

WSR 19-05-008
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 7, 2019, 10:29 a.m., effective March 10, 2019]

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

Purpose: The department is adding this new overpayment section for individual providers to chapter 388-71 WAC to define the circumstances in which an individual provider is subject to an overpayment, clarify the department's authority to collect an overpayment, clarify an individual provider's right to an administrative hearing when they receive an overpayment notice, and provide information about how an individual provider requests an administrative hearing related to an overpayment.

Citation of Rules Affected by this Order: New WAC 388-71-0548.

Statutory Authority for Adoption: RCW 43.20B.675, 74.09.220, 74.09.290, 74.09.520.

Adopted under notice filed as WSR 18-21-150 on October 19, 2018.

Changes Other than Editing from Proposed to Adopted Version: The department added "erroneous or" to subsection (1)(k).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: February 6, 2019.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-71-0548 When is an individual provider subject to an overpayment? (1) Unless payment is otherwise required by state or federal law, it is an overpayment as defined in RCW 43.20B.010 and 41.05A.170 if an individual provider (IP) is paid by the department and:

- (a) Did not actually perform the work;
- (b) Payment is for dates of service after the death of the client;
- (c) Payment is for services provided when the client was admitted to a hospital, nursing home, or other institutional setting;

(d) Payment is for dates of service when the client was outside of the United States;

(e) Did not have a valid IP services contract at the time the services were provided and had been notified by the department to stop the provision of services;

(f) Had not completed required training or obtained required certification at the time the services were provided and had been notified by the department to stop the provision of services;

(g) Had a disqualifying crime or negative action at the time the services were provided and had been notified by the department to stop the provision of services;

(h) Provided services after being notified by the department to stop the provision of services;

(i) Provided services that are not included in the client's plan of care;

(j) Provided services that exceeded the amount of the client's benefit in the client's plan of care where those services were not necessitated by an emergent and immediate need of the client and the IP is not a family member or household member of the client; or

(k) Received erroneous or duplicate payment(s).

(2) If the department determines an IP was overpaid, even if it was due to department error, the department recovers any moneys that the IP received as a result of overpayments, as authorized under chapter 41.05A RCW or 43.20B RCW.

(a) The department will send the IP notice of the overpayment.

(b) The IP has a right to request an administrative hearing when notice of an overpayment is received from the department.

(c) To request an administrative hearing, an IP must send a written request to the office of financial recovery within twenty-eight days of the IP's receipt of notice of the overpayment that:

(i) States the basis for contesting the overpayment notice;

(ii) Includes a copy of the department's notice with the request; and

(iii) Is sent by certified mail return receipt requested (CMRRR) or another trackable delivery service.

(d) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW).

WSR 19-05-010
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 7, 2019, 11:13 a.m., effective March 10, 2019]

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

Purpose: Amends WAC 181-80-010 and 181-80-020 and creates new WAC 181-80-002 and 181-80-005, describing statutory authority and definitions sections[.] Amendments address requirements for alternative route programs (WAC 181-80-010) and the types of routes available for programs to develop (WAC 181-80-020). HB 1654, Laws of

2017, directed the professional educator standards board to create explicit requirements for these program[s] in WAC.

Citation of Rules Affected by this Order: New WAC 181-80-002 and 181-80-005; and amending WAC 181-80-010 and 181-80-020.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-24-124 on December 5, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12kwa.us, web site www.PESB.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 2, 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 2, Amended 2, Repealed 0.

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

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

Date Adopted: January 10, 2018 [2019].

David Brenna
Senior Policy Analyst

NEW SECTION

WAC 181-80-002 Authority. As provided for in RCW 28A.410.210, 28A.660.020, and 28A.660.035, the Washington professional educator standards board establishes policies and requirements for the preparation and certification of educators, including establishing policies for the approval of nontraditional preparation program providers, providing oversight and accountability related to the quality and effectiveness of these programs, and constructing rules that address the competitive grant process and program design. The professional educator standards board will accept proposals for educator preparation programs from community college and nonhigher education providers as described in RCW 28A.410.290. The professional educator standards board has the authority to implement the articulated pathway for teacher preparation and certification as described in RCW 28A.410.292.

NEW SECTION

WAC 181-80-005 Definitions. The following definitions shall apply to terms used in this chapter:

(1) Clinical practice: "Clinical practice" means the period during a field experience where the candidate practices or serves in the role for which he or she is being prepared. Clinical practice must take place in an education setting and under the general supervision of a certificated prac-

itioner in the role for which the candidate is seeking certification, as defined in WAC 181-78A-010.

(2) District staff member: For the purposes of chapter 181-80 WAC, these candidates may be classified district staff members, or district staff members who hold initial, continuing, or limited career technical education certificates, or district early learning education staff.

(3) Field experience: "Field experience" means learning experiences in school, clinical, or laboratory settings. These learning experiences must be related to specific program outcomes and designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor as defined in WAC 181-78A-010.

(4) Internship: "Internship" means the period of clinical practice for candidates enrolled in approved administrator, school counselor, and school psychologist preparation programs as defined in WAC 181-78A-010.

(5) Preresidency intensive academy: The preresidency intensive academy shall require candidates to, prior to beginning residency, gain foundational knowledge in professional educator standards board-approved program domain standards; an introduction to the culture of schools, lesson planning, and basic classroom management; and must require training in cultural competency.

(6) Residency: A residency is a year-long field experience with a minimum of five hundred forty hours of student teaching. Residency is facilitated through partnership of preparation program and school district. Mentoring is required for the duration of the residency.

(7) Student teaching: "Student teaching" means the period of clinical practice for individuals enrolled in teacher preparation programs as defined in WAC 181-78A-010.

AMENDATORY SECTION (Amending WSR 17-18-006, filed 8/24/17, effective 9/24/17)

WAC 181-80-010 Basic requirements. (1) ~~((The professional educator standards board shall transition the alternative route partnership grant program from a separate competitive grant program to a preparation program model to be expanded among approved preparation program providers.))~~ Alternative routes to teacher certification programs are partnerships between professional educator standards board-approved preparation program~~(s)~~ providers, Washington school districts, and other partners as appropriate. These partnerships are focused on district-specific teacher shortage areas. Authorized alternative routes partnerships are eligible to apply for the alternative routes block grant and to facilitate alternative route conditional scholarship program as described in RCW 28A.660.050.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts ~~((applying to operate an))~~ operating an approved alternative route to teacher certification program ~~((shall include in its proposal to the Washington professional educator standards board:~~

~~(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;~~

(b) ~~The estimated number of candidates that will be enrolled per route;~~

(c) ~~An identification, indication of commitment, and description of the role of approved teacher preparation programs and partnering district or consortia of districts;~~

(d) ~~An assurance that the district or approved preparation program provider will provide adequate training for mentor teachers specific to the mentoring of alternative route candidates;~~

(e) ~~An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;~~

(f) ~~A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in RCW 28A.660.040;~~

(g) ~~A summary of procedures that provide flexible completion opportunities for candidates to achieve a residency certificate; and~~

(h) ~~The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any requirements accordingly. The plan may include the following components:~~

(i) ~~A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship during field experience, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. Before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision;~~

(ii) ~~Identification of performance indicators based on the knowledge and skills standards required for residency certification by the Washington professional educator standards board;~~

(iii) ~~Identification of benchmarks that will indicate when the standard is met for all performance indicators;~~

(iv) ~~A description of strategies for assessing candidate performance on the benchmarks;~~

(v) ~~Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year;~~

(vi) ~~A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program; and~~

(vii) ~~A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route interns will advance its school improvement plans.~~

(3) ~~To the extent funds are appropriated for this purpose, alternative route programs may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend provided by state funds shall not exceed five hundred dollars~~) must meet the following requirements:

(a) Partnership requirements. Alternative routes providers shall establish an alternative routes partnership memorandum of agreement (MOA) between the approved teacher preparation program provider and each partnering district or consortia of districts. Each MOA shall require:

(i) An identification, indication of commitment, and description of the role of approved teacher preparation program provider and partnering district or consortia of districts, including specific duties of each partner;

(ii) The role of each partner in candidate recruitment, screening, selection, and oversight;

(iii) The role of each partner in field placement and student teaching and a description of when each begins within the program;

(iv) The role of each partner in mentorship selection, training, and support;

(v) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route candidates will advance its school improvement plans.

(b) Programmatic requirements. Programs shall uphold the following requirements in addition to requirements and standards listed in chapter 181-78A WAC.

(i) Ensure candidates meet assessment requirements for basic skills, content knowledge, and performance-based assessment per RCW 28A.410.220, 28A.410.280, and WAC 181-78A-300(3).

(ii) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate.

(iii) Clinical practice for teacher candidates should consist of no less than five hundred forty hours in classroom settings.

(iv) Mentorship requirements must be met in accordance with WAC 181-78A-220 and 181-78A-300 and each candidate must be assigned a mentor. The candidate must receive mentoring for the duration of the residency.

(v) Teacher development plan: Ensure the design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's standards for residency certification. The plan must also include:

(A) Identification of one or more tools to be used to assess a candidate's performance once the candidate is about halfway through their residency;

(B) Recognition for relevant prior learning within the teacher development plan that demonstrates meeting residency certification competencies; and

(C) A description of the criteria that would result in early exit from the program with residency certification.

(vi) Shortage areas. Alternative route programs shall enroll candidates in a subject or geographic endorsement shortage area, as defined by the professional educator standards board including, but not limited to, bilingual, English language learner, special education, early childhood education, and areas with shortages due to geographic location as determined by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 17-18-006, filed 8/24/17, effective 9/24/17)

WAC 181-80-020 Program types. Alternative route programs under this chapter shall operate one to four specific route programs. Successful completion of ~~((the program shall make a candidate eligible))~~ an alternative route program shall meet the program completion requirements for residency teacher certification. The mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the teacher preparation program provider must both agree that the teacher candidate has successfully completed the program.

~~(1) ((Alternative route programs operating))~~ Route 1: Providers approved to offer route one programs shall enroll currently employed ((classified instructional employees with transferable associate degrees)) district staff members seeking residency teacher certification ((with endorsements in special education, bilingual education, or English as a second language. It is anticipated that)). Candidates enrolled in ((this route will)) route one programs may complete both their baccalaureate degree and requirements for residency certification in two years or less((, including a mentored internship to be completed in the final year. In addition, partnership programs)). Program providers and partners shall uphold entry requirements for route one candidates that include:

(a) A transferable associate degree, or associate degree, or associate of applied science, or ninety quarter credits or the equivalent in semester credits from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of ((successful)) student interaction and leadership ((as a classified instructional employee;

~~(b) Successful passage of the statewide basic skills exam; and~~

~~(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.~~

~~(2) Alternative route programs operating)).~~

(2) Route 2: Providers approved to offer route two programs shall enroll currently employed ((classified)) district staff members with baccalaureate degrees seeking residency teacher certification ((in subject matter shortage areas and areas with shortages due to geographic location)). Candidates enrolled in this route must complete a ((mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via videoconference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs)) preresidency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education;

~~(b) District or building validation of qualifications, including one year of ((successful)) student interaction and leadership ((as classified staff;~~

~~(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;~~

~~(c) Successful completion of the subject matter assessment required by RCW 28A.410.220(3);~~

~~(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and~~

~~(e) Successful passage of the statewide basic skills exam)).~~

~~(3) ((Alternative route programs seeking funds to operate))~~ Route 3: Providers approved to offer route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application. ((When selecting candidates for certification through route three, districts and approved preparation program providers shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs)) Candidates enrolled in this route must complete a preresidency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from ((a regionally)) an accredited institution of higher education((. The individual's grade point average may be considered as a selection factor;

~~(b) Successful completion of the subject matter assessment required by RCW 28A.410.220(3);~~

~~(c)); and~~

(b) External validation of qualifications, including demonstrated ((successful)) experience with students or children, such as reference letters and letters of support from previous employers((;

~~(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and~~

~~(e) Successful passage of statewide basic skills exam.~~

~~(4) Alternative route programs operating)).~~

(4) Route 4: Providers approved to offer route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold ((conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. If employed on a conditional certificate, the intern may serve as the teacher of record, supported by a well-trained mentor. In addition, partnership programs)) limited certificates as described in WAC 181-79A-231, or hold initial, continuing, or limited career technical education certificates as described in chapter 181-77 WAC. Candidates enrolled in this route must complete a preresidency intensive academy. The candidate will be delegated primary responsibility for planning,

conducting, and evaluating instructional activities in a designated classroom. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from ~~((a regionally))~~ an accredited institution of higher education~~((The individual's grade point average may be considered as a selection factor;~~

~~(b) Successful completion of the subject matter assessment required by RCW 28A.410.220(3);~~

~~(c)); and~~

~~(b) External validation of qualifications, including demonstrated ((successful)) experience with students or children, such as reference letters and letters of support from previous employers((;~~

~~(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and~~

~~(e) Successful passage of statewide basic skills exam)).~~

(5) Applicants for alternative route programs who are eligible veterans or National Guard members and who meet the entry requirements for the alternative route program for which application is made shall be given preference in admission.

WSR 19-05-020

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 11, 2019, 9:30 a.m., effective March 14, 2019]

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

Purpose: WAC 246-810-029(3) Acceptable continuing education courses for a certified counselor and certified adviser, the department of health is adopting rule language that will increase the amount of allowable distance learning program hours from twelve to up to twenty hours per reporting period.

Citation of Rules Affected by this Order: Amending WAC 246-810-029.

Statutory Authority for Adoption: RCW 18.19.050.

Adopted under notice filed as WSR 18-16-079 on July 30, 2018.

A final cost-benefit analysis is available by contacting James Chaney, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2831, fax 360-236-2901, TTY 360-833-6388 or 711, email James.Chaney@doh.wa.gov.

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

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

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

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

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

Date Adopted: February 11, 2019.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-029 Acceptable continuing education courses for certified counselor and certified adviser. (1) A continuing education program or course must be relevant to counseling and must contribute to the advancement, extension and enhancement of the professional competence of the credential holder. Relevant courses include those that are related to counseling theory and practice, modality(ies) of the counseling services the credential holder will provide, professional ethics, courses related to risk assessment, screening using the global assessment of functioning scale, referral of clients, and Washington state law applicable to counseling.

(2) Continuing education courses, seminars, workshops, training programs, and institutes must have a featured instructor, speaker(s), or panel approved by an industry-recognized institution of higher learning, or a local, state, national, or international organization.

(3) Distance learning programs approved by an industry-recognized local, state, national or international organization or educational organization may meet these requirements. The programs must require a test of comprehension upon completion. Distance learning programs are limited to ~~((twelve))~~ twenty hours per reporting period.

(4) Other learning experiences, such as serving on a panel, board or council, community service, research, peer consultation, or publishing articles for professional publications are acceptable if the experience contributes to the advancement, extension, and enhancement of the professional competence of the certified counselor or certified adviser. The experience is limited to six hours per reporting period.

WSR 19-05-024

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed February 12, 2019, 2:30 p.m., effective March 15, 2019]

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

Purpose: Amends WAC 179-15-030 describing requirements for the subject matter special education certificate for paraeducators.

Citation of Rules Affected by this Order: Amending WAC 179-15-030.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-24-107 on December 4, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504,

phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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Date Adopted: January 10, 2019.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-17-011, filed 8/2/18, effective 9/2/18)

WAC 179-15-030 Process. (1) To attain the paraeducator special education subject matter certificate, the paraeducator must complete twenty continuing education credit hours of training that meet the learning objectives of the course outline as described in WAC 179-15-060;

(2) Training for the certificate must include the training competencies that align with WAC 179-15-050; ~~((and))~~

(3) A professional growth plan may not be completed to attain the special education subject matter certificate; and

(4) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the special education subject matter certificate.

WSR 19-05-025

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed February 12, 2019, 2:33 p.m., effective March 15, 2019]

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

Purpose: Amends WAC 179-17-040 describing requirements for the advanced paraeducator certificate.

Citation of Rules Affected by this Order: Amending WAC 179-17-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-24-111 on December 4, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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Date Adopted: January 10, 2019.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-17-012, filed 8/2/18, effective 9/2/18)

WAC 179-17-040 Process. (1) To attain the advanced paraeducator certificate, the paraeducator must complete seventy-five continuing education credit hours of training in topics related to the duties of an advanced paraeducator; ~~((and))~~

(2) Professional growth plans may be completed towards the attainment or renewal of the advanced paraeducator certificate; and

(3) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the advanced paraeducator certificate.

WSR 19-05-028

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed February 12, 2019, 3:20 p.m., effective March 15, 2019]

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

Purpose: Amends WAC 179-05-020 and adds new sections for WAC 179-05-030 and 179-05-040 describing methods to attain paraeducator certificate.

Citation of Rules Affected by this Order: New WAC 179-05-030 and 179-05-040; and amending WAC 179-05-020.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-24-105 on December 4, 2018.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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Date Adopted: January 10, 2019.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-16-104, filed 7/31/18, effective 8/31/18)

WAC 179-05-020 Definitions. (1) "Continuing education credit hours" as used in this title is defined in WAC 181-85-030.

(2) "Professional growth plan" as used in this title is defined as:

(a) Paraeducator individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards of a specific paraeducator certificate.

(b) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (3) of this section.

(c) Paraeducators who complete an annual professional growth plan to attain or renew their certificate shall receive the equivalent of twenty-five continuing education credit hours.

(3) "Professional growth team" as used in this title is defined as a team comprised of the individual completing a professional growth plan for renewing or attaining a certificate and a minimum of one colleague, who holds a paraeducator certificate or a Washington state educator certificate as described in Title 181 WAC, chosen by the individual.

(4) "Certificate renewal" means that process whereby the validity of a certificate, subject to expiration, is extended.

NEW SECTION

WAC 179-05-030 Paraeducator certificate renewal.

(1) Individuals who hold paraeducator certificates have the following options for renewal:

(a) For the subject matter certificates described in chapters 179-13 and 179-15 WAC, candidates must complete twenty continuing education credit hours during the validity period of the certificate.

(b) For the advanced paraeducator certificate described in chapter 179-17 WAC, candidates must complete thirty continuing education credit hours during the validity period of the certificate.

(2) Application for renewal shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

(3) Expired certificates may be renewed with completion of required continuing education credit hours as stated in subsection (1) of this section within the previous five years from the date of the renewal application.

(4) An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application.

(5) Individuals who hold a certificate as described in Title 181 WAC may renew a paraeducator certificate, with the exception of:

(a) Undated residency certificates; and

(b) Limited certificates as described in WAC 181-77-014 and 181-79A-231.

(6) For educators holding multiple certificates in this title, continuing education credit hours completed to renew one certificate may be used towards meeting the renewal requirements for all paraeducator certificates held by an individual.

NEW SECTION

WAC 179-05-040 Requirements for attaining a paraeducator certificate for a holder of a valid educational certificate pursuant to WAC 181-79A-140. (1) Requirements for an individual holding a valid educational certificate pursuant to WAC 181-79A-140:

(a) The purpose of this section is to clarify the requirements for individuals holding a valid educational certificate pursuant to WAC 181-79A-140, with the exception of: Educators who only hold limited certificates, as described in chapter 181-77 WAC and WAC 181-79A-231, must meet the requirements of the paraeducator certificate program as outlined in this title.

(b) Educators who do not hold a valid educational certificate pursuant to WAC 181-79A-140 must meet the requirements of the paraeducator certificate program as described in this title.

(2) Individuals must meet the paraeducator minimum employment requirements, as defined in chapter 179-03 WAC.

(3) Individuals must complete the fundamental course of study, as described in chapter 179-09 WAC.

(4) Individuals who hold a valid educational certificate pursuant to WAC 181-79A-140 and have completed the fundamental course of study, as described in chapter 179-09 WAC, are considered to have met the requirement for seventy continuing education credit hours for the general paraeducator certificate as described in chapter 179-11 WAC.

Individuals shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020.

(5) Individuals who hold one of the following endorsements, as described in WAC 181-82A-202, meet the requirements to attain the subject matter certificates as described in chapters 179-13 and 179-15 WAC:

(a) English language learner and/or bilingual, meet the requirements to attain the English language learner subject matter certificate as described in chapter 179-13 WAC;

(b) Special education and/or early childhood special education, meet the requirements to attain the special education subject matter certificate as described in chapter 179-15 WAC;

(c) Individuals shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the attainment of the subject matter certificate.

WSR 19-05-041

PERMANENT RULES

SECRETARY OF STATE

[Filed February 14, 2019, 8:46 a.m., effective March 17, 2019]

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

Purpose: The purpose is permanent adoption of previously adopted amendments to WAC 434-208-060 and 434-250-120 related to electronic return of ballot for nonservice and nonoverseas voters. These amendments change the ballot return process by requiring ballots from these voters to be returned by the United States Postal Service or via a ballot drop box only. The amendments limit the option to return ballots by email or fax to only service and overseas voters.

Citation of Rules Affected by this Order: Amending WAC 434-208-060 and 434-250-120.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 18-21-171 on October 23, 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 2, Repealed 0.

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

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

Date Adopted: December 4, 2018.

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(b) Any minor party or independent candidate filing material for president and vice president, except nominating petitions;

(c) Lists of presidential electors selected by political parties or independent candidates;

(d) Voted ballots and signed ballot declarations from service and overseas voters received no later than 8:00 p.m. on election day (~~(- Voted ballots and signed ballot declarations from voters who are neither service nor overseas voters received no later than 8:00 p.m. on election day, as long as hard copies of the ballot and ballot declaration are received no later than the day before certification of the election));~~

(e) Resolutions from cities, towns, and other districts calling for a special election;

(f) Voter registration forms, unless the form is illegible or the signature image is poor quality requiring the county auditor to reject the form;

(g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC 434-261-050; and

(h) Requests to withdraw.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, referendum, recall, or other signature petitions may be filed electronically.

(4) County auditors must use best practices provided by the secretary of state for securely handling documents received by fax and email.

AMENDATORY SECTION (Amending WSR 18-10-003, filed 4/19/18, effective 5/20/18)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted if:

(a) The ballot declaration is signed with a valid signature. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter.

(i) If the voter is unable to sign his or her name, the voter may make a mark or symbol with two witnesses' signatures. A signature stamp accompanied by two witness signatures is an acceptable mark.

(ii) A power of attorney cannot be used as a signature for a voter;

(b) The signature has been verified pursuant to WAC 434-379-020; and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The postmark on the envelope is the offi-

cial date of mailing. If there are two postmarks, the earlier postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40.110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. ((If the ballot is from a voter who is neither a service nor overseas voter, a hard copy of the ballot and ballot declaration must also be received no later than the day before certification of the election.)) Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4)((~~(a)~~)) For service and overseas ballots returned by fax or email, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or ((~~(as)~~)) in multiple emails.

((~~(b)~~)) If the ballot is from a voter who is neither a service nor overseas voter, the voter must also return a hard copy of the ballot and ballot declaration no later than the day before certification.

~~(i) Consistent with WAC 434-250-080, the first valid ballot and declaration received is counted; subsequently received versions are not counted.~~

~~(ii) In order to maintain secrecy of the ballot, the hard copy ballot may not be compared to the ballot received electronically.~~

~~(iii) Voted ballots returned electronically no later than 8:00 p.m. on election day are timely even if the hard copy subsequently returned contains a postmark after election day.~~

~~(e)) (a) Service and overseas ballots returned ((electronically)) by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.~~

~~(b) Only service and overseas voters are eligible to return a ballot electronically. For electronic ballots received from voters who are not service or overseas voters the county auditor must:~~

~~(i) Contact the voter immediately if a fax or email ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.~~

~~(ii) Count only the ballot received by mail or ballot drop box if the voter returns both an electronic ballot and a ballot by mail or ballot drop box.~~

~~(iii) Send the electronic ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.~~

(5) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

WSR 19-05-054

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 15, 2019, 12:11 p.m., effective March 18, 2019]

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

Purpose: The subject of this rule making relates to the statewide all-payer health care claims database (WA-APCD). WAC 82-75-030 provides additional definitions for terms used in the chapter that establishes and regulates WA-APCD. Specifically, this rule making will revise the definition of "Washington covered person" to correct an error that was made when amending the definition in spring 2018.

Citation of Rules Affected by this Order: Amending WAC 82-75-030.

Statutory Authority for Adoption: RCW 43.371.010(3) and 43.371.070.

Adopted under notice filed as WSR 19-01-060 on December 14, 2018.

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

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

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

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

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

Date Adopted: February 15, 2019.

Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-19-056, filed 9/15/18, effective 10/16/18)

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

"Capitation payment" means a payment model where providers receive a payment on a per "covered person" basis, for specified calendar periods, for the coverage of specified health care services regardless of whether the patient obtains care. Capitation payments include, but are not limited to, global capitation arrangements that cover a comprehensive set of health care services, partial capitation arrangements for subsets of services, and care management payments.

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

"Claimant" means a person who files a workers compensation claim with the Washington state department of labor and industries.

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

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

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

"Data policy committee" or "DPC" is the advisory committee required by RCW 43.371.020 (5)(h) to provide advice related to data policy development.

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

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

"Data use agreement" or "DUA" means the legally binding document signed by either the lead organization and the data requestor, or the office and the data requestor, or the office and a Washington state agency, that defines the terms

and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Days" means calendar days.

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

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

"Fee-for-service equivalent" means the amount that would have been paid by the payer for a specified service if the service had not been capitated or paid under an alternative payment formula like treatment episodes, or the fee amount reflected in the payer's internal fee schedule(s) for services that are not paid on a fee-for-service basis.

"Fee-for-service payment" means a payment model where providers receive a negotiated or payer-specified rate for a specific health care service provided to a patient.

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

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

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

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

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

"Malicious intent" means the person acted willfully or intentionally to cause harm, without legal justification.

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

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

"Person" means an individual; group of individuals however organized; public or private corporation, including profit and nonprofit corporations; a partnership; joint venture; public and private institution of higher education; a state, local, and federal agency; and a local or tribal government.

"PFI" means the proprietary financial information as defined in RCW 43.371.010(12).

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

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for

coverage under an insurance policy or member of a health benefit plan.

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

"WA-APCD program director" means the individual designated by the office as responsible for the oversight and management of the operations of the statewide all payer health care claims database authorized in chapter 43.371 RCW.

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

WSR 19-05-055
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 15, 2019, 12:39 p.m., effective March 29, 2019]

Effective Date of Rule: March 29, 2019.

Purpose: The purpose is to amend WAC 357-31-395 to expand the definition of employee's relative to include sibling for the purposes of shared leave.

Citation of Rules Affected by this Order: Amending WAC 357-31-395.

Statutory Authority for Adoption: Chapter 41.04 RCW.

Other Authority: RCW 41.04.665.

Adopted under notice filed as WSR 19-02-025 on December 21, 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: February 15, 2019.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-17-130, filed 8/20/18, effective 9/21/18)

WAC 357-31-395 What definitions apply to shared leave? (1) As defined in RCW 41.04.655, "employee" means

any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, sibling, grandparent, or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious, extreme or life threatening.

(6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard and any other category of persons designated by the President of the United States in time of war or national emergency.

WSR 19-05-056
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 15, 2019, 12:40 p.m., effective March 29, 2019]

Effective Date of Rule: March 29, 2019.

Purpose: The purpose is to place new provisions in Title 357 WAC as a result of chapter 294, Laws of 2017 (SSB 5835) and chapter 47, Laws of 2018 (HB 2661) and clarify that existing WAC apply to disability accommodations. SSB 5835 was passed during the 2017 legislative session with an effective date of July 23, 2017. This bill states that it is an unfair practice for any employer to fail or refuse to make a reasonable accommodation for an employee for pregnancy or a pregnancy related health condition unless the employer can demonstrate that doing so would impose an undue hardship. HB 2661 was passed during the 2018 legislative session with an effective date of June 7, 2018. This bill states that victims of domestic violence, sexual assault, or stalking are able to have reasonable safety accommodations in the workplace.

Citation of Rules Affected by this Order: New WAC 357-26-030, 357-26-035, 357-26-040, 357-26-045, 357-26-050, 357-26-055 and 357-26-060; and amending WAC 357-

26-005, 357-26-010, 357-26-015, 357-26-020, and 357-26-025.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Other Authority: RCW 43.10.005 and 49.76.040.

Adopted under notice filed as WSR 19-02-026 on December 21, 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 7, Amended 5, 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 7, Amended 5, 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 7, Amended 5, Repealed 0.

Date Adopted: February 15, 2019.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

WAC 357-26-005 What is the purpose of this chapter? The purpose of chapter 357-26 WAC is to provide guidance to employers regarding reasonable accommodation (~~((as it specifically relates to employment and separation due to disability within the provisions of the civil service rules))~~) for the following reasons:

- (1) Disability;
- (2) Pregnancy; and
- (3) Safety.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

WAC 357-26-010 When must an employer (~~(provide reasonable accommodation))~~ reasonably accommodate a disability? An employer must reasonably accommodate a known disability of a qualified candidate or employee as required by chapter 49.60 RCW and the federal Americans with Disabilities Act.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

WAC 357-26-015 What actions may an employer take to (~~(provide reasonable accommodation))~~ reasonably accommodate a disability? For persons with disabilities, as defined by state or federal law, reasonable accommodation may include, but is not limited to:

(1) Accommodation in application procedures, testing, and the interview process; or

(2) Modifications or adjustments to a job, work method, or work environment that make it possible for a qualified person with a disability to perform the essential functions of a position, or enjoy the benefits and privileges of employment equal to employees without disabilities.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

WAC 357-26-020 What is the requirement for employers to have a policy and procedure covering (~~(reasonable))~~ disability accommodation? (1) In accordance with the policy statement requirements of WAC 357-25-025, employers must develop and maintain a policy statement on reasonable accommodation.

(2) In accordance with state and federal laws, employers must develop and make readily available a procedure regarding reasonable accommodation of employees with disabilities.

(a) Each employee who requests reasonable accommodation must be provided access to the employer's reasonable accommodation procedure in an accessible format.

(b) Employees who request reasonable accommodation must be notified in writing that in the event (~~(he or she))~~ they cannot be accommodated in (~~(his or her))~~ their current position, and placement in an alternative vacant position is not possible, the appointing authority may initiate a disability separation in accordance with WAC 357-46-160.

AMENDATORY SECTION (Amending WSR 05-01-196, filed 12/21/04, effective 7/1/05)

WAC 357-26-025 May an employee who is unable to perform the essential functions of a position due to a disability request to be separated from employment? An employee who is unable to perform the essential functions of the employee's position due to mental, sensory, or physical incapacity may notify the employer that (~~(he or she does))~~ they do not wish to pursue accommodation and would like to be separated from employment. In this case, the appointing authority is not required to consider a reasonable accommodation and may initiate a disability separation in accordance with WAC 357-46-160.

NEW SECTION

WAC 357-26-030 When must an employer provide reasonable pregnancy accommodations? An employer must provide reasonable pregnancy accommodations to employees who are pregnant or have a pregnancy-related health condition as required in RCW 43.10.005.

NEW SECTION

WAC 357-26-035 What actions must an employer take to provide reasonable pregnancy accommodations? (1) An employer must provide employees who are pregnant or have a pregnancy-related health condition a reasonable pregnancy accommodation, which includes the following:

(a) Providing more frequent, longer, or flexible restroom breaks;

- (b) Modifying a no food or drink policy;
 - (c) Providing seating or allowing an employee to sit more frequently if the job requires standing;
 - (d) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;
 - (e) Providing a temporary transfer to a less strenuous or less hazardous position;
 - (f) Providing assistance with manual labor and limits on lifting;
 - (g) Scheduling flexibility for prenatal visits; and
 - (h) Any further pregnancy accommodation an employee may request and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the employee's attending health care provider.
- (2) An employer cannot require an employee who is pregnant or has a pregnancy-related health condition to take leave if another reasonable pregnancy accommodation can be provided.
- (3) The employer is not required to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

NEW SECTION

WAC 357-26-040 When may an employer deny a reasonable pregnancy-related accommodation? The employer may deny a reasonable pregnancy-related accommodation based on undue hardship, which means an action requiring significant difficulty or expense, to the employer's program, enterprise or business for pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (h). The employer may not claim undue hardship for the pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits on lifting over seventeen pounds.

NEW SECTION

WAC 357-26-045 When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation what documentation may the employee be required to submit? When an employee is pregnant or has a pregnancy-related health condition and requests a reasonable pregnancy accommodation, the employee may be required to submit written certification from their licensed physician or health care professional for those pregnancy accommodations listed in WAC 357-26-035 (1)(d) through (h). An employee is not required to submit written certification for pregnancy accommodations listed in WAC 357-26-035 (1)(a) through (c) or for limits lifting over seventeen pounds.

NEW SECTION

WAC 357-26-050 When must an employer provide reasonable safety accommodations? An employer must provide reasonable safety accommodations to an applicant or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-

01 WAC, is a victim of domestic violence, sexual assault or stalking as required in chapter 49.76 RCW.

NEW SECTION

WAC 357-26-055 What actions must an employer take to provide safety accommodations? (1) An employer must provide an applicant, or employee who is a victim of domestic violence or an employee whose family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking, a reasonable safety accommodation, which includes, but is not limited to the following:

- (a) A transfer or reassignment;
 - (b) Modified schedule;
 - (c) Changed work telephone number, work email address and/or workstation;
 - (d) Installed lock;
 - (e) Implemented safety procedure; or
 - (f) Any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault or stalking.
- (2) Leave taken in accordance with chapter 357-31 WAC may be considered a reasonable safety accommodation.
- (3) The employer may deny a reasonable safety accommodation based on an undue hardship, which means an action requiring significant difficulty or expense.

NEW SECTION

WAC 357-26-060 When an applicant or employee who is a victim of domestic violence, sexual assault or stalking or when an employee has a family member who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, what documentation may the applicant or employee be required to submit? (1) When an applicant or employee who is a victim of domestic violence, sexual assault or stalking or when an employee has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking and seeks a reasonable safety accommodation, the employer may require that the request be supported by verification. An applicant or employee may satisfy the verification requirement by providing the employer with one or more of the following:

- (a) A police report indicating that the applicant, employee or employee's family member was a victim of domestic violence, sexual assault or stalking;
- (b) A court order protecting or separating the applicant, employee or the employee's family member from the perpetrator of the act of domestic violence, sexual assault or stalking;
- (c) Evidence from the court or prosecuting attorney that the applicant, employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault or stalking;
- (d) An applicant or employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault or stalking and the safety accommodation requested is to protect the employee from domestic violence, sexual assault or stalking; or

(e) Documentation that the applicant, employee or the employee's family member is a victim of domestic violence, sexual assault or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault or stalking: An advocate for victims of domestic violence, sexual assault or stalking; an attorney; a member of the clergy; or a medical or other professional.

(2) If the victim of domestic violence, sexual assault or stalking is the employee's family member, as defined in chapter 357-01 WAC, verification of the familial relationship between the employee and the victim may include, but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.

WSR 19-05-067

PERMANENT RULES

BELLEVUE COLLEGE

[Filed February 19, 2019, 9:22 a.m., effective March 22, 2019]

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

Purpose: Bellevue College is revising chapter 132H-169 WAC so that it will conform with recent changes in the law concerning public records; model rules recommended by the attorney general's office, and proposed agency practices to include charging for electronic records.

Citation of Rules Affected by this Order: New WAC 132H-169-025, 132H-169-035, 132H-169-085 and 132H-169-095; repealing WAC 132H-169-010, 132H-169-080, 132H-169-090, 132H-169-100, 132H-169-110, 132H-169-120 and 132H-169-130; and amending WAC 132H-169-020, 132H-169-030, 132H-169-040, 132H-169-050, 132H-169-060, and 132H-169-070.

Statutory Authority for Adoption: RCW 42.56.040, 28B.50.140(13).

Adopted under notice filed as WSR 18-21-189 on October 24, 2018.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 6, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 6, Repealed 7.

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

Date Adopted: February 6, 2019.

Tracy Biga MacLean
Associate Director

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-020 Purpose. The purpose of this chapter is to ~~((ensure compliance with the provisions of the Washington state public disclosure laws (RCW 42.17.250 ff.) governing access to public records, while at the same time preserving the right to privacy for college students and employees and minimizing disruption to the operation of college programs and services))~~ provide access to existing, identifiable, nonexempt public records of Bellevue College in accordance with the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 132H-169-025 Description of college. (1) **Governance.** Bellevue College is a public institution of higher education established under chapter 28B.50 RCW as a community college, which offers associate and baccalaureate degrees. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **Main campus.** The main campus of the college is located at 3000 Landerholm Circle S.E., Bellevue, Washington. The college also offers educational programs online and at another campus located at 14673 N.E. 29th Place, Bellevue, Washington.

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW, are adopted by the board of trustees and published in Title 132H of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in policies and procedures available on the college web site.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. The secretary of the college's board of trustees does maintain and publish on the college web site a documents index of the board's approved meeting minutes, motions, and resolutions. Inquiries may be directed to the secretary of the board in the office of the president.

(5) **College web site.** The college's official web site, available at <http://www.bellevuecollege.edu/> provides general information about the college and its board of trustees, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-030 Definitions. (1) "Public record" ~~((as defined by RCW 42.17.020(36) means "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local~~

agency regardless of physical form or characteristics." All public records of Bellevue Community College, Community College District VIII, are considered to be available for public access except as exempted or limited by WAC 132H-169-070.

(2) ~~"Writing" as defined by RCW 42.17.020(42) includes all means of recording any form of communication or representation, including documents, pictures, computer tapes or disks, and sound recordings.)~~ The term "public record" and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.

(2) "Public Records Act." References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.

(3) Requestor. A "requestor" is any person or entity requesting public records of the college pursuant to the Public Records Act.

(4) College. The term "college" means Bellevue College.

NEW SECTION

WAC 132H-169-035 Public records officer. (1) Designation. A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) Duties. The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) Records office. Inquiries regarding public records of the college may be addressed to the public records officer at the following address:

Public Records Officer
Bellevue College
3000 Landerholm Circle S.E.
Bellevue, WA 98007
425-564-2451
recordsofficer@bellevuecollege.edu

(4) Office hours. The customary office hours of the public records office are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-040 Requests for ~~((access))~~ public records. ~~((Requests for access to and/or copies of public records maintained at Bellevue Community College shall be~~

made in writing to the Vice President for Administrative Services, 3000 Landerholm Circle SE, Bellevue, Washington, 98007. Requesters should submit form BCC 010-072, "Request for Public Records," or write a letter to the vice president for administrative services which:

(1) Provides the requester's name, full mailing address, and telephone number;

(2) States whether the requester is representing him/herself or is representing an agency or company, and if so, gives the agency or company name;

(3) For records concerning a past or present Bellevue Community College student, provides the name, student identification number, and last date of attendance (if known) of that student;

(4) For records concerning a past or present Bellevue Community College employee, provides the name, job title or department, and last date of employment (if known) of that employee;

(5) Provides a specific and detailed description of the record being requested;

(6) States whether the requester wishes only to examine the record and will come to the college to do so or, instead, wishes to obtain a copy of the record;

(7) Certifies that the requester

(a) Will not use the information obtained through the request for public records for commercial purposes;

(b) Has read and understood chapter 132H-169 WAC, and

(c) Agrees to return the record in its original condition if the requester examines the record on campus or to pay the cost of having the copy made.)) (1) Written requests preferred. Request for public records of the college may be addressed to the public records officer at the address given in WAC 132H-169-035. The college encourages, but does not require, requestors to use the public records request form made available by the public records office or online at <https://www.bellevuecollege.edu/legal/publicrecords/>. Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer.

(2) Contents of records requests. A request for public records must include the following information:

(a) The name and contact information of the person requesting the records;

(b) The requestor's mailing address, which may be an electronic mail address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer to identify and locate the records; and

(e) A statement indicating whether the requestor wishes to inspect the records or to receive copies of the records in paper or electronic form.

(3) Lists of individuals for commercial purposes. State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request

if it is evident from the request that the list will be used for a commercial purpose.

(4) Assistance in identifying records. The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records request.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-050 ((Response to)) Processing of records requests. ~~((1) The vice president for administrative services or his/her designee will respond to the request within five business days after receiving it.~~

(2) Depending on the nature of the request and of the record concerned, the vice president for administrative services will respond in one of the following ways:

(a) Make the record available or provide a copy as requested;

(b) State that the record as described does not exist at Bellevue Community College at this time;

(c) Acknowledge the request and ask for additional descriptive information, in cases where the description provided is incomplete or unclear;

(d) Acknowledge the request and state a date by which the record(s) will be provided, for example in cases where the request is for large numbers of documents or records in out-of-the-ordinary formats, or when the request has been made at peak periods such as registration or the first week of instruction;

(e) Deny the request in whole or in part and indicate the specific reason for the denial.) (1) Applicable law. Requests for public records will be processed in accordance with these rules and applicable provisions of Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.

(2) Prioritizing of requests. Public records requests generally will be processed in the order in which they are received by the records office and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.

(3) Clarification of requests. The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within thirty days of the request for clarification.

(4) Providing records by installment. If a requestor submits multiple records requests, or if a request seeks a large number of records or many different types of records, the public records officer may provide access to the records in installments in accordance with applicable provisions of the Public Records Act.

(5) Denial of bot requests. The public records officer may deny a bot request as defined under the Public Records Act, RCW 42.56.080(3) if the records officer reasonably believes the request was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-060 ((Appeal after request is denied-)) Review of denials of records request. ~~((If a request for access to public records is submitted according to WAC 132H-169-040 and is denied, the college is required to conduct an internal review of the denial and the requester has the right to appeal the decision to deny access. The requester should address his/her reason for appeal in writing to the college president who, after consulting with the vice president for administrative services, other college administrators, and legal counsel as appropriate, shall respond in writing within five business days after receiving the appeal. The president's decision is considered final.)) (1) Petition for internal administrative review. A requestor who objects to the denial, or partial denial, of a records request may petition in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and will render a decision within two business days following the initial receipt of the petition by the public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.~~

(2) Review by attorney general's office. A requestor who objects to the denial, or partial denial, of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC 44-06-160. Requests for attorney general review must be directed to: Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.

(3) Judicial review. A requestor may petition the superior court for judicial review of the college's decision denying a public records request, whether in whole or in part, by following the procedures in RCW 42.56.550. The denial of a petition for internal administrative review under subsection (1) of this section shall constitute the final agency action subject to judicial review.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-070 ((Exemptions and limitations-)) Records exempt from inspection for copying. ~~((1) Certain public records are exempt from public access according to RCW 42.17.310. Access to these records will not be granted unless the vice president for administrative services determines that disclosure would not affect any vital governmental interest. If the interest can be protected by deletion of personal references, access shall be granted following deletion of such material, and a reasonable time shall be allowed for deleting the material.~~

(2) Student educational records are available only in accordance with the federal Family Educational Rights and

~~Privacy Act of 1974 (20 U.S.C. 1232g), which establishes that the education records of students attending or having attended the college are confidential and can be released only with written permission of the student.~~

~~(3) Records concerning applicants to and employees of Bellevue Community College are available only to such faculty and staff members, including supervisory personnel, who must have access to certain records in order to carry out the business of the college. The only information contained in an individual's employee file which shall be available for public inspection shall be the name, status, salary, and teaching duties of the employee. The employee, however, shall have full access to his/her personnel file as provided by the pertinent bargaining unit agreement.)~~ (1) Public Records Act exemptions. The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but will deny the inspection or copying of such records to the extent that the records are exempt from inspection or copying under the Public Records Act or other applicable law.

(2) Commonly applied exemptions. The public records officer maintains a list explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the list can be requested from the public records officer and will typically be provided by the records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

(3) Determining applicable exemptions. The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

NEW SECTION

WAC 132H-169-085 Copying fees—Payments. (1) Fees and payment procedures. The following copying fees and payment procedures apply to requests to the college under chapter 42.56 RCW and received on or after the effective date of this section.

(2) Inspection of records. There is no fee for inspecting public records made available for inspection by the public records officer.

(3) Actual costs not calculated. Pursuant to RCW 42.56-120 (2)(b), the college is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The institution does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential college functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(4) Default fees adopted. The college will charge for copies or records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The college will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's web site at <https://www.bellevuecollege.edu/legal/publicrecords/>.

(5) Advance payment required - Fee waivers. Requestors are required to pay for copies in advance of receiving records or an installment of records. The records officer will notify the requestor when payment is due. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and consist of twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

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

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

(7) Payment method. Payment should be made by check or money order payable to Bellevue College. The college prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

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

NEW SECTION

WAC 132H-169-095 Court protection of public records. (1) Notifying interested persons. The college, as required or permitted by law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested and that such persons may apply to the superior court for a protective order under RCW 42.56-540.

(2) Applying for court protection. The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW

42.56.540. Nothing in the chapter shall be construed as either requiring or prohibiting the college's application to the court for such an order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-169-010	Title.
WAC 132H-169-080	Notification of affected persons.
WAC 132H-169-090	Protest concerning access.
WAC 132H-169-100	Requests for review only.
WAC 132H-169-110	Requests for copies.
WAC 132H-169-120	No obligation to create records.
WAC 132H-169-130	Sanctions.

WSR 19-05-070

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed February 19, 2019, 12:23 p.m., effective March 22, 2019]

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

Purpose: WAC 458-61A-219 (Rule 219) explains the real estate excise tax (REET) exemption provided by RCW 82.45.010 (3)(t) for transfers of real property by a legal representative of a person with a developmental disability to a qualified entity as defined in RCW 82.45.010 (3)(t)(iii), made effective through HB [SHB] 2448 in the 2018 legislative session.

Citation of Rules Affected by this Order: New WAC 458-61A-219 Developmentally disabled persons—Housing—Transfers and improvements.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.45.150.

Adopted under notice filed as WSR 18-23-067 on November 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 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: February 19, 2019.

Erin T. Lopez
Rules Coordinator

NEW SECTION

WAC 458-61A-219 Developmentally disabled persons—Housing—Transfers and improvements. (1) **Introduction.** A transfer of real property by a legal representative of a person with a developmental disability to a qualified entity as defined in RCW 82.45.010 (3)(t)(iii) is not subject to the real estate excise tax if certain conditions are met and no consideration passes in the transfer. This rule explains the eligibility and continued use requirements, and provides documentation requirements for persons who make qualifying transfers of real property described in RCW 82.45.010 (3)(t).

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including:

(a) WAC 458-61A-100 Real estate excise tax—Overview.

(b) WAC 458-61A-102 Definitions.

(c) WAC 458-61A-201 Gifts.

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

(4) **Definitions.** The following definitions apply throughout this rule:

(a) The definitions in chapter 82.45 RCW.

(b) The definitions in RCW 71A.10.020.

(c) "Affordable housing program" defined in RCW 43.185A.020.

(d) "Qualified entity" is:

(i) A nonprofit organization under 26 U.S.C. Sec. 501(c)(3) of the federal Internal Revenue Code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

(ii) A nonprofit adult family home, as defined in RCW 70.128.010, that exclusively serves persons with developmental disabilities.

(5) **Required conditions.** The transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity is not subject to real estate excise tax if the following conditions are met:

(a) The transferor's adult child (or otherwise legally represented person) with developmental disabilities retains a life estate in the property and must be allowed to reside in the residence or successor residence so long as the placement is safe and appropriate, as determined by the department of social and health services.

(b) The title of the property is conveyed by the legal representative of a person with developmental disabilities to a qualified entity without any consideration. Consideration may include money or anything of value, the performance of services, or assumption of debt.

(c) The residential property must have no more than four living units located on it.

(d) The residential property transferred to the qualified entity must remain in continued use as supported living for persons with developmental disabilities for a period of at least fifty years by the qualified entity or successor entity.

(6) Additional continued use requirements.

(a) The property will not be considered in continued use if the department of social and health services finds that the property has failed, after a reasonable time to remedy, to meet any health and safety statutory or regulatory requirements.

(i) If the department of social and health services determines that the property fails to meet the requirements for continued use, the department of social and health services must notify the department and the real estate excise tax becomes immediately due and payable by the qualified entity.

(ii) The measure of the tax is the value of the property at the time of its initial transfer into use as residential property for persons with developmental disabilities.

(iii) The tax due is not subject to penalties, fees, or interest.

(b) If the qualified entity sells or otherwise conveys ownership of the residential property, including the conveyance of the residential property as a result of casualty, the proceeds of the sale or conveyance must be used to acquire similar residential property and such similar residential property must be considered the successor for continued use.

The exemption from real estate excise tax is limited to the initial transfer to the qualified entity. Any subsequent sale or conveyance of the real property is subject to real estate excise tax.

(7) Documentation requirements.

(a) In order to receive the exemption under this rule, a real estate excise tax affidavit must be provided to the county treasurer of the county in which the real property is located and recorded with the county auditor, by the transferor of the residential property and must include:

(i) A copy of the transfer agreement; and

(ii) A copy of the property tax assessment for the real property parcel issued by the applicable county in the same year as the initial qualifying transfer.

(b) A copy of all documentation required under this subsection will be retained indefinitely by the Washington office of the secretary of state, Washington state archives branch.

(8) Examples.

Example 1. Pamela Sutton is the legal representative of Susan Park, a person with developmental disabilities. Pamela owns a single family residential property with a county assessed value of \$250,000. The property is encumbered by an outstanding mortgage of \$150,000. On August 1, 2019, Pamela transfers 100 percent of her interest in the real property to Helping Homes of Washington, a qualified nonprofit adult family home. As part of the transfer, Helping Homes of Washington agrees to assume the property's \$150,000 encumbrance of debt. In this example, the transfer is not eligible for the exemption because it includes consideration in the form of assumption of debt.

Example 2. Patrick Sampson is the legal representative of Andrew Sampson, his adult child with developmental disabilities. Patrick owns a single family residential property with a county assessed value of \$300,000. The property is not encumbered by debt. On July 1, 2019, Patrick transfers 100 percent of his interest in the real property to Helping Homes of Washington, a qualified nonprofit adult family home. Andrew is allowed to reside in the residence and the department of social and health services has determined the place-

ment is safe and appropriate. Assuming the eligibility requirements under subsections (5)(c) and (d) of this rule are also met, the transfer is exempt from real estate excise tax.

Example 3. Assume the facts from Example 2. On December 31, 2029, Helping Homes of Washington sells the residential property for \$450,000. A similar property is purchased shortly thereafter. Andrew will reside in the new residence. In this example, the initial transfer remains exempt from real estate excise tax because the requirements for continued use are met. However, Helping Homes of Washington is subject to real estate excise tax on the subsequent sale of the residential property because the exemption is limited to the initial transfer.

Example 4. Assume the facts from Example 2. On April 1, 2025, the department of social and health services finds that Helping Homes of Washington has failed, after a reasonable time to remedy, to meet certain health regulatory requirements for the property. The department of social and health services notifies the department of revenue. In this example, the initial transfer no longer qualifies for the exemption and is now subject to real estate excise tax, which is due immediately. The measure of the tax is the county assessed value of \$300,000 at the time of its initial transfer. The initial transfer is not subject to penalties, fees, or interest.

Example 5. Assume the facts from Example 2. On July 1, 2025, the property is destroyed by fire. The qualifying entity receives casualty insurance proceeds of \$350,000 for the loss of real property improvements. On July 1, 2026, the remaining unimproved property is sold for \$100,000. On December 1, 2026, the casualty insurance proceeds and proceeds from sale are used to purchase a similar residential property. Andrew will reside in the newly purchased residential property. The conditions for continued use are met, and the initial transfer remains exempt from real estate excise tax. While real estate excise tax is due from the qualified entity on the \$100,000 sale of the unimproved property parcel, it is not due on the proceeds from casualty insurance.

Example 6. Assume the facts from Example 2. On August 1, 2019, the department of social and health services determines the residential property requires improvements to meet building codes before Andrew is able to safely reside in the home. Helping Homes of Washington is an eligible entity under RCW 43.185A.040 and the residential property was transferred in accordance with the required conditions in subsection (5) of this rule. Helping Homes of Washington is eligible to seek funding in the form of grants and loans through the affordable housing program, administered by the department of commerce, in order to bring the residential property into compliance with building codes. If Helping Homes of Washington fails to meet the building standards required by the department of social and health services within a reasonable period of time, real estate excise tax will become due immediately and payable by Helping Homes of Washington. The tax is not subject to penalties, fees, or interest.

WSR 19-05-074
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed February 19, 2019, 2:40 p.m., effective March 22, 2019]

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

Purpose: Chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration; WAC 246-254-001 Purpose and scope, 246-254-010 Definitions, abbreviations, and acronyms, 246-254-020 Payment of fees, 246-254-050 Method of payment, and 246-254-053 Radiation machine facility fees. The adopted rule removes the option for registrants that employ two or more full-time individuals whose positions are entirely devoted to in-house radiation safety to pay a flat fee. The flat fee did not align with the cost of regulating these registrants and is inequitable to all other registrants.

Citation of Rules Affected by this Order: Repealing WAC 246-224-0030 and 246-224-0120; and amending WAC 246-224-0001, 246-224-0010, 246-224-0020, 246-224-0040, 246-224-0050, 246-224-0060, 246-224-0070, 246-224-0080, 246-224-0090, 246-224-0100, 246-224-0110, 246-254-001, 246-254-010, 246-254-020, 246-254-050, and 246-254-053.

Statutory Authority for Adoption: RCW 43.20B.020, 43.70.110, 43.70.250, and 70.98.080.

Adopted under notice filed as WSR 18-21-086 on October 15, 2018.

Changes Other than Editing from Proposed to Adopted Version: Adds the phrase "designated by one physical address" to the definition of "radiation machine facility" in WAC 246-224-0010 Definitions, abbreviations, and acronyms and 246-254-010 Definitions, abbreviations, and acronyms. This phrase is in the current definition of "facility" and is needed to implement the rule.

Adds the phrase "or its designee" to a sentence directing registrants on fee payment in WAC 246-254-020 Payment of fees. The department has agreements with other entities, including the department of revenue, business license service, to collect fees on its behalf.

Adds the word "exceptions" to the title of WAC 246-224-0020 Radiation machine facility registration "exceptions" to clarify the sections content.

A final cost-benefit analysis is available by contacting Peter Beaton, Department of Health, 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 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 16, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, 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 16, Repealed 2.

Date Adopted: February 13, 2019.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0001 Purpose. The purpose of this chapter is to regulate sources of ionizing radiation as required by RCW 70.98.050 and 70.98.080. This chapter provides for the registration of all radiation machine(~~s installed, manu-~~factured, tested, used, or) facilities located in Washington state.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Agent" means a person, company, or dealer(~~;-which assembles, installs, repairs, sells, or leases X-ray machines~~) that sells, leases, transfers, lends, disposes of, assembles, repairs, replaces, or installs radiation machines or components in Washington state.

(2) "Application" means, for the purpose of this chapter, the business license application or business license renewal application and appropriate addenda used by the BLS of the department of revenue.

(3) "BLS" means the department of revenue's business licensing service.

(4) "Department" means the department of health.

(5) (~~"Facility" means all buildings, structures, and operations on one contiguous site or identified by one physical location address designation at which one or more radiation machines are installed, manufactured, tested, or used.~~

(~~6~~)) "FDA" means the United States Food and Drug Administration.

(~~7~~) (~~6~~) "Radiation" means, for the purposes of this chapter, ionizing radiation, including X-ray, electron beam, and other machine produced particulate radiation.

(~~8~~) (~~"Radiation machine" means, for purposes of this chapter, a device that, when operated, produces X-ray or electron radiation, in a prescribed manner, with defined characteristics, techniques, or parameters. It does not include devices with radioactive material as the only source of radiation.~~) (~~7~~) "Radiation machine facility" means each separate building, structure, and operation or buildings, structures, and operations designated by one physical address that connect through a walkway or share a common wall, where there is at least one radiation machine installed, manufactured, tested, or used. A vehicle that has one or more radiation machines installed, manufactured, tested, or used is considered a radiation machine facility.

(~~9~~) (~~8~~) "Registrant" means the owner or controller of the radiation machine who is responsible for the safe operation of the radiation machine.

~~((10))~~ "Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with regulations adopted by the department.

~~((11))~~ (9) "Storage" means the status of a radiation machine that is approved by the department as being unable to produce radiation without substantial effort at set-up, reassembly, or reinstallation. ~~((For facilities with a radiation control authority, (for example radiation safety office) a locking or disabling procedure may serve to provide this status.))~~ A radiation machine is considered in storage if a registrant locks out or disables the radiation machine.

(10) "X-ray system" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the X-ray system are considered integral parts of the system.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0020 ~~((Who must register a radiation machine?))~~ Radiation machine facility registration exceptions. ~~((Any X-ray facility within Washington state must register))~~ A registrant shall register each radiation machine facility with the department. A registrant shall include each radiation machine they own or control in a radiation machine facility registration except if:

(1) The radiation machine produces incidental X-rays with an equivalent dose rate that does not exceed 5 µSv/hr (0.5 mrem/hr) at 5 cm from any accessible equipment surface averaged over an area of 10 square centimeters;

(2) The radiation machine is in transit;

(3) The radiation machine is held for sale or lease by X-ray agents; or

(4) The department allows an exemption in accordance with WAC 246-220-050(1).

AMENDATORY SECTION (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

WAC 246-224-0040 ~~((What if we have separate locations with radiation machines?))~~ Registering radiation machine facilities. (1) ~~((Geographically separate facilities must register separately.))~~ A registrant shall register each radiation machine facility even if these ~~((separate))~~ facilities are under one administrative control ~~((e.g.)), for example, several satellite clinics operated by one health care institution((3)).~~

(2) Each radiation machine facility must ~~((designate a))~~ have a designated contact person.

(3) If ~~((machines are))~~ a radiation machine is routinely moved between or among separate radiation machine facilities, the registrant shall notify ~~((DOL))~~ BLS prior to moving the radiation machine ~~((being moved)), or notify the department at the time shielding plans are submitted for review.~~

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0050 ~~((When and how do I register?))~~ Radiation machine facility registration process. (1) ~~((You must))~~ A registrant shall register a radiation machine facility with the department through submission of a business license application and appropriate addendum used by BLS no later than fifteen calendar days ~~((of))~~ after initial use unless a shielding plan~~((s))~~ review is required.

(2) ~~((Facilities requiring))~~ When a radiation machine facility requires a shielding plan review ~~((must)), the registrant shall register with BLS and submit plans to the department for review prior to construction or installation of radiation machines according to WAC 246-225-030((7))~~ General requirements—Plan review.

(3) Registration is valid for one year from the department approval date, or any other date as may be determined ~~((through partnership with))~~ by BLS.

(4) ~~((Pay applicable registration fees according to WAC 246-254-053, Radiation machine facility registration fees.~~

~~((5))~~ A registrant shall submit registration information and applicable fees identified in WAC 246-254-053 Radiation machine facility fees to BLS in accordance with ~~((their))~~ BLS instructions.

(Note: For BLS information, visit the following web site: www.bls.dor.wa.gov.)

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0060 ~~((Are there other requirements besides registration?))~~ Applicability. ~~((All))~~ A registrant~~((s must))~~ shall:

(1) ~~((Follow applicable standards according to))~~ Comply with this chapter and the requirements under:

(a) ~~Chapter 246-225 WAC((, Radiation protection—X-rays in the healing arts));~~

(b) ~~Chapter 246-225A WAC;~~

(c) ~~Chapter 246-226 WAC;~~

(d) ~~Chapter 246-227 WAC((, Radiation protection—Industrial X-ray));~~

(e) ~~Chapter 246-228 WAC((, Radiation protection—Analytical X-ray equipment)); and~~

(f) ~~Chapter 246-229 WAC((, Radiation protection—Particle accelerators));~~

(2) ~~((Meet))~~ Comply with general radiation protection rules and standards ~~((according to))~~ in accordance with:

(a) ~~Chapter 246-220 WAC((, Radiation protection—General provisions));~~

(b) ~~Chapter 246-221 WAC((, Radiation protection standards)); and~~

(c) ~~Chapter 246-222 WAC((, Radiation protection—Worker rights); and~~

~~((3))~~ Pay applicable fees for radiation machine use according to WAC 246-254-053, Radiation machine facility registration fees).

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0070 ~~((When and how do I report))~~ **Reporting changes to ((my)) a radiation machine facility registration((?)).** ~~((1) You must notify BLS within thirty days of any change to your registration information.~~

~~(2) Submit registration changes to:~~

Department of Revenue
Business Licensing Service
P.O. Box 9034
Olympia, WA 98507-9034
Phone: 800-451-7985
Fax: 360-705-6699
Email: BLS@dor.wa.gov

Note: For office of radiation protection information, visit the following web site: www.doh.wa.gov.
For BLS information, visit the following web site: www.bls.dor.wa.gov.)

A registrant shall submit any change to the registration information to BLS and the department within thirty days.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0080 ~~((When and how do I renew my))~~ **Radiation machine facility registration((?)) renewal requirements.** (1) ~~((You will receive registration renewal notices from BLS.~~

~~(2) You must submit))~~ A registrant shall renew their registration annually by submitting renewal information and the applicable fees to ((the department of revenue as specified by)) BLS.

~~((3))~~ (2) If ((you do)) a registrant does not receive a renewal notice, the registrant shall contact BLS.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0090 ~~((What are my obligations if I close my facility or get rid of a machine?))~~ **Requirements for closing a radiation machine facility or removing a radiation machine from service.** (1) ~~((You must notify the department or BLS of the machine status within thirty days of closure or removal.))~~ A registrant that closes a radiation machine facility or removes a radiation machine from service shall notify the department and BLS within thirty days.

(2) If ~~((the))~~ a radiation machine is disposed of or transferred within Washington state, ((you must)) the registrant shall provide the department the following:

- (a) The name and contact information of the recipient;
- (b) The address of the recipient; and
- (c) The date of the disposal or transfer.

(3) If the radiation machine is to be placed in storage and retained, ((contact)) the registrant shall obtain approval from the department ((for approval)).

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0100 ~~((What are the responsibilities of the))~~ **X-ray agent((?)) responsibilities.** (1) Within fifteen calendar days, any agent who sells, leases, transfers, lends, disposes of, assembles, repairs, replaces, or installs radiation machines or components in Washington state ~~((must))~~ shall notify the department of the:

- (a) Recipient's name and radiation machine facility address;
- (b) Manufacturer, model, and serial number of each radiation machine master control; and
- (c) Date of transfer of the radiation machine.

~~((Note: An FDA form 2579 or equivalent may be used for this notification requirement.))~~

~~((2))~~ ((Any)) An agent may use the FDA form 2579 or equivalent to meet the notification requirements of subsection (1) of this section.

~~((3))~~ An agent who installs X-ray systems, controls, or components ~~((must))~~ shall ensure that the radiation machines, accessories, or components ~~((t))~~, including exposure switch placement~~((s))~~, meet the applicable requirements of:

- ~~((a))~~ Chapter 246-225 WAC((, Radiation protection—X-rays in the healing arts));
- ~~((b))~~ Chapter 246-225A WAC;
- ~~((c))~~ Chapter 246-226 WAC;
- ~~((d))~~ Chapter 246-227 WAC((, Radiation protection—Industrial X-ray));
- ~~((e))~~ Chapter 246-228 WAC((, Radiation protection—Analytical X-ray equipment)); and
- ~~((f))~~ Chapter 246-229 WAC((, Radiation protection—Particle accelerators)).

~~((3))~~ (4) An agent~~((s must))~~ shall not install or transfer a radiation machine if the registrant does not ~~((complete))~~ submit:

~~((a))~~ A required plan review according to chapter 246-225 ~~((WAC, Radiation protection—X-rays in the healing arts)), 246-226, or ((chapter)) 246-227 WAC((, Radiation protection—Industrial radiography)); or~~

~~((b))~~ Shielding ~~((and/or required design construction))~~ plan or radiation machine facility design, or both if required.

~~((4))~~ (5) An agent~~((s must))~~ shall assemble certified X-ray systems according to 21 C.F.R., ~~((subchapter J))~~ Sec. 1000 through 1050 (2018) so that manufacturer's specifications and intended performance designs are met.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0110 ~~((What if I want to bring a radiation machine into Washington state for temporary use from out-of-state?))~~ **Temporary use of an out-of-state radiation machine in Washington state.** (1) A registrant shall notify the department at least three business days prior to in-state use when bringing ~~((an X-ray))~~ a radiation machine into the state for any temporary use. The department may waive the time requirement upon a hardship request by the owner. Notification to the department includes, at a minimum, the:

- (a) Type of radiation machine;
- (b) Nature, duration, and scope of use; and
- (c) Exact location where the radiation machine is to be used.

(2) All radiation machines and assemblies must comply with all applicable regulations.

(3) Any medical or dental use radiation (~~((e.g., X-ray))~~) machines within the state must register with the department according to WAC 246-224-0020.

(4) For radiation (~~((e.g., X-ray))~~) machines not intended for patient diagnosis and treatment, ~~((you must))~~ a registrant shall register the radiation machine if it is used for more than sixty calendar days. Registration is waived if the radiation machine is used for sixty or fewer calendar days per year.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-224-0030 Are there any radiation machines within Washington state that do not have to be registered?
- WAC 246-224-0120 What happens if I do not register my radiation machine?

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-001 Purpose and scope. This chapter establishes fees charged for licensing, permitting, registration, and inspection services (~~((rendered by the office of radiation protection as authorized under chapters 43.70, 70.98, and 70.121 RCW)).~~ These fees apply to owners and operators of radiation (~~((generating))~~) machine~~((s))~~ facilities, users of radioactive material, operators of low-level radioactive waste disposal facilities, owners and operators of facilities emitting airborne radioactivity, and owners and operators of certain mineral processing and uranium or thorium milling operations and their associated tailings or waste.

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-010 Definitions, abbreviations, and acronyms. ~~((As used in this chapter, the following definitions apply:))~~ The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Application" means a completed RHF-1 or equivalent with supporting documentation requesting the department to grant authority to receive, possess, use, transfer, own or acquire radioactive material. For radiation machine facility registrations, "application" means the ~~((master business application and appropriate addenda))~~ forms used by ~~((the master license service of the department of licensing))~~ BLS.

(2) "BLS" means the department of revenue's business licensing service.

(3) "Compliance inspection" means a routinely scheduled visit to the licensee's facility and/or temporary job site(s)

for the purpose of determining compliance with the radioactive material license and applicable regulations. This service is covered by the annual fee for the radioactive material license.

~~((3))~~ (4) "Department" means the department of health which has been designated as the state radiation control agency.

~~((4))~~ (5) "Direct staff time" means all work time directly applicable to or associated with a specific radioactive material licensee and includes license file review, inspection preparation, on-site visits, report writing, review and ~~((acknowledgement))~~ acknowledgment of correspondence, review of license applications, renewals and amendment requests, telephone contacts, and staff or management conferences specifically related to the license. Travel time is not considered direct staff time.

~~((5))~~ (6) "Emission unit" means the point of release of airborne emissions of radioactive material.

~~((6))~~ (7) "Environmental cleanup monitoring" means an on-site visit by the department to a licensee's facility or site of operation to determine the status of corrective actions to remove environmental radiation contamination resulting from the licensee's operation. Such a monitoring visit may include, but is not limited to, the review of the licensee's records pertaining to the environmental cleanup, observation of the licensee's cleanup work, sampling by the department for analysis, associated laboratory work, and the analysis of the information collected by the department.

~~((7))~~ (8) "Facility" means all buildings, structures and operations on one contiguous site using or identified by one physical location address designation.

~~((8))~~ (9) "Follow-up inspection" means an on-site visit to a licensee's facility to verify that prompt action was taken to correct significant items of noncompliance found by the department in a previous inspection. The first follow-up inspection is covered by the annual fee for the radioactive material license.

~~((9))~~ (10) "Inspection" means an official examination or observation by the department including but not limited to tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the department.

~~((10))~~ (11) "Investigation" means an on-site visit to a licensee's facility or site of operation when, in the department's judgment, it is required for the purpose of reviewing specific conditions, allegations, or other information regarding unusual conditions, operations, or practices. This service is covered by the annual fee for the radioactive material license.

~~((11))~~ (12) "License" means a ~~((license))~~ document issued by the department in accordance with the regulations adopted by the department.

~~((12))~~ (13) "New license application" means a request to the department to use radioactive material from a person not currently a licensee or from a current licensee requesting authorization to use radioactive material in a new way such that a change of fee category is required.

~~((13))~~ (14) "Perpetual care and maintenance" means further maintenance, surveillance or other care of milling or

tailings impoundment sites after termination of the site operator's decommissioning responsibilities and license.

~~((14) "Registration" means registration with the department by any person possessing a source of ionizing radiation in accordance with regulations adopted by the department.))~~

(15) "Radiation machine facility" means each separate building, structure, and operation or buildings, structures, and operations designated by one physical address that connect through a walkway or share a common wall, where there is at least one radiation machine installed, manufactured, tested, or used. A vehicle that has one or more radiation machines installed, manufactured, tested, or used is considered a radiation machine facility.

(16) "Sealed source and device evaluation" means a radiological safety evaluation performed by the department on the design, manufacture, and test data of any single sealed source ~~((and/or))~~ or device model for the purpose of registering the sealed source or device with the United States Nuclear Regulatory Commission.

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-020 Payment of fees. (1) Applicants, licensees, permittees, and registrants requesting or receiving licenses, permits, registrations, and actions or services by the department shall ~~((pay the))~~ submit to the department or its designee applicable ~~((fee or))~~ fees for the license, permit, registration, and action or service provided by the department.

(2) The department shall charge a fee for each:

(a) Radiation machine facility registration~~((;))~~ and radiation machine ~~((at the facility, if applicable))~~ tube at the facility;

(b) Radioactive material license;

(c) Service or action with respect to a radioactive material licensee not otherwise covered by fees;

(d) Cubic foot of low-level radioactive waste volume received at a commercial disposal site;

(e) Kilogram of uranium or thorium milled from ore; and

(f) Air emission ~~((permit))~~ license.

(3) The department shall charge a fee for each radioactive material license based on the single highest fee category describing activities subject to the conditions of the license.

(4) The department shall charge the applicable license fee for each category when multiple licenses are required.

(5) The department may require multiple radioactive material licenses based upon:

(a) Physical separation of operations;

(b) Organizational separations within a licensee's operation;

(c) Complexity of uses of radioactive material such that two or more fee categories would apply to the operation.

(6) Each licensee, permittee, or registrant shall:

(a) Remit the full fee ~~((+))~~ at the fee rate established by rule at the time such fee is paid~~((, and (ii)))~~;

(i) At least thirty days prior to the annual anniversary date for licensees; or

~~((+))~~ (ii) On a payment schedule as provided in WAC 246-254-030 or other schedule as may be determined through

partnership with ~~((the master license service of the department of licensing))~~ BLS.

(b) Consider the annual anniversary to be the month and day of the expiration date of the existing radioactive material license, or other date as may be determined through partnership with ~~((the master license service of the department of licensing))~~ BLS.

(7) The department shall refund one-half of the fee if an application is withdrawn prior to issuance of a radioactive material license.

(8) If there is a change by the applicant, licensee, permittee or registrant resulting in a higher fee category, the applicant, licensee, permittee, or registrant shall pay a prorated fee for the remainder of the fee interval.

(9) Each licensee, permittee, or registrant shall remit the full amount of any quarterly billing or individual billing for licensing or compliance actions within thirty days of receipt of the bill.

~~((10) Fees due on or after the effective date of these regulations shall be at the rate prescribed in this chapter.))~~

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-050 Method of payment. (1) ~~((For radiation machine facility registration application and renewal fees, applicants and registrants shall submit payment to the master license service of the department of licensing.))~~ A registrant shall submit radiation machine facility registration fees and radiation machine tube fees to BLS.

(2) For all other fees and charges including shielding plan review and follow-up inspection fees, licensees, permittees and registrants shall:

(a) Submit fee payments by check, draft or money order made payable to the department ~~((of health));~~ and

(b) Include fee payment with the application for license or submit the fee by mail, in person, or by courier to the address provided in the bill or bill correspondence.

AMENDATORY SECTION (Amending WSR 11-02-012, filed 12/28/10, effective 1/31/11)

WAC 246-254-053 Radiation machine facility ~~((registration))~~ fees. (1) ~~((Radiation machine facility fees apply to each person or facility owning, leasing or using radiation-producing machines. The annual facility fee consists of the base registration fee and a per tube charge, where applicable.))~~ A registrant shall comply with chapter 246-224 WAC when registering radiation machine facilities. A registrant shall pay the following applicable radiation machine facility registration fees and radiation machine tube fees for each radiation machine facility and tube annually as identified in Table A and B of this section.

Table A

((a)) Radiation Machine Facility Registration Fees			
Type of Radiation Machine Facility		((Facility Base Fee)) Registration Fee per Facility	((Added Fee per Tube))
((i)) (a)	Dental, podiatric, veterinary uses	\$107	((See following table))
((ii)) (b)	Hospital, medical, chiropractic uses	\$207	((See following table))
((iii)) (c)	Industrial, research, educational, security, or other facilities	\$107	((See following table))
((iv)) (d)	Mammography only	\$89	((N/A))
((v)) (e)	Bone densitometry only	\$89	((N/A))
((vi)) (f)	Electron microscopes only	\$89	((N/A))
((vii)) (g)	Bomb squad only	\$89	((N/A))
((viii)) (h)	Radiation safety program as specified in subsection (3) of this section	\$5,827	N/A))

Table B

((b)) Radiation Machine Tube Fees		
Type of Tube		((Added)) Fee per Tube
((i)) (a)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	\$27
((ii)) (b)	Veterinary (radiographic, fluoroscopic, portable, mobile)	\$46
((iii)) (c)	Podiatric uses (radiographic, fluoroscopic)	\$46
((iv)) (d)	Mammography	N/A
((v)) (e)	Bone densitometry	N/A
((vi)) (f)	Electron microscope	N/A
((vii)) (g)	Bomb squad	N/A
((viii)) (h)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	\$131
((ix)) (i)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	\$131
((x)) (j)	Therapy (Grenz Ray, Orthovoltage, non-accelerator)	\$131
((xi)) (k)	Accelerators (therapy, other medical uses)	\$131
((xii)) (l)	Computer tomography (CT, CAT scanner)	\$131
((xiii)) (m)	Stereotactic (mammography)	\$107

((b)) Radiation Machine Tube Fees		
Type of Tube		((Added)) Fee per Tube
((xiv)) (n)	Industrial radiographic	\$46
((xv)) (o)	Analytical, X-ray fluorescence	\$46
((xvi)) (p)	Industrial accelerators	\$46
((xvii)) (q)	Airport baggage	\$27
((xviii)) (r)	Cabinet (industrial, security, mail, other)	\$27
((xix)) (s)	Other industrial uses (includes industrial fluoroscopic uses)	\$27

(2) ~~(X-ray)~~ Radiation shielding plan review fees. ~~((a))~~ Radiation machine facilities regulated under the shielding plan requirements of WAC 246-225-030, 246-226-030, or 246-227-150 are subject to a ~~(((\$344 X-ray))~~ three hundred forty-four dollar radiation shielding review fee for each X-ray room plan submitted~~(((\$344 X-ray))~~ ;

~~((b))~~ (a) A registrant may request an expedited plan review for ~~(((\$1000))~~ one thousand dollars for each X-ray room plan. An expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

~~((c))~~ (b) If a radiation machine facility regulated under WAC 246-225-030, 246-226-030, or 246-227-150 operates without submittal and departmental review of ~~((X-ray))~~ radiation shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of ~~(((\$656))~~ six hundred fifty-six dollars.

(3) ~~((Radiation safety fee.~~ If a facility or group of facilities under one administrative control employs two or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee as specified in subsection (1)(a)(viii) of this section.

(4) ~~Consolidation of registration.~~ Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies to all buildings, structures and operations on one contiguous site using or identified by one physical address location designation.

~~((5))~~ Inspection fees.

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under ~~((the base fee and tube registration))~~ fees as described in subsection (1) of this section.

(b) Radiation machine facilities requiring follow-up inspections due to uncorrected noncompliance~~((s))~~ events must pay an inspection follow-up fee of ~~(((\$118))~~ one hundred eighteen dollars for each reinspection required.

~~((6))~~ A facility's annual registration fee is valid for a specific geographical location and person only. It is) (4) The annual radiation machine facility registration fees and radiation machine tube fees are not transferable to another geographical location or ~~((owner or user))~~ registrant.

WSR 19-05-086
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed February 20, 2019, 9:53 a.m., effective March 23, 2019]

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

Purpose: This action updates the effective date of the federal regulations that have been adopted by the agency.

Citation of Rules Affected by this Order: Amending ORCAA Regulations Rule 1.11.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 18-24-056 on November 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 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: February 13, 2019.

Francea L. McNair
Executive Director

AMENDATORY SECTION

Rule 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, (~~2017~~) 2018.