderate risk of opioid-induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, past history of substance use disorder or abuse, aberrant behavior, and dose of opioids between fifty to ninety milligram morphine equivalent doses per day.

(16) "Morphine equivalent dose" or "MED" means a conversion of various opioids to a morphine equivalent dose ~~((by the use of accepted))~~ using the agency medical directors' group or other conversion table(s) approved by the commission. MED is considered the same as morphine milligram equivalent or MME.

~~((8))~~ (17) "Multidisciplinary pain clinic" means a ~~((clinic or office that provides comprehensive pain management and includes care provided by multiple available disciplines or treatment modalities, for example, medical care through physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, advanced registered nurse practitioners, and physical therapy, occupational therapy, or other complementary therapies.~~

~~((9))~~ health care delivery facility staffed by physicians of different specialties and other nonphysician health care providers who specialize in the diagnosis and management of patients with chronic pain.

(18) "Opioid" means a drug that is either an opiate that is derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, tramadol, buprenorphine, and methadone when used to treat pain.

(19) "Palliative care" means care that maintains or improves the quality of life of patients and their families fac-

ing serious, advanced, or life-threatening illness. ~~((With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.))~~

(20) "Perioperative pain" means acute pain that occurs surrounding the performance of surgery.

(21) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW. Other jurisdictions may refer to this as the prescription drug monitoring program or "PDMP."

(22) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(23) "Refill" or "renewal" means a second or subsequent filling of a previously issued prescription.

(24) "Subacute pain" is considered to be a continuation of pain that is six- to twelve-weeks in duration.

(25) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance that is a normal physiological consequence of extended opioid therapy for pain. It is characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

NEW SECTION

WAC 246-919-865 Patient notification, secure storage, and disposal. (1) The physician shall ensure the patient is provided the following information at the first issuance of a prescription for opioids and at the transition from acute to subacute, and subacute to chronic:

(a) Risks associated with the use of opioids as appropriate to the medical condition, the type of patient, and the phase of treatment;

(b) The safe and secure storage of opioid prescriptions; and

(c) The proper disposal of unused opioid medications including, but not limited to, the availability of recognized drug take-back programs.

(2) This requirement may be satisfied with a document provided by the department of health.

NEW SECTION

WAC 246-919-870 Use of alternative modalities for pain treatment. The physician shall exercise their professional judgment in selecting appropriate treatment modalities for acute nonoperative, acute perioperative, subacute, or chronic pain including the use of multimodal pharmacologic and nonpharmacologic therapy as an alternative to opioids whenever reasonable, clinically appropriate, evidence-based alternatives exist.

NEW SECTION

WAC 246-919-875 Continuing education requirements for opioid prescribing. (1) To prescribe an opioid in Washington state, a physician licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids or the opioid prescribing rules in this chapter. The continuing education must be at least one hour in length.

(2) The physician shall complete the one-time continuing education requirement described in subsection (1) of this section by the end of the physician's first full continuing education reporting period after January 1, 2019, or during the first full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing training in prescribing of opioids count toward meeting applicable continuing education requirements in the same category specified in WAC 246-919-460.

OPIOID PRESCRIBING—ACUTE NONOPERATIVE PAIN AND ACUTE PERIOPERATIVE PAIN

NEW SECTION

WAC 246-919-880 Patient evaluation and patient record—Acute nonoperative pain. Prior to issuing an opioid prescription for acute nonoperative pain or acute perioperative pain, the physician shall:

(1) Conduct and document an appropriate history and physical examination including screening for risk factors for overdose and severe postoperative pain;

(2) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

(3) Inquire about any other medications the patient is prescribed or is taking.

NEW SECTION

WAC 246-919-885 Treatment plan—acute nonoperative pain. The physician shall comply with the requirements in this section when prescribing opioids for acute nonoperative pain.

(1) The physician should consider prescribing nonopioids as the first line of pain control in patients unless not clinically appropriate in accordance with the provisions of WAC 246-919-870.

(2) The physician, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-919-985.

(3) If the physician prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids. A three-day supply or less will often be sufficient. The physician shall not prescribe beyond a seven-day supply without clinical documentation in the patient record to justify the need for such a quantity.

(4) The physician shall reevaluate the patient who does not follow the expected course of recovery, and reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This may include:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional indicated diagnostic evaluations.

(6) If a prescription results in the patient receiving a combination of opioids with a sedative medication listed in WAC 246-919-970, such prescribing must be in accordance with WAC 246-919-970.

(7) Long-acting or extended release opioids are not indicated for acute nonoperative pain.

(8) Medication assisted treatment medications must not be discontinued when treating acute pain, except as consistent with the provisions of WAC 246-919-975.

(9) If the physician elects to treat a patient with opioids beyond the six-week time period of acute nonoperative pain, the physician shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain in WAC 246-919-895 and 246-919-900 shall apply.

NEW SECTION

WAC 246-919-890 Treatment plan—Acute perioperative pain. The physician shall comply with the requirements in this section when prescribing opioids for perioperative pain.

(1) The physician should consider prescribing nonopioids as the first line of pain control in patients, unless not clinically appropriate, in accordance with the provisions of WAC 246-919-870.

(2) The physician, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-919-985.

(3) If the physician prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids. A three-day supply or less will often be sufficient. The physician shall not prescribe beyond a fourteen-day supply from the time of discharge without clinical documentation in the patient record to justify the need for such a quantity.

(4) The physician shall reevaluate a patient who does not follow the expected course of recovery and reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control should include objectives or metrics to be used to determine treatment success if opioids are to be continued. This may include:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional indicated diagnostic evaluations or other treatments.

(6) If a prescription results in the patient receiving a combination of opioids with a sedative medication listed in WAC 246-919-970, such prescribing must be in accordance with WAC 246-919-970.

(7) Long-acting or extended release opioids are not indicated for acute perioperative pain.

(8) Medication assisted treatment medications must not be discontinued when treating acute perioperative pain except as consistent with the provisions of WAC 246-919-975.

(9) If the physician elects to treat a patient with opioids beyond the six-week time period of acute perioperative pain, the physician shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain, WAC 246-919-895 and 246-919-900 shall apply unless there is documented improvement in function or pain control and there is a documented plan and timing for discontinuation of all opioid medications.

OPIOID PRESCRIBING—SUBACUTE PAIN

NEW SECTION

WAC 246-919-895 Patient evaluation and patient record—Subacute pain. The physician shall comply with the requirements in this section when prescribing opioids for subacute pain.

(1) Prior to issuing an opioid prescription for subacute pain, the physician shall assess the rationale for continuing opioid therapy as follows:

- (a) Conduct an appropriate history and physical examination;
- (b) Reevaluate the nature and intensity of the pain;
- (c) Conduct, or cause their designee to conduct, a query of the PMP in accordance with the provisions of WAC 246-919-985;
- (d) Screen the patient's level of risk for aberrant behavior and adverse events related to opioid therapy;
- (e) Obtain a biological specimen test if the patient's functional status is deteriorating or if pain is escalating; and
- (f) Screen or refer the patient for further consultation for psychosocial factors if the patient's functional status is deteriorating or if pain is escalating.

(2) The physician treating a patient for subacute pain with opioids shall ensure that, at a minimum, the following is documented in the patient record:

- (a) The presence of one or more recognized diagnoses or indications for the use of opioid pain medication;
- (b) The observed or reported effect on function or pain control forming the basis to continue prescribing opioids beyond the acute pain episode;
- (c) Pertinent concerns discovered in the PMP;
- (d) An appropriate pain treatment plan including the consideration of, or attempts to use, nonpharmacological modalities and nonopioid therapy;
- (e) The action plan for any aberrant biological specimen testing results and the risk-benefit analysis if opioids are to be continued;
- (f) Results of psychosocial screening or consultation;
- (g) Results of screening for the patient's level of risk for aberrant behavior and adverse events related to opioid therapy, and mitigation strategies; and

(h) The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable.

(3) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

- (a) Change in pain level;
- (b) Change in physical function;
- (c) Change in psychosocial function; and
- (d) Additional indicated diagnostic evaluations or other treatments.

NEW SECTION

WAC 246-919-900 Treatment plan—Subacute pain.

The physician, having recognized the progression of a patient from the acute nonoperative or acute perioperative phase to the subacute phase shall develop an opioid treatment plan.

(1) If tapering has not begun prior to the six- to twelve-week subacute phase, the physician shall reevaluate the patient. Based on effect on function or pain control, the physician shall consider whether opioids will be continued, tapered, or discontinued.

(2) If the physician prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain that is severe enough to require opioids. During the subacute phase the physician shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity.

(3) If a prescription results in the patient receiving a combination of opioids with a sedative medication listed in WAC 246-919-970, such prescribing must be in accordance with WAC 246-919-970.

(4) If the physician elects to treat a patient with opioids beyond the six- to twelve-week subacute phase, the physician shall document in the patient record that the patient is transitioning from subacute pain to chronic pain. Rules governing the treatment of chronic pain, WAC 246-919-905 through 246-919-955, shall apply.

OPIOID PRESCRIBING—CHRONIC PAIN MANAGEMENT

NEW SECTION

WAC 246-919-905 Patient evaluation and patient record—Chronic pain. When the patient enters the chronic pain phase, the patient shall be reevaluated as if presenting with a new disease. The physician shall include in the patient's record:

- (1) An appropriate history including:
 - (a) The nature and intensity of the pain;
 - (b) The effect of pain on physical and psychosocial function;
 - (c) Current and relevant past treatments for pain, including opioids and other medications and their efficacy; and
 - (d) Review of comorbidities with particular attention to psychiatric and substance use.
- (2) Appropriate physical examination.

(3) Ancillary information and tools to include:

(a) Review of the PMP to identify any medications received by the patient in accordance with the provisions of WAC 246-919-985;

(b) Any pertinent diagnostic, therapeutic, and laboratory results;

(c) Pertinent consultations; and

(d) Use of a risk assessment tool that is a professionally developed, clinically recommended questionnaire appropriate for characterizing a patient's level of risk for opioid or other substance use disorders to assign the patient to a high-, moderate-, or low-risk category.

(4) Assessment. The physician must document medical decision making to include:

(a) Pain related diagnosis, including documentation of the presence of one or more recognized indications for the use of pain medication;

(b) Consideration of the risks and benefits of chronic opioid treatment for the patient;

(c) The observed or reported effect on function or pain control forming the basis to continue prescribing opioids; and

(d) Pertinent concerns discovered in the PMP.

(5) Treatment plan as provided in WAC 246-919-910.

NEW SECTION

WAC 246-919-910 Treatment plan—Chronic pain.

The physician, having recognized the progression of a patient from the subacute phase to the chronic phase, shall develop an opioid treatment plan as follows:

(1) Treatment plan and objectives including:

(a) Documentation of any medication prescribed;

(b) Biologic specimen testing ordered;

(c) Any labs, diagnostic evaluations, referrals, or imaging ordered;

(d) Other planned treatments; and

(e) Written agreement for treatment as provided in WAC 246-919-915.

(2) The physician shall complete patient notification in accordance with the provisions of WAC 246-919-865 or provide this information in the written agreement.

NEW SECTION

WAC 246-919-915 Written agreement for treatment—Chronic pain. The physician shall use a written agreement that outlines the patient's responsibilities for opioid therapy. This written agreement for treatment must include the following provisions:

(1) The patient's agreement to provide samples for biological specimen testing when requested by the physician;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills;

(3) Reasons for which opioid therapy may be discontinued;

(4) The requirement that all opioid prescriptions for chronic pain are provided by a single prescriber or a single clinic, except as provided in WAC 246-919-965 for episodic care;

(5) The requirement that all opioid prescriptions for chronic pain are to be dispensed by a single pharmacy or pharmacy system whenever possible;

(6) The patient's agreement to not abuse alcohol or use other medically unauthorized substances;

(7) A violation of the agreement may result in a tapering or discontinuation of the prescription; and

(8) The patient's responsibility to safeguard all medications and keep them in a secure location.

NEW SECTION

WAC 246-919-920 Periodic review—Chronic pain.

(1) The physician shall periodically review the course of treatment for chronic pain. The frequency of visits, biological testing, and PMP queries in accordance with the provisions of WAC 246-919-985, must be determined based on the patient's risk category:

(a) For a high-risk patient, at least quarterly;

(b) For a moderate-risk patient, at least semiannually;

(c) For a low-risk patient, at least annually;

(d) Immediately upon indication of concerning aberrant behavior; and

(e) More frequently at the physician's discretion.

(2) During the periodic review, the physician shall determine:

(a) The patient's compliance with any medication treatment plan;

(b) If pain, function, and quality of life have improved, diminished, or are maintained; and

(c) If continuation or modification of medications for pain management treatment is necessary based on the physician's evaluation of progress towards or maintenance of treatment objectives and compliance with the treatment plan.

(3) Periodic patient evaluations must also include:

(a) History and physical examination related to the pain;

(b) Use of validated tools or patient report from reliable patients to document either maintenance or change in function and pain control; and

(c) Review of the Washington state PMP at a frequency determined by the patient's risk category in accordance with the provisions of WAC 246-919-985 and subsection (1) of this section.

(4) If the patient violates the terms of the agreement, the violation and the physician's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

NEW SECTION

WAC 246-919-925 Long-acting opioids—Chronic pain. Long-acting opioids should only be prescribed by a physician who is familiar with its risks and use, and who is prepared to conduct the necessary careful monitoring. Special attention should be given to patients who are initiating such treatment. The physician prescribing long-acting opioids should have a one-time completion of at least four hours of continuing education relating to this topic.

NEW SECTION

WAC 246-919-930 Consultation—Recommendations and requirements—Chronic pain. (1) The physician shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic pain patients who are under eighteen years of age or who are potential high-risk patients.

(2) The mandatory consultation threshold is one hundred twenty milligrams MED. In the event a physician prescribes a dosage amount that meets or exceeds the consultation threshold of one hundred twenty milligrams MED per day, a consultation with a pain management specialist as described in WAC 246-919-945 is required, unless the consultation is exempted under WAC 246-919-935 or 246-919-940.

(3) The mandatory consultation must consist of at least one of the following:

(a) An office visit with the patient and the pain management specialist;

(b) A telephone, electronic, or in-person consultation between the pain management specialist and the physician;

(c) An audio-visual evaluation conducted by the pain management specialist remotely where the patient is present with either the physician or a licensed health care practitioner designated by the physician or the pain management specialist; or

(d) Other chronic pain evaluation services as approved by the commission.

(4) A physician shall document each consultation with the pain management specialist.

NEW SECTION

WAC 246-919-935 Consultation—Exemptions for exigent and special circumstances—Chronic pain. A physician is not required to consult with a pain management specialist as defined in WAC 246-919-945 when the physician has documented adherence to all standards of practice as defined in WAC 246-919-905 through 246-919-925, and when one or more of the following conditions are met:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain, which may or may not include hospitalization, requiring a temporary escalation in opioid dosage, with an expected return to their baseline dosage level or below;

(3) The physician documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams morphine equivalent dose (MED) per day without first obtaining a consultation; or

(4) The physician documents the patient's pain and function are stable and the patient is on a nonescalating dosage of opioids.

NEW SECTION

WAC 246-919-940 Consultation—Exemptions for the physician—Chronic pain. The physician is exempt from the consultation requirement in WAC 246-919-930 if one or more of the following qualifications is met:

(1) The physician is a pain management specialist under WAC 246-919-945;

(2) The physician has successfully completed a minimum of twelve category I continuing education hours on chronic pain management within the previous four years. At least two of these hours must be dedicated to substance use disorders;

(3) The physician is a pain management physician working in a multidisciplinary chronic pain treatment center or a multidisciplinary academic research facility; or

(4) The physician has a minimum of three years of clinical experience in a chronic pain management setting, and at least thirty percent of their current practice is the direct provision of pain management care.

NEW SECTION

WAC 246-919-945 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If an allopathic physician or osteopathic physician:

(a) Is board certified or board eligible by an American Board of Medical Specialties-approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, neurology, rheumatology, or anesthesiology;

(b) Has a subspecialty certificate in pain medicine by an ABMS-approved board;

(c) Has a certification of added qualification in pain management by the AOA;

(d) Is credentialed in pain management by an entity approved by the commission for an allopathic physician or the Washington state board of osteopathic medicine and surgery for an osteopathic physician;

(e) Has a minimum of three years of clinical experience in a chronic pain management care setting; and

(i) Has successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years for an allopathic physician or three years for an osteopathic physician; and

(ii) Has at least thirty percent of the allopathic physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.

(2) If an allopathic physician assistant, in accordance with WAC 246-918-895.

(3) If an osteopathic physician assistant, in accordance with WAC 246-854-330.

(4) If a dentist, in accordance with WAC 246-817-965.

(5) If a podiatric physician, in accordance with WAC 246-922-750.

(6) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

NEW SECTION

WAC 246-919-950 Tapering considerations—Chronic pain. The physician shall consider tapering or referral for a substance use disorder evaluation when:

(1) The patient requests;

(2) The patient experiences a deterioration in function or pain;

(3) The patient is noncompliant with the written agreement;

(4) Other treatment modalities are indicated;

(5) There is evidence of misuse, abuse, substance use disorder, or diversion;

(6) The patient experiences a severe adverse event or overdose;

(7) There is unauthorized escalation of doses; or

(8) The patient is receiving an escalation in opioid dosage with no improvement in their pain or function.

NEW SECTION

WAC 246-919-955 Patients with chronic pain, including those on high doses of opioids, establishing a relationship with a new physician. (1) When a patient receiving chronic opioid pain medications changes to a new physician, it is normally appropriate for the new physician to initially maintain the patient's current opioid doses. Over time, the physician may evaluate if any tapering or other adjustments in the treatment plan can or should be done.

(2) A physician's treatment of a new high dose chronic pain patient is exempt from the mandatory consultation requirements of WAC 246-919-930 if:

(a) The patient was previously being treated with a dosage of opioids in excess of a one hundred twenty milligram MED for chronic pain under an established written agreement for treatment of the same chronic condition or conditions;

(b) The patient's dose is stable and nonescalating;

(c) The patient has a history of compliance with treatment plans and written agreements documented by medical records and PMP queries; and

(d) The patient has documented functional stability, pain control, or improvements in function or pain control at the presenting opioid dose.

(3) With respect to the treatment of a new patient under subsection (1) or (2) of this section, this exemption applies for the first three months of newly established care, after which the requirements of WAC 246-919-930 shall apply.

OPIOID PRESCRIBING—SPECIAL POPULATIONS

NEW SECTION

WAC 246-919-960 Special populations—Children or adolescent patients, pregnant patients, and aging populations. (1) Children or adolescent patients. In the treatment of pain for children or adolescent patients, the physician shall treat pain in a manner equal to that of an adult but must account for the weight of the patient and adjust the dosage prescribed accordingly.

(2) Pregnant patients. The physician shall not initiate opioid detoxification without consultation with a provider with expertise in addiction medicine. Medication assisted treatment for opioids, such as methadone or buprenorphine, must not be discontinued during pregnancy without consultation with a MAT prescribing practitioner.

(3) Aging populations. As people age, their sensitivities to and metabolizing of opioids may change. The physician shall consider the distinctive needs of patients who are sixty-five years of age or older and who have been on chronic opioid therapy or who are initiating opioid treatment.

NEW SECTION

WAC 246-919-965 Episodic care of chronic opioid patients. (1) When providing episodic care for a patient who the physician knows is being treated with opioids for chronic pain, such as for emergency or urgent care, the physician or their designee, shall review the PMP and document their review and any concerns.

(2) A physician providing episodic care to a patient who the physician knows is being treated with opioids for chronic pain should provide additional analgesics, including opioids when appropriate, to adequately treat acute pain. If opioids are provided, the physician shall limit the use of opioids to the minimum amount necessary to control the acute pain until the patient can receive care from the practitioner who is managing the patient's chronic pain.

(3) The episodic care physician shall coordinate care with the patient's chronic pain treatment practitioner, if possible.

OPIOID PRESCRIBING—COPRESCRIBING

NEW SECTION

WAC 246-919-970 Coprescribing of opioids with certain medications. (1) The physician shall not knowingly prescribe opioids in combination with the following medications without documentation of medical decision making:

- (a) Benzodiazepines;
- (b) Barbiturates;
- (c) Sedatives;
- (d) Carisoprodol; or
- (e) Nonbenzodiazepine hypnotics.

(2) If, because of a prior prescription by another provider, a prescription written by a physician results in a combination of opioids and medications described in subsection (1) of this section, the physician issuing the new prescription shall consult with the other prescriber to establish a patient care plan surrounding these medications. This provision does not apply to emergency care.

NEW SECTION

WAC 246-919-975 Coprescribing of opioids for patients receiving medication assisted treatment. (1) Where practicable, the physician providing acute nonoperative pain or acute perioperative pain treatment to a patient who is known to be receiving MAT medications shall prescribe opioids when appropriate for pain relief either in consultation with a MAT prescribing practitioner or a pain specialist.

(2) The physician providing acute nonoperative pain or acute perioperative pain treatment shall not discontinue MAT medications without documentation of the reason for doing

so, nor shall the use of these medications be used to deny necessary operative intervention.

NEW SECTION

WAC 246-919-980 Coprescribing of naloxone. The opioid prescribing physician shall confirm or provide a current prescription for naloxone when opioids are prescribed to a high-risk patient.

OPIOID PRESCRIBING—PRESCRIPTION MONITORING PROGRAM

NEW SECTION

WAC 246-919-985 Prescription monitoring program—Required registration, queries, and documentation. (1) The physician shall register to access the PMP or demonstrate proof of having assured access to the PMP if they prescribe Schedule II-V medications in Washington state.

(2) The physician is permitted to delegate performance of a required PMP query to an authorized designee.

(3) At a minimum, the physician shall ensure a PMP query is performed prior to the prescription of an opioid or of a medication listed in WAC 246-919-970 at the following times:

- (a) Upon the first refill or renewal of an opioid prescription for acute nonoperative pain or acute perioperative pain;
- (b) The time of transition from acute to subacute pain; and

(c) The time of transition from subacute to chronic pain.

(4) For chronic pain management, the physician shall ensure a PMP query is performed at a minimum frequency determined by the patient's risk assessment, as follows:

(a) For a high-risk patient, a PMP query shall be completed at least quarterly;

(b) For a moderate-risk patient, a PMP query shall be completed at least semiannually; and

(c) For a low-risk patient, a PMP query shall be completed at least annually.

(5) The physician shall ensure a PMP query is performed for any chronic pain patient immediately upon identification of aberrant behavior.

(6) The physician shall ensure a PMP query is performed when providing episodic care to a patient who the physician knows to be receiving opioids for chronic pain, in accordance with WAC 246-919-965.

(7) If the physician is using an electronic medical record (EMR) that integrates access to the PMP into the workflow of the EMR, the physician shall ensure a PMP query is performed for all prescriptions of opioids and medications listed in WAC 246-919-970.

(8) For the purposes of this section, the requirement to consult the PMP does not apply when the PMP or the EMR cannot be accessed by the physician or their designee due to a temporary technological or electrical failure.

(9) Pertinent concerns discovered in the PMP shall be documented in the patient record.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-919-853 Patient evaluation.
- WAC 246-919-854 Treatment plan.
- WAC 246-919-855 Informed consent.
- WAC 246-919-856 Written agreement for treatment.
- WAC 246-919-857 Periodic review.
- WAC 246-919-858 Long-acting opioids, including methadone.
- WAC 246-919-859 Episodic care.
- WAC 246-919-860 Consultation—Recommendations and requirements.
- WAC 246-919-861 Consultation—Exemptions for exigent and special circumstances.
- WAC 246-919-862 Consultation—Exemptions for the physician.
- WAC 246-919-863 Pain management specialist.

WSR 18-23-062**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed November 16, 2018, 11:01 a.m., effective December 17, 2018]

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

Purpose: Amend rules to clarify the options and testing protocol for applicants who want to request managing broker exam approval based on qualifications other than three years of full-time broker experience.

Citation of Rules Affected by this Order: Amending WAC 308-124A-713 and 308-124A-715.

Statutory Authority for Adoption: RCW 18.85.041.

Other Authority: Chapter 18.85 RCW.

Adopted under notice filed as WSR 18-18-040 on August 29, 2018.

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

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

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

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

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

Date Adopted: November 16, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-713 Application for managing broker license examination—Other qualification or related experience. Applications for a managing broker license examination by persons who do not possess three years of actual experience as a full-time broker as required by RCW 18.85.111 who show qualification by reason of practical experience in a business allied with or related to real estate shall be submitted to the real estate program. The application shall be accompanied by a letter requesting approval of alternative qualifications or experience and indicating the basis for such approval. The letter must include a detailed personal history or work resume, with supporting documentation, ~~((and a letter from each of five business references describing from personal knowledge the qualifications and experience of the applicant))~~ which will include a certified license affidavit from the issuing agency as applicable. The following ~~((guidelines are provided as examples of))~~ are deemed alternative qualifications or experience which may qualify in lieu of three years of full-time broker experience:

(1) Postsecondary education with major study in real estate together with one year experience as a real estate broker ~~((or one year experience under the provisions of subsections (2) through (7) of this section))~~ actively licensed in good standing in Washington or another state, U.S. possession, or foreign jurisdiction with similar licensing standards.

(2) Full-time experience as ((~~an~~)) a licensed attorney at law, in good standing, with practice in real estate transactions for not less than one year.

(3) Five years' full-time experience ~~((, with decision-making responsibility, in closing real estate transactions for escrow companies, mortgage companies, or similar institutions))~~ as a licensed mortgage broker or loan originator in good standing.

(4) Five years' full-time experience ~~((with a commercial bank, savings and loan association, title company or mortgage company, involving all details of real estate transactions))~~ as a licensed limited practice officer or escrow agent in good standing.

(5) Five years' full-time experience as a licensed or certified real property ~~((fee appraiser or salaried))~~ appraiser in good standing.

(6) Five years' full-time experience ~~((in all phases of land development, construction, financing, selling and leasing of residences, apartments or commercial buildings.~~

(7) Five years' experience in real estate investment, property management, or analysis of investments or business opportunities) managing, leasing, selling, or buying real property on behalf of a third-party corporation, limited liability company, or partnership.

All experience time periods referenced in WAC 308-124A-713 shall ~~((be within the last seven years prior to))~~ have been completed within the six years immediately preceding the date of application.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-715 Unsuccessful managing broker applicants—Alternate qualifications. The managing broker applicant who is approved to take the exam based upon alternate qualifications or experience pursuant to WAC 308-124A-713 and subsequently fails the exam is not permitted to repeat the exam ~~((unless they satisfy the requirements in RCW 18.85.114))~~ using alternative qualifications or experience.

WSR 18-23-063

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 16, 2018, 11:05 a.m., effective December 17, 2018]

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

Purpose: Amending the rule to more clearly define naming requirements for real estate firm and assumed names, and to clarify the basis under which the department may deny, suspend, or reject a real estate firm or assumed name.

Citation of Rules Affected by this Order: Amending WAC 308-124A-815.

Statutory Authority for Adoption: RCW 18.85.041.

Other Authority: Chapter 18.85 RCW.

Adopted under notice filed as WSR 18-18-039 on August 29, 2018.

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

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

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

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

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

Date Adopted: November 16, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-14-077, filed 7/1/13, effective 8/1/13)

WAC 308-124A-815 Prohibited firm and assumed names. (1) The department can deny, suspend, or reject a firm name((s)) or assumed name((s that are in the department's opinion:)) if it:

(a) Is derogatory((s));

(b) Is similar or the same as ((other)) another licensed firm name((s));

(c) Implies that ((#)) the firm is a public agency or part of government((s));

(d) Implies ((nonprofit or)) the firm is a not-for-profit organization;

(e) Implies it is a research organization.

(2) The following are nonexclusive examples of language that are deemed to be similar when used individually or in combination:

(a) The use of a different corporate designator, for example, Corp., Co., Inc., Ltd., and the like.

(b) The addition or deletion of an article or conjunction from the name, such as "the," "a," or "and."

(c) The use of a plural.

(d) The use of a geographic designator after the association's name. In the case of affiliates using the same name with a geographic or other designator, written consent will be required from the parent or affiliate.

(e) The abbreviation of a word in the same name.

(f) The substitution of a symbol for a word or vice versa.

(g) The use of the terms "realty," "real estate," "group," "realtors," or "firm."

(3) A real estate firm shall not ((be issued a license nor)) advertise in any manner using a name which ((is in the department's opinion similar to currently issued firm or assumed name licenses or imply that either the real estate firm is a nonprofit organization, research organization, public bureau or public group)) has not been licensed by the department. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

WSR 18-23-070

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 18-302—Filed November 16, 2018, 1:54 p.m., effective December 17, 2018]

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

Purpose: The purpose of this rule change is to adopt Washington Administrative Code for coastal recreational bottomfish and halibut fisheries that are consistent with regulations adopted by the Pacific Fishery Management Council (council).

WAC 220-314-020 Possession limits—Bottomfish.

Two changes to WAC 220-314-020 are proposed. The first would expand the current allowance to retain up to two canary rockfish to all coastal marine areas. The west coast canary rockfish population has rebuilt sufficiently to allow retention of canary rockfish. The Washington department of fish and wildlife (WDFW) has implemented canary rockfish retention in a conservative manner after a long period of retention being prohibited in recreational fisheries. In 2017, retention of up to two canary rockfish was allowed only in some areas of the coast. This approach gave managers the opportunity to consider not only the amount of canary rockfish that anglers would retain, but also to understand if their [there] might be issues with misidentification with yelloweye rockfish which remains prohibited in recreational fisheries and is managed under small federal harvest guidelines. Final

2017 catch estimates showed that recreational catch of approximately five mt was well below the fifty mt Washington recreational federal harvest guideline. In addition, it was clear that anglers were correctly distinguishing canary rockfish from yelloweye rockfish. Catch relative to federal harvest guidelines is sufficient to allow retention in all coastal management areas west of the Bonilla-Tatoosh line.

The second change would exempt flatfish from the nine fish daily bottomfish limit and maintain the current daily bag limit of twelve. In 2017, the recreational bottomfish bag limit was reduced from twelve to nine bottomfish per day. The bottomfish bag limit reduction was focused on the need to reduce catch of some rockfish species, primarily black rockfish. However, changes to the aggregate bottomfish bag limit that includes flatfish has no beneficial impact on the rockfish population given that the preferred habitat for most flatfish species (soft sand or muddy bottom) is different from the preferred habitat for most rockfish species (pelagic and high relief rocks and boulders). Restoring the flatfish limit to a daily limit of twelve will provide recreational opportunity in balance with resource sustainability.

WAC 220-314-030 Halibut—Seasons—Daily and possession limits.

The purpose of this rule change would be to implement an annual limit of four halibut per person. The primary objective of an annual bag limit is to spread halibut fishing opportunity across more participants by reducing the amount of halibut that anglers can collectively retain. WDFW catch record card data from 2012-2016 estimates that eighty-seven percent of anglers report catching two or fewer halibut per year while only one percent of anglers retain more than six halibut per year. However, stakeholders have continually expressed their support for an annual bag limit with many in favor of going as low as two fish. Others would be comfortable with a higher limit and some want it to continue to be unlimited. Based on the data and stakeholder input, we are proposing a phased approach to an annual bag limit starting at four fish. WDFW will review the results of the annual limit and continue to gather public input to gauge the need for additional changes in the future.

WAC 220-310-110 Angling gear—Lawful and unlawful acts.

The purpose of this rule change is to expand the requirement to have a descending device on board recreational fishing vessels and rigged for deployment when fishing for bottomfish and halibut to include coastal marine areas. Currently, the rule is in place only in Puget Sound marine areas. Descending devices used to release rockfish back to the depth of capture significantly improve the survivability of released rockfish.

Citation of Rules Affected by this Order: Amending WAC 220-314-020 Possession limits—Bottomfish, 220-314-030 Halibut—Seasons—Daily and possession limits, and 220-310-110 Angling gear—Lawful and unlawful acts.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 18-14-116 on July 5, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 3, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 22, 2018.

Kelly Susewind
Director

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-310-110 Angling gear—Lawful and unlawful acts. (1) It is unlawful for any person to use more than one line while angling for personal use, except:

(a) Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing in lakes, ponds, and reservoirs open to fishing unless listed as an exception in WAC 220-220-160. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing in rivers and marine areas as noted in WAC 220-220-160 and 220-312-010 through 220-312-060.

(b) A second line using forage fish jigger gear is permissible while fishing in Catch Record Card Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, and 13.

(c) When fishing outside 3 miles from shore in Pacific Ocean waters for tuna species, anglers are not restricted on the number of rods or lines fished per angler, provided that no other species are possessed onboard the vessel. A violation of this subsection is an infraction, punishable under RCW 77.15.160, Infractions.

(2) It is unlawful for any person to take, fish for, or possess fish taken for personal use by any means other than angling with a line attached to a pole held in hand while landing the fish or with a hand-operated line without rod or reel, except:

(a) It is unlawful to fish for or possess salmon taken for personal use with hand lines in marine waters of Puget Sound east of the mouth of the Sekiu River and in Washington waters at the mouth of the Columbia River east of a line projected true north and south through Buoy 10, Grays Harbor, and Willapa Bay.

(b) It is permissible to leave a pole in a pole holder while playing or landing the fish if the pole is capable of being readily removed from the pole holder.

(c) It is permissible to use an electric power-operated reel designed for sport fishing attached to a pole.

(3) It is unlawful for any person while angling to fail to keep his angling gear under his or her direct and immediate physical control.

(4) In areas where a saltwater license is valid, each fisher aboard a vessel may continue to deploy angling gear or shellfish gear until the daily limit of food fish or shellfish for all licensed anglers and juvenile anglers aboard has been retained.

(5) In Catch Record Card Areas ~~((4 east of the Bonilla-Tatoosh line and Areas 5))~~ 1 through 13: It is unlawful for any person to take, fish for, or possess bottomfish or halibut taken for personal use, to fail to have onboard the vessel a fish descending or fish recompression device, rigged for immediate use, and capable of rapidly returning ~~((fish))~~ rockfish to depth of capture.

(6) A violation of this section is an infraction, punishable under RCW 77.15.160, unless the person has harvested fish or shellfish. If the person has harvested fish or shellfish, the violation is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the fish or shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

(7) It is unlawful to possess fish or shellfish taken with gear in violation of the provisions of this section. Possession of fish or shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the fish or shellfish were taken with such gear. Possession of such fish or shellfish is punishable under RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, unless the fish or shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370, Unlawful recreational fishing in the first degree—Penalty.

AMENDATORY SECTION (Amending WSR 17-17-045, filed 8/10/17, effective 9/10/17)

WAC 220-314-020 Possession limits—Bottomfish. It is unlawful for any person to fish for or take bottomfish for personal use except within the seasons, daily quantities and possession limits prescribed as follows:

(1) Coastal areas (Catch Record Card Areas 1 through 3 and 4 west of the Bonilla-Tatoosh line):

(a) Bottomfish fishing is open the second Saturday in March through the third Saturday in October, except fishing for surfperch from the shore is allowed year-round.

(b) Limit ~~((+2))~~ of surfperch and flatfish is 12. For all other bottomfish, limit is 9 fish total, which may include no more than:

- (i) Lingcod: 2 fish, no minimum length.
- (ii) Rockfish: 7 fish in aggregate which can include up to ~~((one))~~ two canary rockfish in Catch Record Card Areas 1 ~~((and 2))~~ through 4. The possession limit for yelloweye rockfish is 0.
- (iii) Wolf-eel: 0 fish from Catch Record Card Area 4.
- (iv) Cabezon: Marine Areas 1 through 3: 2 fish. Marine Area 4: 1 fish; the minimum size limit is 18 inches.

(2) Inner Puget Sound (Catch Record Card Areas 4 east of the Bonilla-Tatoosh line, and 5 through 13):

(a) Catch Record Card Area 4 east of the Bonilla-Tatoosh line: Limit 10 fish total, which may include no more than:

- (i) Lingcod: 2 fish, minimum length of 22 inches.
- (ii) Rockfish: 6 fish. Only black or blue rockfish may be retained.
- (iii) Wolf-eel: 0 fish.
- (iv) Cabezon: 1 fish; the minimum size limit is 18 inches.

(b) Catch Record Card Areas 5 and 6: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. Only black or blue rockfish may be retained.
in Marine Area 5 west of Slip Point	3 fish. Only black or blue rockfish may be retained.
in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	2 fish

(c) Catch Record Card Area 7: 15 fish total for all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pollock	2 fish
Pacific hake	2 fish

(d) Catch Record Card Areas 8-1 through 11 and 13: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish

Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	0 fish

(e) Catch Record Card Area 12: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	0 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	0 fish
Wolf-eel	0 fish
Cabezon	0 fish
Pacific hake	0 fish

(f) The possession limit for lingcod taken by angling gear is 26 to 36 inches in length. For spear fishing, lingcod may not be possessed that exceed 36 inches in length.

(g) In Marine Areas 5 through 11 and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(h) In Catch Record Card Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

(3) The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form.

(4) Unless otherwise provided, bottomfish fishing is open the entire year.

(5) Daily limits include bottomfish caught in adjacent areas bordering other states, such as Oregon.

(6) It is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks.

AMENDATORY SECTION (Amending WSR 17-17-045, filed 8/10/17, effective 9/10/17)

WAC 220-314-030 Halibut—Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1: Closed except as provided by emergency rule. By-catch restriction: It is unlawful during any vessel trip to bring into port or land bottomfish, except flatfish, sablefish and Pacific cod, if the vessel has brought halibut into port or landed halibut.

(b) Catch Record Card Area 2:

(i) The northern near shore fishery takes place in those waters from 47°31.70'N. lat. south to 46°58.00'N. lat. and east of a boundary line approximating the 30 fathom depth contour as defined by the following coordinates:

- 47°31.70'N. lat., 124°37.03'W. long.
- 47°25.67'N. lat., 124°34.79'W. long.
- 47°12.82'N. lat., 124°29.12'W. long.
- 46°58.00'N. lat., 124°24.24'W. long.

Closed except as provided by emergency rule.

(ii) All other waters in Area 2 - Closed except as provided by emergency rule.

(iii) From March 15 through June 15, it is unlawful to fish for or possess bottomfish, except rockfish, seaward of line approximating the 30-fathom depth contour as defined by the coordinates below. However, a person may fish for and retain sablefish and Pacific cod from May 1 through June 15 and retain lingcod on days open during the primary halibut season as described in (b)(ii) of this subsection, seaward of a line approximating the 30-fathom depth contour as defined by the coordinates below:

- 47°31.70'N. lat., 124°37.03'W. long.
- 47°25.67'N. lat., 124°34.79'W. long.
- 47°12.82'N. lat., 124°29.12'W. long.
- 46°52.94'N. lat., 124°22.58'W. long.
- 46°44.18'N. lat., 124°18.00'W. long.
- 46°38.17'N. lat., 124°15.88'W. long.

(c) Catch Record Card Areas 3 and 4 - Closed except as provided by emergency rule. The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within an eastward-facing C-shaped closed area defined as: Beginning at 48°18'N. lat., 125°18'W. long.; thence to 48°18'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 124°59'W. long.; thence to 48°11'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 125°11'W. long.; thence to 48°04'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 124°59'W. long.; thence to 48°00'N. lat., 125°18'W. long.; thence to the point of origin.

It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates, from May 1 through Labor Day except, on days and times open to halibut fishing when only lingcod, sablefish and Pacific cod can be retained:

- 48°23.9'N. lat., 124°44.2'W. long.
- 48°23.6'N. lat., 124°44.9'W. long.
- 48°18.6'N. lat., 124°43.6'W. long.
- 48°18.6'N. lat., 124°48.2'W. long.
- 48°10.0'N. lat., 124°48.8'W. long.
- 48°02.4'N. lat., 124°49.3'W. long.
- 47°37.6'N. lat., 124°34.3'W. long.
- 47°31.7'N. lat., 124°32.4'W. long.

(d) Catch Record Card Areas 5 through 13 - On days that the halibut fishery is open, it is lawful to fish for, retain, and possess lingcod and Pacific cod seaward of 120 feet in Catch Record Card Areas 5 and 6. Closed except as provided by emergency rule.

(2) Daily limit is one halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-310-210 for limits on Canadian-origin halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(4) The annual limit is four halibut taken from state or offshore waters. This does not include Canadian waters; see WAC 220-310-210 for limits on Canadian-origin halibut.

(5) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing. This does not include halibut caught in Canadian waters. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

~~((5))~~ (6) A violation of this section is punishable under RCW 77.15.370 or 77.15.380, depending on the violation.

WSR 18-23-074
PERMANENT RULES
GAMBLING COMMISSION

[Filed November 19, 2018, 8:28 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: This rule change allows a card room to have two people, instead of three, conduct a soft count if:

- Card game gross gambling receipts were less than \$5 million in the previous fiscal year, or
- Card game gross gambling receipts were between \$5 million and \$15 million and the licensee uses a currency counter.

Citation of Rules Affected by this Order: Amending WAC 230-15-610 Preparing to do a count and 230-15-615 Conducting the count.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 18-09-002 on April 5, 2018, and WSR 18-19-104 on September 19, 2018.

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

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

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

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

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

Date Adopted: November 15, 2018.

Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-610 Preparing to conduct a count. (1) House-banked card game licensees must assign licensed employees to conduct the count. ~~((The count team must be made up of three or more licensed employees.))~~ The count team must not include anyone who works in the surveillance department or whose duties included preparing, approving, or reviewing records used in ~~((that))~~ the specific count process. ~~((2))~~ Count team requirements are based on the licensee's card room gross gambling receipts in their previous fiscal year:

<u>Card Room Gross Gambling Receipts</u>	<u>Minimum Count Team Requirements</u>
<u>Less than \$5 million.</u>	<u>Two person count team.</u>
<u>\$5 million to \$15 million.</u>	<u>Three person count team or two person count team if a currency counter is used as outlined in this chapter.</u>
<u>More than \$15 million.</u>	<u>Three person count team.</u>
<u>A new house-banked card room whose financial statements have not yet been submitted to us.</u>	<u>Three person count team.</u>

(2) Prior to using a two person count team, the licensee must receive approval from the director or their designee. The approval will be based on the licensee:

- (a) Meeting the card room gross gambling receipts requirements in their previous fiscal year; and
- (b) Having internal controls in place to prevent both under-reporting and misappropriation of funds; and
- (c) Having demonstrated following their internal controls to prevent both under-reporting and misappropriation of funds based on their administrative history; and
- (d) Having a currency counter, which complies with commission rules, and internal controls for the use of the currency counter. This applies for those licensees with card room gross gambling receipts of \$5 million to \$15 million.

(3) Licensees must accurately count and record the contents of drop boxes to ensure the proper accountability of all gambling chips, coin, and currency. The count must be done at least once each gambling day.

~~((3))~~ (4) If a cage cashier completes the opener, closer, fills, and credits portions of the master game report, the cashier sends the original master game report to the count team for completion. The cage cashier must immediately send a copy directly to the accounting department.

~~((4))~~ (5) A count team member must notify the surveillance room observer that the count is about to begin. The surveillance employee must then observe the count as it occurs and make a video and audio recording of the entire count process.

~~((5))~~ (6) Before opening drop boxes, the count team must lock the door to the count room. Licensees must permit no person to enter or leave the count room, except for a normal work break or an emergency, until the count team has

completed the entire counting, recording, and verification process for the contents of drop boxes.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

WAC 230-15-615 Conducting the count. (1) All house-banked card room licensees must have a three person count team except as set forth in subsections (2) and (3) of this section. The three person count team must conduct the count as follows:

~~((1))~~ (a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

~~((2))~~ (b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

~~((3))~~ (c) A count team member must empty the contents onto the count table; and

~~((4))~~ (d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

~~((5))~~ (e) Count team member(s) must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and currency and by type of form, record, or document; and

~~((6))~~ (f) At least two count team members must count, either manually or mechanically, each denomination of coin, chips, and currency separately and independently. Count team members must place individual bills and coins of the same denomination on the count table in full view of the closed circuit television cameras, and at least one other count team member must observe and confirm the accuracy of the count orally or in writing; and

~~((7))~~ (g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

~~((8))~~ (h) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

~~((9))~~ (i) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(2) The two person count team for licensees with card game gross gambling receipts of less than \$5 million in their previous fiscal year must conduct the count as follows:

(a) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(b) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and to be recorded by the audio recording equipment; and

(c) A count team member must empty the contents onto the count table; and

(d) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to at least one other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(e) A count team member must separate the contents of each drop box into separate stacks on the count table by denominations of coin, chips, and currency and by type of form, record, or document; and

(f) One count team member must count, either manually or mechanically, each denomination of coin, chips, and currency separately and independently. The count team member must place individual bills and coins of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(g) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

(h) As the count is occurring, a surveillance employee must record in the surveillance log the total chip and currency count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(i) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series numbers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(j) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

(3) The two person count team for licensees with card game gross gambling receipts between \$5 million and \$15 million in their previous fiscal year and use a currency counter must conduct the count as follows:

(a) The currency counter to be used must meet the following requirements:

(i) Automatically provides two separate counts of the funds at different stages in the count process. If the separate counts are not in agreement during the count process and the discrepancy cannot be resolved immediately, the count must

be suspended until a third count team member is present to manually complete the count as set forth in subsection (1) of this section until the currency counter is fixed; and

(ii) Displays the total bill count and total dollar amount for each drop box on a screen, which must be recorded by surveillance.

(b) Immediately prior to the count, the count team must verify the accuracy of the currency counter with previously counted currency for each denomination actually counted by the currency counter to ensure the counter is functioning properly. The test results must be recorded on the table games count documentation and signed by the two count team members performing the test; and

(c) The currency counter's display showing the total bill count and total dollar amount of each drop box must be recorded by surveillance during the count; and

(d) The contents of drop boxes must not be combined before the count team separately counts and records the contents of each box; and

(e) As each drop box is placed on the count table, a count team member must announce the game, table number, and shift, if applicable, loudly enough to be heard by all persons present and be recorded by the audio recording equipment; and

(f) A count team member must empty the contents onto the count table; and

(g) Immediately after the contents are emptied onto the count table, a count team member must display the inside of the drop box to the closed circuit television camera, and show it to the other count team member to confirm that all contents of the drop box have been removed. A count team member must then lock the drop box and place it in the drop box storage area; and

(h) Count team member(s) must combine all currency into one stack and separate the contents of each drop box into separate stacks on the count table by denomination of coin and chips, by type of form, record, or document; and

(i) Count team members must place all of the currency from a drop box into the currency counter which will perform an aggregate count by denomination of all of the currency collected from the drop box; and

(j) One count team member must count each denomination of coin and chips separately and independently by placing coins of the same denomination on the count table in full view of the closed circuit television cameras, and the other count team member must observe and confirm the accuracy of the count orally or in writing; and

(k) As the contents of each drop box are counted, a member of the count team must record the total amount of coin, chips, and currency counted (the drop) on the master games report; and

(l) As the count is occurring, a surveillance employee must record in the surveillance log the currency counter accuracy information in (b) of this subsection, currency verification amount, total bill and dollar count of each drop box and the announcement by the count team of the combined dollar count of all drop boxes; and

(m) If a cage cashier has recorded the opener, closer, fill slips, and credit slips on the master game report before the count, a count team member must compare the series num-

bers and totals recorded on the master game report to the fill slips, credit slips, and table inventory slips removed from the drop boxes, confirm the accuracy of the totals, and must record, by game and shift, the totals we require on the master game report. Otherwise, the count team must complete all required information on the master game report; and

(n) The accounting department may complete the win/loss portions of the master game report independently from the count team if this is properly documented in the approved internal controls.

WSR 18-23-080

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 19, 2018, 1:53 p.m., effective December 20, 2018]

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

Purpose: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC), the department of health is adopting rule amendments to the vendor and participant sections of the chapter to: Clarify business integrity requirements; clarify types of monitoring activities; define "pattern" relating to vendor violations and sanctions; and to remove a sanction.

The changes remove a participant sanction and clarify sanction amounts in the participant sections of the rules as they are required by USDA/FNS, the program oversight agency. Revisions of definitions and clarifications to areas of the vendor sections of the rules are in the interest of vendors to better understand the requirements of the rules to support compliance.

The rules will:

- Remove a sanction for selling or giving away breast pumps;
- Clarify the dollar amount of several participant sanctions;
- Clarify business integrity and vendor selection criteria;
- Remove requirement for vendors to only purchase WIC approved foods from approved wholesalers, and to include frozen fruit and vegetables in the full service grocery requirement;
- Align language in the rule with federal C.F.R. requirements;
- Provide a clearer description of vendor compliance activities;
- Clarify how an individual store contract termination or disqualification impacts multi-store vendors; and
- Allow eWIC card as a method of payment.

Citation of Rules Affected by this Order: New WAC 246-790-095; and amending WAC 246-790-010, 246-790-075, 246-790-077, 246-790-105, 246-790-500, 246-790-530, and 246-790-560.

Statutory Authority for Adoption: RCW 43.70.120.

Adopted under notice filed as WSR 18-12-117 on June 6, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 7, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 7, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 0.

Date Adopted: November 19, 2018.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

WAC 246-790-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Administrative appeal" means a ~~((formal proceeding where a vendor who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department))~~ proceeding required by statute or constitutional right and conducted under the rules of this chapter, which provides an opportunity to be heard by the department prior to the entry of an order under this chapter.

(2) "Applicant" means any vendor, or person representing a vendor, or vendors reapplying for authorization, requesting authorization to participate in the WIC program by submitting a completed application for authorization and all corresponding documentation.

(3) "Approved infant formula wholesaler" means a supplier or manufacturer listed in the document titled "*Washington WIC Approved Infant Formula Suppliers.*"

(4) "Authorized vendor" means a vendor who has met the vendor selection criteria as required by the United States Department of Agriculture (USDA) and the department, received training on WIC program requirements, and entered into a fully executed contract with the department.

(5) "Business integrity" means ~~((the))~~ a store's uncompromising commitment and adherence to honesty, truthfulness, and accuracy in interactions with the department, customers, creditors, suppliers, associates, and the public at large.

(6) "Business and financial documentation" means all documents required to own and operate a business as a retailer which may include, but not be limited to, banking and financial records; property sales, leases and rental agreements; insurance records; affiliate arrangements; inventory records; accounting, sales, and tax records; records of ownership; or articles of incorporation, bylaws and operating agreements.

(7) "C.F.R." means Code of Federal Regulations.

~~((7))~~ (8) "Cash value voucher" means a WIC food instrument used by a participant to obtain fresh fruits and vegetables.

~~((8))~~ (9) "Civil monetary penalty" means a sum of money imposed by the WIC program for noncompliance with program requirements.

~~((9))~~ (10) "Contract" means the department's standard WIC contract form that, once completed and signed by both parties, becomes the written legal document binding a vendor and the department to designated terms and conditions and authorizes the vendor to transact food instruments.

~~((10))~~ (11) "Cost containment" means the process of controlling expenses required to operate the WIC program.

~~((11))~~ (12) "Department" means the Washington state department of health.

~~((12))~~ (13) "Disqualification" means the act of revoking the authorization and terminating the contract of an authorized vendor for a specific period of time or permanently for noncompliance with WIC program requirements.

~~((13))~~ (14) "EBT (electronic benefits transfer)" means the electronic system that allows a participant to authorize transfer of their government food benefits from a federal account to a vendor account to pay for products they buy.

~~((14))~~ (15) "Food instrument" means ~~((the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, cash value vouchers, or EBT payment))~~ a WIC program voucher, check, coupon, electronic benefit transfer (eWIC card), or other document which is used to obtain authorized foods.

~~((15))~~ (16) "*Minimum Inventory Requirements*" means the document created, maintained and supplied by the department that lists the required minimum stock levels of department-authorized foods a store must maintain on premises at all times.

~~((16))~~ (17) "Notice of violation" means a written document given to a vendor when the department determines the vendor has not complied with program requirements, federal WIC regulations, this chapter, or ~~((the))~~ a contract.

~~((17))~~ (18) "Participant" means a woman, infant or child receiving WIC benefits.

~~((18))~~ (19) "Participant access" means the ability of WIC participants to purchase authorized WIC foods, with consideration made to factors including, but not limited to, geography, population density, and participant dietary needs, as determined by the department.

~~((19))~~ (20) "Peer group" means a group of authorized vendors that share certain characteristics and can be expected to have similar business practices and prices. Peer group criteria and assignments are determined by the department. Vendors in the same peer group are subject to the same WIC maximum reimbursement levels. Peer group criteria include, but are not limited to, characteristics such as geography or size.

~~((20))~~ (21) "SNAP" means the federal supplemental nutrition assistance program. SNAP was previously known as the food stamp program.

~~((21))~~ (22) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any organization, association, or business entity.

Evidence of substantial interest may include, but not be limited to:

(a) Directly or indirectly owning, operating, managing, or controlling an entity or any part of any entity;

(b) Directly or indirectly profiting from an entity or assuming liability for debts or expenditures of the entity; or

(c) Being an officer or director or managing member of an entity.

(23) "Variety" means a collection of similar, but not identical, foods and products. This may include different brands, sizes or flavors of similar foods and products.

~~((22))~~ (24) "Vendor," also known as "retailer," means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC-approved foods to WIC participants.

~~((23))~~ (25) "Vendor compliance activities" means on-site contract monitoring, covert compliance buys, and inventory audits.

(26) "Vendor selection criteria" means the federally approved standards the department uses to select vendors for WIC authorization.

~~((24))~~ (27) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.

~~((25))~~ (28) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246.

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

WAC 246-790-075 Vendor application. (1) To be considered for WIC vendor authorization, an applicant must:

(a) Be a food vendor that meets or exceeds all selection criteria listed in WAC 246-790-077;

(b) Apply to the department using ~~((department forms))~~ the required format;

(c) Provide complete and truthful information in the application;

(d) Allow the department to inspect the store; and

(e) Participate in training on WIC program requirements.

(2) If the department declines an application, the applicant may reapply no sooner than six months afterwards.

(3) Before declining an application for the first time, the department shall give an applicant thirty days' notice to submit missing materials or information, if such is the basis for denial.

(4) An applicant may request an exemption to the vendor selection criteria in WAC 246-790-077.

(a) The request must:

(i) Be in writing, dated, and signed by the applicant;

(ii) Explain the reasons for the request in detail;

(iii) Demonstrate how the requested exemption is consistent with the requirements, purpose, and objectives of the program; and

(iv) List, in the body of the request, the physical address of the applicant.

(b) The department may grant the requested exemption if the applicant's request conforms to (a) of this subsection and

the department determines that allowing the exemption is consistent with the requirements, purpose, and objectives of the program and is necessary to assure participant access.

(c) The department shall respond in writing to a request for exemption with its decision to grant or deny the request.

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

WAC 246-790-077 Vendor selection criteria. At the time of application, applicants must meet the following criteria; all authorized vendors must continue to meet the following criteria throughout the period of authorization:

(1) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the "WIC approved infant formula suppliers" document.

~~(2) ((Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer, wholesaler, dairy, or fresh produce supplier.~~

~~(3))~~ (3) Maintain in store at all times the minimum quantities and varieties of WIC approved foods, including infant formula, as required by the "WIC minimum inventory requirements" document. Expired or spoiled foods do not count as inventory.

~~((4))~~ (3) Maintain an active electronic mailing address to be used for department communications.

~~((5))~~ (4) Be primarily engaged in the retail sale of food products and general merchandise as a full line grocery store. A full line grocery store carries the designated products in the following categories on a continuous basis. These requirements are separate from the "minimum inventory requirements."

(a) Canned foods: At least twenty total varieties of canned foods such as fruit, vegetables, beans, meat, poultry, chili, soup, stew, broth or sauce (excluding canned infant formula, fish, juice or other beverages).

(b) Frozen foods: At least ten total varieties of frozen foods such as dinners, pizza, fruit, or vegetables (excluding frozen juice, meat, seafood, poultry, desserts, snacks or novelties).

(c) Dairy products: At least ten total varieties of refrigerated dairy products such as butter, yogurt, cottage cheese, string cheese, cream cheese, whipped cream, sour cream or ice cream (excluding milk, WIC-approved cheeses, infant formula, or individual serving size packages of dairy products).

(d) Frozen and unfrozen meat, seafood, and poultry: At least six total varieties (all unbreaded) of frozen meat, unfrozen meat, frozen seafood, unfrozen seafood, frozen poultry, or unfrozen poultry, including at least two varieties of meat and at least two varieties of poultry (excluding precooked and deli-style products).

~~((Fresh))~~ (e) Fruit and vegetables: At least twenty total varieties of fresh or frozen fruits or fresh or frozen vegetables including at least five varieties of fruits and at least five varieties of vegetables. The store must have a minimum of five linear feet of refrigerated display space for its produce.

(f) Bread and tortillas: At least ten total varieties of bread products such as bread, rolls, bagels, and tortillas. Breads and

tortillas exclude muffins, pastries, cookies, cakes, crackers, or other snack foods.

(g) Grains, pasta, and dried beans: At least ten total varieties of grains, pasta, or beans such as oatmeal, rice, bulgur, pasta, beans, peas, or lentils (excluding bread, canned products or other breakfast cereals).

(h) Baby products: At least ten total varieties of baby products such as diapers, baby bottles, baby wipes, baby shampoo, or baby lotion(~~(, or baby bottles)~~) (excluding infant formula).

(i) Household cleaners and laundry products: At least ten total varieties of household cleaning or laundry products used for cleaning kitchens, dishes, bathrooms, windows, floors, furniture, clothes, or fabrics.

(j) Health care products: At least twenty total varieties of health care products such as pain relievers, cold/cough/allergy products, digestive aids, dental care products, feminine hygiene products, or toilet paper.

~~((6))~~ (5) Maintain prices for WIC-approved foods that are at or below the limits established by the WIC nutrition program's current price management system.

~~((7))~~ (6) Be currently authorized and participating as a vendor in the supplemental nutrition assistance program (SNAP).

~~((8))~~ (7) Receive or expect to receive less than fifty percent in annual food sales revenue from WIC transactions.

~~((9))~~ (8) Be open for business at least eight hours per day, six days per week.

~~((10))~~ (9) Submit to the department, upon request, sales information including gross sales and tax exempt food sales.

(10) Be current with state, federal and local taxes.

(11) Have electronic cash registers capable of producing receipts that include:

- (a) The store name;
- (b) Food product name and description;
- (c) Quantity sold~~((;))~~ and price of each item;
- (d) Total actual purchase price; and
- (e) The date of sale.

(12) Post food prices for all foods, including fresh fruits and vegetables, on each item, or on the shelf next to the item.

(13) Maintain a business model that promotes business integrity. The department may investigate the business integrity of a WIC vendor or applicant at any time. In its determination of business integrity, the department's considerations will include, but ~~((is))~~ are not limited to, the following:

(a) Providing complete and truthful information in the application, correspondence, and other documents requested by the department.

(b) Cooperating with department requests to complete WIC authorization or compliance activities, including granting access to WIC food instruments.

(c) Providing business and financial documentation to the department upon request.

(d) Ensuring all current owners, officers, managers, or representatives have had no criminal convictions or civil judgments entered against them in the last six years for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, ~~((and))~~ or obstruction of justice.

~~((e))~~ (e) Having no uncorrected violation(s) from a previous contracting period, current disqualification, or outstanding claims owed to the department.

~~((f))~~ (f) Not being currently disqualified from the SNAP or having a civil money penalty levied instead of SNAP disqualification.

~~((g))~~ (g) Disclosure of any third party, agent or broker involved in any part of the application process.

~~((h))~~ (h) Where a store has an outstanding WIC or SNAP sanction or claim, not attempting to avoid sanction or claim by reapplying after:

(i) Conveying any legal interest in a store to a relative or other person with whom the owner or owners have a financial relationship.

(ii) Accepting any legal interest in a store from a relative by blood or marriage or other person with whom the owner or owners have a financial relationship.

(iii) Reorganizing the business to another form, such as, but not limited to, corporation, general partnership, limited partnership, sole proprietorship, ~~((and))~~ or limited liability company.

(iv) Failing to cooperate with WIC authorization of compliance activities.

(14) The department may verify the identity of an applicant at any time.

(15) When evaluating business integrity, the department may take into account whether a store subject to a sanction or claim has been sold for less than fair market value.

~~((15))~~ (16) Not own or be a substantial interest holder, have previously owned or been a substantial interest holder, or have a legal interest in a business that has a WIC sanction currently in effect. This includes any business for which a vendor may be applying.

~~((16))~~ (17) Use a recordkeeping system that complies with the Washington state department of revenue requirements in WAC 458-20-254, maintains inventory records for Federal tax reporting, preserves original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.

~~((17))~~ (18) Comply with all federal and state nondiscrimination laws, regulations, and policies. This includes, but is not limited to, 7 C.F.R. Parts 15, 15a, and 15b and RCW 49.60.030.

~~((18))~~ (19) Comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336.

~~((19))~~ (20) Comply with all other federal, state, county, and city required licenses, permits and certifications.

~~((20))~~ (21) Exemptions.

(a) Oregon and Idaho vendors located on the Washington border and that serve Washington residents are exempt from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.

(b) An "infant formula-only provider" is exempt from the full line grocery store requirement. Infant formula-only provider means an authorized vendor or pharmacy for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.

NEW SECTION**WAC 246-790-095 Vendor compliance activities.**

There are three primary types of vendor compliance activities:

- (1) On-site contract monitoring is an overt compliance inspection conducted by department staff to confirm a vendor's compliance with state vendor agreement requirements, and state and federal WIC regulations.
- (2) A compliance buy is a covert shopping experience conducted by department staff at WIC-authorized vendors. The compliance buy activity is used to test vendor staff's knowledge of compliance rules.
- (3) An inventory audit is an examination of food invoices or other proof of purchase to determine whether a vendor has purchased sufficient quantities of authorized food to support the vendor's claim(s) for reimbursement for such foods from the department during a specific point in time.

AMENDATORY SECTION (Amending WSR 14-21-110, filed 10/16/14, effective 11/16/14)

WAC 246-790-105 Failure to meet WIC program requirements.

(1) When an authorized vendor is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department will initiate appropriate enforcement action which may include notices of violation, unless the department determines that notification would compromise the investigation; claims for reimbursement; and sanctions as set forth in the applicable federal regulations or the contract.

(2) Where a violation requires disqualification, the department may impose a civil penalty in lieu of disqualification if the department determines, in its sole discretion and in accordance with the department's participant access criteria, that the continued operation of the store is necessary to assure adequate participant access.

(3) An authorized vendor's contract is terminated on the effective date of a disqualification. A multistore vendor's contract shall be amended to remove only the disqualified store on the effective date of disqualification.

(4) Where a sanction requires a pattern of violations, a "pattern" is established by ~~((more than one))~~ three separate documented incidents of the same ((type of violation within a)) federal or state contract violation identified during a single contract period.

(5) A disqualified vendor may reapply at the end of the disqualification period.

(6) The department will document complaints against authorized vendors and any resulting corrective action.

(7) The effective date of all sanctions is twenty-eight days after an authorized vendor receives notice of the department's decision to impose sanctions, unless otherwise specified in this chapter, the contract, or in the department's notice. The department, in its sole discretion, may temporarily suspend the contract in lieu of termination to resolve any uncertain matters, including appeals.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-500 Definitions related to participant compliance. The definitions in this section apply to this section through WAC 246-790-570 unless the context clearly indicates otherwise.

(1) "Appeal" means a formal proceeding where a participant who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.

(2) "Applicant" means any pregnant woman, postpartum woman, infant ~~((or))~~, child, or caregiver of an infant or child who is applying to receive WIC program benefits, ~~((and))~~ or a breastfeeding infant of an applicant breastfeeding woman. Applicants include individuals who are currently participating in the program but are applying because their certification period is about to expire.

(3) "Authorized supplemental foods" means those supplemental foods authorized by the department for issuance to a particular participant.

(4) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

(5) "C.F.R." means Code of Federal Regulations.

(6) "Claim" means a type of sanction demanding repayment for misuse of ~~((WIC/FMNP))~~ WIC/farmers' market nutrition program (FMNP) benefits by a WIC participant.

(7) "Deliberate" means acting intentionally, knowingly and voluntarily ~~((and not because of mistake or accident)).~~

(8) "Department" means the Washington state department of health.

(9) "Disqualification" means the act of ending the WIC program participation of a participant, whether as a punitive sanction or for administrative reasons.

(10) "Dual participation" means program participation in one or more than one WIC clinic.

(11) "Eligibility criteria" means the reasons people qualify for WIC program benefits as described in 7 C.F.R. Sec. 246.7(c).

(12) "Farmers' market nutrition program (FMNP)" means a program to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants, and to expand the awareness, use of, and sales at farmers' markets.

(13) "Food instrument" means the method of payment used by a participant to obtain WIC-approved foods. ~~((This))~~ These methods may include WIC checks, WIC farmers' market nutrition program checks, cash value vouchers, or electronic benefit transfer (EBT) payments.

(14) "Local agency" means:

(a) A public or private nonprofit health or human services agency that provides health services either directly or through contract with the department to provide services ~~((s))~~ in accordance with 7 C.F.R. Sec. 245.5;

(b) An Indian health services unit in contract with the department to provide services;

(c) An Indian tribe, band or group recognized by the department; and/or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups.

(15) "Notice of violation" means a written document given to a participant, or caregiver of an infant or child participant, when the department determines a participant or caregiver((s)) of an infant or child participant, ((have)) has not complied with WIC program requirements, federal WIC regulations, this chapter, or the participant rights and responsibilities form. This notice is a type of sanction which explains the violation and provides a warning about repercussions of subsequent violations.

(16) "Nutritional risk" means detrimental or abnormal nutritional conditions detectable by biochemical or anthropomorphic measurements; other documented nutritionally related medical conditions; dietary deficiencies that impair or endanger health; conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions including, but not limited to, homelessness and migrancy, as specified in 7 C.F.R. Sec. 246.2.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant violation" means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program.

(19) "Proxy" means an individual who is designated by a participant or a child or infant participant's parent, guardian, or caretaker to receive ((food instruments and to)) and redeem food instruments for the participant and whose name is ((on file at)) filed with the local agency.

(20) "Restitution" means reimbursement to the department of the cash value of ((the)) WIC program benefits received by a participant as the result of a sanction imposed for a violation.

(21) "Sanction" means a penalty imposed by the department of health WIC program because of a violation. The three types of sanctions are notice of violation, disqualification, and claim.

(22) "SNAP" means the federal Supplemental Nutrition Assistance Program. SNAP was previously known as the Food Stamp Program.

(23) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC-approved foods to WIC participants.

(24) "Violation" means any deliberate action of a WIC participant or caregiver of an infant or child participant, including actions listed in WAC 246-790-520 that violate federal or state statutes, regulations, policies, or procedures governing the WIC program.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. Sec. 246.

(26) "WIC benefits" means benefits a participant receives that include, but are not limited to, food, infant formula, and breast pumps.

(27) "WIC Participant Rights and Responsibilities form" means a document signed by a WIC participant or proxy ((has signed)) showing she or he has been advised of and agrees to WIC program rights and obligations.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-530 WIC participant violations and sanctions. (1) When any WIC participant or caregiver deliberately violates ((the)) federal or state statutes, regulations, policies or procedures governing the WIC program, the department will initiate appropriate enforcement action, which may include establishment of claims under WAC 246-790-550 or disqualification under WAC 246-790-560. Violations and applicable sanctions are listed below:

Violations	1st Instance	2nd Instance	Subsequent Instances
((Redeeming or)) Attempting to redeem a food instrument for unauthorized foods or formula.	Notice of violation	((6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is over \$100)) <u>Notice of violation</u>	((1-year)) <u>6-month</u> disqualification ((and claim))
<u>Redeeming a food instrument for unauthorized foods or formula.</u>	<u>Notice of violation and claim</u> <u>1-year disqualification and claim if claim is \$100 or more</u>	<u>1-year disqualification and claim</u>	<u>1-year disqualification and claim</u>
<u>Attempting to return foods purchased with a food instrument to a WIC vendor in exchange for money, credit, a different food or food in excess of those on the food instrument.</u>	<u>Notice of violation</u>	<u>Notice of violation</u>	<u>6-month disqualification</u>

Violations	1st Instance	2nd Instance	Subsequent Instances
Returning ((or attempting to return)) foods purchased with a food instrument to a WIC vendor in exchange for money ((or)) credit, a different food, or food in excess of those on the food instrument.	Notice of violation and <u>claim</u> <u>1-year disqualification and claim if claim is \$100 or more</u>	((6-month)) <u>1-year</u> disqualification and claim ((if claim is less than \$100 <u>1-year disqualification and claim if claim is over \$100))</u>	1-year disqualification and claim
Redeeming a food instrument reported as lost or stolen, and then replaced.	Notice of violation and <u>claim</u> <u>1-year disqualification and claim if claim is \$100 or more</u>	((6-month)) <u>1-year</u> disqualification and claim ((if claim is less than \$100 <u>1-year disqualification and claim if claim is over \$100))</u>	1-year disqualification and claim
Destruction of vendor ((or)) farmer or local agency property during a WIC transaction or visit.	Notice of violation if replacement or repair cost is less than \$100 6-month disqualification if replacement or repair cost is ((more than)) \$100 or more <u>Note: Replacement or repair cost will be determined by affected vendor, farmer or local agency</u>	1-year disqualification	1-year disqualification
Destruction of state ((or local)) agency property during a WIC visit.	Notice of violation ((if replacement or repair cost)) and claim if claim is less than \$100 ((6-month)) <u>1-year</u> disqualification ((if replacement or repair cost is more than \$100)) and claim if claim is \$100 or more	1-year disqualification	1-year disqualification
Altering a food instrument.	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is ((over)) \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Making false or misleading statements or deliberately misrepresenting, concealing or withholding facts to obtain or increase benefits.	Notice of violation and claim if claim is less than \$100 1-year disqualification and claim if claim is ((over)) \$100 or more	1-year disqualification and claim	1-year disqualification and claim

Violations	1st Instance	2nd Instance	Subsequent Instances
Participating in and spending WIC food instruments from more than one WIC clinic during the same time period (dual participation).	((Notice of violation and claim if claim is less than \$100; termination from one of the WIC clinics)) 1-year disqualification and claim ((if claim is over \$100))	1-year disqualification and claim	1-year disqualification and claim
Threatening to harm or physically harming clinic, farmer or vendor staff during a WIC visit.	6-month disqualification	1-year disqualification	1-year disqualification
Failure to comply with department or local agency request for information ((required to verify eligibility)) <u>during an investigation.</u>	1-year disqualification	1-year disqualification	1-year disqualification
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell <u>food instrument</u> or exchange food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other nonfood items (trafficking) ((This includes)) verbally, in print, or online through web sites ((and)) <u>or social media.</u>	<u>Notice of violation and claim if claim is less than \$100</u> 1-year disqualification and claim <u>if claim is \$100 or more</u>	1-year disqualification and claim	1-year disqualification and claim
((Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell or exchange a WIC multi-user breast pump for cash, credit, merchandise, favors, or other items (trafficking). This includes verbally, in print or online through web sites and social media.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim))
Theft of a food instrument by a WIC participant.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim

(2) During each certification visit, participants will be informed of their rights and responsibilities, program rules, and that there ~~((are))~~ may be potential sanctions should they deliberately violate a program rule.

(3) Whenever the department assesses a claim of misappropriated WIC program benefits of one hundred dollars or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year.

(4) The department may decide not to impose a disqualification if, within thirty days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or

by a participant under the age of eighteen, the department may approve the designation of a proxy in order to continue program benefits to these participants.

(5) Participants may reapply for benefits at any time after the disqualification period ~~((is over))~~ concludes.

(6) The department must consider designating a substitute caregiver instead of disqualification for infants, children, and women under eighteen years of age.

(7) Second and subsequent instances of violations are assessed based on a twelve-month period from the first notice that a violation has occurred.

AMENDATORY SECTION (Amending WSR 17-08-020, filed 3/27/17, effective 4/27/17)

WAC 246-790-560 Participant disqualification. (1) In addition to the disqualifications set forth in the table under WAC 246-790-530, whenever the department assesses a claim under WAC 246-790-550 of one hundred dollars or more, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year. In addition, a claim may be assessed for misuse of WIC/FMNP benefits. Dual participation violations will result in disqualification regardless of claim amount.

(2) The department will count any violation occurring within the consecutive twelve-month period following the first notice of violation as a second or subsequent violation. Second or subsequent violations do not have to be for the same violation type.

(3) The department will count any second or subsequent violation as a second or subsequent violation even if:

(a) Another member of the WIC participant's household commits the violation; or

(b) The violation affects the WIC benefits of another WIC participant in the same household.

(4) The department shall provide a written notice to the WIC participant describing the violations and specifying the sanction.

(5) For a violation involving a claim, the department may decline to impose a disqualification if the WIC participant makes full restitution, or agrees to a repayment schedule, within thirty days of the date the notice of disqualification was sent.

(6) Where a parent or caregiver of an infant or child participant or a WIC participant under the age of eighteen has committed ~~((the))~~ a violation, the department must consider designating a substitute caregiver to continue providing WIC benefits to the participant.

(7) Participants may reapply for benefits at any time after the end of the disqualification period.

Citation of Rules Affected by this Order: New WAC 504-26-015, 504-26-020, 504-26-025, 504-26-030, 504-26-035, 504-26-040, 504-26-045, 504-26-050, 504-26-105, 504-26-110, 504-26-115, 504-26-120, 504-26-125, 504-26-409, 504-26-415, 504-26-420, 504-26-425, 504-26-504, 504-26-510, 504-26-515, 504-26-520, 504-26-525 and 504-26-530; repealing WAC 504-26-005, 504-26-101, 504-26-102, 504-26-103, 504-26-200, 504-26-301, 504-26-302, 504-26-303, 504-26-304, 504-26-305, 504-26-4031, 504-26-404, 504-26-405, 504-26-406, 504-26-407, 504-26-408, 504-26-501, 504-26-601 and 504-26-602; and amending WAC 504-04-010, 504-04-020, 504-04-110, 504-04-120, 504-04-130, 504-04-140, 504-26-001, 504-26-010, 504-26-100, 504-26-201, 504-26-203, 504-26-204, 504-26-206, 504-26-213, 504-26-214, 504-26-219, 504-26-220, 504-26-225, 504-26-227, 504-26-230, 504-26-401, 504-26-402, and 504-26-403.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 18-20-113 on October 2, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 23, Amended 22, Repealed 19; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 23, Repealed 19.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 23, Repealed 19.

Date Adopted: November 16, 2018.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

WSR 18-23-083

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed November 19, 2018, 2:53 p.m., effective December 20, 2018]

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

Purpose: The university is updating the rules regarding standards of conduct for students, chapter 504-26 WAC, and the rules regarding practice and procedure, chapter 504-04 WAC.

The proposed amendments modify, clarify, and update the student conduct procedures in the university's standards of conduct for students and rules regarding practice and procedure, including, but not limited to, student conduct hearings and appeals. The proposed amendments include, but are not limited to, changes to incorporate legal requirements and help ensure that students' rights are well protected throughout the process, while also protecting the university community and holding individuals accountable for violations.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-010 Matters subject to brief adjudication. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:

(1) ~~Student conduct proceedings under chapter 504-26 WAC are treated as brief adjudications, except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, which shall be referred for a full (formal) adjudication in accordance with this chapter).~~ Student conduct proceedings involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization. The procedural rules of chapter 504-26 WAC apply to all student conduct proceedings.

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of ~~((admissions))~~ the registrar.

(3) Appeals of parking violations. Appeals of parking violations are brief ~~((adjudicatory))~~ adjudicative proceedings conducted pursuant to applicable rules. See WAC 504-13-860, 504-14-860, 504-15-860, and 504-19-860.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. ((§)) Sec. 1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of ~~((scholarships and))~~ student financial ((aid)) services.

(6) ~~((Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.~~

~~((7))~~ Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees ~~((shall be))~~ are brief adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings. The president of Washington State University or his or her designee ~~((shall have))~~ has the power to appoint members of the faculty, staff, and student body; administrative law judges; members in good standing of the Washington state bar association; the president or his or her designee; a person or entity with whom the university contracts; or any combination of the above to be presiding officers for formal and brief adjudicative proceedings. When more than one individual is designated to be the presiding officer, one person shall be designated by the president or ~~((president's))~~ designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. The term "presiding officer" as used in this chapter ~~((shall be))~~ is read in the plural when the context demands.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-110 Adoption of model rules of procedure for formal (full) ~~((proceedings))~~ adjudications—Exceptions. In formal ~~((proceedings))~~ adjudications (also referred to as full adjudications) pursuant to RCW 34.05.413 through 34.05.476, Washington State University follows the Administrative Procedure Act (chapter 34.05 RCW) and hereby adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exceptions ~~((and modifications))~~:

(1) WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

(2) ~~((WAC 10-08-040 Adjudicative proceedings—Notice of hearing. In addition to this model rule regarding notice, the provisions in WAC 504-26-401(5) and 504-26-403 (1) and (2) apply.~~

(3) ~~The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 (Title IX) shall include the complainant(s) if the complainant(s) notifies the university that she/he wishes to participate as a party.~~

(4) WAC 10-08-120 Adjudicative proceedings—Subpoenas. In determining whether to issue, quash, or modify a subpoena to a complainant/witness in a student conduct matter implicating Title IX, the presiding officer shall give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal office for civil rights. In such cases, the party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(5) Cross examination. As required by RCW 34.05.449, cross examination of witnesses shall be permitted to the extent necessary for full disclosure of all relevant facts and issues. However, in a student conduct matter implicating Title IX, the complainant and respondent shall not be permitted to cross examine each other directly. The preferred method of cross examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. The presiding officer may decline to ask cross examination questions that are irrelevant, immaterial, or unduly repetitious. In accordance with evidence rule 412, a complainant's sexual history generally will not be admissible. All questions submitted by the parties will be retained as part of the agency record. At the request of either participating party in a student conduct matter implicating Title IX, the requesting party shall be permitted to participate remotely, or in a different room, in accordance with chapter 504-26 WAC.

(6) Discovery. Depositions, interrogatories, and medical examinations of parties as part of discovery are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process, in accordance with RCW 34.05.446.

(7) Standard of proof. The standard of proof in student conduct proceedings is preponderance of the evidence.

(8) Administrative review in full adjudications. Within twenty days of service of an initial order resulting from a full adjudication in a student conduct proceeding, or a different time period as specified in the initial order, a student or student organization may appeal the decision to the university president or designee, who reviews the matter in accordance with RCW 34.05.464. Complainants in student conduct matters shall be afforded the same right to appeal as respondents. The university president or designee, of his or her own initiative, may review any initial order resulting from a full adjudication. The decision of the president shall be the final order of the university. If no appeal is initiated, the initial order following a full adjudication becomes the final order of the university after twenty-one days, or the day after the appeal

~~period specified in the initial order, whichever is sooner.))~~
Chapter 504-26 WAC sets forth exceptions and modifications to the model rules of procedure for formal hearings involving student discipline.

(3) The university's faculty manual sets forth exceptions and modifications to the model rules of procedure for formal hearings involving faculty discipline.

(4) Other procedural rules adopted in this title and this chapter are supplementary to the model rules. In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university ~~((shall))~~ govern.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-120 Confidentiality of student, faculty, and staff formal adjudicative proceedings. In formal adjudicative proceedings, the presiding officer ~~((shall have))~~ has the power to close all or part of the hearing to public observation. The presiding officer ~~((shall have))~~ has the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also ~~((shall have))~~ has the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or ~~((medical withdrawal))~~ administrative cancellation of enrollment, hearings ~~((with))~~ are normally ~~((be))~~ closed to public observation. In student conduct matters, including those implicating Title IX, hearings ~~((will be))~~ are closed to public observation in accordance with WAC 504-26-025.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding ~~((shall have))~~ has the right to have an ~~((adviser))~~ advisor present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington, including licensed legal interns ~~((pursuant to admission to practice rule 9, shall be)),~~ are permitted to act as ~~((a))~~ representatives at the proceedings. The presiding officer ~~((shall have))~~ has the power to impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-140 Discovery. Discovery in formal hearings may be permitted at the discretion of the presiding officer, ~~((except as provided in WAC 504-04-110(6)))~~ unless specific limitations apply. In permitting discovery, reference ~~((shall))~~ must be made to the civil rules applicable in court proceedings for guidance.

The presiding officer ~~((shall have))~~ has the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

PART I

GENERAL MATTERS

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-001 Preamble. Washington State ~~((University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct.))~~ University's long-standing commitment to providing students with a transformational experience continues with a focus on enhancing the quality and relevance of the learning experience, providing more personalized student services, expanding learning opportunities outside the classroom, and developing a more cohesive student community. To this end, students are expected to uphold and be accountable ~~((for these))~~ to high standards ~~((both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.~~

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these)) of conduct that foster a safe, healthy, and inclusive campus community. The basic philosophy behind the standards of conduct and processes is one of education, centered on student learning through personal development and accountability. Therefore, the student conduct process is designed to guide and correct behaviors, challenge students to make better choices, and protect the rights and safety of all students, the university, and the community at large.

The university strives to provide a fair process for every student without bias or favor regardless of socioeconomic status, connections, race, color, creed, religion, national or ethnic origin, sex/gender, sexual orientation, gender identity/expression, age, marital status, disability, genetic information, or status as an honorably discharged veteran or member of the military. It also has responsibility to inform and educate the university community, parents, and the public at large on these standards, uphold them, and exercise the authority to take educational and/or disciplinary action accordingly.

Correspondingly, students have the responsibility to read and be familiar with the standards of conduct ~~((this chapter); and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community)),~~ to abide by them, and to understand that violation of these standards, if the student is found responsible, will

result in disciplinary and/or educational sanctions. The vice president for student affairs is the person designated by the university president to be responsible for the administration of the standards of conduct.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-010 Definitions. ~~((1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).~~

~~(2) The term "a)~~ For purposes of the standards of conduct, the following definitions apply:

~~(1) Academic integrity hearing board. Teaching faculty and student representatives who, collectively, are authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.~~

~~(2) Appeals board ("means any person or persons authorized by the vice president for student affairs). The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider ((an)) appeals from a university conduct board's or conduct officer's determination((, or a determination after a full adjudication,)) as to whether a student has violated the standards of conduct ((for students)) and any sanctions imposed.~~

~~(3) ((The term ")) Brief adjudication. The process by which a conduct officer may adjudicate student conduct matters involving possible sanctions, other than matters involving suspension for more than ten instructional days, expulsion, loss of recognition, or revocation of degree. Also referred to as a "conduct officer hearing" or "brief adjudicative proceeding."~~

~~(4) Cheating((")). Includes, but is not limited to:~~

~~(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.~~

~~(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.~~

~~(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.~~

~~(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:~~

~~(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact((;)). The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.~~

~~(ii) Counterfeiting a record of internship or practicum experiences((;)).~~

~~(ii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.~~

~~(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.~~

~~(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the ((office of student conduct)) center for community standards. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.~~

~~(g) Unauthorized collaboration on assignments.~~

~~(h) Intentionally obtaining unauthorized knowledge of examination materials.~~

~~(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.~~

~~(j) Unauthorized multiple submission of the same work.~~

~~(k) Sabotage of others' work.~~

~~(l) Tampering with or falsifying records.~~

~~((4) The term ")) (5) Complainant((" means any party)). Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint. Any individual, group, or entity, including the university, who submits a ((charge)) complaint alleging that a student or a registered or recognized student organization violated the standards of conduct ((for students.~~

~~(5) The term ")).~~

~~(6) Conduct board. The group of students, faculty, and staff, collectively authorized in accordance with WAC 504-26-110 to adjudicate certain student conduct matters.~~

~~(7) Conduct officer. A university official authorized by the vice president for student affairs to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.~~

~~(8) Faculty member((")). For purposes of this chapter, ((means)) any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.~~

~~((6) The term ")) (9) Full adjudication. The process by which a conduct board adjudicates matters involving possible suspension of greater than ten instructional days, expulsion, loss of recognition, revocation of degree, or other matters as determined by the university. Also referred to as "formal adjudication," "formal (or full) adjudicative proceeding," or "conduct board hearing."~~

~~(10) Gender identity ("means"). Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.~~

~~((7) The term "may" is used in the permissive sense.~~

~~(8) The term ") (11) Member of the university community (""). Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.~~

~~((9) The term "policy" means)) (12) Parties. The parties to a student conduct proceeding must include the university and the respondent. The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 must include the complainant(s), if the complainant(s) notifies the university in writing that they wish to participate as a party. The university may designate other complainants, individuals, or recognized or registered student organizations as parties to conduct proceedings, or allow individuals or recognized or registered student organizations to intervene in conduct proceedings.~~

~~(13) Policies. The written rules and regulations of the university as found in, but not limited to, the standards of conduct ((for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.~~

~~(10) The term ") , university policy manuals, housing and dining policies, academic regulations, and the university's graduate, undergraduate, and professional catalogs and other publications, including electronic publications.~~

~~(14) Recognized or registered student organization (" means any number of persons who have)). A group of students, collectively, that has complied with the formal requirements for university recognition or registration.~~

~~((11) The term "shall" is used in the imperative sense.~~

~~(12) The term "student" includes all persons)) (15) Respondent. A student or recognized or registered student organization alleged to have violated these standards of conduct.~~

~~(16) Student. Any person taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct ((for students)), who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, ((although)) even if not enrolled ((in this institution.~~

~~(13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students)).~~

~~((14) The term "university" means)) (17) University. Includes all locations, premises, programs, and operations of Washington State University.~~

~~((15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.~~

~~(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.~~

~~(17) The term ") (18) University official ("includes)). Any person employed by the university, performing assigned administrative or professional responsibilities.~~

~~((18) The term ") (19) University premises ("includes)). All land, buildings, facilities, vehicles, web sites, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.~~

~~((19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.))~~

NEW SECTION

WAC 504-26-015 Jurisdiction and applicability— Relationship to other proceedings.

(1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

(a) The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

(i) Requires the university to exercise jurisdiction under law or as required by federal or state agencies;

(ii) Negatively impacted the reputation of the university or its students;

(iii) Occurred on the property of recognized or registered student organizations;

(iv) Caused physical, mental, or emotional harm to another; or

(v) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized or registered student organization.

(b) When the university chooses to exercise jurisdiction for off-campus conduct not in connection with a university-sponsored activity, the parties must be notified in writing of the decision and the reasons for the decision, and their right

to challenge the decision to the vice president for student affairs or designee. Challenges to jurisdiction must be in writing and filed within five calendar days from the date the notice is sent. In cases implicating Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct, the vice president for student affairs or designee must consult with the university's Title IX coordinator.

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards apply to a student's conduct even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a significant number of organization officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay a student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

NEW SECTION

WAC 504-26-020 Advisors and representatives. (1) Advisors. Any party may have an advisor of their choice present during all stages of a conduct process. Upon a party's request, a list of trained advisors from outside the office of the dean of students (and those offices reporting to the dean of students) is provided. Advisors may assist any party engaged in the conduct process and attend meetings and hearings. Advisors may not be witnesses to the alleged behavior. Students should select an advisor whose schedule allows for attendance at the scheduled date and time of the informational meeting and/or hearing, because delays are not normally allowed due to scheduling conflicts of the advisor.

(2) Communication with the center for community standards. Advisors and representatives may communicate directly with the center for community standards to receive information on dates and times of meetings, status of conduct processes, and outcomes. As a condition of participation in the conduct process, the center for community standards may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(3) Advisors in conduct meetings and hearings. During any conduct process, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties.

(4) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. In conduct board hearings, questions regarding logistical and administrative issues are to be directed to the presiding officer, who may impose reasonable conditions upon participation of advisors and representatives.

NEW SECTION

WAC 504-26-025 Confidentiality and participation in student conduct hearings. Student conduct meetings and hearings are closed to public observation. The parties and their advisors or representatives may attend the entire hearing, excluding deliberations. Admission of any other person to the hearing is at the discretion of the conduct officer or presiding officer, as applicable. For convenience, or to accommodate concerns for the personal safety, well-being, or fears of confrontation of any party or witness, the conduct officer or presiding officer may allow participation remotely, in separate rooms, or by other means.

NEW SECTION

WAC 504-26-030 Consolidation. In any student conduct matter in which there are common issues or parties, the parties may request, or the conduct officer or presiding officer may decide, to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.

NEW SECTION

WAC 504-26-035 Service and notification. Service of all university notices under this chapter is sent by electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address on file with the center for fraternity and sorority life, university recreation, or student involvement. Deadlines described in this chapter begin the date the notification is sent via email, personally delivered, or placed in regular U.S. mail.

NEW SECTION

WAC 504-26-040 Presumptions and standard of proof. All students and registered or recognized student organizations are presumed "not responsible" for alleged violations. Any violation must be proven by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred. As part of the university's opening statement in any conduct board hearing, the university's representative must read a statement to this effect.

NEW SECTION

WAC 504-26-045 Evidence. (1) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence. The sexual history of a complainant is not admissible in a student conduct proceeding except to the extent permitted by evidence rule 412 and RCW 34.05.452 (stating that presiding officers must refer to the Washington rules of evidence as guidelines for evidentiary rulings).

(2) Students may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No student must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a student's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

NEW SECTION

WAC 504-26-050 Interim measures. (1) While a student conduct matter is pending, the university may take a

number of interim actions in order to ensure the preservation of the educational experience and the overall university environment of the parties. These actions may include, but are not limited to:

- (a) A no-contact order imposed on any party;
 - (b) University housing room change for one or more involved parties; and/or
 - (c) Changes in academic schedules or assignments for any party.
- (2) As stated in the university's housing and dining policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassignments are determined to be necessary by the university.

(3) University departments taking interim measures must coordinate with the center for community standards, which advises the parties of the interim measures and the process for challenging them. For matters involving the university's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct, the departments must also consult with the university's office for equal opportunity regarding interim measures. Interim measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

~~((ARTICLE I~~~~AUTHORITY FOR STANDARDS OF CONDUCT FOR STUDENTS)) PART II~~OFFICERS AND BOARDS

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-100 ~~((Composition of conduct and appeals boards.))~~ **Presiding officers.** ~~((1) The university))~~ Full adjudicative proceedings are conducted by the conduct board ~~((shall be composed of five individuals appointed by the vice president for student affairs and comprised of students and persons who are any category of university employee, including affiliate faculty and staff. The chairperson of the conduct board shall be named by the vice president for student affairs and shall be a university employee.~~

~~Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.~~

~~(2) The appeals board shall be appointed by the vice president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees, including affiliate faculty and staff, or students. Three persons constitute a quorum of the appeals board.)~~ and are presided over by an individual who is licensed to practice law in the state of Washington and has judicial training. The presiding officer's role is to ensure a fair and impartial process and is limited to making procedural and evidentiary rulings and handling logistical and other matters related to facilitating the proceedings to ensure compliance with legal requirements.

The presiding officer must transmit a full and complete record of the proceedings to the center for community standards and the conduct board, including such comments upon demeanor of witnesses as the presiding officer deems relevant, in accordance with RCW 34.05.461. The presiding officer does not vote and is not considered for purposes of creating a quorum of the conduct board.

NEW SECTION

WAC 504-26-105 Recruitment, appointment, and term of conduct and appeals board members. A committee comprised of students, staff, and faculty members and convened by the vice president for student affairs selects a pool of members of the university community to serve as conduct board members, as well as a separate pool for appeals board members. Each pool must include representatives from all WSU campuses. Pool members are approved by the university president and must be in good standing with the university. Pool members serve a maximum term of four calendar years but may apply to serve another four-year term after a break of two years. Terms of pool members are staggered. Boards are convened by the vice president for student affairs or designee. The center for community standards is not involved in the recruitment or application processes for board members.

NEW SECTION

WAC 504-26-110 Composition of conduct board. A conduct board must consist of five members. A quorum of five is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining whether there is a quorum. A majority of conduct board members hearing a matter must be enrolled WSU students (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

NEW SECTION

WAC 504-26-115 Composition of appeals board. The appeals board must consist of three members. A quorum of three is needed to review a matter. A majority of appeals board members hearing a matter must be enrolled WSU students (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. No appeals board member may serve on a case if the member previously served on a board on a case involving the same complainant or respondent. The vice president for student affairs or designee is responsible for designating one of the three appeals board members as chair. The chair is responsible for ensuring a fair and impartial process and is a voting member of the appeals board.

NEW SECTION

WAC 504-26-120 Training. (1) Board members and presiding officers. Conduct board members, appeals board members, and presiding officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Cultural competency and implicit bias;
- (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
- (c) Identifying bias against individuals and against groups;
- (d) Conflict of interest;
- (e) Sexual assault and gender-based violence;
- (f) Alcohol and drug prevention;
- (g) Due process and burden of proof in student conduct matters; and
- (h) Sanctioning principles and guidelines.

(2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Alternative dispute resolution;
- (b) Restorative justice; and
- (c) All training required of board members (see subsection (1) of this section).

(3) Renewal of training. Training must be renewed on an annual basis.

NEW SECTION

WAC 504-26-125 Recusal. (1) Notification of names of conduct officers and board members. All parties must be notified of the names of conduct officers, conduct board members, and/or appeals board members assigned to their case no later than ten calendar days prior to the hearing or appeals board meeting date.

(2) Requesting recusal of conduct officers and board members. A party requesting recusal of a conduct officer or conduct/appeals board member must demonstrate good cause. The request must be made in writing no later than five calendar days prior to the date of the conduct hearing or appeals board meeting. For conduct board members, the presiding officer is responsible for granting or denying requests. For conduct officers and appeals board members, the vice president for student affairs or designee is responsible for granting or denying requests.

(3) Presiding officer. Requests for recusal of the presiding officer are governed by the model rules of procedure, WAC 10-08-050(2).

(4) Self-recusal in the event of conflict of interest. Conduct officers and board members must be trained in conflict of interest. For any matter in which they are participating, if they identify a potential conflict of interest, appeals board members and conduct officers must promptly notify and consult with the vice president for student affairs or designee, while conduct board members must promptly notify and consult with the presiding officer. Conduct officers and board members must recuse themselves if, after consultation, an actual conflict is determined to exist. If a potential conflict is identified but is determined by the vice president or designee

or presiding officer, as applicable, to be insufficient to justify removal of the person, the parties must be notified of the potential conflict and reasons for determining that it does not pose an actual conflict. For purposes of this subsection, a conflict of interest is defined as a personal interest, financial, familial, or otherwise, that might impair, or reasonably appear to an objective, outside observer to impair, a person's independent unbiased judgment in the discharge of their official responsibilities.

~~((ARTICLE II~~

~~PROSCRIBED)) PART III~~

PROHIBITED CONDUCT

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or recognized or registered student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in WAC 504-26-405.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-203 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities, including its public service functions on or off campus, or of other authorized nonuniversity activities when the conduct occurs on university premises or is directed toward any member of the university community (~~((members))~~) by any means including use of telephone, computer, or some other medium.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-204 Abuse of others or disruption or interference with the university community. Abuse of others or disruption or interference with the university community includes, but is not limited to:

(1) Physical abuse, threats, intimidation, and/or other conduct that threatens, endangers, harms, or undermines the health, safety, or welfare of the university community or any person, including, but not limited to, domestic or intimate partner violence.

(2) Conduct that disrupts the university community or prevents ~~((other students, employees, or guests of))~~ any member of the university community from completing their duties.

(3) Conduct that interferes with or disrupts the university's mission, operations, or activities.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-206 Hazing. (1) No student or recognized or registered student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include, but are not limited to, the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a recognized or registered student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be imposed, ~~((shall))~~ forfeits any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any recognized or registered student organization (~~((association, or student living group))~~) that knowingly permits hazing by its members or others subject to its direction or control ~~((shall))~~ must be deprived of any official recognition or approval granted by the university.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-213 Firearms and dangerous weapons. No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university ~~((property))~~ premises or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. Students wishing to maintain a firearm on campus for hunting or sporting activities must store the firearm with the Washington State University department of public safety.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-214 Disruptive activity. Participating in an on-campus or off-campus riot or unlawful assembly that disrupts the normal operations of the university and/or infringes on the rights of other members of the university community; leading or inciting others to disrupt scheduled and/or normal activities within any ~~((campus building or area))~~ university premises. For peaceful demonstrations, students should consult with university police for safety guidelines.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system including, but not limited to:

(1) Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.

(2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.

(3) Disruption or interference with the orderly conduct of a university conduct board proceeding.

(4) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.

(7) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board, any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.

(8) Failure to comply with or failure to complete any term or condition of any disciplinary sanction(s) imposed under the standards of conduct ~~((for students))~~.

(9) Influencing or attempting to influence another person to commit an abuse of the university conduct system.

(10) Violation of probation or any probationary conditions.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-220 Discrimination and discriminatory harassment. Discrimination or discriminatory harassment on the basis of race; sex/gender; sexual orientation; gender identity/expression; religion; age; color; creed; national or ethnic origin; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); marital status; genetic information; and/or status as an honorably discharged veteran or member of the military; and as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-225 Trespassing. Knowingly entering or remaining unlawfully in or on university premises or any portion thereof. Any person who has been given notice by a university official of the university's decision to exclude ~~((him or her))~~ them from all or a portion of the university ((property)) premises is not licensed, invited, or otherwise privileged to enter or remain on the identified portion of university ~~((property))~~ premises, unless given prior explicit written permission by university administration.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-227 Sexual harassment. Sexual harassment includes behavior defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-230 Retaliation. Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under the standards of conduct ~~((for students))~~ (this chapter). Retaliatory behavior includes action or threat of action that could negatively affect another's employment, education, reputation, or other interest. It also includes retaliation as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

~~((ARTICLE III~~

~~RULES AND REGULATIONS))~~

~~((ARTICLE)) PART IV~~

~~((STANDARDS OF CONDUCT FOR STUDENTS))
PROCEDURES~~

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-401 ~~((Complaints and student))~~ Initiating conduct ((process)) proceedings. (1) Complaints. Any member of the university community may ~~((file))~~ submit a complaint ~~((against))~~ that a student ~~((for violations of))~~ or recognized or registered student organization violated the standards of conduct ~~((for students).~~

(2) ~~A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the~~

accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if)), In addition, the university may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to refer the matter for hearing. After reviewing the initial information, if the conduct officer determines that further conduct proceedings are not warranted, the conduct officer dismisses the matter. If the conduct officer decides not to initiate a conduct proceeding when requested by a complainant, the conduct officer must notify the complainant in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known.

(3) Notice of informational meeting. After reviewing initial information regarding a possible student conduct violation, if the student conduct officer decides conduct proceedings are warranted, the student conduct officer sends the respondent, or parties as appropriate, written notice of an informational meeting. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the meeting. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 (Interpretation—Policies, procedures, and guidelines) must be provided. Any request to change or extend the time or date of the informational meeting should be addressed to the conduct officer.

(4) Purpose of informational meeting. The purpose of the informational meeting is to provide the respondent with information on the conduct process and their rights and responsibilities, and to determine next steps, if any, in resolving the matter. During the informational meeting, the respondent may provide names of witnesses to the conduct officer to potentially contact. In cases involving Title IX, an informational meeting is also offered to a complainant.

(5) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution. In cases where agreement is not reached directly, before referring the matter to a hearing, the conduct officer must consider, and make a written determination, whether alternative dispute resolution is appropriate to resolve the matter. Alternative dispute resolution must not be used in matters involving sexual misconduct or sexual harassment. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.

(6) Referral for adjudication. After the informational meeting, if the conduct officer determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing ((or referred for a)) (brief adjudication) in accordance with WAC 504-26-402, or conduct board hearing (full adjudication) in accordance with ((chapter 504-04 WAC.

(a) If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, the matter is referred for a full adjudication in accordance with chapter 504-04 WAC.

(b) Matters other than those listed in (a) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter for a full adjudication.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the

parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) Determinations in student conduct matters are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence)) WAC 504-26-403. In determining which process is appropriate, the conduct officer considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with the center for community standards, and the range of possible sanctions that could be imposed. A student may request that a conduct board hear the case, but the final decision regarding whether to refer the matter to the conduct board for hearing is made by the conduct officer and is not subject to appeal.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-402 Conduct officer ~~((actions))~~ hearings (brief adjudications). ~~(((1) Any student alleged by a conduct officer to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of)) (1) The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.~~

(2) Notice of hearing. The conduct officer must provide the parties with written notice no later than ten calendar days prior to the conduct officer hearing. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific standard of conduct provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of ~~((a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).))~~ the hearing. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided. The notice must also include:

(a) A jurisdiction statement if the alleged behavior occurred off campus and information regarding the right to challenge jurisdiction in accordance with WAC 504-26-015;

(b) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125; and

(c) Any request to extend the time ~~((and/or))~~ or date of the conduct officer conference/hearing should be addressed to the conduct officer ~~((or presiding officer, as applicable).~~

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing).

(3) ~~((After a review of the evidence and interviewing the student(s) involved in the case,))~~ Hearing and possible outcomes. Conduct officer hearings are brief adjudications conducted in accordance with RCW 34.05.482 through 34.05.494. The hearing allows the conduct officer to review available information, hear the parties' view of the matter, render a decision regarding responsibility, and impose sanctions, as appropriate.

(a) Before the hearing begins, the conduct officer must inform the respondent that:

(i) All respondents are presumed "not responsible" for pending charges;

(ii) The university must prove all violations by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred; and

(iii) The parties have the right to have an advisor present at the hearing.

(b) Upon conclusion of the hearing, the conduct officer may take any of the following actions:

~~(((a)))~~ (i) Terminate the proceeding and enter a finding that the ~~((accused student or recognized student organization))~~ respondent is not responsible for the alleged conduct violation;

~~(((b)))~~ (ii) Dismiss the ~~((investigation,))~~ matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information ~~((that was unknown to the conduct officer arises))~~ becomes known;

~~(((c)))~~ (iii) Find the respondent responsible for any violations and impose ~~((appropriate))~~ sanctions ~~((as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct))~~ within the limitations described in subsection (1) of this section; or

~~(((d)))~~ (iv) Refer the matter ~~((for a full adjudication in accordance with chapter 504-04 WAC.~~

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a full adjudication.

(5) The student is notified in writing of the determination ~~made by))~~ to the conduct board.

(4) Notice of decision and right to appeal. The conduct officer notifies the parties in writing of the decision within ten ~~((business))~~ calendar days of the ~~((proceeding. The notice))~~ conduct officer hearing. This is the initial order of the university and includes information regarding the ~~((stu-~~

dent's)) parties' right to appeal (~~((pursuant to WAC 504-26-407))~~ under WAC 504-26-420.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-403 Conduct board (~~(proceedings)~~ hearings (full adjudications)). ~~((1) Any student charged by a conduct officer with a violation of any provision of the standards of conduct for students that is to be heard by a conduct board is provided notice as described in WAC 504-26-401(5).~~

~~(2) The written notice shall be completed by the conduct officer and shall include:~~

~~(a) The specific complaint, including the university policy or regulations allegedly violated;~~

~~(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;~~

~~(c) The time, date, and place of the hearing;~~

~~(d) A list of the witnesses who may be called to testify, to the extent known;~~

~~(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.~~

~~(3) Time for hearings.~~

(a)) (1) Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board in the discretion of the conduct officer.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC, Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between the rules in this chapter and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than ~~((seven))~~ ten calendar days after the ~~((student has))~~ parties have been sent notice of the hearing ~~((, except in the case of interim suspensions as set forth in WAC 504-26-406)).~~

~~((b))~~ In accordance with WAC 10-08-090, requests to extend the time and/or date for hearing must be addressed to the ~~((chair of the university conduct board, and must be copied to the office of student conduct))~~ presiding officer. A request for extension of time is granted only upon a showing of good cause.

~~((4) University conduct board hearings are conducted by a university conduct board. A goal of the hearing is to have an educational tone and to avoid creation of an unduly adversarial environment. The hearings are conducted according to the following guidelines, except as provided by subsection (6) of this section:~~

~~(a) Procedures:~~

~~(i) University conduct board hearings are conducted in private.~~

~~(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.~~

~~(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.~~

~~(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.~~

~~(v) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board, the complainant, and the accused student, as appropriate. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board. The chair of the university conduct board shall have the discretion to determine admissibility of information.~~

~~(vi) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board))~~

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the (chair and/or conduct officer.

(vii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(viii) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the university conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged and what sanctions, if any, are appropriate.

(b) If the accused student is found responsible for any of the charges, the board may, at that time, consider the student's past contacts with the office of student conduct in determining an appropriate sanction.

(c) The accused student or recognized student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or recognized student organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the standards of conduct for students), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered, deposited in the U.S. mail, or electronically mailed, and a statement of how to file an appeal.

(i) The written decision is the university's initial order.

(ii) If the student or recognized student organization does not appeal the conduct board's decision before twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as an audio record, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice president for student affairs or designee to be appropriate)) presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Cross-examination. As required by RCW 34.05.449, cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues. The preferred method of cross-examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. Regardless, in no circumstance may

the complainant or respondent be permitted to cross-examine each other directly in person or through their representative. The presiding officer may decline to ask cross-examination questions that are irrelevant, immaterial, or unduly repetitious. All questions submitted by the parties must be retained as part of the agency record, in accordance with RCW 34.05.566.

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter, except that any sanction of expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization requires a supermajority consisting of no more than one "no" vote.

(9) Notice of decision and right to appeal. Within ten calendar days of the completion of the hearing, the conduct board must issue a decision, which is the initial order of the university and must contain the following:

(a) Appropriately numbered findings of fact and conclusions;

(b) The sanction(s) to be imposed, if any, and the rationale for the sanction(s);

(c) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(d) Notice that the initial order becomes final unless an appeal is filed within twenty-one calendar days of service of the initial order.

NEW SECTION

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises, programs, or activities pending an investigation or student conduct proceeding relating to alleged standards of conduct violations. An emergency suspension may be imposed at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension. Emergency suspension may be imposed only in situations when the vice president for student affairs or campus chancellor (in consultation with the center for community standards), or their designee, has cause to believe that the student:

(a) Has violated any provision of the standards of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of any part of the university community or the public at large. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

(3) Procedure. The vice president for student affairs or campus chancellor, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), and the policy reasons for the emergency suspension. The

emergency suspension does not replace the regular hearing process, which must proceed to a conduct officer hearing or conduct board hearing, as applicable, as quickly as feasible. Once a final order is entered, any emergency suspension is lifted and the sanction, if any, set forth in the final order is imposed.

NEW SECTION

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor must assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the center for community standards in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the respondent disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor must make a determination as to whether the student did or did not violate the academic integrity policies. If the instructor finds that the student was in violation, the instructor must provide the student and the center for community standards with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one calendar days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by their instructor to have violated the academic integrity policies, the academic integrity hearing board must make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policies and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Academic integrity hearing board proceedings.

(i) Any student appealing a responsible instructor's finding of an academic integrity violation is provided written notice of an academic integrity hearing board hearing in accordance with WAC 504-26-035. The written notice must include:

(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;

(B) The approximate time and place of the alleged act that forms the factual basis for the violation;

(C) The time, date, and place of the hearing;

(D) A list of the witnesses who may be called to testify, to the extent known; and

(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student must have the right to inspect the documentation.

(ii) Time for hearings.

(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the student has been sent notice of the hearing.

(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to the center for community standards. A request for extension of time is granted only upon a showing of good cause.

(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by (c)(iv) of this subsection:

(A) Academic integrity hearing board hearings are conducted in private.

(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.

(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.

(D) In hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weeks before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may suggest written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the academic integrity hearing board chair, who has the discretion to determine admissibility of information.

(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.

(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.

(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the respondent is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(I) The respondent is notified of the academic integrity hearing board's decision within twenty calendar days from the date the matter is heard. The respondent must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.

(iv) If a respondent to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the respondent's absence, and the board may issue a decision based upon that information.

(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

(vi) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the respondent's first offense, the center for community standards ordinarily requires the respondent to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the respondent's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the respondent's second offense, the respondent is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, with a recommendation that the respondent be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the respondent is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the respondent's case be referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the respondent's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings must be reported to the responsible instructor and the chair or dean.

NEW SECTION

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become

final twenty-one calendar days after the date the decision is sent to the parties, unless an appeal is submitted before that date.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order imposing sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond, and conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct officer hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct that the respondent was found to have committed; or

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the appeal and an opportunity to respond.

(a) The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

(b) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent to the parties within twenty calendar days of receipt of the appeal. For appeals of conduct board decisions, the appeals board's decision must be sent to the parties within thirty calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to ninety calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective when sent.

(7) Reconsideration of final orders. Within ten calendar days of service of a final order, any party may submit a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or twenty-one calendar days after the request has been submitted, whichever is sooner. If the appeals board does not respond to the request for reconsideration within twenty-one calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by requesting a stay in writing to the appeals board within ten calendar days of the date the order was served.

NEW SECTION

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the center for community standards web site. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) imposed for a particular violation. Factors must include, but not be limited to, the following:

(a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;

(b) Malicious intent. If a respondent is found to have intentionally selected a victim based upon the respondent's perception of the victim's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct; and

(c) Impact on victim and/or university community.

(2) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(3) Types of sanctions. The following sanctions may be imposed upon any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be imposed for any single violation:

(a) Warning. A notice in writing to the respondent that the respondent is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the student or recognized or registered student organization that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be imposed if the student or recognized or registered student organization is found to have violated any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized or registered student group or organization; they are not eligible for certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the respondent to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of a recognized or registered student organization).

(g) University housing suspension. Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the student from a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or standard of conduct in obtaining the degree, or for other serious violations committed by a student before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A recognized or registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing first year students. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a recognized or registered student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, student involvement office organizational activities, and center for fraternity and sorority life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a student who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902.

(4) Academic integrity violations. No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

((ARTICLE)) PART V

ADMINISTRATION AND RECORDS

NEW SECTION

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The vice president for student affairs or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the center for community standards web site and in the university's student handbook. A link to the student handbook or center for community standards web site must be provided to parties prior to any informational meeting or student conduct hearing and must provide the following information:

- (a) Rights in the student conduct process;
- (b) A clear explanation of what to expect during the process;
- (c) Information regarding legal resources available in the community;
- (d) A statement that respondents are presumed "not responsible"; and
- (e) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045.

(2) Definitions from these standards are incorporated into Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

NEW SECTION

WAC 504-26-510 Good Samaritan policy. A conduct officer may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student who, while in the course of helping another person seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk. In addition, a conduct officer may elect not to initiate a conduct proceeding against a complainant who admits to the possession or use of alcohol or drugs in connection with a report under this policy.

NEW SECTION

WAC 504-26-515 Periodic review and assessment. At the end of each academic year, the center for community standards provides a report to the vice president for student affairs which must include, at a minimum, a numerical breakdown of the types of matters handled and the sanctions imposed. The vice president for student affairs must make the report publicly available, provided all personally identifiable or readily ascertainable student information is removed.

The standards of conduct and the student conduct system as a whole are reviewed every three years under the direction of the vice president for student affairs or designee. The student government council is asked to provide recommendations and input on proposed changes. After completion of any

adjudication or other resolution of a student conduct matter, the center for community standards must send a survey to all parties requesting feedback on the process. Feedback results must be reviewed, at a minimum, every three years in connection with the periodic review and assessment.

NEW SECTION

WAC 504-26-520 Conduct hold on student record.

When a student leaves the university or completes course work required for a degree after an incident occurs that could result in violations of the standards of conduct, the center for community standards may place a conduct hold on the student's record. A conduct hold may also be placed on the student's account if the student has failed to adequately complete sanctions by the proscribed timeline. A conduct hold may restrict the student from adding or dropping classes, requesting an official transcript, or receiving a degree from the university until the hold is removed. The center for community standards must advise the student of the hold and the process for challenging the hold. A conduct hold under these circumstances is not a sanction and does not imply or assume responsibility for a violation of the standards of conduct.

NEW SECTION

WAC 504-26-525 Good standing. The award of a degree and/or diploma is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of the misconduct. The university has the sole authority in determining whether to withhold the degree and/or diploma in cases where the student is not in good standing. The university must deny the award of a degree if the student is dismissed from the university based on their misconduct. Neither diplomas nor transcripts are sent until students have resolved any unpaid fees and resolved any acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of misconduct. (See also academic regulation 45 in the university general catalog.)

NEW SECTION

WAC 504-26-530 Recordkeeping and confidentiality. (1) Removal of conduct record. A student may request removal from their record a single disciplinary violation relating to the possession or use of alcohol and/or marijuana, and/or other violation of the university's policies relating to alcohol and drugs. Granting such a request is discretionary, and the student must make such a request in accordance with university policies and procedures.

(2) Conduct records are maintained in accordance with the university's records retention schedule.

(3) The conduct record is confidential and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 504-21 WAC, University policy on student education records.

(4) A student may request a copy of their own conduct record at their own reasonable expense by making a written request to the center for community standards.

(5) Personally identifiable student information is redacted to protect other students' privacy, except as otherwise required by law.

(6) A student may authorize release of their own conduct record to a third party in compliance with FERPA by making a written request to the center for community standards.

(7) The university may inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA.

(8) The university informs the complainant of the outcome of any conduct proceeding alleging sexual misconduct. (34 C.F.R. 668.46 (b)(11)(vi)(B).)

(9) The university may not communicate a student's conduct record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(a) The student's parents or legal guardians may review these conduct records if the student is a dependent for tax purposes as defined by FERPA.

(b) The university may release conduct records to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA.

((ARTICLE VI

INTERPRETATION AND REVISION))

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 504-26-005 Good standing.
- WAC 504-26-101 Convening boards.
- WAC 504-26-102 Policies.
- WAC 504-26-103 Decisions.
- WAC 504-26-200 Jurisdiction of the standards of conduct for students.
- WAC 504-26-301 Malicious intent.
- WAC 504-26-302 Responsibility for guests.
- WAC 504-26-303 International and national exchange programs.
- WAC 504-26-304 Recognized student organization conduct.
- WAC 504-26-305 Violation of law and university discipline.
- WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings.
- WAC 504-26-404 Procedure for academic integrity violations.
- WAC 504-26-405 Sanctions.

WAC 504-26-406	Interim suspension.
WAC 504-26-407	Review of decision in brief adjudications.
WAC 504-26-408	Interim measures.
WAC 504-26-501	Records.
WAC 504-26-601	Interpretations.
WAC 504-26-602	Periodic review.

WSR 18-23-085**PERMANENT RULES****WASHINGTON STATE UNIVERSITY**

[Filed November 19, 2018, 4:35 p.m., effective December 20, 2018]

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

Purpose: The university is updating the safety rules for spectator events.

In order to meet industry best practices applicable to safety and security at PAC-12 (Pacific Athletic Conference) and NCAA (National Collegiate Athletic Association) events, the university administration is implementing a "clear bag" policy along with other item restrictions. Clear bags help streamline the security process for entry into university events and allow for greater visibility of items being brought into the venues. This policy mirrors those implemented by a majority of peer institutions.

Citation of Rules Affected by this Order: Amending WAC 504-36-030.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 18-18-095 on September 5, 2018.

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

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

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

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

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

Date Adopted: November 16, 2018.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-010, filed 5/8/17, effective 6/8/17)

WAC 504-36-030 Spectator events—Safety rules. (1) Protection of the safety and general welfare of students, fac-

ulty and staff, performers and officials, and members of the general public attending or participating in spectator events on campus is a primary concern of Washington State University.

(2) The following rules of conduct apply to all spectator events of Washington State University. "Spectator event," for the purposes of this section, means ticketed or nonticketed athletic or entertainment events held on any portion of university property, including, but not limited to, Martin Stadium and the Beasley Coliseum (hereafter the "event site").

(a) Behavior which in the judgment of designated university officials constitutes a disruption of the event or a safety hazard for other spectators or participants is prohibited.

(b) For ticketed events, an individual is entitled to occupy only the seat for which he or she has the proper ticket.

(c) Photographing or making audio or visual recordings of a spectator event for commercial purposes is not permitted without specific written permission from the WSU athletic department (for athletic events) or the performer and applicable designated university official (for entertainment events).

(d) Aisles, walkways, and stairs must be kept clear of hazards and obstacles at all times to ensure safe and easy passage for all persons.

(e) Possession and/or consumption of illegal drugs or marijuana is prohibited. Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.

(i) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with (e)(ii) of this subsection, found in the possession of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.

(ii) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor and cannabis board and restrictions and policies imposed by the university, have restricted attendance, and be limited to specified room(s) or area(s). Possession, consumption, service, dispensation, or sale of alcohol is prohibited except to persons of legal age.

(f) Smoking and other uses of tobacco and/or nicotine products are prohibited in all areas of the Pullman campus in accordance with chapter 504-38 WAC and all areas of the Vancouver campus in accordance with chapter 504-37 WAC.

(g) Each spectator is allowed to bring one empty nondisposable water bottle into the event site, provided that the capacity of the water bottle is no more than one and one-half liters. All other beverage containers and devices used for carrying beverage containers are prohibited. All such items are subject to a visual inspection by designated university officials upon entry to the event site. If designated university officials make the determination that a given container or device is prohibited, the possessor of the container or device must remove the container or device from the event site premises or may surrender the container or device to such designated university officials for disposal.

(h) Each spectator is allowed to bring ~~((one soft sided))~~ the following sizes and styles of bags into the event site, provided ((such bag is no larger than fourteen inches by eight inches by fourteen inches and)) that, for seated events, ((is)) the bags are small enough to fit completely under the spectator's seat, where such bags must be kept. ((All other))

(i) Bags made of clear plastic, vinyl, or PVC that are no larger than fourteen inches by eight inches by fourteen inches.

(ii) Clear drawstring bags that are no larger than fourteen inches by fourteen inches.

(iii) One gallon clear plastic freezer bags (Ziploc bag or similar).

(iv) Small clutch bags, with or without a handle strap, that are no larger than four and one-half inches by six and one-half inches (the approximate size of a hand).

(v) Exceptions are made for medically necessary items after proper inspection upon entrance.

(vi) The clear bag policy is enforced at various venues at the discretion of university personnel and management. Exceptions may also be made depending on the venue.

(i) Prohibited bags and containers ~~((are prohibited.))~~ include, but are not limited to:

(i) Purses larger than a clutch bag;

(ii) Coolers;

(iii) Briefcases;

(iv) Backpacks;

(v) Fanny packs;

(vi) Cinch bags;

(vii) Luggage of any kind;

(viii) Computer or camera bags;

(ix) Binocular cases;

(x) Any bag larger than the permissible sizes specified in subsection (h) of this section.

(j) Spectators are allowed to bring personal items, e.g., keys, cellular telephones, wallet, makeup, in their pockets if they choose not to use a clear bag.

(k) Additional items such as diapers, wipes, and other supplies for babies and small children are allowed if placed in an approved clear bag.

(l) All ~~((such))~~ items are subject to a visual inspection by designated university officials upon entry into the event site. If designated university officials make the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university officials for disposal.

~~((+))~~ (m) The following items are also prohibited in the event site:

(i) Fireworks, weapons, explosive devices, or artificial noisemaking devices (such as airhorns);

(ii) Items deemed dangerous or unacceptable by designated university officials;

(iii) Drones;

(iv) Laser pointers;

(v) Extension items used to hold cellular telephones or cameras in place (e.g., "selfie sticks");

(vi) Flag poles, or any items that act as an extension of an arm and have a flag or sign affixed;

(vii) Footballs, frisbees, sport balls, any kind of inflatable balls, or any other projectiles;

(viii) Umbrellas;

(ix) Seat cushions with rigid frames. Seatback cushions must:

(A) Be soft sided;

(B) Contain no pockets or zippers; and

(C) Be no wider than eighteen inches.

(x) Pets or animals, except as allowed by WAC 504-36-020 or as otherwise required by state or federal law;

~~((+))~~ (xi) Food and beverages, unless purchased from a vendor within the event site.

(3) Where there is reasonable cause to believe that a person is violating, or is attempting to violate, the requirements identified in subsection (2) of this section, such person is denied license or privilege to enter or remain in or upon the event site premises, and designated university officials may take necessary action to deny entry or to remove such persons from the event site premises.

Prohibited items found in the possession of a spectator or otherwise found on the event site are to be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate. Violation of the requirements identified in subsection (2) of this section or failure to vacate the event site premises upon request of designated university officials may result in university disciplinary action (if applicable) and/or subsequent legal proceedings under federal or state law and/or the Washington Administrative Code.

(4) For purposes of this section, designated university officials include the president of the university, the vice president for finance and administration, and the following officials:

(a) Director of athletics or designee for athletic events;

(b) Director of the Beasley Coliseum or designee for Beasley Coliseum events;

(c) Director of the Compton Union Building or designee for events in the Compton Union Building;

(d) Director of the School of Music or designee for events sponsored by that school;

(e) The WSU executive director of public safety or designee;

(f) Officers of the WSU police department when (i) acting at the request of any of the above-named officials to enforce university regulations, or (ii) enforcing state laws or local ordinances;

(g) Contracted or hired security personnel and crowd management personnel when acting at the direction of the above-named officials or designees to enforce university regulations.

WSR 18-23-088

PERMANENT RULES

WASHINGTON STATE

HISTORICAL SOCIETY

[Filed November 20, 2018, 8:25 a.m., effective December 21, 2018]

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

Purpose: RCW 27.34.070 requires the adoption of rules to govern and protect the receipt and expenditure of the pro-

ceeds, rents, profits, and income of all gifts, grants, conveyances, bequests, and devices received by the society.

Citation of Rules Affected by this Order: New chapter 255-30 WAC.

Statutory Authority for Adoption: RCW 27.34.070.

Adopted under notice filed as WSR 18-17-107 on November 6 [August 16], 2018.

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

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

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

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

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

Date Adopted: November 6, 2018.

Jennifer Kilmer
Director

Chapter 255-30 WAC

WASHINGTON STATE HISTORICAL SOCIETY— GIFTS, GRANTS, CONVEYANCES, BEQUESTS AND DEVICES

NEW SECTION

WAC 255-30-010 Purpose. Washington state historical society (society) has the power and authority to accept gifts, grants, conveyances, bequests, of real or personal property or both, whether or not these are held in trust or otherwise. It is also authorized to sell, lease, exchange, invest, or expend the same or the proceeds from rents, profits, and income except as limited by the donor's terms. The society is required by law to adopt rules to:

(1) Govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests and devices to the society;

(2) Ensure compliance with state and federal laws, rules and regulations, society policies, and professional standards of ethical and donor-centered fund-raising; and

(3) Provide protocols for individuals soliciting or accepting gifts on behalf of the society.

The purpose of these rules is to fulfill the society's legal responsibility to adopt these rules.

NEW SECTION

WAC 255-30-020 Definitions. (1) "Bequest" means property or money that an individual promises to give to another person or organization after he or she dies.

(2) "Bond" means an official document in which a government or company promises to pay back an amount of money that it has borrowed and to pay interest for the borrowed money.

(3) "Conveyance" means the transfer or delivery of an item to another, commonly used to describe the transfer of title to land from one person to another by deed.

(4) "Device" means a testamentary disposition of land or realty, a gift of real property by the last will and testament of the donor.

(5) "Washington state historical society" means a 501 (c)(3) corporation and a trustee for the state of Washington pursuant to chapter 27.34 RCW. The society is responsible for collecting, cataloging and preserving objects, manuscripts, sites, photographs and other items that illustrate the cultural, artistic, and natural history of the state and in this capacity operates a state museum, which supports cultural, artistic, and educational activities and performs other responsibilities as required pursuant to RCW 27.34.070.

(6) "Grant" means to legally or formally transfer a possession.

(7) "Personal property" means something that is owned by a person, business or other entity such as goods, money, notes, bonds, stocks, merchandise, furniture, etc. It does not include land, an interest in land, buildings, or items affixed to the land.

(8) "Real property" means land, including all natural resources, and generally whatever is erected or growing upon or affixed to the land including buildings and crops.

(9) "Restricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor imposes conditions of ownership, retention, disposition or use of the item given.

(10) "Security" means an instrument of investment in the form of a document (such as a stock certificate or bond) providing evidence of its ownership.

(11) "Stock" means a share of the value of a company which can be bought, sold, or traded as an investment.

(12) "Trust" means property, real or personal, or money held by some person, firm or corporation for the benefit of the society.

(13) "Unrestricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor does not specify the imposition of any conditions as to the ownership or use of the gift.

NEW SECTION

WAC 255-30-030 Procedures for accepting gifts. (1) Donors: The society greatly values its donors and their support of the society. Society staff will treat donors with respect and professionalism. Donors will be acknowledged and thanked for their gifts in writing within a reasonable period of time, generally not to exceed one month.

(2) Donor intent: Society staff and representatives agree to respect and carry out the intentions of the donors whose

gifts, grants, conveyances, bequests, or devices have been accepted by the society.

(3) Gift documentation: The society will document the receipt of all gifts.

NEW SECTION

WAC 255-30-040 Income tax charitable deductions.

Receipts shall be issued for gifts that qualify for income tax charitable deductions.

(1) Cash and checks: Cash and checks may be accepted regardless of the amount. The value of any cash or check gift is its face value. Checks should be written to the Washington State Historical Society or WSHS.

(2) Real or personal property: If the gift is personal or real property the society may document the value of the gift as it was formally appraised or accept the donor's stated value as a good faith estimate. For gifts valued at \$5000 or greater the donor must provide an independent professional appraisal.

(3) Life insurance: If the donor named the society as the beneficiary of a new or existing whole life insurance policy, the designation will be recorded as a gift, at its present value, when the gift becomes irrevocable. Alternatively, when the society is named as both beneficiary and irreversible owner of a whole life insurance policy, it will be recorded as a gift.

(4) Charitable remainder trusts, charitable lead trusts, and willed bequests: The income from a trust and/or a willed legacy will be recorded as a gift, at its present value, when a gift becomes irreversible.

(5) Retirement plan beneficiary designations: If a donor designates the society as a beneficiary of his or her retirement plan, it will be recorded as a gift, at its present value, when the gift becomes irreversible/permanent.

(6) Gifts in-kind: These include gifts of time and services. The society will record the donation of time and services, but will not identify a dollar value.

NEW SECTION

WAC 255-30-050 Donations to the society. (1) When the society receives a donation, it shall comply with all the rules and regulations related to gift giving for gifts it receives directly. Those rules are found in state, federal and corporate law related to:

(a) State entities and public 501 (c)(3) corporations;

(b) Federal and state laws and regulations that apply to the society as a 501 (c)(3) corporation including, but not limited to, the U.S. Internal Revenue Service Code; and

(c) Professional standards of ethical and donor-centered fund-raising.

(2) The society may hold endowed funds for the long term benefit of the society that are managed by a committee of the board or by an independent investment manager.

(3) Private funds donated directly to the society shall be held consistent with all state rules and regulations governing expenditure of those funds.

(4) Permanently restricted and temporarily restricted funds shall be kept in a separate line account as non-lapsing funds of the society together with earned interest and shall be used in accordance with the directions provided by the donor.

(5) Unrestricted funds shall be retained in the society's general cash account(s). Disbursement shall be made by the executive director in accordance with the board of trustees-approved Society budget.

NEW SECTION

WAC 255-30-070 Deferred gifts. (1) The society welcomes and encourages deferred gifts such as:

(a) Charitable remainder trusts;

(b) Charitable lead trusts; and

(c) Testamentary bequests.

(2) Society trustees and staff members shall not serve as an executor (personal representative) for a donor's estate.

(3) Society trustees and staff members shall not serve as trustee or co-trustee on a charitable remainder trust or a charitable lead trust.

NEW SECTION

WAC 255-30-080 Tangible personal property requirements. (1) The following requirements apply to tangible personal property that is donated with the intent for the society to sell and do not apply to donations of artifacts for the collection:

(a) Acceptance of personal property is contingent on formal approval of the society's board of trustees. The board may delegate authority for approval with formal action which identifies who has delegated authority, and the limits of any such authority;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance; and the purposes for which the item is being donated are permissible under the state expenditure rules which apply to donations to the society;

(c) All tangible property shall be valued by the proceeds from the sale or by a qualified appraisal;

(d) The society must be able to dispose of the property within a short time, normally not to exceed six months following the receipt of the gift; and

(e) The society shall adhere to all IRS requirements relating to the disposition of gifts of tangible personal property and shall provide appropriate forms to the donor and IRS where required.

(2) The following requirements apply to tangible personal property that is donated with the intent for the society to maintain:

(a) Acceptance of property shall not violate any federal, state or local statute or ordinance;

(b) The purpose for which the item is being donated shall be permissible under the state expenditure rules which apply to donations to the society;

(c) Acceptance of personal property is contingent on formal approval of the society's board of trustees. The board may delegate authority for approval with formal action which identifies who has delegated authority, and the limits of any such authority.

NEW SECTION

WAC 255-30-090 Acceptance of artwork. In addition to the considerations outlined in WAC 256-30-080, prior to

the acceptance of art, the society shall comply with the additional requirements of the society's *Collections Management Policy and Collecting Policy*.

NEW SECTION

WAC 255-30-100 Acceptance of real estate. (1) The society may accept gifts of developed or undeveloped real estate. The following requirements apply to the acceptance of real estate:

(a) Acceptance of real estate is contingent on formal approval of the society's board of trustees;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance;

(c) The purpose for which the property is being donated shall be permissible under the state expenditure rules which apply to donations to the society;

(d) The donor agrees that the property can be sold at the society's discretion;

(e) The donor may be responsible for obtaining and paying for an appraisal of the property. The appraisal must be performed by an independent, qualified appraiser;

(f) The society's board of trustees may require the donor provide an environmental appraisal of any proposed gift of real estate;

(g) The donor may be asked to pay for all or a portion of the following:

(i) Maintenance costs;

(ii) Real estate taxes due prior to date of conveyance;

(iii) Insurance;

(iv) Real estate broker's commission and other costs of sale; and

(v) Preliminary title report costs; and

(h) The property shall be conveyed by warranty deed prior to the execution of any contract of sale by the grantor.

NEW SECTION

WAC 255-30-120 Acknowledgment—Receipt for gifts. On delivery of any contribution, the society will, to the best of its ability, provide a written acknowledgment of the receipt of a gift within 30 days.

WSR 18-23-092
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)

[Filed November 20, 2018, 9:53 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: The purpose of this rule making is to adopt new safety codes, update and clarify existing rules, and increase fees by the fiscal growth factor rate of 4.0 percent in chapter 296-104 WAC, Board of boiler rules—Substantive. The fee increase is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2019.

This rule making will:

- Adopt the National Board Inspection Code (NBIC), current edition, Part 1, as the standard for installation of nonnuclear boilers, unfired pressure vessels and safety devices in the state of Washington. Also, adopt language to clarify the duties of inservice inspectors in relation to other standards and requirements for which other regulatory agencies have authority or responsibility.
- Adopt the Uniform Plumbing Code (UPC), Section 608.5 with Washington state amendments for water heater discharge piping to create uniformity with other state and local jurisdictions that recognize the same standard.
- Adopt amendments to the definition of "hot water heater" to clarify existing requirements for customers.
- Replace the "A" endorsement with "Authorized Inspector Commission" to bring the rules up-to-date with current terminology in NBIC, NB-263 RCI-1 for inspector commissions and endorsements.
- Adopt amendments to align the rules with NBIC, current edition, Part 4 for installation, inservice inspection, and repair of pressure relief devices.
- Replace Supplement 10 with Supplement 7 for nonnuclear repairs and alterations to align the rules with NBIC, current edition, Part 3.
- Increase fees by the fiscal growth factor of 4.0 percent to cover the program's operating expenses.

Citation of Rules Affected by this Order: New WAC 296-104-251; and amending WAC 296-104-010, 296-104-065, 296-104-102, 296-104-320, 296-104-502, and 296-104-700.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 18-19-082 on September 18, 2018.

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

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

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

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

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

Date Adopted: November 20, 2018.

Terry Chapin, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Accident" shall mean a failure of the boiler or unfired pressure vessel resulting in personal injury or property loss or an event which renders a boiler or unfired pressure vessel unsafe to return to operation.

"Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or "board" shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

"Boilers and/or unfired pressure vessels" - Below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- "Boiler/unfired pressure vessel status" shall mean:
 - * Active - Boilers or pressure vessels that are currently in service.
 - * Inactive - Boilers or pressure vessels still located at the facility but are physically disconnected from the energy input and system.
 - * Out-of-service - Boilers or pressure vessels that are no longer at the facility.
 - * Scrapped - Boilers or pressure vessels that have been condemned as defined below.
- "Condemned boiler or unfired pressure vessel" shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements. The following procedure shall be utilized:
 - (a) The inspector will issue and follow the department's "red tag" procedure.
 - (b) The object will be immediately removed from service.
 - (c) The existing national board and state number shall be obliterated by the inspector.
 - (d) The ASME nameplate and/or stamping shall be physically removed by the owner/user and verified by the inspector.

- (e) If required by the inspector, a portion of the pressure vessel shall be physically removed by the owner/user. This action will render the object incapable of holding pressure.
- (f) The inspector shall document this procedure on the boiler/pressure vessel inspection report and change the object status to "scrapped."
 - "Corrosion" shall mean the destruction or deterioration of a material, that results from a reaction with its environment.
 - "Expansion tank" shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
 - "Historical boilers and unfired pressure vessel" shall mean nonstandard boilers and pressure vessels including steam tractors, traction engines, hobby steam boilers, portable steam boilers, and other such boilers or pressure vessels that are preserved, restored, and maintained only for demonstration, viewing, or educational purposes. They do not include miniature hobby boilers as described in RCW 70.79.070.
 - "Hot water heater" shall mean a closed vessel designed to supply hot water for external use to the system.
 - * All vessels must be listed by a nationally recognized testing agency (~~and~~).
 - * Shall be protected with an approved temperature and pressure safety relief valve (~~and~~) with the appropriate pressure and relieving capacity ratings.
 - * The hot water heater shall not exceed any of the following limits:
 - * Pressure of 160 psi (1100 kpa);
 - * Temperature of 210 degrees F (99°C).
 - * 120 gallons in capacity.
 - * 200,000 Btu/hr (58.6 kW).
 - Additional requirements:
 - * Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
 - * Hot water heaters exceeding 200,000 Btu/hr (~~(58.6 kW)~~) 58.6 kW input must be ASME code stamped.
 - "Indirect water heater" shall mean a closed vessel appliance used to heat water for use external to itself, which includes a heat exchanger used to transfer heat to water from an external source. The requirements and limits described above shall apply.
 - "Installer" shall mean any entity or individual who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is

defined as a registered contractor, owner, user or designee.

- **"Low pressure boiler"** shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Pool heaters"** shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.
 - (a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 kW) or less shall be manufactured and certified to ANSI Z21.56, UL1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.
 - (b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.
 - (c) Pool heaters open to the atmosphere are excluded.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:
 - * Fired process tubular heaters;
 - * Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
 - * Piping whose primary function is to transport fluids from one location to another;
 - * Those vessels defined as low pressure heating boilers or power boilers.

- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.-130.

"Jacketed steam kettle" shall mean a pressure vessel with inner and outer walls that is subject to steam pressure and is used to boil or heat liquids or to cook food. Jacketed steam kettles with a total volume greater than or equal to one and one-half cubic feet (11.25 gallons) shall be ASME code stamped.

(a) **"Unfired jacketed steam kettle"** is one where the steam within the jacket's walls is generated external to itself, such as from a boiler or other steam source.

(b) **"Direct fired jacketed steam kettle"** is a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), pub-

lic and private hospitals, nursing homes and assisted living facilities.

"Special design" shall mean a design using nationally or internationally recognized engineering standards other than the codes adopted in WAC 296-104-200.

AMENDATORY SECTION (Amending WSR 04-01-194, filed 12/24/03, effective 1/24/04)

WAC 296-104-065 Administration—How should an inspector obtain a Washington state commission? A commission as a deputy inspector of boilers and/or unfired pressure vessels may be issued by the chief inspector to an inspector complying with WAC 296-104-065 (1) or (4). Upon the request of a boiler insurance company authorized to insure and insuring against loss from explosion of boilers and/or unfired pressure vessels in this state, or a company with an owner/user inspection agency, a commission as a special inspector of boilers and/or unfired pressure vessels shall be issued by the chief inspector to an inspector in the employ and supervision of such company provided the inspector has had the experience prescribed in chapter 70-79 RCW and complies with one of the following:

(1) Passed an examination covering the Washington state boilers and unfired pressure vessels law, chapters 70.79 RCW and 296-104 WAC; and holds a national board commission.

(2) Is certified by the American Petroleum Institute in accordance with API-510 for pressure vessel inspection, having passed an examination covering the Washington state boilers and unfired pressure vessels law, chapters 70.79 RCW and 296-104 WAC.

(3) Is certified by the American Petroleum Institute in accordance with API-510 for pressure vessel inspection, and specifically and temporarily in the direct employ of an owner/user inspection agency as set forth in RCW 70.79.130. This inspector shall be exempted from the state examination requirement in WAC 296-104-065(2).

(4) Is an inspector holding the national board (~~"A" endorsement~~) authorized inspector commission and performs shop inspections only. This inspector shall be exempt from the exam requirement set forth in WAC 296-104-065(1).

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-102 Inspection—What are the standards for in-service inspection? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers(~~(s)~~) and unfired pressure vessels(~~(- and safety devices in)~~) is the National Board Inspection Code (NBIC), current edition Part 2, excluding Section 6, Supplements 1, 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for installation, in-service inspection, and repair of pressure relief devices is the National Board Inspection Code (NBIC), current edition Part 4, excluding Section 6, Supplements 1 and 3 which may be used as non-mandatory guidelines.

(3) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Part 2, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) current edition.

((3)) (4) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

((4)) (5) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, current edition. This code may be used on or after the date of issue.

((5)) (6) TAPPI TIP 0402-16, revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

NEW SECTION

WAC 296-104-251 Installation—What are the standards for installation for nonnuclear boiler and pressure vessels? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

The standard for installation of nonnuclear boilers, unfired pressure vessels, and safety devices is the National Board Inspection Code (NBIC), current edition Part 1, excluding Section 5 and Section 6, Supplements 1, 2, and 5 which may be used as nonmandatory guidelines.

AMENDATORY SECTION (Amending WSR 04-01-194, filed 12/24/03, effective 1/24/04)

WAC 296-104-320 Installation—Where should the discharge from safety pressure relief devices, blow offs and drains be directed? Discharge from safety pressure relief devices, blow offs and drains shall be directed to a safe point of discharge to prevent injury to personnel and property. Discharge lines from boilers, accumulators, or headers, with a capacity of 1,000 pounds of steam per hour or more, shall be directed outside of the building.

For hot water heater discharge lines as defined in WAC 296-104-010 that do not exceed 120 gallons or 200,000 Btu/hr input the following requirements shall be followed:

The discharge piping serving a temperature relief valve, pressure relief valve, or combination of both shall have no valves, or obstructions, or means of isolation and be provided with the following:

(1) Equal to the size of the valve outlet and shall discharge full size to the flood level of the area receiving the discharge and pointing down.

(2) Materials shall be rated at not less than the operating temperature of the system and approved for such use.

(3) Discharge pipe shall discharge independently by gravity through an air gap into the drainage system or outside of the building with the end of the pipe not exceeding 2 feet (610 mm) and not less than 6 inches (152 mm) above the ground and pointing downwards.

(4) Discharge in such a manner that does not cause personal injury or structural damage.

(5) No part of such discharge pipe shall be trapped or subject to freezing.

(6) The terminal end of the pipe shall not be threaded.

(7) Discharge from a relief valve into a water heater pan shall be prohibited.

Exception: Where no drainage was provided, replacement water heating equipment shall only be required to provide a drain pointing downward from the relief valve to extend between 2 feet (610 mm) and 6 inches (152 mm) from the floor. No additional floor drain need be provided.

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-502 Repairs—What is the standard for nonnuclear repairs and alterations? The standard for repairs/alterations is:

(1) National Board Inspection Code (NBIC), current edition Part 3, excluding Section 6, Supplements 1, 5, 6, and ((40)) 7 which may be used as nonmandatory guidelines.

(2) The standard for repair of historical boilers or riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Part 3, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) current edition.

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of \$((54.00)) 56.16 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$((23.30)) 24.23.

Hot water heaters per RCW 70.79.090, inspection fee: \$((7.10)) 7.38.

Heating boilers:	Internal	External
Cast iron—All sizes	\$((39.30))	\$((31.40))
	<u>40.87</u>	<u>32.65</u>
All other boilers less than 500 sq. ft.	\$((39.30))	\$((31.40))
	<u>40.87</u>	<u>32.65</u>

500 sq. ft. to 2500 sq. ft.	\$(78.60)	\$(39.30)
	<u>81.74</u>	<u>40.87</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(31.40)	\$(15.40)
	<u>32.65</u>	<u>16.01</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	\$(39.30)	\$(31.40)
	<u>40.87</u>	<u>32.65</u>
100 sq. ft. to less than 500 sq. ft.	\$(47.60)	\$(31.40)
	<u>49.50</u>	<u>32.65</u>
500 sq. ft. to 2500 sq. ft.	\$(78.60)	\$(39.30)
	<u>81.74</u>	<u>40.87</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(31.40)	\$(15.40)
	<u>32.65</u>	<u>16.01</u>
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.	Internal	External
Less than 15 sq. ft.	\$(31.40)	\$(23.30)
	<u>32.65</u>	<u>24.23</u>
15 sq. ft. to less than 50 sq. ft.	\$(46.60)	\$(23.30)
	<u>48.46</u>	<u>24.23</u>
50 sq. ft. to 100 sq. ft.	\$(54.40)	\$(31.40)
	<u>56.57</u>	<u>32.65</u>
For each additional 100 sq. ft. or any portion thereof	\$(54.30)	\$(15.40)
	<u>56.47</u>	<u>16.01</u>
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours	\$(47.60)	<u>49.50</u>
For each hour or part of an hour in excess of 8 hours	\$(71.10)	<u>73.94</u>
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours	\$(71.10)	<u>73.94</u>
For each hour or part of an hour in excess of 8 hours	\$(111.20)	<u>115.64</u>
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours	\$(47.60)	<u>49.50</u>
For each hour or part of an hour in excess of 8 hours	\$(71.10)	<u>73.94</u>
When insurance company is authorized inspection agency:		
For each hour or part of an hour up to 8 hours	\$(71.10)	<u>73.94</u>

For each hour or part of an hour in excess of 8 hours ~~\$(111.20)~~ 115.64

Examination fee: A fee of ~~\$(88.00)~~ 91.52 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of ~~\$(47.50)~~ 49.40 for initial work card. A fee of ~~\$(29.50)~~ 30.68 for annual renewal.

If a special inspector changes companies: A work card fee of ~~\$(47.50)~~ 49.40.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of ~~\$(442.60)~~ 460.30 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 18-23-101

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 20, 2018, 2:54 p.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: The developmental disabilities administration (DDA) is creating new rules to establish requirements for DDA-contracted group training homes. Group homes were previously certified and licensed by residential care services within the department of social and health services (DSHS). These new rules simplify qualifications by allowing a certified and licensed group training home to move to a certified group training home model.

Citation of Rules Affected by this Order: New WAC 388-101D-0560, 388-101D-0565, 388-101D-0570, 388-101D-0575, 388-101D-0580, 388-101D-0585, 388-101D-0590, 388-101D-0595, 388-101D-0600, 388-101D-0605, 388-101D-0610, 388-101D-0615, 388-101D-0620, 388-101D-0625, 388-101D-0630, 388-101D-0635, 388-101D-0640, 388-101D-0645, 388-101D-0650, 388-101D-0655, 388-101D-0660, 388-101D-0665, 388-101D-0670, 388-101D-0675, 388-101D-0680, 388-101D-0685, 388-101D-0690, 388-101D-0695, 388-101D-0700, and 388-101D-0705.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120, 71A.12.040, 71A.22.010.

Adopted under notice filed as WSR 18-19-028 on September 12, 2018.

Changes Other than Editing from Proposed to Adopted Version: DDA changed WAC 388-101F-0650 to 388-101D-0650 to correct a typographical error.

In WAC 388-101D-0685, DDA replaced "the person" with "the client or employee" as follows:

If a group training home client or employee has tuberculosis symptoms or receives a positive chest x-ray result, the group training home must:

(1) Report the person client or employee with tuberculosis symptoms or a positive chest x-ray to an appropriate medical provider or public health provider;

(2) Follow the infection control and safety measures ordered by the person's client or employee's medical provider or a public health provider;

(3) Implement appropriate infection control measures;

(4) Apply living or work restrictions if the person client or employee poses an infection risk to others; and

(5) Ensure an employee caring for a client who has active tuberculosis complies with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection under chapter 296-842 WAC.

A final cost-benefit analysis is available 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.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 30, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 30, Amended 0, Repealed 0.

Date Adopted: November 20, 2018.

Cheryl Strange
Secretary

NEW SECTION

WAC 388-101D-0560 What is a group training home? "Group training home" means a nonprofit facility certified under this chapter and chapter 388-101 WAC. A group training home provides twenty-four-hour community-based instruction and support services to two or more adults.

NEW SECTION

WAC 388-101D-0565 What are the physical requirements for a group training home bedroom? (1) The group training home must ensure each client's bedroom:

(a) Is a private room, unless the client requests to share a room;

(b) Has a window or door that provides natural light, is covered with a screen, and allows for emergency exit;

(c) Has a closet or wardrobe, which must not be considered part of the usable square footage;

(d) Has a locking door, unless the client's person-centered service plan indicates that it is unsafe for the client to have a locking door;

(e) Has direct, unrestricted access to common areas;

(f) Has adequate space for mobility aids, such as a wheelchair, walker, or lifting device; and

(g) Is at least eighty square feet of usable floor space for a single-occupancy room, one hundred and forty square feet for a double-occupancy room.

(2) For a group training home licensed as an adult family home January 1, 2019, a double bedroom must be at least one hundred and twenty square feet of usable floor space.

(3) Unless the client chooses to provide their own bed, the home must provide each client:

(a) A clean, comfortable bed that meets the client's needs; and

(b) A waterproof mattress cover if needed or requested by the client.

NEW SECTION

WAC 388-101D-0570 What are the physical requirements for a group training home bathroom? (1) The group training home must provide handwashing sinks with hot and cold running water in the ratio of one for every five clients.

(2) The group training home must provide toilets in the ratio of one for every five clients.

(3) The group training home must provide bathing options, with hot and cold running water, for clients that meet the needs identified in their person-centered service plans.

(4) A client must have access to a toilet and shower or tub without going through another client's room.

NEW SECTION

WAC 388-101D-0575 How must a group training home manage food and maintain its kitchen? A group training home must manage food and maintain its kitchen under chapter 246-215 WAC if the group training home:

(1) Supports more than six clients; and

(2) Was certified after January 1, 2019.

NEW SECTION

WAC 388-101D-0580 Must the group training home adapt the home to suit a client's needs? If a client's needs change, the group training home must make a reasonable attempt to adapt the home to meet the needs identified in the client's person-centered service plan.

NEW SECTION

WAC 388-101D-0585 What building codes apply to group training homes? (1) A group training home must meet state and local building codes in effect at the time of their:

- (a) Initial licensure as an adult family home or assisted living facility; or
 - (b) Initial certification as a group training home.
- (2) A group training home may be required to modify the home to meet current building code requirements if the building poses a health or safety risk to a client.
- (3) If a group training home makes any construction changes to the home, the construction must meet current state and local building codes.

NEW SECTION

WAC 388-101D-0590 When must a group training home be inspected by a local building official? The group training home must be inspected by a local building official:

- (1) Before initial certification; and
- (2) After any construction that:
 - (a) Affects a client's ability to enter or exit the home; or
 - (b) Makes a significant structural change to the home.

NEW SECTION

WAC 388-101D-0595 What steps must be taken before moving a client out of the home during construction? (1) Before moving a client out of the group training home during planned construction, the home must provide thirty days' written notice to the client, the client's guardian if they have one, DDA, and residential care services.

- (2) The notice must include:
 - (a) The client's temporary address;
 - (b) A plan for delivering services to the client while temporarily out of the home;
 - (c) A transition plan to support the client while moving out of and returning home; and
 - (d) The projected completion date for the construction project.

NEW SECTION

WAC 388-101D-0600 Who is responsible for cleaning and maintaining a group training home? (1) The group training home's fixtures, furnishings, exterior, and interior, including the client's bedroom, must be safe, sanitary, and well maintained.

- (2) The group training home staff must provide house-keeping instruction and support to a client in accordance with the client's person-centered service plan.

NEW SECTION

WAC 388-101D-0605 How must a group training home protect clients from risks associated with bodies of water? (1) Any body of water at the group training home over twenty-four inches deep must be enclosed by a fence at least forty-eight inches high.

- (2) Any door or gate that directly leads to the body of water must have an audible alarm.

NEW SECTION

WAC 388-101D-0610 What requirements must a group training home's fireplaces, heaters, and stoves meet? (1) The group training home must not use a space heater unless it has an underwriters laboratories (UL) rating.

- (2) Any hot surface, such as a fireplace or wood-burning or pellet stove, must have a stable barrier that prevents accidental client contact.

NEW SECTION

WAC 388-101D-0615 What requirements must the group training home's smoke detectors and fire extinguishers meet? (1) The group training home must install approved automatic smoke detectors:

- (a) In every client's bedroom;
 - (b) On every floor of the home; and
 - (c) In an interconnected manner so when one alarm is triggered, the whole system reacts.
- (2) The approved smoke detectors must:
- (a) Be in working condition at all times; and
 - (b) Meet the specific needs of all clients living in the home.
- (3) The group training home must have a five-pound 2A:10B-C fire extinguisher on each floor of the home, unless the local fire authority requires a different type of fire extinguisher.
- (4) Each fire extinguisher must be:
- (a) Installed according to manufacturer recommendations;
 - (b) Annually replaced or inspected and serviced;
 - (c) In proper working order; and
 - (d) Readily available for use at all times.
- (5) The group training home must be located in an area with public fire protection.
- (6) A group training home that was a licensed assisted living facility before January 1, 2019 must:
- (a) Meet requirements under subsections (1) through (5); or
 - (b) Annually demonstrate they have passed inspection by the state fire marshal.

NEW SECTION

WAC 388-101D-0620 How must a group training home prepare for emergency evacuations? (1) The group training home must display an emergency evacuation plan in a common area on every floor of the home.

- (2) The emergency evacuation plan must include:
 - (a) A floor plan of the home with clearly marked exits;
 - (b) Emergency evacuation routes; and
 - (c) The location for the clients to meet outside the home.
- (3) The group training home must be able to evacuate all clients to a safe location outside the home in five minutes or less.
- (4) A group training home that was a licensed assisted living facility before January 1, 2019 must:

- (a) Meet requirements under subsection (3); or
 - (b) Annually demonstrate they have passed inspection by the state fire marshal.
- (5) If a client requires assistance during an evacuation, the group training home must ensure the client's primary evacuation route does not require the client to evacuate:
- (a) Through another person's bedroom; or
 - (b) Using stairs, an elevator, chairlift, or platform lift.

NEW SECTION

WAC 388-101D-0625 How much emergency food and drinking water must be kept in the group training home? (1) The group training home must keep an emergency food supply on-site to meet the needs of the clients and staff for at least seventy-two hours. The food supply must meet the dietary needs of each client.

(2) The group training home must keep at least three gallons of water on-site for each client and staff member, which must be:

- (a) In sealed, food-grade containers;
 - (b) Stored in a cool, dry location away from direct sunlight; and
 - (c) Chlorinated or commercially bottled.
- (3) Chlorinated water must be replaced every six months.

NEW SECTION

WAC 388-101D-0630 What must a group training home consider when providing nutritional services? (1) The group training home must:

- (a) Serve breakfast, lunch, and dinner each day;
 - (b) Provide twenty-four hour access to snacks and beverages, including nutritious options and options preferred by the client;
 - (c) Provide a special diet, if ordered by a healthcare professional, such as low sodium, general diabetic, and mechanical soft food diets;
 - (d) Provide prescribed nutrient concentrates and supplements when prescribed in writing by a healthcare practitioner; and
 - (e) Maintain a sufficient supply of food at all times.
- (2) The group training home must plan meals that accommodate the client's preferences and support the client's choice.
- (3) The group training home must provide meals, snacks, and beverages that, if applicable, address each client's:
- (a) Nutritional needs;
 - (b) Food allergies and sensitivities; and
 - (c) Need for altered diet due to a risk of choking or aspiration.

NEW SECTION

WAC 388-101D-0635 What requirements must an employee or volunteer meet to prepare meals and snacks in a group training home? (1) If a group training home employee prepares food for clients, the employee must:

- (a) Complete safe food handling training requirements under chapter 388-829 WAC;

(b) Prepare food for clients in a safe and sanitary manner; and

(c) Have a food worker card under chapter 246-217 WAC.

(2) If a group training home volunteer prepares food for clients, the volunteer must:

(a) Prepare food for clients in a safe and sanitary manner; and

(b) Have a food worker card under chapter 246-217 WAC.

(3) The group training home staff must provide meal preparation instruction and support to the client in accordance with the client's person-centered service plan.

NEW SECTION

WAC 388-101D-0640 When may a pet live in a group training home? A pet living in the group training home must:

- (1) Not compromise any client rights, preferences, or medical needs;
- (2) Be clean and healthy with proof of current vaccinations; and
- (3) Pose no significant health or safety risks to any client residing in the home.

NEW SECTION

WAC 388-101D-0645 What infection control practices must a group training home implement? (1) The group training home must implement occupational safety and health administration (OSHA) universal precautions to limit the spread of infections when:

- (a) Providing client care and services;
 - (b) Cleaning the home;
 - (c) Washing laundry; and
 - (d) Managing infectious waste.
- (2) The group training home must:
- (a) Provide staff with the supplies, equipment, and protective clothing necessary for limiting the spread of infections;
 - (b) Restrict a staff person's contact with clients when the staff person has an illness that is likely to spread in the group training home by casual contact; and
 - (c) Report communicable diseases as required under chapter 246-100 WAC.
- (3) If a client has a positive tuberculosis test result, the group training home must ensure the client:
- (a) Has a chest X-ray no more than seven days after the positive test result;
 - (b) Is evaluated for signs and symptoms of tuberculosis; and
 - (c) Follows the recommendation of the client's health-care provider.

NEW SECTION

WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis? To detect and manage tuberculosis, a group training home must:

(1) Ensure each employee has a tuberculin test no more than three days after beginning to work with clients unless otherwise exempt under this chapter;

(2) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

(3) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

(4) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

NEW SECTION

WAC 388-101D-0655 What type of tuberculin test must a group training home employee complete? (1) A group training home employee required to complete a tuberculin test must complete:

(a) A tuberculin skin test with results read by a qualified medical professional between forty-eight and seventy-two hours after placing the test; or

(b) Another FDA-approved tuberculin test.

(2) A group training home employee must complete a blood test for tuberculosis if the employee declines a skin test.

NEW SECTION

WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test? (1) A group training home employee is not required to complete a tuberculin test if the employee:

(a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;

(b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:

(i) Adequate therapy for active disease; or

(ii) Completion of treatment for latent tuberculosis infection preventive therapy;

(c) Self-reports a history of positive test results under subsection (2) or (3) of this section.

(2) If a group training home employee self-reports a history of positive test results with chest x-ray results from the last twelve months, the employee must:

(a) Provide a copy of the normal x-ray results to the group training home; and

(b) Be evaluated for signs and symptoms of tuberculosis.

(3) If a group training home employee self-reports a history of positive test results without chest x-ray results, the employee must:

(a) Be referred to a medical provider;

(b) Complete a chest x-ray within seven days; and

(c) Be cleared by a medical professional before returning to work if the x-ray is abnormal and consistent with tuberculosis.

(4) A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

NEW SECTION

WAC 388-101D-0665 When must a group training home employee complete a one-step tuberculin test? A group training home employee must complete a one-step tuberculin test if the employee:

(1) Has a documented history of a negative result from a previous two-step skin test; or

(2) Is tested using an FDA-approved tuberculin test that does not require a two-step testing process.

NEW SECTION

WAC 388-101D-0670 When must a group training home employee complete a two-step tuberculin test? A group training home employee must complete a two-step tuberculin skin test if the employee:

(1) Has never had a tuberculosis skin test;

(2) Cannot demonstrate proof of a previous negative two-step skin test; or

(3) Completed a one-step skin test more than twelve months ago.

NEW SECTION

WAC 388-101D-0675 What happens if a group training home employee receives a positive tuberculin test result? If a group training home employee receives a positive result to tuberculosis skin or blood testing, the group training home must:

(1) Ensure the employee completes a chest X-ray within seven days;

(2) Evaluate the employee for signs and symptoms of tuberculosis immediately and annually thereafter; and

(3) Follow the recommendations of the employee's medical provider.

NEW SECTION

WAC 388-101D-0680 Must a group training home employee complete follow-up testing? A group training home employee with negative tuberculin test results may be required by a public health provider or licensing authority to complete follow-up testing:

(1) After exposure to active tuberculosis;

(2) When tuberculosis symptoms are present; or

(3) Periodically as determined by the public health provider.

NEW SECTION

WAC 388-101D-0685 What must a group training home do when a client or employee has tuberculosis symptoms or receives a positive chest x-ray result? If a group training home client or employee has tuberculosis symptoms or receives a positive chest x-ray result, the group training home must:

(1) Report the client or employee with tuberculosis symptoms or a positive chest x-ray to an appropriate medical provider or public health provider;

(2) Follow the infection control and safety measures ordered by the client or employee's medical provider or a public health provider;

(3) Implement appropriate infection control measures;

(4) Apply living or work restrictions if the client or employee poses an infection risk to others; and

(5) Ensure an employee caring for a client who has active tuberculosis complies with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection under chapter 296-842 WAC.

NEW SECTION

WAC 388-101D-0690 What records must a group training home maintain related to tuberculin testing? A group training home must:

(1) Keep the records of tuberculin test results, reports of X-ray findings, and any medical provider or public health provider orders in the group training home;

(2) Provide the records to a public health provider or licensing agency upon request;

(3) Retain the records for at least two years after the date the employee quits or is terminated; and

(4) Provide an employee a copy of the employee's tuberculin test results.

NEW SECTION

WAC 388-101D-0695 What rights and protections does a client living in a group training home have? (1) In addition to the client rights under WAC 388-101D-0125 and WAC 388-823-1095, a client living in a group training home has the right to:

(a) A locking bedroom door, unless it is unsafe for the client and is documented in their person-centered service plan;

(b) Share their bedroom only if they consent;

(c) Furnish and decorate their bedroom within the terms of their written agreement with the group training home;

(d) Retain and use personal possessions, including furniture and clothing, as space permits;

(e) Control their own schedule, with support if indicated in their person-centered service plan;

(f) Meet privately at any time with visitors of their choosing;

(g) Access and review the group training home's certification review results and corrective action plans;

(h) View copies of the group training home's policies and procedures at any time;

(i) View copies of the certification results, inspection reports, and the group training home's plans of correction at any time;

(j) Receive written notice from the group training home of enforcement action that places a hold on referrals for new clients or is related to provisional certification; and

(k) A setting that meets requirements under 42 C.F.R. 441.301 (c)(4).

(2) Each client must sign a written agreement with the group training home. The written agreement must include the client's notice rights for termination of services. The notice

rights must not conflict with requirements under WAC 388-101D-0200.

NEW SECTION

WAC 388-101D-0700 What notice requirements must a group training home meet? If a client's group training home services are terminated and the client is evicted, before evicting the client the group training home must follow:

(1) Notice requirements under WAC 388-101D-0200; and

(2) Applicable legal processes, such as unlawful detainer under chapters 59.12 or 59.16 RCW.

NEW SECTION

WAC 388-101D-0705 What requirements under this chapter is a group training home provider exempt from?

A group training home provider contracted with DDA before January 1, 2019 is exempt from requirements under WAC 388-101D-0565, 388-101D-0575, 388-101D-0605, 388-101D-0615.

WSR 18-23-120

PERMANENT RULES

CLARK COLLEGE

[Filed November 21, 2018, 11:55 a.m., effective December 22, 2018]

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

Purpose: Amend existing rule on first amendment activities at Clark College using new model language provided by the attorney general's office.

Citation of Rules Affected by this Order: Amending chapter 132N-153 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 18-19-106 on September 19, 2018.

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

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

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

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

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

Date Adopted: November 14, 2018.

Bob Williamson
Vice President of
Administrative Services

AMENDATORY SECTION (Amending WSR 12-19-020, filed 9/7/12, effective 10/8/12)

WAC 132N-153-010 Title. WAC 132N-153-010 through ((132N-153-090)) 132N-153-150 shall be known as use of Community College District 14 facilities by college groups and noncollege groups for first amendment activities.

NEW SECTION

WAC 132N-153-100 Definitions. (1) "College groups" means individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(2) "College facilities" includes all buildings, structures, grounds, office space, and parking lots.

(3) "Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective or viewpoints.

(4) "Noncollege groups" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

NEW SECTION

WAC 132N-153-110 Statement of purpose. Clark Community College District 14 is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities to which the college's facilities and grounds are dedicated. Accordingly, the college designates the common areas of the college as a limited public forum dedicated to the use of college groups, subject to the time, place, and manner limitations and restrictions set forth in this policy. Groups or individuals who are invited or permitted to engage in first amendment activities at the college do not represent an endorsement by Clark College or the board of trustees.

The purpose of the time, place and manner regulations set forth in this procedure is to establish procedures and reasonable controls for the use of college facilities. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest

extent possible. The college has designated certain facilities as public use areas open to noncollege groups as set forth herein.

NEW SECTION

WAC 132N-153-120 Use of facilities. (1) Subject to the regulations and requirements of this policy, groups may use the college's limited forums for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Groups are encouraged to notify the college safety and security department no later than twenty-four hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

(3) All sites used for expressive activity should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(4) All fire, safety, sanitation or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of expressive activity conducted pursuant to this policy.

(5) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

(6) The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

(7) The event must not substantially and materially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.

(8) The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

(9) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(10) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(11) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

NEW SECTION

WAC 132N-153-130 Additional requirements for noncollege groups. (1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. When renting college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy. When the college grants permission to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

(2) Noncollege groups may otherwise use college facilities for expressive activity as identified in this procedure.

(3) The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for expressive activity on campus:

(a) The public use areas may be scheduled. Scheduled groups have priority of use over unscheduled groups:

(i) On the college's main campus, the limited public forum is located on the circle pad approximate to the sun dial.

(ii) A secondary location is available on the lawn area south of the Japanese garden.

(iii) The limited public forum at Clark College at the Columbia Tech Center is the circle pad west of the main entry door.

(iv) The limited public forum location at the Clark Center at WSU Vancouver will be determined by WSU Vancouver policy.

(b) Please contact the vice president of administrative services for more information.

(4) Noncollege groups that seek to engage in expressive activity on the designated public use area(s) are encouraged to provide notice to the college safety and security office no later than twenty-four hours prior to the event, along with the following information solely to ensure:

(a) The area is not otherwise scheduled; and

(b) To give the college an opportunity to assess any security needs:

(i) The name, address, and telephone number of a contact person for the individual, group, entity or organization sponsoring the event;

(ii) The date, time and requested location of the event;

(iii) The nature and purpose of the event; and

(iv) The estimated number of people expected to participate in the event.

(5) When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

(6) When the college grants permission to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 132N-153-140 Distribution of materials. College groups may post information on bulletin boards, kiosks

and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups. The sponsoring organization is encouraged, but not required to include its name and address on the distributed information. Postings must be date stamped and may be displayed no longer than thirty calendar days.

NEW SECTION

WAC 132N-153-150 Trespass. (1) Noncollege groups who violate these rules, any provision of the conduct code, or whose conduct jeopardizes the health or safety of others, will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the college president or designee to leave the college property. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college facilities of the person or group of persons requested to leave, and subject such individuals to arrest under the criminal trespass provisions of chapter 9A.52 RCW or municipal ordinance.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice president of administration or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice president of administrative services or designee will be the final decision of the college and should be issued within five work days.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132N-153-020 Statement of purpose.

WAC 132N-153-030 Definitions.

WAC 132N-153-040 Request for use of facilities.

WAC 132N-153-050 Additional requirements for noncollege groups.

WAC 132N-153-060 The role of the president in first amendment decisions.

WAC 132N-153-070 Criminal trespass.

WAC 132N-153-080 Posting of a bond and hold harmless statement.

WAC 132N-153-090 Disclaimer.