WSR 19-19-020
PERMANENT RULES
BOARD OF TAX APPEALS

[Filed September 9, 2019, 4:51 p.m., effective October 10, 2019]

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

Purpose: Add new section to chapter 456-12 WAC making electronic mail the board's primary method of written communications.

Citation of Rules Affected by this Order: New WAC 456-12-125.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 19-15-126 on July 23, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 9, 2019.

Kate Adams
Executive Director

NEW SECTION

WAC 456-12-125 Electronic correspondence. (1) Consistent with changing standards in communication, and to ensure efficient use of state resources, the board adopts electronic mail as its primary method of written communication.

(2) When possible, decisions and other correspondence of the board will be sent by electronic mail.

(3) For purposes of these rules, decisions and other board correspondence sent by electronic mail will have the same effect as if sent by United States mail.

(4) The board will accept submissions via electronic mail as provided in these rules.

(5) This rule does not apply to or affect the requirements for serving a party to a proceeding.

WSR 19-19-022
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 10, 2019, 10:52 a.m., effective October 11, 2019]

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

Purpose: The purpose of this rule is to recodify WAC 392-400-226 Harassment, intimidation, and bullying, into a new, stand-alone chapter of the Washington Administrative Code, chapter 392-405 WAC. This rule making makes no material changes to the rule.

Citation of Rules Affected by this Order: New WAC 392-405-005, 392-405-010, and 392-405-020.

Statutory Authority for Adoption: RCW 28A.300.285.

Adopted under notice filed as WSR 19-14-045 on June 27, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, 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: September 10, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-405 WAC

HARASSMENT, INTIMIDATION AND BULLYING

NEW SECTION

WAC 392-405-005 Authority. The authority for this chapter is RCW 28A.300.285, which provides that the superintendent of public instruction shall adopt rules regarding school districts' communication of a model harassment, intimidation, and bullying policy and procedure to parents, students, employees, and volunteers.

NEW SECTION

WAC 392-405-010 Purpose. The purpose of this chapter is to establish the requirements school districts must meet when communicating the district's harassment, intimidation, and bullying policy and procedure to parents, students, employees, and volunteers.

NEW SECTION

WAC 392-405-020 School district rules defining harassment, intimidation and bullying prevention policies and procedures—Distribution of rules. (1) A school district's harassment, intimidation and bullying policy and procedure must be published and made available to all parents or guardians, students, employees, and volunteers on an annual basis.

(2) A school district must publish, at a minimum, the following materials:

(a) The district's policy and procedure;

(b) A harassment, intimidation, and bullying incident reporting form; and

(c) Current contact information for the district's harassment, intimidation and bullying compliance officer.

(3) If a school district does not distribute the policy and procedure to all parents or guardians, students, employees, and volunteers, the district must provide notice that describes the contents of the policy and procedure and specifies the person(s) to contact for a copy. The notice must be provided to students and parents on an annual basis in a manner reasonably calculated to come to their attention.

WSR 19-19-032
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 11, 2019, 9:26 a.m., effective October 12, 2019]

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

Purpose: The department is amending WAC 388-408-0040 How does living in an institution affect my eligibility for basic food? and 388-420-010 Alcohol and drug treatment centers, to update references to the division of behavioral health and recovery to reflect the department of health as the responsible agency. The department is also amending obsolete WAC cross-references to show the correct references.

Citation of Rules Affected by this Order: Amending WAC 388-408-0040 and 388-420-010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: 7 C.F.R. 273.11.

Adopted under notice filed as WSR 19-10-046 on April 29, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 10, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-022, filed 7/24/15, effective 8/24/15)

WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food? (1) For basic food, an "institution" means a place where people live that provides residents more than half of three meals daily as a part of their normal services.

(2) Most residents of institutions are not eligible for basic food.

(3) If you live in one of the following institutions, you may be eligible for basic food even if the institution provides the majority of your meals:

(a) Federally subsidized housing for the elderly;

(b) Qualified drug and alcohol treatment centers when an employee of the treatment center is the authorized representative as described under WAC 388-460-0010;

(c) Qualified developmental disabilities administration (DDA) group homes for persons with disabilities;

(d) A shelter for battered women and children when the resident left the home that included the abuser; or

(e) Nonprofit shelters for the homeless.

(4) A qualified DDA group home is a nonprofit residential facility that:

(a) Houses sixteen or fewer persons with disabilities as defined under WAC 388-400-0040(9); and

(b) Is certified by DDA.

(5) A qualified drug and alcohol treatment center is a residential facility that:

(a) Is authorized as a retailer by the U.S. Department of Agriculture, Food and Nutrition Service or operated by a private nonprofit organization; and

(b) Meets the ((~~division of behavioral health and recovery (DBHR) chemical dependency~~)) department of health (DOH) residential substance use disorder treatment services licensing and certification rules in WAC ((~~388-877B-0200~~)) 246-341-1108.

(6) The qualified drug and alcohol treatment center described in subsection (5) in this section must be:

(a) Receiving funds under part B of Title XIX of the Public Health Service Act;

(b) Eligible to receive funds under part B of Title XIX of the Public Health Service Act, but does not receive these funds; or

(c) Operating to further the purposes of part B of the Public Health Service Act to provide treatment and rehabilitation of drug addicts or alcoholics.

(7) Elderly or disabled individuals and their spouses may use basic food benefits to buy meals from the following meal providers if FNS has approved them to accept basic food benefits:

(a) Communal dining facility; or

(b) Nonprofit meal delivery service.

(8) If you are homeless, you may use your basic food benefits to buy prepared meals from nonprofit organizations the department has certified as meal providers for the homeless.

AMENDATORY SECTION (Amending WSR 14-21-119, filed 10/17/14, effective 11/17/14)

WAC 388-420-010 Alcohol and drug treatment centers. (1) Food assistance is only available to a resident of a drug and alcohol treatment center when the treatment center is administered by a public or private nonprofit agency. In addition, the residential treatment center must be:

(a) Licensed by the ((~~division of behavioral health and recovery (DBHR)~~)) department of health (DOH) as a behavioral health agency (see chapter ((~~388-877~~)) 246-341 WAC); and

(b) Certified by ((~~DBHR~~)) DOH to provide ((~~chemical dependency~~)) residential substance use disorder treatment services (see WAC ((~~388-877B-0200~~)) 246-341-1108).

(2) A resident is considered a one person assistance unit. However if the resident's spouse or child is also living in the treatment center, the spouse or child is included in the resident's assistance unit.

(3) The resident must have a designated employee of the treatment center act as an authorized representative as specified in chapter 388-460 WAC.

(4) The authorized representative receives and uses the food assistance benefits for meals the resident is served in the treatment center.

(5) The authorized representative also has responsibilities as specified in chapter 388-460 WAC.

WSR 19-19-033
PERMANENT RULES
SECRETARY OF STATE

[Filed September 11, 2019, 10:10 a.m., effective October 12, 2019]

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

Purpose: Permanent adoption of WAC 434-230-135 and amending WAC 434-230-130, relating to prepaid postage. Updating WAC 434-261-116 providing a mechanism for county notification to the secretary of state on intent to conduct a risk limiting audit, and amendment of WAC 434-379-010 to clarify the random sampling process used for signature checking of state initiatives.

Citation of Rules Affected by this Order: New WAC 434-230-135; and amending WAC 434-379-010, 434-261-116, and 434-230-130.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 19-15-154 on July 24, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 5, 2019.

Mark Neary
Assistant Secretary of State

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

WAC 434-230-130 Envelopes. Mail-in ballots must be accompanied by the following:

(1) A security envelope or sleeve, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service((~~, display the words "APPLY FIRST-CLASS POSTAGE HERE" or "POSTAGE PAID" in the upper right-hand corner,~~)) and conform to ((~~postal department~~)) regulations required by the county auditor's U.S. Postal Service business reply mail account.

NEW SECTION

WAC 434-230-135 Ballot return postage. (1) The secretary of state will work with each county auditor to identify the most cost effective U.S. Postal Service business reply permit type for their county. Once the appropriate business reply mail permit type is determined, each county auditor must:

(a) Establish and maintain the U.S. Postal Service business reply mail permit identified and use it exclusively for ballot return postage;

(b) Connect the business reply mail permit to the secretary of state's U.S. Postal Service enterprise payment system (or succeeding) account;

(c) Use ballot return envelopes approved by the U.S. Postal Service for the business reply mail permit established in (a) of this subsection; and

(d) Provide an independent count of the ballots returned by mail for each election, separate and distinct from the number provided by U.S. Postal Service, if requested by the secretary of state for audit purposes.

(2) County auditors may use their existing envelope stock until February 15, 2020, if return envelope design changes are required to comply with this rule.

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

WAC 434-261-116 Preparing for a risk-limiting audit. (1) At least ninety days before a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in the audit.

(2) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than thirty days before the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in RLAs for that election. The secretary of state may establish different risk limits for comparison audits and ballot polling audits, and for audits of statewide and county contests. In comparison audits, the risk limit will not exceed five percent for statewide contests, and ten percent for county contests.

((~~(2)~~)) (3) No later than eighteen days before the primary or election, the county auditor must appoint an audit board to conduct the risk-limiting audit. Observers nominated by the major political party county chairpersons in accordance with RCW 29A.60.170 may be present during the audit. Members of the canvassing board may serve as members of the audit board. The county auditor or members of their staff may assist the audit board in conducting the audit. All observers are allowed in accordance with RCW 29A.60.170 and WAC 434-261-020.

((~~(3)~~)) (4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

(a) In the case of centrally counted paper ballots, the ballot manifest must uniquely identify for each tabulated ballot the scanner on which the ballot is scanned, the ballot batch of which the ballot is a part, the number of ballots in the batch, and the storage container in which the ballot batch is stored after tabulation. The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

(b) In the case of electronic ballots cast on direct recording electronic voting devices (DREs), the ballot manifest must uniquely identify the device on which the ballot was cast or tabulated, the number of ballots cast or tabulated on the device, and the storage container or location in which each paper ballot or VVPAT is stored. The county must maintain and document uninterrupted chain-of-custody for each DRE and VVPAT. Ballots cast on each DRE and VVPAT must constitute a single batch.

((~~(4)~~)) (5) No later than the sixth day after election day, the county must pause or finish tabulating all ballots cast by voters registered in the county received through that day. The county may, but is not required to, include in the RLA tabulation any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after completing the RLA tabulation, and to the extent permitted by its voting system, the county must also generate and preserve:

(a) A summary results report, showing overvotes, undervotes, and valid write-in votes;

(b) A results file export suitable for uploading to the secretary of state's election night reporting system; and

(c) A CVR export, if conducting a comparison audit.

((~~(5)~~)) (6) Counties conducting a comparison audit must verify that:

(a) The number of individual CVRs in its CVR export equals the aggregate number of ballots reflected in the county's ballot manifest as of the sixth day after election day; and

(b) The vote totals for all choices in all ballot contests in the CVR export equals the vote totals in the summary results report for the RLA tabulation.

After verifying the accuracy of the CVR export, the county must apply a hash value to the CVR export file using the hash value utility provided by the secretary of state.

((~~(6)~~)) (7) Comparison audit uploads. No later than 5:00 p.m. on the sixth day after election day, each county conducting a comparison audit must upload:

(a) Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the secretary of state's office;

(b) Its verified and hashed CVR export, and the CVR export's hash value, to the secretary of state's office; and

(c) Its RLA tabulation results export to the secretary of state's election night reporting system.

((~~(7)~~)) (8) Ballot polling audit uploads. No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit or upload:

(a) Its verified and hashed ballot manifest, and the ballot manifest's hash value, to the secretary of state's office;

(b) Its cumulative tabulation report, to the secretary of state's office; and

(c) Its RLA tabulation results export to the secretary of state's election night reporting system.

((~~(8)~~)) (9) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the secretary of state's RLA tool's random number generator.

((~~(9)~~)) (10) The seed is a number consisting of at least twenty digits, and each digit will be selected in order by sequential rolls of a ten-sided die. The secretary of state will designate one or more staff members to take turns rolling the die. The secretary of state will publish online the random seed after it is established.

((~~(10)~~)) (11) No later than 5:00 p.m. on the Friday after election day, the secretary of state will select by lot a statewide contest, and for each county at least one ballot contest other than the selected statewide contest. The county auditor shall randomly select a ballot contest for audit if in any particular election there is no statewide contest. These will be considered the target contests for the RLA. The secretary of state will publish online a complete list of all target contests.

((~~(11)~~)) (12) The target contest with the closest diluted margin for each county determines the number of ballots that must be examined during the RLA.

((~~(12)~~)) (13) The secretary of state will determine the number of ballots to audit to satisfy the risk limit for the target contests based on the ballot manifests submitted by the counties. The number of ballots to audit will be determined according to the formulas maintained on file in the secretary of state's office.

((~~(13)~~)) (14) The secretary of state will randomly select the individual ballots to audit. The secretary of state will use a random number generator with the seed established under subsection ((~~(9)~~)) (10) of this ((~~rule~~)) section to identify individual ballots as reflected in the county ballot manifests. The secretary of state will notify each county of the randomly

selected ballots that each county must audit no later than the seventh day after election day.

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

WAC 434-379-010 Random sampling procedure. In the verification of signatures on initiative and referendum petitions, under RCW 29A.72.230, the following statistical test may be employed:

(1) Take a minimum three percent ((~~unrestricted~~)) random sample of the signatures submitted;

(2) Check each signature sampled to determine the number of valid signatures in the sample, the number of signatures in the sample which are invalid because the individual signing is not registered to vote or the signature is improper in form, and the number of signatures which are duplicated in the sample;

(3) Calculate an allowance for the chance error of sampling by multiplying the square root of the number of invalid signatures in the sample by 1.5;

(4) Estimate the upper limit of the number of signatures in the population which are invalid by dividing the sum of the invalid signatures in the sample and the allowance for the chance error of sampling by the sampling ratio, i.e., the number of signatures sampled divided by the number of signatures submitted;

(5) Determine the maximum allowable number of pairs of signatures in the population by subtracting the sum of the number of signatures required by Article II, Section 1 of the Washington state Constitution and the estimate of the upper limit of the number of invalid signatures in the population from the number of signatures submitted;

(6) Determine the expected number of pairs of signatures in the sample by multiplying the square of the sampling ratio by the maximum allowable number of pairs of signatures in the population;

(7) Determine the acceptable number of pairs of signatures in the sample by subtracting 1.65 times the square root of the expected number of pairs of signatures in the sample from the expected number of pairs of signatures in the sample;

(8) If the number of pairs of signatures in the sample is greater than the acceptable number of pairs of signatures in the sample, each signature shall be canvassed to determine the exact number of valid signatures;

(9) If the number of pairs of signatures in the sample is less than the acceptable number of pairs of signatures in the sample, the petition shall be deemed to contain sufficient signatures and the serial number and ballot title shall be certified to the state legislature as provided in RCW 29A.72.230 or to the county auditors as provided in RCW 29A.72.250.

WSR 19-19-039
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed September 12, 2019, 10:11 a.m., effective October 13, 2019]

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

Purpose: SSB 5652, passed during the 2019 legislative session, requires the department to adopt rules prescribing the content and format of the personal belongings storage request form. The amendment updates agency rules concerning the storage of vehicles and the storage of personal belongings in those vehicles. The amendment allows a vehicle's owner to retrieve personal belongings from the vehicle and/or request that the registered tow truck operator store the personal belongings for thirty days from the date of signing a storage request form. This addition to WAC 308-61-158 prescribes the content and format of the personal belongings storage request form as provided for in SB [SSB] 5652.

Citation of Rules Affected by this Order: Amending WAC 308-61-158.

Statutory Authority for Adoption: RCW 46.55.190.

Other Authority: Chapter 401, Laws of 2019.

Adopted under notice filed as WSR 19-13-042 on June 12, 2019.

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 Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: September 12, 2019.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-20-035, filed 9/24/02, effective 10/25/02)

WAC 308-61-158 Storage of vehicles. How must the registered tow truck operator handle stored vehicles?

(1) Handling and returning vehicles in substantially the same condition means that vehicles are to be handled with care so that their value is not diminished. The operator must not remove parts or equipment which are affixed to the vehicle.

(2) A vehicle being held for storage by agreement or being held under police authority, other than a suspended license impound, or pursuant to a writ or court order shall not be considered abandoned, nor shall it be processed as such. Any storage fees accrued while under agreement or under police hold, other than a suspended license impound, or pursuant to a writ or court order, shall not be included in the abandoned vehicle lien. Upon the expiration of a storage agreement, the lifting of a police hold other than a suspended license impound, or when the writ or court order is no longer in effect, the operator must begin the unauthorized aban-

doned vehicle processing, including the notification to vehicle owners by first class mail within twenty-four hours.

(3) When vehicles are stored pursuant to a writ or court order, the operator must keep evidence of the inception and termination dates of the writ or court order in the vehicle transaction file.

(4) When a vehicle is being held pursuant to a suspended license impound, and the vehicle is not redeemed even after the payment of a security deposit, and upon expiration of the hold, the operator must send the notice provided in RCW 46.55.110(2) and schedule its auction accordingly.

(5) Vehicles in the custody of an operator must be kept entirely within a secure area owned or operated under that registration.

(6) An operator must not charge for relocating vehicles between separate secure storage areas which he/she owns or operates.

(7) A vehicle's owner or agent may request that the operator store personal belongings from their vehicle for a period of thirty days from the date of signing a personal belongings storage request form. The personal belongings storage request form shall contain the requestor's vehicle identification number, license plate number, make, model, and year. The form shall also contain the RTTO company's name, street address, city, state and zip code where the personal belongings will be stored, the requestor's name and signature, and the date the request form was signed.

WSR 19-19-042
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed September 12, 2019, 12:20 p.m., effective October 13, 2019]

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

Purpose: The agency is updating the rules for program integrity activities related [to] managed care to align with federal rules. As part of this rule making, the agency is repealing WAC 182-538A-160 and replacing it with revisions to chapter 182-502A WAC (see WSR 19-08-089).

Citation of Rules Affected by this Order: Repealing WAC 182-538A-160.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-16-022 on July 26, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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 1.

Date Adopted: September 12, 2019.

Wendy Barcus
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-538A-160 Program integrity requirements.

WSR 19-19-044
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed September 12, 2019, 2:05 p.m., effective October 13, 2019]

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

Purpose: Ensure the rules are consistent with desired hearing practices.

Citation of Rules Affected by this Order: New WAC 137-104-021, 137-104-025 and 137-104-051; repealing WAC 137-104-070; and amending WAC 137-104-010, 137-104-020, 137-104-030, 137-104-040, 137-104-050, 137-104-060, and 137-104-080.

Statutory Authority for Adoption: RCW 72.01.090.

Adopted under notice filed as WSR 19-15-155 on July 24, 2019.

Changes Other than Editing from Proposed to Adopted Version: WAC 137-104-020 (10)-(11), removed subsections (10) and (11) and renumber[ed] subsequent subsections.

WAC 137-104-020(14), added new "High level and low level violations are defined per department policy."

WAC 137-104-050(5), removed subsection (5) and renumber[ed] subsequent subsections.

WAC 137-104-060(j), remove[d] and replace[d] "Officer" with "officer."

WAC 137-104-060(p), remove[d] ";"; remove[d] "and" and replace[d] with ".".

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 7, Repealed 1.

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: September 12, 2019.

Stephen D. Sinclair

Secretary

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-010 Purpose. The purpose of this chapter is to specify policies and procedures pertaining to the ((~~Washington state~~)) department of corrections' community custody administrative hearings and violation ((~~hearings~~)) responses. The following regulations set forth procedural guidelines. They do not create procedural or substantive rights in any person and should not be interpreted or applied in such a manner as to abridge rights already guaranteed by the United States Constitution. The regulations should be interpreted as having sufficient flexibility to be consistent with law and permit the department to accomplish its statutory purposes.

AMENDATORY SECTION (Amending WSR 07-08-082, filed 4/2/07, effective 5/3/07)

WAC 137-104-020 Definitions. For purposes of this chapter, the following words have the following meanings:

(1) "Aggravating factors" are circumstances that elevate a low level violation to a high level violation as defined by department policy.

(2) "Appeals panel" means three reviewing ((~~officers~~)) staff designated by the secretary with the authority to review ((~~hearing officers' decisions, and to affirm, reverse, or modify decisions and sanctions in accordance with RCW 9.94A.737.~~

~~(2)~~)) offender appeals of department findings and imposed sanctions.

(3) "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

(4) "Community corrections officer" means ((~~an employee of the department responsible for carrying out specific duties concerning the supervision of sentenced offenders and monitoring of sentence conditions.~~

~~(3)~~)) community corrections officer as defined by RCW 9.94A.030.

(5) "Community custody" means ((~~that portion of an offender's sentence of confinement in lieu of earned release time served in the community subject to controls placed on the offender's movement and activities by the department. Offenders supervised on community custody include those subject to community placement (as defined in RCW 9.94A.030), drug offender sentencing alternative (as described in RCW 9.94A.505), community custody for a sex offense (as described in RCW 9.94A.505), community custody max, first-time offender waiver (as described in RCW 9.94A.505), or a work ethic camp program (as defined in RCW 9.94A.030), and those sentenced to community custody by the court for crimes committed on or after July 1, 2000, whose sentence is less than one year of confinement. For purposes of this subsection, "community custody max" means a term of community custody for certain sex offenders who have completed their maximum sentences of confinement.~~

~~(4)~~)) community custody as defined by RCW 9.94A.030.

(6) "Department" means the ((~~Washington state department of corrections.~~

~~(5) "Deputy secretary" means the deputy secretary of the prisons division of the department, or the deputy secretary's designee.~~

~~(6) "Graduated sanction system" means structured incremental responses designed to reduce risk to the public, effectively intervene in noncompliant behavior, where possible, repair harm to the community, and make efficient use of limited state resources. Sanctions may include, but are not limited to, partial or total confinement; home detention with electronic monitoring; work crew; community service; inpatient treatment; daily reporting; curfew; educational or counseling sessions; supervisions enhanced through electronic monitoring; or any other sanctions available in the community~~)) department of corrections.

(7) "Ex parte communication" means any predisposition communication between the hearing officer and a party or other individual on behalf of that party regarding the department hearing and the merits of the matter without notice and opportunity for all parties to participate.

(8) "Hearing officer" means an employee of the department authorized to conduct department hearings.

(((~~8~~))) (9) "Hearings ((~~program manager~~)) administrator" means the ((~~manager~~)) administrator of the hearings unit of the department((~~, or the hearings program manager's designee~~)).

(((~~9~~))) (10) "Mitigating factors" are circumstances that may warrant a reduced violation response.

(11) "Offender" means any person in the custody of or subject to the jurisdiction of the department.

(((~~10~~))) (12) "Partial confinement" means ((~~confinement in a facility or institution operated or utilized under contract by the state or by any other unit of government, to include, but not be limited to, work release, treatment center, residential facility, or home detention with electronic monitoring.~~

~~(11) "Probable cause" means a determination, made by a hearing officer, that there is cause to believe a violation has occurred.~~

~~(12) "Secretary" means the secretary of the department, or the secretary's designee.~~

~~(13) "Stipulated agreement" means an agreement between the offender and the department in which the offender admits violations and agrees to comply with intermediate sanctions. For the purposes of this subsection, "intermediate sanction" means department-imposed sanctions that are served in the community rather than total confinement.~~

~~(14) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, to include, but not be limited to, adult correctional facilities, camp and prerelease facilities or a county or municipal jail.~~

~~(15) "Working day" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington~~)) partial confinement as defined by RCW 9.94A.030.

(13) "Total confinement" means total confinement as defined by RCW 9.94A.030.

(14) "Violation" means willful noncompliance with a court-ordered or department-imposed condition, requirement

or instruction. High-level and low-level violations are defined per department policy.

(15) "Violation process" means the process by which the court or the department addresses one or more alleged violations.

NEW SECTION

WAC 137-104-021 General requirements. (1) When addressing the violation the department will ensure that:

(a) The department has jurisdiction to sanction the offender;

(b) The alleged violation was willful; and

(c) The offender is provided the opportunity to respond to the alleged violation.

(2) A low level violation may be aggravated to a high level violation upon review of aggravating factors and approval by a hearing officer.

(3) A reduced response to a violation may be approved as defined by department policy and upon review of mitigating factors.

NEW SECTION

WAC 137-104-025 Community custody sanctions. (1) The state and its officers, agents, and employees may not be held criminally or civilly liable for violation response decisions made in accordance with law per RCW 9.94A.737.

(2) The sanction the department imposes shall be determined by the offender's violation behavior and prior violation processes and shall be reasonably related to the crime of conviction, the violation committed, the offender's risk of reoffending, or the safety of the community. The department's response to violation behavior will be defined by department policy.

(3) A community custody offender who violates any court-ordered or department-imposed condition, requirement, or instruction will be sanctioned by the department as provided in RCW 9.94A.737, 9.94A.633, 9.94A.660, 9.94A.-662, and 9.94A.6332.

(a) The sanction for an offender who commits a low level violation may be a nonconfinement sanction, or a total or partial confinement sanction of not more than three days.

(b) The sanction for an offender who commits a high level violation may be a nonconfinement sanction, or a total or partial confinement sanction of not more than thirty days, unless subject to return under RCW 9.94A.633 or revocation of an alternative sentence under RCW 9.94A.660 and 9.94A.-662. The department will credit an offender's sanction time served pending the hearing or negotiated sanction review.

(i) The offender may be out of custody or held in total or partial confinement pending a formal hearing or negotiated sanction review.

(ii) The offender may be held in total or partial confinement to serve an imposed sanction for a high level violation as determined by department policy.

AMENDATORY SECTION (Amending WSR 07-08-082, filed 4/2/07, effective 5/3/07)

WAC 137-104-030 Hearing officers. (1) Hearing officers will report to and be supervised by the hearings ((~~program manager, within the department's~~)) administrator, and will report through a chain of command separate from that of community corrections or prisons divisions((~~, through an independent chain of command~~)).

(2) Hearing officers may not hear a case in which they have direct personal involvement in the incident under consideration and must formally disqualify themselves by notifying the hearings ((~~program manager~~)) administrator/designee. The hearings ((~~program manager~~)) administrator/designee will select a replacement hearing officer.

(3) Hearing officers shall disqualify themselves if they believe that they cannot render a fair judgment in the hearing. The hearings ((~~program manager~~)) administrator/designee may change the hearing officer assigned to hear a case upon a ((~~written~~)) request from an offender and a showing of good cause.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-040 Notice ((~~and service~~)). (((~~(1) When placed on community custody, offenders shall be provided with written notice of all court and department-imposed conditions and/or requirements.~~

~~(2) If an offender is being held in total confinement prior to the hearing for allegedly violating conditions and/or requirements of community custody, the department shall, within three working days of a probable cause determination by the hearings unit, serve the notice of allegations, hearing and rights, and waiver form.~~

~~(a) Within three working days of the service of the notice of allegations, hearing and rights, and waiver form, the community corrections officer shall submit to the hearing officer and the offender, a report of alleged violations which shall contain the following: Alleged violations, a summary of facts supporting the allegations, and all other supporting documentary evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.~~

~~(b) Reports of alleged violations may be submitted electronically.~~

~~(3) The factual allegations may be amended and/or new allegations added at any time prior to the hearing, provided, the offender receives written notice of such new and/or amended allegations and all other supporting documentary evidence at least twenty-four hours prior to the hearing. The offender may waive the right to such notice at the hearing.~~

~~(4) Offenders who have allegedly violated conditions and/or requirements of community custody, but are not detained, shall be served with the notice of allegations, hearing and rights, and waiver form within thirty days of the community corrections officer becoming aware of the alleged violation behavior.~~

~~(a) A report of alleged violations and all other supporting documentary evidence shall be provided to the offender at least seven working days prior to the hearing.~~

~~(b) The report of alleged violations shall contain the following: Alleged violations, a summary of facts supporting the allegations, and the evidence relating to the violations to be introduced at the hearing. The report shall also contain a preliminary recommendation for disposition.~~

~~(c) Reports may be submitted electronically.~~

~~(5) Community corrections officers shall obtain interpretive services for offenders with known language or communication barriers when serving documents, and, if required, for the hearing.~~)) (1) The department shall notify each offender on community custody of all court and department imposed conditions, requirements, and instructions and of the department's response to violation behavior.

(2) An offender alleged to have committed a low level violation will be provided notice of the alleged violation at the time the department's violation response is initiated and the offender will be provided an opportunity to respond.

(3) An offender alleged to have committed a high level violation has the right to a hearing prior to imposition of any sanction. The offender will receive notice of a pending hearing as follows:

(a) Written notice will be served upon the offender not less than twenty-four hours prior to the hearing. The offender may waive the right to such notice.

(b) Written notice to the offender will include, but is not limited to:

(i) The offender's rights, including rights specified in WAC 137-104-060 and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(ii) A copy of the judgment and sentence and the imposed conditions;

(iii) The alleged violation; and

(iv) The supporting evidence relating to the violations that will be introduced and relied upon by the department at the hearing.

(c) The alleged violations may be amended and new allegations added at any time prior to the hearing, provided the offender receives written notice of such new or amended allegations and all other supporting evidence at least twenty-four hours prior to the hearing. The offender may waive the right to such notice.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-050 Hearing procedures. (1) ((~~Offenders accused of violating any of the conditions or requirements of community custody will be entitled to a hearing, prior to the imposition of sanctions by the department.~~

~~(2)~~)) The hearing shall be conducted by a hearing officer in the department's hearing unit, and shall be considered as an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(((~~(3)~~))) (2) Hearings for community custody offenders, who are being held in total confinement prior to a hearing, shall be conducted within five working days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.

(((~~(4) Hearings for community custody offenders who are not being held in total confinement shall be conducted within fifteen calendar days, but not less than twenty-four hours, after service of the notice of allegations, hearing and rights, and waiver form.~~

~~(5) If an offender is arrested and detained, without a warrant, for violation of conditions of supervision, a probable cause determination will be made by a hearing officer within three working days of the initial detention.~~

~~(6) Prior to the commencement of a hearing, the hearing officer shall verify that proper notice of the hearing has been given and that the offender was properly served with the notice of allegations, hearing and rights, and waiver form, given a copy of the report of alleged violations, and provided with all supporting documentary evidence.~~

~~(7) The hearing officer, if requested by the offender or the community corrections officer, shall conduct an administrative review of the violation report and any additional information submitted to determine whether there is reason to allow the offender to be conditionally released pending the violation hearing. Such administrative review will be conducted within twenty-four hours of the request for conditional release. Such release must be recommended by the reviewing hearing officer and authorized by the hearings program manager or his or her designee.~~

~~(8) A hearing shall be held in all instances when an offender is served with a notice of allegations, hearing and rights, and waiver form.~~

~~(9) Community custody hearings shall be electronically recorded on audio cassette tape and the hearing tape shall be retained by the department for twelve months. An offender, who is the subject of the hearing, may request a copy of the tape recording of that hearing by submitting a request in writing along with a blank tape.~~

~~(10) The offender may call witnesses to testify on his/her behalf at the hearing. The hearing officer may limit the number of witnesses and the scope of the testimony to matters relevant to the allegations and/or disposition.~~

~~(11)~~))) (3) The hearing officer will:

(a) Administer oaths and affirmations;

(b) Ensure the hearing is electronically recorded;

(c) Prohibit and disclose ex parte communications;

(d) Verify the offender has received proper notice;

(e) Verify jurisdiction and foundation;

(f) Weigh the credibility of witnesses;

(g) Receive relevant evidence including hearsay evidence;

(h) Render or defer a decision;

(i) Specify on the record the basis for the findings and decisions;

(j) Provide a written hearing and decision summary to the parties; and

(k) Take any other actions necessary as authorized by the department policy, these rules, and applicable laws.

(4) The parties may call witnesses to testify at the hearing.

(a) The hearing officer may exclude witnesses or limit the scope of testimony to matters relevant to the allegations and/or disposition.

(b) Witnesses may be excluded and testimony may be limited to maintain the safety and security of the facility, offender, staff, or others.

(c) Witnesses may testify outside the presence of the offender when there is substantial likelihood that the witness will suffer significant psychological or emotional trauma if the witness testifies in the presence of the offender, or when there is substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender. The hearing officer ((~~shall enter findings in the record, as to the necessity of such testimony, and~~)) will provide the offender an opportunity to submit questions to be asked of the witness.

(((~~(12) Community custody violation hearings shall be open to the public unless the hearing officer, for a specifically stated reason, closes the hearing in whole or in part.~~

~~(13) At the hearing, the community corrections officer~~))

(d) The hearing officer will state the basis for limiting testimony or excluding witnesses on the record.

(5) The department has the obligation of setting forth evidence supporting the allegations of violations and of offering recommendations for disposition.

(((~~(14)~~))) (6) The department has the obligation of proving each of the ((~~allegations of~~)) alleged violations by a preponderance of the evidence.

(((~~(15) The hearing officer shall:~~

~~(a) Administer oaths and affirmation;~~

~~(b) Issue warrants, as necessary;~~

~~(c) Weigh the credibility of the witnesses;~~

~~(d) Rule on all procedural matters, objections and motions;~~

~~(e) Rule on offers of proof, and receive relevant evidence including hearsay evidence;~~

~~(f) Question witnesses called by the parties in an impartial manner to elicit any facts deemed necessary to fairly and adequately decide the matter;~~

~~(g) Render or defer a decision; and~~

~~(h) Take any other actions necessary and authorized by these rules and law.~~

~~(16) The~~)) (7) Hearing officers may ((~~grant a request for a continuance of~~)) continue the hearing ((~~as long as such continuation is granted~~)) for good cause ((~~and~~)) if doing so does not unduly delay the hearing.

(8) Notice per WAC 137-104-040 is not required except the offender will be notified of the date and location of the continued hearing and will be provided any additional evidence supporting the allegations not less than twenty-four hours prior to the hearing unless the offender waives the right to such notice.

NEW SECTION

WAC 137-104-051 Negotiated sanction review. (1) An offender alleged to have committed a high level violation may waive the hearing and recommend a sanction that is negotiated with the department.

(2) The negotiated sanction shall be reviewed by a hearing officer in the department's hearing unit. A negotiated sanction review shall be considered an offender disciplinary proceeding and shall not be subject to chapter 34.05 RCW, the Administrative Procedure Act.

(3) The hearing officer will determine whether:

(a) The offender knowingly and voluntarily admits guilt to all allegations;

(b) The offender knowingly and voluntarily waives his or her right to a hearing and appeal; and

(c) The recommended sanction is reasonable and within the parameters of department policy.

(4) The hearing officer may reject the negotiated sanction and set the matter over to a hearing.

(5) The negotiated sanction review will be recorded and documented in writing.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-060 Rights specified. ((~~The offender has the right to~~)) An offender subject to a department hearing has rights as specified in RCW 9.94A.737 and the right to:

(1) Receive written notice ((~~of the alleged violations of the conditions/requirements of supervision.~~

~~(2)~~)) in accordance with WAC 137-104-040, including the opportunity to examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.

(2) Have an electronically recorded, community custody hearing conducted within five ((~~working~~)) business days of ((~~service of the notice of allegations, hearing and rights, and waiver form~~)) written notice; however, if the offender has not been placed in confinement, the hearing will be conducted within fifteen ((~~calendar~~)) business days of ((~~service of the~~)) written notice in accordance with RCW 9.9A.737.

(3) ((~~Have~~)) A neutral and detached hearing officer conduct the hearing.

(4) ((~~Examine, no later than twenty-four hours before the hearing, all supporting documentary evidence which the department intends to present during the hearing.~~

~~(5)~~)) Admit to any or all of the allegations, which may result in limiting the scope of the hearing.

(((~~(6) Be present during the fact finding and disposition phases of the hearing. If the offender waives his/her right to be present at the hearing, the department may conduct the hearing in the absence of the offender and may impose sanctions that could include loss of liberty of the offender.~~

~~(7)~~)) (5) Be present during the hearing. An offender may waive the right to be present at the hearing or because of disruptive behavior, an offender may be removed from the hearing at the hearing officer's discretion; in both cases, the department will conduct the hearing in the offender's absence and may impose sanctions.

(6) Present the case to the hearing officer. If there is a language or communication barrier, the hearing officer may ((~~appoint someone~~)) continue the hearing until a qualified individual is identified to interpret or otherwise assist((~~. However, no other person may provide representation in presenting the case. There is no right to an attorney or counsel.~~

~~(8)~~)) in person or by means of an approved language line.

(7) Request counsel as established by department policy. Counsel may be provided if the hearing officer determines

that counsel is necessary due to the complexity of the case or the offender's ability to represent himself or herself.

(8) Cross-examine witnesses ((~~appearing and~~)) testifying at the hearing.

(9) Testify during the hearing or ((~~to~~)) remain silent. Silence will not be held against the offender.

(10) Have witnesses provide written or oral testimony on ((~~his/her behalf, either in person or in a witnessed statement/affidavit; provided, however:~~

~~(a) In an in-custody hearing, outside witnesses may be excluded due to institutional concerns; or~~

~~(b) The hearing officer may exclude persons from the hearing upon a finding of good cause; or~~

~~(c) The hearing officer may exclude a witness from testifying at a hearing or may require a witness to testify outside of the offender's presence when there is a substantial likelihood that the witness will not be able to give effective, truthful testimony in the presence of the offender during the hearing. In either event, the offender may submit a list of questions to ask a witness. Testimony may be limited to evidence relevant to the issues under consideration.~~

~~(11)~~)) the offender's behalf, unless the scope of testimony is limited or the witness is excluded by the hearing officer under WAC 137-104-050.

(11) Request a continuance of the hearing for good cause as per department policy.

(12) Receive a written hearing and decision summary including the evidence presented, ((~~a~~)) the finding of guilty or not guilty, ((~~and~~)) the reasons to support the findings of guilt, and the sanction imposed immediately following the hearing or, in the event of a deferred decision, within two ((~~working days.~~

~~(12) Receive a copy of the full department hearing report.~~

~~(13) Obtain a copy of the audio recording of the hearing, provided, the offender provides a blank audio cassette tape to be used for this purpose.~~

~~(14) Appeal to the regional appeals panel, in writing, within seven calendar days of receipt of the hearing and decision summary form. The offender may also file a personal restraint petition to appeal the department's final decision through the Washington state court of appeals.~~

~~(15)~~)) business days. Offenders may waive the two business days' requirement.

(13) Obtain a copy of the electronic recording of the hearing upon written request.

(14) Appeal the hearing officer's decision pursuant to WAC 137-104-080.

(15) File a personal restraint petition.

(16) Waive any or all of the above rights in this section.

(17) Waive the hearing and recommend a negotiated sanction.

AMENDATORY SECTION (Amending WSR 01-04-044, filed 2/1/01, effective 3/1/01)

WAC 137-104-080 Appeals. (1) The offender may, within seven calendar days, appeal the ((~~decision of the hearing officer within seven calendar days to the appeals panel. The request for review should be submitted in writing and list specific concerns.~~

~~(2) The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to the:~~

~~(a) Crime of conviction;~~

~~(b) Violation committed;~~

~~(c) Offender's risk of reoffending; or~~

~~(d) Safety of the community.~~

~~(3)~~)) findings and imposed sanctions to an appeals panel. The offender's appeal must be submitted in writing.

(2) The appeals panel shall affirm, reverse, modify, vacate, or remand the decision based on its findings.

(3) If a majority of the panel finds that the sanction was not reasonable, relative to the crime of conviction, the violation committed, the offender's risk of reoffending, or the safety of the community, then the appeals panel shall reverse, vacate, remand or modify the decision.

(4) The appeals panel will also examine evidence presented at the hearing ((~~and reverse~~)). If a majority of the panel finds that any finding of a violation was based solely on ((~~unconfirmed or unconfirmable allegations~~)) allegations that were not, or could not be confirmed, then the appeals panel shall reverse, vacate, remand or modify the decision.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-104-070 Determination of competency.

WSR 19-19-050
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Nursing Home Administrators)

[Filed September 13, 2019, 9:45 a.m., effective October 14, 2019]

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

Purpose: Chapter 246-843 WAC, Nursing home administrators, the board adopted revisions that included (1) adding the National Association of Long Term Care Administrator Board's health service executive designation as an additional option for licensure in Washington state, (2) allowing a portion of an administrator-in-training program taken for another state to partially count toward Washington licensure requirements, and (3) allowing licensees to increase the number of continuing education hours the licensee can obtain in one day to use toward the state requirement from seven to twelve hours. Additional changes are made to clarify and/or streamline the language and do not change the meaning of the rule.

Citation of Rules Affected by this Order: Amending WAC 246-843-010, 246-843-070, 246-843-071, 246-843-090, 246-843-091, 246-843-093, 246-843-095, 246-843-130, 246-843-162, 246-843-180, 246-843-230, 246-843-231, and 246-843-280.

Statutory Authority for Adoption: RCW 18.52.061 and 18.130.050.

Adopted under notice filed as WSR 19-06-076 on March 5, 2019.

Changes Other than Editing from Proposed to Adopted Version: Only editing changes were made from the proposed to adopted version.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-4723, fax 360-236-2901, TTY 360-833-6388 or 711, email kendra.pitzler@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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 13, 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 13, Repealed 0.

Date Adopted: April 19, 2019.

Ann B. Zell, Chair
Board of Nursing Home Administrators

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-010 General definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Active administrative charge" means direct participation in the operating concerns of a nursing home. Operating concerns include, but are not limited to, interaction with staff and residents, liaison with the community, liaison with regulatory agencies, pertinent business and financial responsibilities, planning and other activities as identified in the most current job analysis published by the National Association of Boards of Examiners for Long Term Care Administrators.

(2) "Administrator-in-training (AIT)" means an individual in a nursing home ((~~administrator-in-training~~)) training program approved by the board.

(3) "Board" means the state board of nursing home administrators, established under chapter 18.52 RCW, representative of the professions and institutions concerned with the care of the chronically ill and infirm aged patients.

(4) "Collocated facilities" means more than one licensed nursing facility situated on a contiguous or adjacent property, whether or not there are intersecting streets. Other criteria to qualify as a collocated facility would be determined by the nursing home licensing agency under chapter 18.51 RCW.

(((~~4~~))) (5) "Department of health" or "DOH" means the ((~~department of health.~~

(~~5~~))) agency responsible for issuing licenses to nursing home administrators under chapter 18.52 RCW.

(6) "Health service executive" or "HSE" means a voluntary qualification standard issued by the National Association of Long Term Care Administrators Board (NAB) that recognizes a common core and unique entry level competencies by line of service. Successful demonstration of this combination of competencies is measured by education, experience, and examination that meets or exceeds the current NAB requirements to practice as a nursing home administrator, an assisted living administrator, and an administrator practicing in the field of home and community based service in the majority of jurisdictions.

(7) The "National Association of Long Term Care Administrators Boards" or "NAB" means the national organization of regulatory boards and agencies responsible for licensure of long-term care administrators in all fifty states and the District of Columbia.

(8) "On-site, full-time administrator" means an individual ((~~in active administrative charge of one nursing home facility or collocated facilities, as licensed under chapter 18.51 RCW, a minimum of four days and an average of forty hours per week. An "on-site, full-time administrator" in nursing homes with small resident populations, in rural areas, or in nursing homes with small resident populations when the nursing home has converted some of its licensed nursing facility bed capacity for use as assisted living or enhanced assisted living services under chapter 74.39A RCW is an individual in active administrative charge of one nursing home facility, or collocated facilities, as licensed under chapter 18.51 RCW:~~

~~(a) A minimum of four days and an average of twenty hours per week at facilities with one to thirty nursing home beds; or~~

~~(b) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine nursing home beds.~~

(~~6~~))), licensed under chapter 18.52 RCW, who is in active administrative charge of one nursing home facility or collocated facilities for a minimum of:

(a) Four days per week and an average of forty hours per week, if administering a facility with fifty or more nursing home beds;

(b) Four days per week and an average of thirty hours per week, if administering a facility with thirty-one to forty-nine nursing home beds; or

(c) Four days per week and an average of twenty hours per week, if administering a facility with one to thirty nursing home beds.

(9) "Person" means an individual and does not include the terms firm, corporation, institutions, public bodies, joint stock associations, and other such entities.

(((~~7) "Recognized institution of higher learning" is a degree granting institution that is:~~

~~(a) Accredited by an organization recognized by the council for higher education accreditation (CHEA) and is included in the CHEA list recognized accrediting organizations; or~~

~~(b) Accredited by an organization recognized by the United States Department of Education (USDOE) and is included in the USDOE Database of Accredited Postsecondary Institutions and Programs; or~~

~~(c) A foreign institution with a program that the board has found to be the equivalent of programs approved by CHEA or by the USDOE. The transcript must also be evaluated and found to be valid and the academic program the equivalent of programs approved by CHEA or the USDOE, by:~~

~~(i) An organization that is a current member of the National Association of Credential Evaluation Services (NACES); or~~

~~(ii) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE).~~

~~(8) "Secretary" means the secretary of the department of health or the secretary's designee.~~))

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-070 Examination. (1) ((~~The~~)) An applicant for nursing home administrator licensure must ((~~take:~~

~~(a) The National Association of Long Term Care Administrator Boards (NAB)~~)) submit proof of taking and passing the NAB nursing home administrator examination with a scale score of one hundred thirteen; or

(((~~(b)~~))) (2) If the applicant was licensed prior to 1986, the applicant may submit proof of taking and passing the examination offered by professional examination services (PES).

(((~~(2) An applicant for a nursing home administrator license must earn a scaled score of one hundred thirteen on the current NAB national examination.~~

~~(3) The applicant must be notified about their examination score in writing.~~

~~(a) The board and the department must not disclose the applicant's score to anyone other than the applicant, unless requested to do so in writing by the candidate.~~

~~(b) The board shall keep a permanent record of the result of the examination for each applicant.~~))

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-071 Application. (1) An applicant((~~s~~)) for licensure as a nursing home administrator ((~~must meet the following requirements~~)) shall:

(((~~(1)~~))) (a) Be at least twenty-one years old((~~.~~

~~(2) Complete an~~));

(b) Submit to DOH a completed application for licensure provided by ((~~the department~~)) DOH that includes all information requested and payment of fees as required in chapter 246-12 WAC, Part 2 and WAC 246-843-990((~~.~~

~~(3) Submit documentation~~));

(c) Request the official transcripts of successful completion of a baccalaureate degree to be sent directly to DOH from a recognized institution of higher learning((~~.~~

~~(4) Submit~~)). A "recognized institution of higher learning" is a degree granting institution that is:

(i) Accredited by an organization recognized by the Council for Higher Education Accreditation (CHEA) and is included in the CHEA list recognized accrediting organizations; or

(ii) Accredited by an organization recognized by the United States Department of Education (USDOE) and is included in the USDOE Database of Accredited Postsecondary Institutions and Programs; or

(iii) A foreign institution with a program that the board has found to be the equivalent of programs approved by CHEA or by the USDOE. The transcript must also be evaluated and found to be valid and the academic program the equivalent of programs approved by CHEA or the USDOE, by:

(A) An organization that is a current member of the National Association of Credential Evaluation Services (NACES); or

(B) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE).

(d) Verification of successful completion of seven hours of AIDS education and training as required in chapter 246-12 WAC, Part 8((~~.~~

~~(5) Satisfy~~));

(e) Documentation of having satisfied training requirements ((~~by:~~

~~(a)~~)) including that the applicant:

(i) Has successfully ((~~completing~~)) completed an AIT program as described in WAC 246-843-090 and 246-843-091; or

(((~~(b) Meeting~~)) (ii) Has met the requirements for an AIT exemption described in WAC 246-843-093((~~; or~~

~~(c) Meeting the endorsement requirements described in WAC 246-843-230; or~~

~~(d) Meeting the requirements for returning to active status described in WAC 246-843-180.~~

~~(6)~~)).

(f) Documentation that the applicant has successfully ((~~pass~~)) passed the examination as described in WAC 246-843-070.

(((~~(7)~~))) (2) If an applicant is required to ((~~take an administrator-in-training~~)) complete an AIT program, the applicant may concurrently earn their degree but ((~~must~~)) shall submit proof of enrollment in a degree program at a recognized institution of higher learning. The transcript showing successful completion of the degree, sent directly from the institution, must be received before the applicant is approved to take the current NAB national examination.

(3) An applicant who has HSE designation from NAB may submit verification of the HSE directly from NAB to verify that he or she meets the requirements of subsection (1)(c) and (f) of this section.

(4) An applicant licensed as a nursing home administrator outside the state of Washington may apply for initial licensure through endorsement by meeting the requirements of WAC 246-843-230.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-090 Administrator-in-training program. To qualify for a nursing home administrator license, an applicant must successfully complete a board approved

nursing home administrator-in-training (AIT) program as described below:

(1) The AIT program must:

(a) Be under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(b) Be designed to provide for individual learning experiences and instruction based upon the person's academic background, training, and experience;

(c) Provide for a broad range of experience with a close working relationship between preceptor and AIT. A sponsoring facility of less than fifty beds will be considered for an AIT program only if there is a board approved plan to broaden the AIT experience with an equal percentage of experience in a larger facility;

(d) Be described in a prospectus signed by the preceptor. The prospectus ((~~shall~~)) must include a description of the rotation through departments. The board must approve the prospectus ((~~must be approved by the board~~)) before the AIT program start date.

(2) The AIT program prospectus shall include the following components:

(a) A minimum of ninety percent of the required AIT program hours are spent in a rotation through each department of a resident occupied nursing home licensed under chapter 18.51 RCW or a Washington state veterans home established under chapter 72.36 RCW.

(b) The remaining ten percent of the AIT program will include:

(i) A written project assignment including at least one problem-solving assignment to improve the nursing home or nursing home procedures. A description of the project must be submitted in writing to the board and approved before the AIT program start date. The description of the project should indicate the definition of the project and method of approach such as data gathering. A project report that includes possible alternatives, conclusions, and final recommendations to improve the facility or procedure is to be submitted to the board for approval at least ten days before the scheduled end date of the AIT program;

(ii) Planned reading and writing assignments as designated by the preceptor; and

(iii) Other planned learning experiences including learning about other health and social services agencies in the community.

(3) The AIT program must be approved by the board before the AIT may begin the program.

(4) Quarterly written reports to the board shall include a detailed outline of AIT activities during the reporting period. Reports must be submitted by both the AIT and preceptor.

(5) Changes in the AIT program, including a change of preceptor, facility or topic, must be immediately reported in writing to the board. A request for change must be in writing and explain why the change is needed. The request must be co-signed by the AIT and the approved preceptor. In cases where the preceptor is no longer available, the request may be signed by the governing body. Only two changes for the duration of the AIT program will be allowed.

(6) A site visit by a board member will take place before the program plan is considered complete.

(7) The board may withdraw approval or alter conditions under which approval was given if the board finds that the approved program has not been or is not being followed.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-091 Length of AIT program. An applicant ((~~must~~)) shall complete a one thousand five hundred hour AIT program. The program length may be reduced based on the following:

(1) A one thousand hour AIT program may be granted for individuals with a minimum of:

(a) Two years' experience as a department manager in a state licensed nursing home or hospital with demonstrated supervisory and budgetary responsibility;

(b) Five years' experience working in a nursing home; or

(c) Successful completion of a four year degree program in health administration or nursing; or

(d) An applicant may be allowed to complete a one thousand hour AIT program in Washington if they have successfully completed at least five hundred hours but less than one thousand hours of an AIT program approved in another state.

(2) A five hundred hour AIT program may be granted for individuals with a minimum of two years' experience in the last five years with demonstrated supervisory and budgetary responsibility in one of the following positions or their equivalent:

(a) Hospital administrator;

(b) Assistant administrator in a state licensed nursing home or hospital;

(c) Director of a hospital based skilled nursing facility;

(d) Director of a subacute or transitional care unit;

(e) Director of the department of nursing in a state licensed nursing home;

(f) Health care consultant to the long-term care industry;

(g) Director of community-based long-term care service;

(h) Director or regional director of rehabilitation services in a skilled nursing facility;

(i) An applicant may be allowed to complete a five hundred hour AIT program in Washington if they have successfully completed at least one thousand hours of an AIT program approved in another state.

(3) A five hundred hour program may be granted for individuals with a master's degree in health administration or nursing.

(4) At the discretion of the board, veterans who have military experience equal to the civilian classifications and time limits in subsections (2) and (3) of this section are eligible for a reduced AIT as described in subsections (2) and (3) of this section.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-093 Exemption. ((~~No~~)) An applicant is not required to complete an AIT program ((~~is required for~~)) if:

(1) An individual ((~~with~~)) has completed a minimum of five years' experience in the last seven years with extensive supervisory and budgetary responsibility in one of the fol-

lowing positions or their equivalent as determined by the board:

(a) Hospital administrator;

(b) Assistant administrator in a hospital or state licensed nursing home;

(c) Director of a hospital based skilled nursing facility;

(d) Director of a subacute or transitional care unit; or

(e) Regional director of rehabilitation services in a skilled nursing facility.

(2) A veteran((~~s who have~~)) who has military experience equal to the civilian classifications and time limits listed in subsection (1)(a) through (e) of this section.

(3) An individual ((~~who~~)) has worked as a licensed nursing home administrator for a minimum of two years((~~,~~)) in the past five years.

(4) An individual ((~~who~~)) has graduated with a baccalaureate or graduate degree in long-term care administration from a program accredited by ((~~the National Association of Long Term Care Administrator Boards (~~))NAB((~~)~~)).

(5) An individual ((~~who~~)) has graduated from a degree program in a recognized educational institution that included a one thousand hour practical experience (practicum) in a nursing home. This practical experience must be structured to allow a student a majority of time in a systematic rotation through each department of a resident-occupied nursing home. The practical experience shall include planned readings, writing, and project assignments. The practical experience shall include regular contact with the administrator of the facility in which the practical experience was completed.

(6) An individual has been issued an HSE designation from NAB.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-095 Preceptors for administrator-in-training programs. The preceptor shall submit a statement to the board describing his or her qualifications and an agreement to perform the duties of a preceptor.

(1) Qualifications of preceptor:

(a) The preceptor must ((~~have three years' experience employed as a licensed nursing home administrator in the past three years~~)) be actively practicing as a nursing home administrator for a duration of no less than three years prior to the submission of the AIT applicant's initial application for an AIT credential.

(b) The preceptor must be employed full time as the nursing home administrator in the facility where the ((~~administrator-in-training~~)) AIT is trained.

(c) The preceptor shall have an unrestricted license.

(2) Duties of the preceptor:

(a) The preceptor shall take the time necessary and have at least a weekly face-to-face conference with the AIT about the activities of the AIT relative to the training program and the nursing home.

(b) The preceptor shall evaluate the AIT and submit quarterly reports to the board on the progress of the AIT program.

(c) The preceptor shall provide learning opportunities that support the AIT's preparation to succeed on the licensure examination and competently assume the responsibilities of a nursing home administrator.

(3) A preceptor is limited to the supervision of only one AIT unless the preceptor has prior approval from the board.

(4) The board may periodically review and evaluate the quality of AIT programs and preceptor performance.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-130 Continuing education requirements. (1) A licensed nursing home administrator ((~~must~~)) shall demonstrate completion of thirty-six hours of continuing education every two years and comply with chapter 246-12 WAC, Part 7.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

(i) Seminars;

(ii) Teleconferencing;

(iii) Webinars; and

(iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at fifteen hours per each semester unit and ten hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and improve and enhance professional competencies. Continuing education must fit within the following subjects:

(i) Resident centered care;

(ii) Human resources;

(iii) Finance;

(iv) Environment;

(v) Leadership and management;

(vi) Suicide prevention;

(vii) Cultural competency training;

(viii) Laws relating to Washington state nursing homes.

(d) The ((~~continuing education provider must offer a certificate of~~)) licensee shall retain proof of course completion ((~~that lists the number of clock hours~~)). To receive full credit, attendees ((~~must~~)) shall attend the full program. The maximum number of hours allowed for continuing education is ((~~seven~~)) twelve hours per day.

(4) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

(5) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

(6) Within one hundred eighty days after becoming licensed, a nursing home administrator shall attend a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licens-

ees who obtain the required training as administrators-in-training under WAC 246-843-090. The state law training course consists of a minimum of a six-hour program, with formal training objectives, that covers the requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

(a) Resident services, medical and social;

(b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;

(c) Enforcement;

(d) Criminal history inquiries;

(e) Differences between federal and state law.

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

WAC 246-843-162 AIDS prevention and information education requirements. An applicant((~~s must~~)) shall complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-180 Expired license. (1) To return to active status, the ((~~practitioner must~~)) nursing home administrator shall meet the requirements of WAC 246-12-040.

(2) If the license has been expired for five years or more, the ((~~practitioner must~~)) nursing home administrator shall also meet one of the following requirements:

(a) ((~~If the practitioner has been in active practice as a licensed nursing home administrator in another jurisdiction during that time, the practitioner must provide proof of active practice; or~~)) Provide proof of an active status license as a nursing home administrator from another state that has requirements that are substantially equivalent to Washington requirements;

(b) ((~~If the practitioner has not~~)) Provide proof that the applicant has been in active practice as a licensed nursing home administrator in another jurisdiction during that time((~~, the practitioner must~~)); or

(c) Successfully ((~~complete~~)) pass the current licensing examination.

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-230 Endorsement. (1) The board may ((~~endorse~~)) issue a license on the basis of licensure in good standing from another state to a nursing home administrator ((~~currently licensed in another state~~)) if that state requires qualifications substantially equivalent to qualifications required by RCW 18.52.071 and WAC 246-843-090. To obtain a license by endorsement the applicant ((~~must~~)) shall:

(a) ((~~Pay applicable application fee;~~

~~(b) Submit an application on forms approved by the secretary;~~

~~(c)~~)) Satisfy requirements listed in WAC 246-831-071.

(b) Submit ((~~a~~)) verification forms from all states in which currently or previously licensed that verifies the applicant((~~:~~

~~(i)~~)) was or is currently licensed((~~;~~

~~(ii) Has not had a nursing home administrator license revoked or suspended; and~~

~~(iii) Has passed a national examination allowed under WAC 246-843-070;~~

~~(d) Submit a certified transcript of baccalaureate or higher degree, mailed to the department directly from a recognized institution of higher learning;~~

~~(e) Submit documentation of completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8~~)) and confirms licensure status.

(2) Applicants who are((~~:~~

~~(a)~~)) currently certified by the American College of Health Care Administrators (ACHCA) are exempt from taking the current NAB national examination.

(((~~(b) Currently licensed as a nursing home administrator in another state and who have previously passed the national examination are exempt from taking the current NAB national examination.~~))

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-231 Temporary practice permits. (1) An applicant seeking permanent licensure who satisfies all licensing requirements other than a fingerprint-based national background check may receive a temporary practice permit by satisfying requirements listed in WAC 246-12-050.

(2) Temporary practice permits for applicants seeking licensure for interim placement at specific facilities.

(a) A temporary practice permit for interim placement at specific facilities may be issued to an applicant who meets the following conditions:

(i) Holds an unrestricted active license in another state;

(ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by ((~~the department of health~~)) DOH of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

(i) A temporary practice permit is valid only for the specific nursing home for which it is issued unless otherwise approved by the board;

(ii) A temporary permit holder shall consult with a Washington state licensed nursing home administrator with whom they have a written agreement for consultation.

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

(i) The permit holder departs from the nursing home, unless otherwise approved by the board;

(ii) One hundred eighty days after the temporary practice permit is issued.

(d) To receive a temporary practice permit, the applicant ((~~must~~)) shall submit to DOH:

(i) ((~~Submit~~)) Fees and a completed application for the permit;

(ii) ((~~Submit~~)) Verification from each state in which the applicant is currently licensed and is in good standing as a nursing home administrator; and

(iii) ((~~Submit~~)) A written agreement for consultation with a Washington state licensed nursing home administrator.

(((~~(2) Temporary practice permits for applicants seeking permanent licensure.~~

~~(a) A temporary practice permit may be issued to an applicant who meets the following conditions:~~

~~(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards to those in Washington;~~

~~(ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and~~

~~(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.~~

~~(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:~~

~~(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:~~

~~(i) The department of health issues a license after it receives the national background check report and determines that the applicant meets the requirements for licensure;~~

~~(ii) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or~~

~~(iii) One hundred eighty days after the temporary practice permit is issued.~~

~~(d) To receive a temporary practice permit, the applicant must:~~

~~(i) Submit fees and a completed application for licensure as a nursing home administrator;~~

~~(ii) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check;~~

~~(iii) Provide verification of having an active unrestricted license as a nursing home administrator from another state that has substantially equivalent licensing standards in Washington; and~~

~~(iv) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.~~))

AMENDATORY SECTION (Amending WSR 16-17-127, filed 8/23/16, effective 9/23/16)

WAC 246-843-280 Sexual misconduct. (1) A nursing home administrator ((~~must~~)) shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct constitutes grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

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

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

(d) Kissing of a romantic or sexual nature;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals;

(g) Not allowing a patient or client privacy to dress or undress;

(h) Not providing the patient or client a gown or draping;

(i) Dressing or undressing in the presence of the patient, client or key party;

(j) Removing patient or client's clothing or gown or draping;

(k) Encouraging masturbation or other sex act in the presence of the nursing home administrator;

(l) Masturbation or other sex act by the nursing home administrator in the presence of the patient, client or key party;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client or key party;

(o) Discussing the sexual history, preferences or fantasies of the nursing home administrator;

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

(q) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(r) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(t) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

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

(3) A nursing home administrator ((~~must~~)) shall not:

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

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

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

(4) A nursing home administrator ((~~must~~)) shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the provider-patient/client relationship ends.

(5) After the two-year period of time described in subsection (4) of this section, a nursing home administrator shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the nursing home administrator; or

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

(6) When evaluating whether a nursing home administrator is prohibited from engaging, or attempting to engage, in sexual misconduct, the board of nursing home administrators will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the nursing home administrator-patient relationship;

(b) Transfer of care to another nursing home administrator;

(c) Duration of the nursing home administrator-patient relationship;

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

(e) Communication between the nursing home administrator and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the nursing home administrator;

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

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

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

(7) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(8) These rules do not prohibit:

(a) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to nursing home administrators; or

(b) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the nursing home administrator where there is no evidence of, or potential for, exploiting the patient or client.

WSR 19-19-054
PERMANENT RULES
ENVIRONMENTAL AND LAND USE HEARINGS OFFICE
(Pollution Control Hearings Board)

[Filed September 13, 2019, 2:14 p.m., effective October 14, 2019]

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

Purpose: The purpose of this rule making is three fold: (1) To clarify for parties appearing before the pollution control hearings board (PCHB) on forest practices appeals that the general PCHB stay rule, WAC 371-08-415 does not apply to forest practices stays. Instead, the applicable rule is WAC 223-08-087. This has been PCHB's practice since it was assigned jurisdiction over forest practices appeals in 2010. See WSR 10-18-021; *Yockey v. DNR,* PCHB No. 15-031 (April 14, 2015); (2) to amend WAC 223-08-087 to conform to PCHB's current practice when handling requests for stays in forest practices appeals; and (3) to clarify that a request for a "temporary suspension or discontinuance" means a request for a stay. This rule amendment is not intended to change current practice, but instead to provide better guidance regarding what current practice is.

Citation of Rules Affected by this Order: Amending WAC 223-08-087 and 371-08-415.

Statutory Authority for Adoption: RCW 43.21B.170, 43.21B.110 (1)(j), 34.05.422(4), 34.05.479.

Adopted under notice filed as WSR 19-14-035 on June 25, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 10, 2019.

Kay M. Brown, Board Chair
Pollution Control Hearings Board

AMENDATORY SECTION (Amending WSR 90-23-093, filed 11/21/90, effective 12/22/90)

WAC 223-08-087 Commencing an appeal—Temporary suspension or discontinuance (stay). Any county appealing under RCW 76.09.050(8) or any person aggrieved appealing under RCW ((~~76.09.220(8)~~)) 76.09.205 may seek a ((~~temporary suspension~~)) stay of the department's approval, in whole or in part, pending such appeal. Any operator, timber owner, or forest land owner appealing under RCW 76.09.080 may seek ((~~temporary discontinuance~~)) a stay of

the stop work order, in whole or in part, pending such appeal. The following procedure shall apply:

(1) The appellant shall file with the appeals board a motion, supported by affidavit setting forth specific facts supporting a ((~~temporary suspension or discontinuance~~)) stay. Such motion may be filed with the notice commencing the appeal or at any time thereafter prior to the final decision of the appeal by the appeals board.

(2) Upon receipt of said motion, the presiding officer shall schedule a ((~~hearing~~)) conference and serve notice of ((~~such hearing~~)) the conference on all parties to the appeal. ((~~Before or after the commencement of said hearing the presiding officer may order the hearing of the merits to be consolidated with said hearing.~~)) At the conference, a briefing schedule will be established to address the motion. Before or after the commencement or completion of briefing the presiding officer may determine that an evidentiary hearing is required. The hearing of the merits of the appeal may be consolidated with said hearing.

(3) After ((~~hearing~~)) the briefing is completed, the appeals board or the presiding officer ((~~shall temporarily suspend~~)) may stay the department's approval((~~, or temporarily discontinue the~~)) or a stop work order, in whole or in part, or ((~~shall~~)) decline to ((~~suspend or discontinue~~)) stay. Such action shall be based solely on the record ((~~and hearing argument~~)), and shall be embodied in a written order. Orders issued under this subsection shall remain effective until the final decision of the appeals board unless sooner dissolved for good cause shown.

(4) In emergency situations, a ((~~temporary suspension or discontinuance~~)) stay in whole or in part may be granted by the presiding officer without a ((~~hearing~~)) conference and/or briefing, only if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party before any adverse party can be heard in opposition. A ((~~temporary suspension or discontinuance~~)) stay granted without ((~~a hearing~~)) briefing shall be embodied in a written order and shall expire by its terms within such time after entry, not to exceed fourteen days, as provided therein unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. On two days' notice to the party who obtained the ((~~temporary suspension or discontinuance~~)) stay without notice or on such shorter notice to that party as the presiding officer may prescribe, the adverse party may appear and move its dissolution or modification and in that event the presiding officer or appeals board shall proceed to ((~~hear~~)) review and determine such motion as expeditiously as the ends of justice require.

(5) Every order ((~~temporarily suspending~~)) staying the department's approval of an application((~~,~~)) or ((~~temporarily discontinuing~~)) a stop work order, whether issued before or after ((~~hearing~~)) briefing, shall set forth the reasons for its issuance and shall describe in reasonable detail the scope of ((~~suspension or discontinuance~~)) the stay and shall be filed at the principal office of the appeals board and shall be binding upon all parties to the appeal, their officers, agents, servants, employees, and attorneys and upon those persons in active concert of participation with them who receive actual notice of the order.

(6) Except as otherwise provided by statute, no ((~~temporary suspension or discontinuance~~)) stay shall issue except upon the giving of security by the moving party, in such sum as the presiding officer deems proper, for payment of such costs and damages as may be incurred or suffered by any party who is found to have wrongfully obtained the ((~~suspension or discontinuance~~)) stay. No such security shall be required of the United States or of an officer or agency thereof. Pursuant to RCW 4.92.080 no security shall be required of the state of Washington, municipal corporations, or political subdivisions of the state of Washington.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-415 Stays. (1) A person appealing an order not stayed by the issuing agency, and not issued pursuant to chapter 76.09 RCW may obtain a stay of the effectiveness of that order only as set forth in this section.

(2) An appealing party may request a stay by including such a request in the notice of appeal or in a subsequent motion. The request must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which the request is based.

(3) Upon receipt of a request for a stay, the board will confer with the parties regarding its disposition. If necessary, a hearing on the motion will be held. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the board will advance the hearing date on its own initiative or by request of the parties.

(4) The ((~~requester~~)) requestor makes a prima facie case for a stay if the ((~~requester~~)) requestor demonstrates either a likelihood of success on the merits of the appeal or irreparable harm. Upon such a showing, the board shall grant the stay unless the agency demonstrates either:

(a) A substantial probability of success on the merits; or

(b) Likelihood of success and an overriding public interest which justifies denial of the stay.

(5) Unless otherwise stipulated by the parties, the board, after granting or denying a request for a stay, shall expedite the hearing and decision on the merits.

(6) Any party aggrieved by the grant or denial of a stay by the board may petition the superior court of Thurston County for review of that decision pending the hearing on the merits before the board.

(7) A person appealing an order not stayed by the issuing agency and issued pursuant to chapter 76.09 RCW may obtain a stay of the effectiveness of that order pursuant to WAC 223-08-087.

WSR 19-19-060
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 16, 2019, 11:40 a.m., effective October 17, 2019]

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

Purpose: The department of social and health services division of child support (DCS) is amending WAC 388-14A-5400 in order to clarify that the debt adjustment notice process described in that section applies not only to court orders for child support, but to any child support order. WAC 388-14A-5400 How does the division of child support tell the custodial parent when DCS adjusts the amount of debt owed on the case?

The debt adjustment notice process is used to provide notice to a custodial parent (CP) that DCS has reduced the amount of support debt on a case if that reduction was due to specific reasons listed in the rule, this notice gives CP a right to hearing if CP objects to the debt adjustment. Those reasons are: (1) A mathematical error in the debt calculation; (2) a typographical error in the stated debt; (3) proof that DCS should have suspended the support obligation for all or part of the time period involved in the calculation; or (4) proof that the noncustodial parent (NCP) made payments that DCS had not previously credited against the support debt.

Before this change, the rule provided that this process was used for adjustment of debt owed *under a court order* for child support, but DCS uses this process for any child support order. Occasionally, an administrative law judge will dismiss a hearing based on a debt adjustment notice based on the reduction of debt under an administrative child support order. Such a technical reading has a due process impact and DCS is amending the rule to ensure that all custodial parents have the same right to notice and a hearing when DCS reduces the support debt on a case.

Citation of Rules Affected by this Order: Amending WAC 388-14A-5400.

Statutory Authority for Adoption: Implementation is authorized under RCW 26.23.030(3), 34.05.220 (1)(a), 34.05.322, 74.20.101, and 74.08.090.

Adopted under notice filed as WSR 19-15-102 on July 22, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 16, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5400 How does the division of child support tell the custodial parent when DCS adjusts the amount of debt owed on the case? (1) The division of child support (DCS) mails a debt adjustment notice to the payee under a ((~~court~~)) child support order within thirty days of the date DCS reduces the amount of the ((~~court-ordered~~)) support debt it intends to collect if that reduction was due to:

(a) A mathematical error in the debt calculation;

(b) A typographical error in the stated debt;

(c) Proof that DCS should have suspended the support obligation for all or part of the time period involved in the calculation; or

(d) Proof the noncustodial parent (NCP) made payments that DCS had not previously credited against the support debt.

(2) The debt adjustment notice must contain the following information:

(a) The amount of the reduction;

(b) The reason DCS reduced the support debt, as provided under subsection (1) of this section;

(c) The name of the NCP and a statement that the NCP may attend and participate as an independent party in any hearing requested by the payee under this section; and

(d) A statement that DCS continues to provide support enforcement services whether or not the payee objects to the debt adjustment notice.

(3) A debt adjustment notice served in Washington becomes final unless the payee, within twenty days of service of the notice in Washington, files a request with DCS for a hearing under subsection (4) of this section. The effective date of a hearing request is the date DCS receives the request.

(4) A debt adjustment notice served in another state becomes final according to WAC 388-14A-7200.

(5) A hearing under this section is for the limited purpose of determining if DCS correctly reduced the support debt as stated in the notice of debt adjustment.

(6) A payee who requests a late hearing must show good cause for filing a late hearing request if it is filed more than one year after the date of the notice of debt adjustment.

WSR 19-19-061
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed September 16, 2019, 11:52 a.m., effective October 17, 2019]

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

Purpose: The department is amending WAC 388-823-0500 to expand the list of professionals from whom the developmental disabilities administration accepts a diagnosis of autism. These amendments add licensed physicians associated with an autism center, developmental center, or center of

excellence, as well as advanced registered nurse practitioners associated with a center of excellence.

Citation of Rules Affected by this Order: Amending WAC 388-823-0500.

Statutory Authority for Adoption: RCW 71A.16.020.

Adopted under notice filed as WSR 19-16-132 on August 6, 2019.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: September 16, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-0500 How do I show that I have autism as an eligible condition? ((~~In order~~)) To be considered for eligibility under the condition of autism you must be age four or older and have a diagnosis by a qualified professional which meets the conditions in subsection (1) or (2) of this section, as well as subsections (3), (4), and (5) of this section:

(1) Autistic disorder 299.00 per the diagnostic and statistical manual of mental disorders, fourth edition, text revision (DSM-IV-TR)((~~,~~)); or

(2) Autism spectrum disorder 299.00 per the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5), with a severity level of 2 or 3 in both columns of the severity level scale.

(3) The condition is expected to continue indefinitely with evidence of onset before age three.

(4) An acceptable diagnostic report includes documentation of all diagnostic criteria specified in the DSM-IV-TR or DSM-5.

(5) DDA will accept a diagnosis from any of the following professionals:

(a) Board certified neurologist;

(b) Board certified psychiatrist;

(c) Licensed psychologist;

(d) Advanced registered nurse practitioner (ARNP) associated with an autism center ((~~or~~)), developmental center, or center of excellence;

(e) Licensed physician associated with an autism center, developmental center, or center of excellence; or

(((~~e~~))) (f) Board certified developmental and behavioral pediatrician.

WSR 19-19-069
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed September 17, 2019, 9:21 a.m., effective October 18, 2019]

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

Purpose: The office of superintendent of public instruction (OSPI) is amending WAC 392-191A-030 to update the definitions of "certificated classroom teacher" and "teacher" to reflect changes in certification categories enacted by the professional educators standards board in WAC 181-79A-140. The revision ensures the rules reflect state statutes. OSPI is also amending WAC 392-191A-080 to update the frequency of the comprehensive evaluation for a teacher or principal eligible for a focused evaluation, from at least once every four years to at least once every six years. This change aligns with E2SHB 1139 (2019).

Citation of Rules Affected by this Order: Amending WAC 392-191A-030 and 392-191A-080.

Statutory Authority for Adoption: RCW 28A.405.100.

Adopted under notice filed as WSR 19-13-105 on June 19, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: September 16, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-17-028, filed 8/8/16, effective 8/31/16)

WAC 392-191A-030 Definitions. The following definitions apply to the terms used in this chapter:

"Certificated classroom teacher" and "teacher" mean a certificated employee who provides academically focused instruction to students and holds one or more of the certificates pursuant to WAC 181-79A-140 (1) through (3) ((~~and~~)), (6)(a) ((~~through (e) and (g)~~)), (b), (d), and (7).

"Certificated principal," "principal" and "assistant principal" mean a person who is employed to supervise the operation and management of a school as provided by RCW 28A.400.100 and holds certificates pursuant to WAC 181-79A-140 (4)(a) or (6)(h).

"Certificated support personnel" and "certificate support person" mean a certificated employee who provides services to students and holds one or more of the educational staff associate certificates pursuant to WAC 181-79A-140(5).

"Evaluation" shall mean the ongoing process of identifying, gathering and using information to improve professional performance, assess total job effectiveness, and make personnel decisions.

"Evaluation criteria" means minimum evaluation criteria for classroom teachers specified in WAC 392-191A-060, the minimum evaluation criteria for principals specified in WAC 392-191A-150, and the minimum evaluation criteria for certificated support personnel specified in WAC 392-191-020 and 392-191A-210.

"Evidence" means observed practice, products or results of a certificated classroom teacher's or certificated principal's work that demonstrates knowledge and skills of the educator with respect to the four-level rating system.

"Four-level rating system" means the continuum of performance that indicates the extent to which the criteria have been met or exceeded.

"Instructional framework" means one of the approved instructional frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Leadership framework" means one of the approved leadership frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Observe" or "observation" means the gathering of evidence made through classroom or worksite visits, or other visits, work samples, or conversations that allow for the gathering of evidence of the performance of assigned duties for the purpose of examining evidence over time against the instructional or leadership framework rubrics pursuant to this section.

"Rubrics" or "rubric row" means the descriptions of practice used to capture evidence and data and classify teaching or leadership performance and student growth using the evaluation criteria and the four-level rating system.

"Scoring band" means the adopted range of scores used to determine the final summative score for a certificated classroom teacher or principal.

"Student growth" means the change in student achievement between two points in time.

"Student growth data" means relevant multiple measures that can include classroom-based, school-based, school district-based, and state-based tools.

"Summative performance ratings" means the four performance levels applied using the four-level rating system: Level 1 - Unsatisfactory; Level 2 - Basic; Level 3 - Proficient; Level 4 - Distinguished.

AMENDATORY SECTION (Amending WSR 16-17-028, filed 8/8/16, effective 8/31/16)

WAC 392-191A-080 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated classroom teachers. The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

(1) All eight teaching criteria must contribute to the overall summative evaluation and must be completed at least once every ((~~four~~)) six years.

(2) The evaluation must include an assessment of the criteria using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) The principal or his/her designee at the school to which the certificated employee is assigned must make observations and written comments pursuant to RCW 28A.405.100.

(4) The opportunity for the employee to attach written comments to his/her evaluation report.

(5) Criterion scores, including instructional and student growth rubrics, must be determined by an analysis of evidence.

(6) An overall summative score shall be derived by a calculation of all criterion scores and determining the final four-level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(7) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated classroom teacher's student growth impact rating.

(8) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(9) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

(10) Evaluators must analyze the student growth score in light of the overall summative score and determine outcomes.

WSR 19-19-090
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed September 18, 2019, 10:49 a.m., effective October 19, 2019]

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

Purpose: This rule making is necessary to implement E2SHB 1358 which directs the agency to adopt standards for the reimbursement of health care services provided to eligible clients by fire departments pursuant to a community assistance referral and education services program under RCW 35.21.930. The standards must allow payment for covered health care services provided to individuals whose medical

needs do not require ambulance transport to an emergency department.

Citation of Rules Affected by this Order: New WAC 182-531-1740; and amending WAC 182-546-0200, 182-546-0250, and 182-546-0400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; E2SHB 1358.

Adopted under notice filed as WSR 19-15-150 on July 24, 2019.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, 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 3, Repealed 0.

Date Adopted: September 18, 2019.

Wendy Barcus
Rules Coordinator

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

WAC 182-546-0200 Scope of coverage for ambulance transportation. (1) The ambulance program is a medical transportation service. The ((~~medical assistance administration (MAA)~~)) medicaid agency pays for ambulance transportation to and from covered medical services when the transportation is:

(a) Within the scope of an eligible client's medical care program (see WAC ((~~388-501-0060~~)) 182-501-0060);

(b) Medically necessary as defined in WAC ((~~388-500-0005~~)) 182-500-0005 based on the client's condition at the time of the ambulance trip and as documented in the client's record;

(c) Appropriate to the client's actual medical need; and

(d) To one of the following destinations:

(i) The nearest appropriate ((~~MAA-contracted~~)) agency-contracted medical provider of ((~~MAA-covered~~)) agency-covered services; or

(ii) The designated trauma facility as identified in the emergency medical services and trauma regional patient care procedures manual.

(2) ((~~MAA~~)) The agency limits coverage to medically necessary ambulance transportation that is required because the client cannot be safely or legally transported any other way. If a client can safely travel by car, van, taxi, or other means, the ambulance trip is not medically necessary and the ambulance service is not covered by ((~~MAA~~)) the agency. See WAC ((~~388-546-0250~~)) 182-546-0250 (1) and (2) for noncovered ambulance services.

(3) If medicare or another third party is the client's primary health insurer and that primary insurer denies coverage of an ambulance trip due to a lack of medical necessity, ((~~MAA~~)) the agency requires the provider when billing ((~~MAA~~)) the agency for that trip to:

(a) Report the third party determination on the claim; and

(b) Submit documentation showing that the trip meets the medical necessity criteria of ((~~MAA~~)) the agency. See WAC ((~~388-546-1000 and 388-546-1500~~)) 182-546-1000 and 182-546-1500 for requirements for nonemergency ambulance coverage.

(4) ((~~MAA~~)) The agency covers the following ambulance transportation:

(a) Ground ambulance when the eligible client:

(i) Has an emergency medical need for the transportation;

(ii) Needs medical attention to be available during the trip; or

(iii) Must be transported by stretcher or gurney.

(b) Air ambulance when justified under the conditions of this chapter or when ((~~MAA~~)) the agency determines that air ambulance is less costly than ground ambulance in a particular case. In the latter case, the air ambulance transportation must be prior authorized by ((~~MAA~~)) the agency. See WAC ((~~388-546-1500~~)) 182-546-1500 for nonemergency air ambulance coverage.

(5) See also WAC 182-531-1740 Treat and refer services.

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

WAC 182-546-0250 Ambulance services the ((~~department~~)) agency does not cover. (1) The ((~~department~~)) medicaid agency does not cover ambulance services when the transportation is:

(a) Not medically necessary based on the client's condition at the time of service (see exception at WAC ((~~388-546-1000~~)) 182-546-1000);

(b) Refused by the client (see exception for ITA clients in WAC ((~~388-546-4000~~)) 182-546-4000(2));

(c) For a client who is deceased at the time the ambulance arrives at the scene;

(d) For a client who dies after the ambulance arrives at the scene but prior to transport and the ambulance crew provided minimal to no medical interventions/supplies at the scene (see WAC ((~~388-546-0500~~)) 182-546-0500(2));

(e) Requested for the convenience of the client or the client's family;

(f) More expensive than bringing the necessary medical service(s) to the client's location in nonemergency situations;

(g) To transfer a client from a medical facility to the client's residence (except when the residence is a nursing facility);

(h) Requested solely because a client has no other means of transportation;

(i) Provided by other than licensed ambulance providers (e.g., wheelchair vans, cabulance, stretcher cars); or

(j) Not to the nearest appropriate medical facility.

(2) If transport does not occur, the ((~~department~~)) agency does not cover the ambulance service, except as provided in WAC ((~~388-546-0500(2)~~)) 182-546-0500(2) and 182-531-1740 Treat and refer services.

(3) The ((~~department~~)) agency evaluates requests for services that are listed as noncovered in this chapter under the provisions of WAC ((~~388-501-0160~~)) 182-501-0160.

(4) For ambulance services that are otherwise covered under this chapter but are subject to one or more limitations or other restrictions, the ((~~department~~)) agency evaluates, on a case-by-case basis, requests to exceed the specified limits or restrictions. The ((~~department~~)) agency approves such requests when medically necessary, according to the provisions of WAC ((~~388-501-0165 and 388-501-0169~~)) 182-501-0165 and 182-501-0169.

(5) An ambulance provider may bill a client for noncovered services as described in this section, if the requirements of WAC ((~~388-502-0160~~)) 182-502-0160 are met.

AMENDATORY SECTION (Amending WSR 18-12-091, filed 6/5/18, effective 7/6/18)

WAC 182-546-0400 General limitations on payment for ambulance services. (1) In accordance with WAC 182-502-0100(8), the agency pays providers the lesser of the provider's usual and customary charges or the maximum allowable rate established by the agency. The agency's fee schedule payment for ambulance services includes a base rate or lift-off fee plus mileage.

(2) The agency:

(a) Pays providers under fee-for-service for ground ambulance services provided to a client who is enrolled in an agency-contracted managed care organization (MCO).

(b) Pays providers under fee-for-service for air ambulance services provided to a client who is enrolled in an agency-contracted MCO.

(3) The agency does not pay providers for mileage incurred traveling to the point of pickup or any other distances traveled when the client is not on board the ambulance. The agency pays for loaded mileage only as follows:

(a) The agency pays ground ambulance providers for the actual mileage incurred for covered trips by paying from the client's point of pickup to the point of destination.

(b) The agency pays air ambulance providers for the statute miles incurred for covered trips by paying from the client's point of pickup to the point of destination.

(4) The agency does not pay for ambulance services if:

(a) The client is not transported, unless the services are provided under WAC 182-531-1740 Treat and refer services;

(b) The client is transported but not to an appropriate treatment facility; or

(c) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC 182-546-0500(2)).

(5) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs, the agency's payment is as follows:

(a) If medicare covers the service, the agency pays the lesser of:

(i) The full coinsurance and deductible amounts due, based upon medicaid's allowed amount; or

(ii) The agency's maximum allowable for that service minus the amount paid by medicare.

(b) If medicare does not cover or denies ambulance services that the agency covers according to this chapter, the agency pays its maximum allowable fee; except the agency does not pay for clients on the qualified medicare beneficiaries (QMB) only program.

NEW SECTION

WAC 182-531-1740 Treat and refer services. (1) The purpose of treat and refer services is to reduce the number of avoidable emergency room transports, i.e., transports that are nonemergency or nonurgent.

(2) Treat and refer services are covered health care services for a client who has accessed 911 or a similar public dispatch number, and whose condition does not require ambulance transport to an emergency department based on the clinical information available at the time of service.

(3) Treat and refer services can be provided by any city and town fire department, fire protection district organized under Title 52 RCW, regional fire protection service authority organized under chapter 52.26 RCW, provider of emergency medical services that levy a tax under RCW 84.52.069, and federally recognized Indian tribe.

(4) To receive payment for covered health care services provided to clients under this section, an entity that meets the criteria in subsection (3) of this section must be an enrolled medicaid provider with an active core provider agreement for the service period specified in the claim, and have an established community assistance referral and education services program under RCW 35.21.930.

(a) Prior to billing and receiving payment, participating providers must submit a participation agreement and attestation form to the agency certifying their compliance with RCW 35.21.930.

(b) Providers must immediately notify the agency if they no longer meet the requirements of RCW 35.21.930. Providers who no longer meet the requirements of the program and continue to bill and receive payment under the program must return any overpayment under RCW 41.05A.170.

(5) Treat and refer services must be documented in a standard medical incident report that includes a clinical or mental health assessment.

(6) The health care professionals providing treat and refer services must:

(a) Be state-certified emergency medical technicians, state-certified advanced emergency medical technicians, or state-certified paramedics under chapters 18.71 and 18.73 RCW;

(b) Be under the supervision and direction of an approved medical director according to RCW 35.21.930(1); and

(c) Not perform medical procedures they are not trained and certified to perform, according to RCW 35.21.930(1).

(7) Entities that meet the criteria in subsections (3) and (4) of this section must retain the standard medical incident

report in subsection (5) of this section according to WAC 182-502-0020.

(8) Payments under this section are subject to review and audit under chapter 182-502A WAC.