

WSR 20-02-013
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed December 19, 2019, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-148.

Title of Rule and Other Identifying Information: The department is proposing to amend chapter 388-76 WAC, Adult family home minimum licensing requirements, including WAC 388-76-10510 Resident rights—Basic rights, 388-76-10515 Resident rights—Exercise of rights, 388-76-10522 Resident rights—Notice—Policy on accepting medicaid as a payment source, 388-76-10525 Resident rights—Description, 388-76-10530 Resident rights—Notice of services, 388-76-10532 Resident rights—Standardized disclosure of services form, 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits, 388-76-10545 Resident rights—Admitting and keeping residents, 388-76-10555 Resident rights—Financial affairs, 388-76-10560 Resident rights—Adult family home management of resident financial affairs, 388-76-10561 Resident rights—Resident security deposit account, 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs, 388-76-10585 Resident rights—Examination of inspection results, 388-76-10600 Resident rights—Mail and telephone privacy, 388-76-10615 Resident rights—Transfer and discharge, 388-76-10685 Bedrooms, 388-76-10695 Building codes—Structural requirements, 388-76-10700 Building official—Inspection and approval, 388-76-10710 Construction and remodeling—Relocation of residents, 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring, 388-76-10735 Kitchen facilities, 388-76-10750 Safety and maintenance, 388-76-10765 Storage, 388-76-10770 Telephones, 388-76-10784 Water hazards—Fences, gates and alarms, 388-76-10795 Windows, 388-76-10800 Adult family home located outside of public fire protection, 388-76-10805 Automatic smoke detectors, 388-76-10810 Fire extinguishers, 388-76-10830 Emergency and disaster plan—Required, 388-76-10835 Elements of an emergency and disaster plan, 388-76-10840 Emergency food supply, 388-76-10850 Emergency medical supplies, 388-76-10870 Resident evacuation capability levels—Identification required, 388-76-10885 Elements of emergency evacuation floor plan, 388-76-10890 Posting the emergency evacuation floor plan—Required, 388-76-10895 Emergency evacuation drills—Frequency and participation, 388-76-10900 Documentation of emergency evacuation drills—Required, and 388-76-10905 Emergency evacuation—Notification of department required.

The department also proposes to create WAC 388-76-10616 Resident rights—Transfer and discharge notice and is repealing WAC 388-76-10520 Resident rights—General notice, 388-76-10555 Resident rights—Financial affairs, 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs, and 388-76-10835 Elements of an emergency and disaster plan.

Hearing Location(s): On February 4, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 5, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 4, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update rules that are obsolete or require clarification. The department worked with internal and external stakeholders to identify rules that have been in place for a number of years and that are ambiguous or difficult to implement or regulate. We sought to clarify areas where a rule may have multiple interpretations. Some of the rules are being updated to reflect new or improved technology. Other rule changes are intended to improve resident safety. Because some of the regulations in the section outlining resident rights are closely related to the federal regulations under the home and community based settings program, we adapted the language to a closer alignment with those requirements. Similarly, adult family homes must meet the requirements of this chapter and the building code, so some of the changes here incorporate parts of the International Residential Code as adopted by Washington state into this chapter for easier use.

Reasons Supporting Proposal: The goal of this proposal is to update these rules to ensure improved compliance by adult family homes and improved resident safety and quality of life. The expected outcome is improved ease of compliance, both due to addressing known barriers and increasing the clarity of the regulations. The proposal will also improve resident safety, rights, and quality of life due to recognizing and strengthening the regulations that oversee the residents in these homes. We solicited feedback on the proposal from internal and external stakeholders and incorporated the suggestions received wherever possible.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: None.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, 253-234-6061.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Libby Wagner, 20425 72nd Avenue South, Kent,

WA 98032, phone 253-234-6061, fax 253-395-5073, email wagnee@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The costs associated with this proposal are mainly administrative or update the physical plant. We determined that these costs will be minor, optional, or rare, and do not impose more than minor costs to the regulated businesses.

A copy of the detailed cost calculations may be obtained by contacting Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, phone 253-234-6061, fax 253-395-5073, email wagnee@dshs.wa.gov.

December 16, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10510 Resident rights—Basic rights.

The adult family home must ensure that each resident:

- (1) Receives appropriate necessary services, as identified in the assessment and negotiated care plan;
- (2) Is treated with courtesy, dignity, and respect;
- (3) Continues to enjoy basic civil and legal rights;
- (4) Has the ~~((chance))~~ opportunity to exercise ((reasonable)) control over life decisions, such as ((choice)) making the resident's own choices about daily life, participation in services or activities, care, and privacy;
- (5) ~~((Is provided))~~ Has the opportunity to engage in religious, political, civic, recreational, and other social activities of their choice;
- (6) Is cared for in a manner ~~((and in an environment))~~ that ~~((promotes maintenance or enhancement of each))~~ enhances or maintains the resident's quality of life ((including a));
- (7) Is cared for in an environment that is safe, clean, comfortable, and homelike ((environment)); and
- ~~((7) Is allowed))~~ (8) Has the freedom to have and use ((his or her)) their personal belongings to the extent possible.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10515 Resident rights—Exercise of rights. The adult family home must:

- (1) Protect each resident's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the home;
- (2) Protect and promote the rights of each resident and assist the resident to exercise ~~((his or her))~~ the rights ((as)) of a resident of the home((, as a citizen or resident of the United States)) and the state of Washington.
- (3) Be free of interference, coercion, discrimination, and ~~((reprisal))~~ retaliation from the home in exercising ~~((his or her))~~ the resident's rights; and
- (4) Ensure the resident's right to choose a representative who may exercise the resident's rights to the extent provided by law.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10522 Resident rights—Notice—Policy on accepting medicaid as a payment source. The adult family home must fully disclose the home's policy on accepting medicaid ~~((payments))~~ or other public funds as a payment source. The policy must:

- (1) Clearly state the circumstances under which the adult family home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;
- (2) Be provided both orally and in writing in a language ~~((that))~~ the resident understands;
- (3) Be provided to all prospective residents, before ~~((they are admitted))~~ admission to the home;
- (4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;
- (5) Be a written ~~((on a page))~~ document that is separate from other documents and ~~((be written in))~~ use a type font that is at least fourteen point; and
- (6) Be signed and dated by the resident and ~~((be))~~ kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10525 Resident rights—((Description)) Postings. The adult family home must ~~((give each resident a written description of resident's rights that includes a))~~ post the following in a common use area where they can be easily viewed by anyone in the home, including residents, resident representatives, the department, and visitors:

- (1) ~~((Description of how the home will protect personal funds))~~ The name, address, and telephone number for the home's regional residential care services licensing office;
- (2) ~~((Posting of names, addresses, and telephone numbers of the:

 - (a) State survey and certification agency;
 - (b) State licensing office;
 - (c) State ombuds program; and
 - (d) Protection and advocacy systems.))~~ The department's poster that includes the complaint resolution unit hotline and the telephone number for the state ombuds program; and
 - (3) ~~((Statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation))~~ The poster from the agency designated as the protection and advocacy system for residents with disabilities.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10530 Resident rights—Notice of rights and services. (1) The adult family home must provide each resident ~~((notice in writing))~~ written notice of the resident's rights and services provided in the home in a language the resident understands and before ~~((admission, and))~~ the resident is admitted to the home. The notice must be

reviewed at least once every twenty-four months (~~(after admission of)~~) from the date of the resident's admission and must include the following:

~~((1))~~ (a) Information regarding resident rights, including rights under chapter 70.129 RCW;

(b) A complete description of the services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;

~~((2))~~ (c) A complete description of the charges for those services, items, and activities, including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs; ~~(and~~

~~(3))~~ (d) The monthly or per diem rate charged to private pay residents to live in the home;

(e) Rules of the (~~home's operations~~) home, which must not violate resident rights in chapter 70.129 RCW;

(f) How the resident can file a complaint concerning alleged abandonment, abuse, neglect, or financial exploitation with the state hotline; and

(g) If the home will be managing the resident's funds, a description of how the home will protect the resident's funds.

(2) Upon receiving the notice of rights and services at admission and at least every twenty-four months, the home must ensure the resident and a representative of the home sign and date an acknowledgement stating that the resident has received the notice of rights and services as outlined in this section. The home must retain a signed and dated copy of both the notice of rights and services and the acknowledgement in the resident's record.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10532 Resident rights—Department standardized disclosure (~~of services form~~) forms. (1) The adult family home is required to complete the department's standardized disclosure of services form.

~~((1))~~ The home must:

(a) List on the form the scope of care and services available in the home;

(b) Send the completed form to the department when applying for a license; and

(c) Provide an updated form to the department thirty days prior to changing services, except in emergencies, when the scope of care and services is changing.

(2) The ~~(form does not:~~

~~(a) Replace the notice of services required when a resident is admitted to the adult family home as directed in chapter 388-76-10530 WAC.~~

~~(b) Replace any other form or policy as required in chapter 388-76 WAC))~~ adult family home must complete the disclosure of charges form as provided by the department. The home must:

(a) Provide a copy to each resident prior to or upon admission to the home;

(b) Provide a copy upon resident request;

(c) Keep a copy in each resident's record;

(d) Ensure the resident and a representative of the home sign and date an acknowledgement stating that the resident has received the disclosure of charges form and keep a copy

of the disclosure and the acknowledgement in the resident's record.

(3) These forms do not replace the notice of services required when a resident is admitted to the adult family home as directed in WAC 388-76-10530.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10540 Resident rights—Disclosure of (~~fees and~~) charges—Notice requirements—Deposits. (1) ~~(The adult family home must complete the department's disclosure of charges form and provide a copy to each resident admitted to the home.~~

~~(2))~~ If the adult family home requires an admission fee, deposit, prepaid charges, or any other fees or charges, by or on behalf of a person seeking admission, the home must ~~(give the resident full)~~ include this information on the disclosure of charges form in writing in a language the resident understands prior to its receipt of any funds.

~~((3))~~ (2) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees, or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, transferred, or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges that the home will refund to the resident if the resident leaves the home.

~~((4) The home must ensure that the resident and home sign and date an acknowledgement in writing stating that the resident has received a disclosure required under subsection (2) of this section. The home must retain a copy of the disclosure and acknowledgement.~~

~~(5))~~ (3) If the home does not provide the disclosures in subsection ~~((3))~~ (1) of this section to the resident, the home must not keep the resident's security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

~~((6))~~ (4) If a resident dies, is hospitalized, or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges paid by the resident less the home's per diem rate for the days the resident actually resided, reserved, or retained a bed in the home regardless of any minimum stay policy or discharge notice requirements;

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the home's admission agreement; and

(c) Must not require the resident to obtain a refund from a placement agency or person.

~~((7))~~ (5) The adult family home must not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

~~((8))~~ (6) The adult family home must provide the resident with any and all refunds due ~~((to him or her))~~ within thirty days from the resident's date of discharge from the home.

~~((9))~~ (7) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

~~((10))~~ (8) The home must ensure that any resident admission agreement is consistent with the requirements of this section, chapters 70.128, 70.129, and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10545 Resident rights—Admitting and keeping residents. The adult family home must:

(1) Only admit or keep individuals whose needs the home can safely ~~((serve in the home))~~ meet:

(a) With ~~((appropriate))~~ qualified available staff; and

(b) Through the provision of reasonable accommodations required by state and federal law~~((:));~~

(2) Not admit an individual before obtaining ~~((a thorough))~~ a complete assessment of the ~~((resident's))~~ individual's needs and preferences, except in cases of a genuine emergency;

(3) Ensure that the admission of the individual does not negatively affect the ability of the home to meet the needs of or endangers the safety of other residents; and

(4) Comply with all applicable federal and state requirements regarding nondiscrimination.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required. The adult family home must provide the following information in writing to prospective residents before admission and current residents who were admitted before this requirement took effect:

(1) Information about the provider, entity representative, and resident manager, ~~((if there is a resident manager))~~ including:

(a) Availability in the home, including a general statement about how often ~~((he or she is))~~ they each are in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) ~~((His or her))~~ Primary responsibilities~~((, including whether he or she makes daily general care management decisions));~~ and

(e) How to contact the provider, entity representative ~~((or)),~~ and resident manager when ~~((he or she is))~~ not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents, including:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) ~~((His or her))~~ Primary responsibilities~~((, including whether he or she makes daily general care management decisions));~~

(d) The nonroutine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make ~~((available))~~ the services of a licensed nurse available in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

(4) A statement indicating if someone other than the provider makes decision(s) regarding management of residents' daily care.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10560 Resident rights—Adult family home management of resident financial affairs. (1) Each resident has the right to manage their own financial affairs. The adult family home must not require any resident to deposit their personal funds with the home.

(2) If the adult family home agrees to manage a resident's personal funds, the home must ~~((do all of the following))~~:

~~((1))~~ Hold, safeguard, manage, and account for the personal funds of the resident deposited with the home);

~~((2))~~ (a) Have a written authorization from the resident;

(b) Develop and maintain a system that assures a full, complete, and separate accounting of each resident's personal funds given to the home on the resident's behalf;

(c) Ensure the resident's funds are not mixed with the home's funds or with the funds of any person other than another resident. If funds are pooled accounts, there must be a separate accounting for each resident's share;

~~((3))~~ (d) Deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing ~~((account or accounts))~~ account(s) separate from any of the home's operating accounts~~((:))~~ and that credits all interest earned on residents' funds to that account;

~~((4))~~ If funds are pooled accounts, there must be a separate accounting for each resident's share; and) (e) Ensure that the account or accounts are held in a financial institution as defined in RCW 30A.22.040, and notify each resident in writing of the name, address, and location of the depository.

~~((5))~~ (f) Keep a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund; and

(g) Provide an individual financial record when requested by the resident or the resident's legal representative.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10561 Resident rights—Resident security deposit account. ~~((Any))~~ (1) Funds in excess of one hundred dollars that are paid to an adult family home as a security deposit or as prepayment for charges beyond the first month's residency

~~((+))~~ must be deposited by the adult family home in an interest bearing account that is separate from any of the home's operating accounts and that credits all interest earned on the resident's funds to that account.

(2) The adult family home must:

(a) ~~((Ensure that))~~ Provide a record of the account ~~((is available upon the request of))~~ when requested by the resident ~~((or their))~~, the resident's representative, or the department;

(b) ~~((Not commingle resident))~~ Ensure the resident's funds ~~((from these accounts))~~ are not mixed with the ~~((adult family))~~ home's funds or with the funds of any person other than another resident. If an account pools resident funds ~~((are commingled))~~, ~~((the home must provide each resident with))~~ there must be a separate accounting for ~~((their))~~ each resident's share;

(c) Ensure that the ~~((account or accounts))~~ account(s) are held, and remain until a resident refund occurs, in a financial institution as defined in ~~((RCW 30.22.041;))~~ RCW 30A.22.-040; and

(d) Notify ~~((each))~~ the resident in writing of the name, address, and location of the depository.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10585 Resident rights—Examination of inspection results. (1) The adult family home must place a copy of the following documents ~~((in a visible location))~~ in a common use area where they can be ~~((examined))~~ easily viewed by residents, resident representatives, the department, and anyone interested without having to ask for them~~((:))~~;

(a) ~~((A copy of))~~ The most recent inspection report, any related follow-up reports, and related cover ~~((letter))~~ letters; and

(b) ~~((A copy of))~~ All complaint investigation reports, any related follow-up reports, and any related cover letters received since the most recent inspection or ~~((not less than))~~ within the last twelve months, whichever is longer.

(2) The adult family home must post a notice that the following documents are available for review if requested by the residents, resident representatives, the department, and anyone interested~~((:))~~;

(a) A copy of each inspection report and related cover letter received during the past three years; and

(b) A copy of any complaint investigation reports and related cover letters received during the past three years.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10595 Resident rights—Advocacy access and visitation rights. The adult family home must not interfere with each resident's right to have access to and from:

(1) Any representative of the state;

(2) The resident's own physician;

(3) The state long-term care ombuds ~~((program as established under chapter 43.190 RCW))~~ programs;

(4) The agency responsible for the protection and advocacy system for ~~((developmentally disabled individuals))~~ one or more of the following:

(a) Individuals with developmental disabilities as established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

~~((5))~~ The agency responsible for the protection and advocacy system for mentally ill individuals) (b) Individuals with mental illness as established under the Protection and Advocacy for ~~((mentally ill))~~ Individuals with Mental Illness Act;

~~((6))~~ Immediate family or other relatives of) (c) Individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law;

(5) Visitors who are visiting the resident ~~((and others who are visiting))~~ with the resident's consent ~~((of the resident, subject to reasonable limits))~~, which:

(a) The resident may withdraw at any time; and

(b) May only be limited when the limitation is to protect the rights or safety of the residents or others ~~((and to the resident's right to deny or withdraw consent at any time;~~

~~((7))~~ The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law) in the home and must be documented under WAC 388-76-10401; and

~~((8))~~ (6) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10600 Resident rights—Mail and telephone privacy. The adult family home must ensure each resident's right to privacy in communications, including the right to:

(1) Send and receive unopened mail without delay;

(2) Have writing paper, postage, and pens or pencils available that have been paid for by the resident; and

(3) ~~((Be able to use a telephone where calls can be made without being overheard))~~ Have twenty-four hour per day access to a telephone to make and receive confidential calls.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10605 Resident rights—Personal property and storage space. The adult family home must ensure each resident's right to keep and use personal possessions, including ~~((some))~~ furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home~~((s))~~ and not transfer or discharge the resident unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for ~~((his or her))~~ their stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must~~((:~~

~~((a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;~~

~~((b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;~~

~~((c) Record the reasons in the resident's record; and~~

~~((d) Include in the notice the items described in subsection (5) of this section.~~

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) A resident has not resided in the home for thirty days.

(5) The home must include the following in the written notice specified in subsection (2) of this section:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds;

~~((e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and~~

~~((f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals)) first attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident.~~

~~((6))~~ (3) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

~~((7))~~ (4) If the home discharges a resident in violation of this section or WAC 388-76-10616, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

NEW SECTION

WAC 388-76-10616 Resident rights—Transfer and discharge notice. (1) Before a home transfers or discharges a resident, the home must give the resident and the resident's representative a written thirty day notification informing them of the transfer or discharge. The home must also make a reasonable effort to notify, if known, any interested family member. The written notification must be in a language and manner the resident understands and include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged if known at the time of the thirty-day discharge notice;

(d) The name, address, and telephone number of the state long-term care ombuds;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with a developmental disability; and

(f) For residents with mental illness, the mailing address and telephone number of the agency responsible for the protection and advocacy of individuals with mental illness.

(2) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) The resident has been absent from the home for thirty or more days.

(3) A copy of the written notification must be in the resident's records.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10620 Resident rights—Quality of life—General. (1) The adult family home must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) ~~((Within reasonable))~~ The home may design home rules ~~((designed to))~~ that protect the rights and quality of life of residents~~((s))~~. Within these rules, the home must ensure the resident's right to:

(a) Choose activities, schedules, and health care consistent with ~~((his or her))~~ the resident's interests, assessments, and negotiated care plan;

(b) Be informed about community activities and ways to interact with members of the community both inside and outside the home;

(c) Make choices about aspects of ~~((his or her))~~ life in the home that are significant to the resident;

(d) Wear ~~((his or her))~~ the resident's own clothing and decide ~~((his or her))~~ their own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated to:

(i) Be informed in advance about recommended care and services and of any recommended changes in the care and services;

(ii) Participate in planning care and treatment or changes in care and treatment;

(iii) Direct ~~((his or her))~~ the resident's own service plan and changes in the service plan, or

(iv) Refuse any particular service so long as such refusal is documented in the record of the resident.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10685 Bedrooms. The adult family home must meet all of the following requirements:

(1) Ensure each resident's bedroom is an outside room~~((; which))~~ that allows entrance of natural light~~((;))~~.

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways, and corridors to common use areas and other rooms used for care and services including bathrooms~~((;))~~.

(4) Make separate bedrooms available for each ~~((sex;))~~ gender identity, unless roommates of different gender identities mutually consent to sharing a bedroom.

(5) Ensure that residents occupying a shared bedroom are notified in advance that they will have a roommate or that a roommate could be admitted at a later date.

(6) Make ~~((reasonable))~~ efforts to accommodate ~~((residents wanting to share the room;))~~ a resident's preference of roommate.

~~((6))~~ (7) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

~~((7))~~ (8) Give each resident the opportunity to have a lock on their bedroom door if they ~~((choose))~~ choose to unless having a locked door would be unsafe for the resident and this is documented ~~((in the resident's negotiated care plan))~~ according to WAC 388-76-10401.

~~((8))~~ (9) Ensure each bedroom has a closet or a wardrobe, armoire, or reasonable ~~((facsimile thereof))~~ storage space for clothes accessible to residents. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

~~((9))~~ (10) Ensure there are no more than two residents to a bedroom~~((;))~~.

~~((10))~~ (11) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or ~~((more wide))~~ wider with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((11))~~ (12) Do not use the upper bunk of double-deck beds for a resident's bed~~((;))~~.

~~((12))~~ (13) Provide each resident a call bell ~~((or intercom system if)), or an alternative way of alerting staff in an emergency, that the resident can use, unless the ((provider, entity representative, resident manager or caregiver))~~ bedroom of an AFH staff member is ~~((not))~~ within hearing distance of ~~((each resident))~~ the resident's bedroom ~~((and the system is required by the department;))~~ and a staff member will be within hearing distance at all times.

~~((13))~~ (14) Ensure that members of the household~~((; other than residents;))~~ and staff do not share bedrooms with residents~~((; and))~~.

~~((14))~~ (15) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside; ~~((and))~~

(3) At least one door leading to the outside is designated as ~~((the primary egress and))~~ an emergency exit. In homes licensed after January 1, 2016, this door must have a lever door handle on both sides and hardware that allows residents to exit when the door is locked and ~~((reentry))~~ immediately reenter without a key, tool, or special knowledge or effort by residents~~((;))~~;

(4) Other ~~((external exit))~~ doors leading to the outside that are not designated as ~~((the primary egress;))~~ an emergency exit must open without any special skills or knowledge, and they must remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident~~((;))~~; and

(5) All internal and external doors comply with local jurisdictional requirements as well as the building code requirements in chapter 51-51 WAC.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-76-10725,

the adult family home must not use the following in the home or on the premises:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.

(2) The home may video monitor and video record activities in the home, without an audio component, only in the following areas:

- (a) Entrances and exits if the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather(-);
- (b) Outdoor areas accessible to both residents and the public, such as, but not limited to, driveways or walkways, provided that the purpose of such monitoring is to prevent theft, property damage, or other crime on the premises;

(c) Outdoor areas not commonly used by residents; and
 ((e)) (d) Designated smoking areas, subject to the following conditions:

- (i) Residents are assessed as needing supervision for smoking;
- (ii) A staff person watches the video monitor at any time the area is used by such residents;
- (iii) The video camera ((is)) must be clearly visible;
- (iv) The video monitor ((is)) must not be viewable by the general public; and

((+)) (3) The home ((notifies)) must notify all residents in writing of the video monitoring equipment. The home must ensure that the resident and home sign and date an acknowledgement in writing stating that the resident has received this notification, and the home must retain a signed copy of the acknowledgement.

(4) The presence of cameras must not alter the obligation of the home to provide appropriate in-person assistance and monitoring due to individual physical or cognitive limitations.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10725 Electronic monitoring equipment—Resident requested use. (1) ~~((The adult family home must not use))~~ Audio or video monitoring equipment ~~((to monitor any resident unless:~~

- ~~(a) The resident has requested the monitoring; and~~
- ~~(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring-))~~ may not be installed in an adult family home to monitor any resident sleeping area unless the resident or the resident's representative has requested and consents to the monitoring;

(2) Electronic monitoring equipment must be installed in a manner that is safe for residents;

(3) An adult family home must not refuse to admit an individual, or discharge a resident, solely because of a request to conduct authorized electronic monitoring;

(4) A resident may limit consent for use of electronic monitoring devices to specific times or situation, pointing the camera in a particular direction, or prohibiting the use of certain devices;

(5) The release of audio or video monitoring recordings by the facility is prohibited, except to authorized persons or

as otherwise required by law. Each person or organization with access to the electronic monitoring must be identified in the resident's negotiated care plan;

(6) If the resident requests that the home conduct audio or video monitoring of their sleeping area, before any electronic monitoring occurs the home must ensure:

(a) That the electronic monitoring does not violate chapter 9.73 RCW;

(b) ~~((The resident has identified a threat to the resident's health, safety or personal property;~~

~~((e)))~~ The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

~~((d)))~~ (c) The resident and the home have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

~~((z)))~~ (7) The home must:

(a) Reevaluate the ~~((need for))~~ use of the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing signed and dated by the resident.

~~((4))~~ (8) The home must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring;

(b) Roommate objects or withdraws the consent to the electronic monitoring, or

(c) Resident becomes unable to give consent, unless consent has been provided by a resident's representative as described in this section.

~~((5))~~ (9) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's ~~((decision maker))~~ representative.

~~((6))~~ (10) For the purposes of consenting to audio electronic monitoring, the term "resident includes only:

(a) The resident residing in the home; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

~~((7))~~ (11) If the resident's decision maker consents to audio electronic monitoring as specified in subsection ~~((6))~~ ~~(10)~~ of this section, the home must maintain a copy of the court order authorizing such consent in the resident's record.

(12) If the adult family home determines that a resident, resident's family, or other third party is electronically monitoring a resident's bedroom without complying with the requirements of this section, the home must disconnect or remove such equipment until the appropriate consent is obtained and notice given as required by this section.

(13) Nothing in this section prohibits or limits an adult family home from implementing electronic monitoring pursuant to a resident's negotiated care plan, including but not limited to motion sensor alerts, floor pressure sensors, or global positioning devices, where the monitoring does not entail the transmittal or recording of a human-viewable image, sound, or resident name.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10750 Safety and maintenance. The adult family home must:

(1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, and homelike environment that is free of hazards;

(2) Ensure that there is existing outdoor space that is safe and usable for residents;

(3) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;

(4) Ensure items and furnishings brought into the home by the resident for their use are clean, functioning, and safe;

(5) Provide safe and functioning systems for:

(a) Heating;

(b) Cooling, which may include air circulating fans;

(c) Hot and cold water;

(d) Electricity;

(e) Plumbing;

(f) Garbage disposal;

(g) Sewage;

(h) Cooking;

(i) Laundry;

(j) Artificial and natural light;

(k) Ventilation; and

(l) Any other feature of the home(;-);

~~((5))~~ (6) Ensure water temperature is at least one hundred five degrees and does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:

(a) Tubs;

(b) Showers; and

(c) Sinks(;-);

~~((6) Provide storage for)~~ (7) Ensure all toxic substances(;- poisons;) and ((other)) hazardous materials ((that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;) are kept in locked storage and in their original containers, and that only residents who have been assessed as safe to use them are granted access and may use them without direct supervision. This includes but is not limited to those with one or more of the following warning labels:

(a) Danger;

(b) Poison;

(c) Corrosive;

(d) May cause burns; or

(e) Vapors harmful.

~~((7))~~ (8) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each resident;

~~((8))~~ (9) Keep all firearms locked and accessible only to authorized persons; and

~~((9))~~ (10) Keep the home free from:

(a) Rodents;

(b) Flies;

(c) Cockroaches(;-); and

(d) Other vermin.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10765 Storage. The adult family home must:

(1) Supply each resident with adequate and reasonable storage space for:

(a) Clothing;

(b) Personal possessions; and

(c) Upon request, a lockable container or storage space for small items, unless ~~((the))~~:

(i) The resident has a ((private)) single occupancy room with a lockable door; and

(ii) Only the resident ((room can be locked by the resident)) and appropriate staff have a key to the door.

~~((2) Provide locked storage for all prescribed and over-the-counter medications as per WAC 388-76-10485.))~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10770 Telephones. The adult family home must ~~((provide))~~:

(1) Have at least one working ((nonpay)) telephone in the home that does not cost residents money to use; and

(2) Allow residents privacy and reasonable access to the telephone(;-and

~~(3) Privacy for the resident when making or receiving)) to make and receive calls.~~

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10784 Water hazards—Fences, gates, and alarms. For any adult family home ~~((newly))~~ licensed after July 1, 2007 or any currently licensed adult family home that adds or modifies a new or existing water hazard after July 1, 2007 must ensure:

(1) ~~((Comply with this section and))~~ Pools, spas, and hot tubs are installed according to the requirements of the(;-

~~(a)) International Residential Code (IRC)(;-and~~

~~(b)) as adopted by the Washington state ((amendments to the International Residential Code (IRC))) building code council.~~

(2) ~~((Enclose))~~ Water hazards over twenty-four inches deep ((with)) are:

(a) Enclosed by fences and gates at least forty-eight inches high; ((and))

(b) Equipped with an audible ((alarms)) alarm that sounds when ((doors, screens, and gates)) any door, screen, or gate that directly ((lead)) leads to or ((surround)) surrounds the water hazard(;-are)) is opened; and

(c) Secured by locking any doors, screens, or gates that lead directly to or surround the water hazard.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10795 Windows. (1) The adult family home must ensure at least one window in each resident bedroom meets the following requirements:

(a) The sill height ((of the bedroom window is)) must not be more than forty-four inches above the finished floor.

((2)) For homes licensed after July 1, 2007, the department will not approve alternatives to the sill height requirement such as step(s), raised platform(s), or other devices placed by or under the window openings.

((3)) (b) The ((bedroom window must have the following:

(a) A minimum)) opening area must be a minimum of 5.7 square feet, except ((a)) that the openings of windows in rooms at grade level ((floor window openings)) as defined by the International Residential Code may have a minimum clear opening of 5.0 square feet((:)). The window must also have:

((b)) (i) A minimum opening height of twenty-four inches; ((and))

((c)) (ii) A minimum opening width of twenty inches((-); and

((4)) (c) The home must ensure the bedroom window can be opened from inside the room without keys ((or)), tools, or special knowledge or effort to open.

((5)) (d) The window must be free from obstructions that might block or interfere with access for emergency escape or rescue.

(2) When resident bedroom windows are fitted with storm windows, the home must equip the storm windows with release mechanisms that:

(a) Easily open from the inside; and

(b) Do not require a key or special knowledge or effort to open.

((6)) (3) The home must ensure that each basement ((and each resident bedroom)) window((- that meets the requirements of subsection (1), (2) and (3) of this section, are)) is kept free from obstructions that might block or interfere with access for emergency escape or rescue.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10800 Adult family home located outside of public fire protection. (1) If the adult family home is located in an area without public fire protection, the home must have written verification of adequate fire protection from the fire authority.

(2) If the local fire authority requires the home to have additional protective measures such as a fire extinguisher with a rating other than that required under WAC 388-76-10810(1), the home must meet this requirement.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10805 Automatic smoke ((detectors)) alarms. (1) The adult family home must ensure approved automatic smoke ((detectors)) alarms are((:)) installed and maintained according to manufacturer instructions;

((1) Installed,)) (2) At a minimum, smoke detectors must be located in the following ((locations)) areas:

(a) Every resident bedroom ((used by a resident));

(b) In ((proximity to the area where the)) the immediate vicinity of resident ((or)) bedroom(s), and if applicable, the

sleeping areas used by the adult family home staff ((sleeps)); and

(c) On every level of a multilevel home.

((2) Installed in a manner so that)) (3) The home must ensure the ((fire warning is heard)) smoke alarms in all parts of the home ((upon)) are active and interconnected in such a manner that the activation of ((a single detector, and)) one alarm will activate them all.

((3)) (4) Each smoke alarm must be kept in working condition at all times.

AMENDATORY SECTION (Amending WSR 08-09-028, filed 4/8/08, effective 5/9/08)

WAC 388-76-10810 Fire extinguishers. (1) The adult family home must have an approved five pound 2A:10B-C rated fire extinguisher on each floor of the home.

(2) The home must ensure ((the)) fire extinguishers are:

(a) ((Installed according to manufacturer recommendations)) Mounted or securely fastened in a stationary position at a minimum of four inches from the floor and a maximum of sixty inches from the floor;

(b) Inspected and serviced annually;

(c) In proper working order; ((and))

(d) ((Readily available for use)) Accessible at all times((-

(3) If required by the local fire authority, the home must provide different fire extinguishers in place of the fire extinguishers required in subsection (1) of this section); and

(e) Not located behind a locked door.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10825 Space heaters, fireplaces, and stoves. (1) The adult family home must not use oil, gas, kerosene, or electric space heaters that ((do not)) have ((an underwriters laboratories (UL) rating)) not been certified by an organization listed as a nationally recognized testing laboratory.

(2) The adult family home must ensure that stoves and heaters do not block resident, staff, or household member escape routes.

(3) The adult family home must ensure that fireplaces ((and)), stoves, or heaters that get hot to the touch when in use have a stable, flame-resistant barrier that ((prevents accidental resident contact. The adult family home is)) does not ((required to have a barrier if the fireplace and stove surfaces are not)) get hot to the touch ((when in use)) and that prevents accidental contact by residents or any flammable materials.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10830 Emergency and disaster plan—Required. The adult family home must have a written emergency and disaster plan ((and procedures)) to meet the needs of each resident during emergencies and disasters. The plan must include:

(1) Responding to natural and man-made emergencies and disasters that may reasonably occur at the home;

(2) Actions to be taken by staff and residents during and after an emergency or disaster; and

(3) The fire drill plan for evacuation of the home.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10840 Emergency food supply. (1) The adult family home must have an on-site emergency food supply ~~((that can be stored with other food in the home and))~~ that:

~~((4))~~ (a) Will last for a minimum of seventy-two hours for each resident and each household member;

~~((2))~~ (b) Meets the dietary needs of each resident, including any specific dietary restrictions ~~((any resident))~~ they may have;

(c) Can be stored with other food in the home; and

~~((3))~~ (d) Is sufficient, safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10850 Emergency medical supplies. The adult family home must ~~((have emergency medical supplies that include))~~:

(1) ~~((First aid))~~ Have emergency medical supplies on-hand for the application of basic first aid during an emergency or disaster in a sufficient amount for the number of residents living in the home;

(2) Replenish the emergency medical supplies as they are used; and

~~((2) A first aid))~~ (3) Have a first aid manual.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10865 Resident evacuation from adult family home. (1) The adult family home must be able to evacuate all residents from the home to a safe location outside the home in five minutes or less.

(2) The home must ensure that residents ~~((who require assistance))~~ are able to evacuate the home as follows:

(a) Through ~~((the primary egress))~~ a door designated as an emergency exit;

(b) Via a path from the resident's bedroom that does not go through other bedrooms; and

(c) Without the resident having to use any of the following:

(i) ~~((Stairs;~~

~~((ii))~~ Elevators;

~~((iii) Chairlift))~~ (ii) Chairlifts; or

~~((iv))~~ (iii) Platform ~~((lift))~~ lifts.

(3) Residents who require assistance with evacuation must have a path via an emergency exit to the designated safe location that does not require the use of stairs.

(4) Ramps for residents to enter, exit, or evacuate on homes licensed after November 1, 2016 must:

(a) Comply with WAC 51-51-0325;

(b) Have a slope measuring no greater than eight and three-tenths percent in the direction of travel; and

(c) Have required landings at the top, bottom, and at any change of direction, with a slope measuring no greater than two percent in the direction of travel.

~~((4))~~ (5) Homes that serve residents who are not able to hear the fire alarm warning must install visual fire alarms.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10870 Resident evacuation capability levels—Identification required. The adult family home must ensure that each resident's assessment, preliminary service plan, and negotiated care plan identifies ~~((and each resident's preliminary care plan and negotiated care plan))~~ and describes the resident's ability to evacuate the home according to the following descriptions:

(1) Independent: Resident is physically and mentally capable of ~~((safely getting out of))~~ independently evacuating the home without the assistance of another individual or the use of mobility aids. The department will consider a resident independent if capable of getting out of the home after one ~~((verbal))~~ cue ~~((;))~~.

(2) Assistance required: Resident is not physically or mentally capable of ~~((getting out of))~~ evacuating the ~~((house))~~ home without assistance from another individual ~~((or))~~, mobility aids, or multiple cues.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10885 Elements of emergency evacuation floor plan. The adult family home must ensure ~~((the))~~ there is an emergency evacuation floor plan ~~((has))~~ for each level of the home that:

(1) ~~((An accurate floor plan of the home, including))~~ Is accurate and includes all rooms, hallways, and exits (such as doorways and windows) to the outside of the home;

(2) Illustrates the emergency evacuation ~~((routes showing the paths to take))~~ route(s) to exit the home, with the route to the emergency exit door being easily identifiable; and

(3) Identifies the designated safe location for the residents to meet outside the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10890 Posting the emergency evacuation floor plan—Required. The adult family home must display an emergency evacuation floor plan on each floor of the home ~~((in))~~ and the plan must:

(1) Be posted in a visible location ~~((in the home))~~ commonly used by residents, staff, and visitors alike; and

(2) ~~((Common areas normally used by residents, staff and visitors))~~ Illustrate the evacuation route from the rooms on that floor to the designated safe location outside the home.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. (1) There are two types of emergency evacuation drills:

(a) A full evacuation is evacuation from the home to the designated safe location; and

(b) A partial evacuation is evacuation to the designated emergency exit.

(2) The adult family home must ensure:

((+)) (a) Partial emergency evacuation drills occur during random staffing shifts at least every ~~((two months))~~ sixty days, with each resident participating in at least one each calendar year; ~~((and~~

(2)) (b) All residents take part in a full emergency evacuation drill together and at the same time at least ~~((one emergency evacuation drill))~~ once each calendar year ~~((that includes full evacuation from the home to a safe location)); and~~

(c) Staff practice emergency evacuation drills even if there are no residents living in the home.

(3) The home must respect the resident's right to refuse to participate in emergency evacuation drills. However, the home must still demonstrate the ability to safely evacuate all residents doing the following:

(a) Documenting the resident's wish to refuse to participate in the negotiated care plan;

(b) Providing an estimate of the amount of time it would take to evacuate the resident and how they calculated this estimate in the negotiated care plan;

(c) Adding the estimated time to the time recorded on the emergency evacuation drill log after each drill to ensure the length of time to evacuate does not exceed five minutes; and

(d) Continuing to offer the resident a chance to participate in every evacuation drill.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10900 Documentation of emergency evacuation drills—Required. The adult family home must document ~~((in writing))~~ the following for all emergency evacuation drills ~~((which must include))~~:

(1) Names of each resident and staff involved in the drill;

(2) Name of the person conducting the drill;

(3) Date and time of the drill;

(4) Whether the drill was a full or partial emergency evacuation; and

((4)) (5) The length of time it took to ~~((evacuate all residents))~~ complete the evacuation.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10905 Emergency evacuation—Notification of department required. The adult family home must ~~((immediately call))~~ notify the department's complaint ~~((toll free complaint telephone number of))~~ resolution unit as soon as possible after resident safety is secure when:

(1) The home is on emergent stand-by for evacuation;

(2) There is any fire; or

~~((2) Emergency evacuation))~~ (3) Residents were evacuated from the home.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10520 Resident rights—General notice.

WAC 388-76-10555 Resident rights—Financial affairs.

WAC 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs.

WAC 388-76-10835 Elements of an emergency and disaster plan.

WSR 20-02-016

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 19, 2019, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-22-031.

Title of Rule and Other Identifying Information: WAC 182-535-1245 Access to baby and child dentistry (ABCD) program.

Hearing Location(s): On February 4, 2020, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 5, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 4, 2020.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.loughheed@hca.wa.gov, by January 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending subsection (1)(c) to clarify ABCD program services provided by a dental provider for eligible clients who are enrolled in an agency-contracted managed care organization (MCO) are paid through the fee-for-service payment system. The agency is adding subsection (1)(d) to reflect that ABCD program services provided by a nondental provider for eligible clients who are enrolled in an agency-contracted MCO must be billed directly through the client's MCO.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Pixie Needham, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-9967.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

December 19, 2019

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-20-047, filed 9/25/19, effective 10/26/19)

WAC 182-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

(i) Categorically needy program (CNP);

(ii) Limited casualty program-medically needy program (LCP-MNP);

(iii) Children's health program; or

(iv) State children's health insurance program (SCHIP) ~~((~~or~~)).~~

(c) ABCD program services provided by a dental provider for eligible clients who are enrolled in ((a) an agency-contracted managed care organization (MCO) ((~~plan~~)) are paid through the fee-for-service payment system.

(d) ABCD program services provided by a nondental provider for eligible clients who are enrolled in an agency-contracted managed care organization (MCO) must be billed directly through the client's MCO.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

(a) Oral health education;

(b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and

(c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) Only ABCD-certified dentists and other agency-approved certified providers are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) Is limited to one visit per day per family, up to two visits per child in a twelve-month period, per provider or clinic; and

(ii) Must include documentation of all of the following in the client's record:

(A) "Lift the lip" training;

(B) Oral hygiene training;

(C) Risk assessment for early childhood caries;

(D) Dietary counseling;

(E) Discussion of fluoride supplements; and

(F) Documentation in the client's record to record the activities provided and duration of the oral education visit.

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.

(g) Therapeutic pulpotomy;

(h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

(i) Resin-based composite crowns on anterior primary teeth; and

(j) Other dental-related services, as specified in the agency's current published documents.

(4) The client's record must show documentation of the ABCD program services provided.

WSR 20-02-032
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed December 19, 2019, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-21-126.

Title of Rule and Other Identifying Information: **Background Checks—Child Welfare Programs:** Proposed amended WAC 110-04-0010 What is the purpose of this chapter?, 110-04-0020 What definitions apply WAC 388-06A-0100 through 388-06A-0260 of this chapter?, 110-04-0030 Why are background checks done?, 110-04-0040 Who must have background checks?, 110-04-0060 Does the background check process apply to new and renewal licenses, certifications, contracts, and authorizations to have unsupervised access to children?, 110-04-0070 What happens if I don't comply with the background check requirement?, 110-04-0080 What does the background check cover?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit or disqualify me from being licensed, contracted, certified, or authorized to have unsupervised access to children?, 110-04-0120 If I have a conviction, may I ever have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?, and 110-04-0150 How will I know the status of a background check?

Group Care Licensing: Proposed amended WAC 110-145-1305 What definitions do I need to know to understand this chapter?, 110-145-1325 What is required to apply for a group care facility license?, 110-145-1330 How does the department determine my suitability to become a licensed provider or an employee, intern, or volunteer of a licensed provider?, 110-145-1400 Must prospective and current employees, volunteers, interns, and subcontractors be disqualified from having access to the children in my facility?, and 110-145-1550 What changes must I report to my licensor?

Hearing Location(s): On February 4, 2020, at 1:00 p.m., at Conference Room 4, Office Building 2, Service Level, 1115 Washington Street S.E., Olympia, WA.

Date of Intended Adoption: February 6, 2020.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by February 4, 2020.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by January 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rule amendments implement the Family First Prevention Services

Act, which requires all employees working in a department of children, youth, and families (DCYF)-licensed group care facility, including those not working directly with children, to complete fingerprint based background checks and out-of-state child abuse and neglect registry checks for every state in which an individual lived in the five years preceding the background check application. Proposed amendments require volunteers providing direct care to children to pass a background check and out-of-state child abuse and neglect registry checks for every state in which an individual lived in the five years preceding the background check application.

Reasons Supporting Proposal: DCYF must comply with the Family First Prevention Services Act in order to continue to receive federal funding for licensed group care facilities.

Statutory Authority for Adoption: RCW 43.43.832, 74.13.031, and 74.15.030.

Statute Being Implemented: Chapter 74.15 RCW.

Rule is necessary because of federal law, P.L. 115-123.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Parvin/Ernest Blackwell, Olympia, 253-260-0355; and Implementation and Enforcement: DCYF, statewide.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Family First Prevention Services Act, P.L. 115-123, div. E, title VII, 2018, specifically, Part IV § 50745, requires fingerprint-based background checks and child abuse and neglect registry checks for all employees of group care facilities. The consequence of noncompliance would be the loss of federal appropriations that fund the state's group care facilities.

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

1. Describe the proposed rule, including:

- A brief history of the issue.
- An explanation of why the proposed rule is needed.
- A brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The proposed rules codify a current practice of requiring a group care facility's volunteers to complete fingerprint-based background check and child abuse and neglect registry check and receive DCYF authorization before providing direct care to children. Since October 2018, federal laws

required all employees working in a group care facility, including individuals who do not work with children, to complete these checks and receive DCYF authorization before working in the facility. The department believes these standards should also apply to volunteers who provide direct care to children, since they are likely to have unsupervised access to the children receiving care. DCYF pays for volunteers' background checks as well as any necessary out-of-state child abuse and neglect registry checks. The potential cost to

a group care facility is wages to ensure caregiver ratios are met for the number of children in care while awaiting DCYF's authorization of the volunteers. These potential costs may or may not exceed the minor cost threshold.

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

NAICS code (4, 5 or 6 digit)	NAICS business description	# of businesses in WA	Minor-cost threshold =1% of average annual payroll	Minor-cost threshold =0.3% of average annual receipts
623990	Group Care	152	\$3,746.67	23751.583333

3. Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue. To mitigate the cost of compliance, DCYF is paying each volunteer's initial \$66 application and fingerprinting background check fee as well as any necessary out-of-state child abuse and neglect registry checks.

Group care facility licensees identified potential financial impacts as increased labor costs to pay overtime to authorized employees to maintain required ratios while they wait for DCYF to authorize volunteers. The labor costs vary depending on each group care facility's location and the number of children for which the facility is licensed.

4. Explain how you determined the rule may impose more-than-minor costs on businesses in the industry. Group care facility licensees were surveyed to determine if they anticipate compliance will result in a financial impact, why, what the impact would likely be, and if they have suggestions for technique to mitigate any anticipated increased costs.

5. Determine whether the proposed rule may impose a disproportionate impact on small businesses compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule. Use one or more of the following as a basis for comparing costs:

- Cost per employee.
- Cost per hour of labor.
- Cost per \$100 of sales.

Small businesses will likely have increased costs as a result of the proposed rules. It is not technically a disproportionate impact, however, since the majority of licensed group care facilities in the state are small businesses.

6. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. Include consideration of each of the following cost mitigation strategies:

(a) Reducing, modifying, or eliminating substantive regulatory requirements - DCYF rejects this strategy because not subjecting individuals who may have unsupervised access to children to background and child abuse & neglect registry

checks is potentially compromising the safety of children receiving care.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements - the proposed rules do not increase recordkeeping or reporting.

(c) Reducing the frequency of inspections - the proposed rules do not impact inspections.

(d) Delaying compliance timetables - current practice requires background checks for volunteers who may have unsupervised access to children, so the proposed rules are not expected to impact current volunteers. DCYF does not want to risk the safety of children in its care by delaying the requirement for new volunteers.

(e) Reducing or modifying fine schedules for noncompliance - noncompliance will not result in fines, but could impact a facility's license. DCYF licensing division staff will assist licensees as needed.

(f) Any other mitigation techniques suggested by small businesses or their advocates - group care facility licensees suggested that background checks should be completed more quickly. Background checks are completed within two weeks to two months, depending on how quickly the applicant submits his or her fingerprints to DCYF. DCYF staff prioritize these background checks and applications are generally processed the date received or, at the latest, the following business day. DCYF communicates to applicants that submitting the application electronically and quickly responding with fingerprints when directed to do so will minimize processing time. DCYF has begun work to streamline background checks required for child welfare programs and expects to introduce process innovations over the next few years. Other suggestions such as allowing new volunteers to work with supervised access to children pending the background check results and allowing the licensed facility to fingerprint prospective staff would run afoul of the federal background check requirement.

If the costs cannot be reduced, provide a clear explanation of why. See responses to 6(a) through (f) above.

7. Describe how small businesses were involved in the development of the proposed rule. Earlier this year, DCYF held webinars to explain the new requirements and invited all group care facility licensees to attend and provide input. In November 2019, draft rules were emailed to all group care

facility licensees along with an invitation to tell DCYF how the draft rules were expected to impact their operations.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. 0.

9. Summarize the results of the analysis, including the determination if costs are disproportionate. Compliance with the proposed rules will likely result in increased costs for the regulated community that may, or may not, exceed the minor cost threshold. DCYF is committed to engaging with its regulated community and, when possible, responding to and addressing concerns. In this case, DCYF has agreed to pay the volunteers' background checks fees and is working towards innovating its background check process.

A copy of the statement may be obtained by contacting DCYF rules coordinator, P.O. Box 40975, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov.

December 19, 2019
Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0010 What is the purpose of this chapter? This chapter establishes rules for background checks conducted by ~~((children's administration (CA) at) the department of ((social and health services (DSHS)))~~ children, youth, and families (DCYF) for child welfare purposes and does not apply to background checks conducted for child care or early learning purposes as they are addressed in chapter 110-06 WAC. The department does background checks on individuals who are licensed, certified, contracted, employed in a group care facility, or authorized to care for or have unsupervised access to children. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0020 What definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180 of this chapter?~~ The following definitions apply to WAC ~~((388-06A-0100 through 388-06A-0260)) 110-04-0030 through 110-04-0180 of this chapter:~~

"**Authorized**" or "**authorization**" means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

~~("CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child placing agencies, child protective services, child~~

~~welfare services, and other services to children and their families.)~~

"**Certification**" means ~~((~~ ~~(+))~~ department or child placing agency (CPA) approval of a person, foster home, or facility that ~~((does not legally need to be licensed, but wishes to have evidence that they meet the minimum)) is exempt from licensing but meets the licensing requirements.~~

~~((2) Department licensing of a child placing agency to certify and supervise foster home and group care programs:))~~

"**Children**" means a person who is one of the following: ~~((+))~~ ~~(a)~~ Under eighteen years old; ~~((2) Up to twenty-one years of age and pursuing a high school or equivalency course of study (GED/HSEC), or vocational program;~~

~~(3))~~ ~~(b)~~ Up to twenty-one years of age and participating in the extended foster care program; or

~~((4))~~ ~~(c)~~ Up to ~~((twenty one))~~ twenty-five years of age and under the custody of ~~((the Washington state))~~ juvenile rehabilitation ~~((administration)).~~

"**Civil adjudication proceeding**" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"**Department**" or ~~((DSHS))~~ "**DCYF**" means the department of ~~((social and health services (DSHS)))~~ children, youth, and families.

"**I**" and "**you**" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"~~((DLR))~~ Licensing division" or "**LD**" means the licensing division ~~((of licensed resources within children's administration. DLR))~~ within DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

~~((("I" and "you" refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.))~~

"**Licensors**" means either:

~~((1) A DLR))~~ ~~(a)~~ An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies ~~((established under this chapter))~~ that provide or certify foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

~~((2))~~ ~~(b)~~ An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"**Unsupervised**" means will not or may not be in the presence of:

~~((1))~~ (a) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

~~((2))~~ (b) Another individual who has been previously approved by ~~((children's administration))~~ DCYF.

"**We**" refers to the department, including licensors and ~~((social workers))~~ caseworkers.

"**WSP**" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0030 Why are background checks done? ~~((The children's administration))~~ DCYF does background checks to help safeguard the health, safety, and well-being of children in out of home care. By doing background checks, the department reduces the risk of harm to children from individuals ~~((that))~~ who have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability, and competence before you are issued a license, contract, certificate, ~~((or authorized))~~ authorization to be employed at a group care facility, or authorization to have unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33-020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old

in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home, including the parents.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0060 Does the background check process apply to new and renewal licenses, certification, contracts, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children? For ~~((children's administration))~~ DCYF, these regulations apply to all applications for new and renewal licenses, contracts, certifications, authorizations to be employees at a group care facility, and authorizations to have unsupervised access to children that are processed by ~~((the children's administration))~~ DCYF after the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0070 What happens if I ~~((don't))~~ do not comply with the background check requirement? The department will deny, suspend, or revoke your license, contract, or certification, or disqualify you to care for children if you or someone on the premises of your home or facility having unsupervised access, or an employee at a group care facility does not comply with the department's requirement for a background check.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) Background checks conducted for ~~((children's administration))~~ DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) ~~((through))~~ and (2) of this section, background checks conducted by ~~((children's administration))~~ DCYF for placement of a child in out-of-home care, including foster homes, group

care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(a) Child abuse and neglect registries in each state a person has lived in, in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(4) Except as required in ~~((WAC 388-06A-0150 (4)(b), children's administration))~~ subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children. Those felony convictions are as follows:

(a) Child abuse and/or neglect;

(b) Spousal abuse;

(c) A crime against a child (including child pornography);

(d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault or battery); or

(e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children in any home or facility.

(2) If you are convicted of one of the crimes listed in WAC ~~((388-06A-0170))~~ 110-04-0100 (1)(a) through (e), you will not be able to:

(a) Receive a license to provide care to children;

(b) Be approved for adoption of a child;

(c) Be a contractor;

(d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children;

(e) Be authorized to be employed at a group care facility even if you do not work directly with children;

(f) Volunteer or participate as an intern in a home or facility that offers care to children; or

~~((f))~~ (g) Provide any type of care to children, if the care is funded by the state.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, con-

tracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children? The department must disqualify you from licensing, contracting, certification, authorization for employment at a group care facility, or ~~((from having))~~ authorization for unsupervised access to children if it has been less than five years from a conviction for the following crimes:

(1) Any felony physical assault or battery offense not included in WAC ~~((388-06A-0170))~~ 110-04-0100;

(2) Any felony violation of the following drug-related crimes:

(a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW);

(b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);

(c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);

(d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or

(e) Unlawfully manufacturing, delivering, or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.

(3) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from being authorized to be employed at a group care facility or having unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children? (1) In two situations, ~~((DSHS))~~ DCYF may find a person with convictions able to be authorized to be employed at a group care facility or have unsupervised access to children:

(a) If the conviction for any crime listed in WAC ~~((388-06A-0180))~~ 110-04-0110 occurred more than five years ago; or

(b) If the conviction was for a crime other than those listed in WAC ~~((388-06A-0170 or 388-06A-0180))~~ 110-04-0100 or 110-04-0110.

(2) In both of these situations, ~~((DSHS))~~ DCYF must review your background to determine your character, suitability, and competence to have unsupervised access to children. In this review, ~~((DSHS))~~ DCYF must consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of other convictions in your background;

(d) Your age at the time of conviction;

(e) Documentation indicating you ~~((has))~~ have successfully completed all court-ordered programs and restitution;

(f) Your behavior since the conviction; and

(g) The vulnerability of those that would be under your care.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check? (1) The department will not license, contract, certify, authorize employment at a group care facility, or authorize ~~((a person to have))~~ unsupervised access to children to a person who ~~((have))~~ has a criminal charge pending for a disqualifying crime;

(a) Described in the Adoption and Safe Families Act of 1997 ~~((or a criminal charge pending for a disqualifying crime)); or~~

(b) That relates directly to child safety, permanence, or well-being.

(2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children by providing proof to the department that the charge against you has been dropped or that you were acquitted.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0150 How will I know the status of the background check? (1) If you have been approved by the background check:

(a) The department will notify you ~~((;))~~ and your prospective employer ~~((, or your))~~ or supervisor ~~((;))~~ if you have requested a contract, authorization to be employed at a group care facility, or approval for unsupervised access to children.

(b) The department will not directly notify you, and will instead continue the process for approving your application if you have requested a license or certification to care for children.

(2) If you have been disqualified by the background check:

(a) The department will notify you in writing and include any laws and rules that require disqualification;

(b) The department will also notify the care provider, the prospective employer, or the licensor; and

(c) You will not receive a license, contract, certification, or be authorized to be employed at a group care facility or have unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social ~~((and/or))~~ and emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

~~(("CA" means children's administration.))~~

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children ~~((and/or))~~ and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter ~~((388-145))~~ 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

~~((1))~~ (a) Under eighteen years old;

~~((2))~~ (b) Up to twenty-one years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to ~~((his or her))~~ their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

~~((3))~~ (c) Up to twenty-one years of age and participates in the extended foster care program;

~~((4))~~ (d) Up to twenty-one years of age with intellectual and developmental disabilities;

~~((5))~~ (e) Up to ~~((twenty-one))~~ twenty-five years of age and under the custody of ~~((the Washington state))~~ juvenile ~~((justice))~~ rehabilitation ~~((administration))~~.

"Child placing agency" or "CPA" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four-hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assess-

ment and services for runaway youth and youth in conflict with their family ~~((and/or))~~ or in need of emergency placement.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

~~("DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.)~~

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" or ~~((DSSH))~~ "DCYF" means the department of ~~((social and health services))~~ children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

~~"Direct care ((staff))" means ((persons who provide daily))~~ direct, hands-on personal care and supervision ((and direct care)) to group care children and youth.

~~("DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies and licensed group care facilities.)~~

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse ~~((and/or))~~ or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles,

stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of ~~((CA))~~ DCYF and the child's whereabouts are unknown ~~((and/or))~~, the child has left care without the permission of the child's caregiver or ~~((CA))~~ DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

~~((+))~~ (a) A decision issued by an administrative law judge;

~~((+))~~ (b) A final determination, decision, or finding made by an agency following an investigation;

~~((3))~~ (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;

~~((4))~~ (d) A revocation, denial, or restriction placed on any professional license; or

~~((5))~~ (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or run-away youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

~~("Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.)~~

"Volunteer" means a person who provides ~~(direct care)~~ services for your facility without compensation~~(, for your facility)~~.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to ~~(the department of social and health services, including DLR and DCFS)~~ DCYF and its staff.

"Young child" refers to a child age twelve months through eight years old.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the ~~(division of licensed resources, children's administration)~~ DCYF LD.

(2) You must submit a completed background authorization form for your executive director, agency staff, including those not directly working with children, consultants, ~~(interns,)~~ volunteers, and anyone ~~(who may have unsupervised access to children)~~ paid by the facility per chapter (388-06A) 110-04 WAC.

(3) You must ensure that ~~(an)~~ all paid agency (employee who may have unsupervised access to) staff and any other paid adults working at your facility, including those not directly working with children, complete a FBI fingerprint check and a child abuse and neglect history check of every state in which the individual has lived in the preceding five years prior to conducting the background check.

(4) You must ensure that agency volunteers ~~(or interns that have lived outside of Washington state during any portion of the previous three years)~~ who provide direct care complete a FBI fingerprint check and a child abuse and neglect history check of every state in which the individual has lived in the preceding five years prior to conducting the background check.

(5) You must ensure that ~~(no employee,)~~ agency volunteers (or subcontractor has unsupervised access to children until you are notified by children's administration that a background check was completed that qualifies the individual to have unsupervised access.) who do not provide direct care and have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check.

(6) You must ensure all staff, volunteers, or subcontractors meet the requirements in chapter 110-04 WAC. An individual is not authorized to work in the facility until DCYF issues a background check clearance authorization for the individual.

(7) If you have both a license issued by ~~(DLR)~~ LD and a contract with the department, you must adhere to the most stringent background check requirement.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1330 How does the department determine my suitability to become a licensed provider or ~~(an employee, intern,)~~ a staff member or volunteer of a licensed provider? (1) The department determines your suitability as a licensed provider after receiving your application, background ~~(authorization(s))~~ authorizations for those listed in WAC ~~((388-145-1325(2)))~~ 110-145-1325, and all required documentation outlined in this chapter.

(2) The department determines the suitability of a licensee, ~~(employee, intern)~~ staff member, or volunteer after receiving their background authorization referenced in subsection (1) ~~(above)~~ of this section.

(3) You, your ~~((employees, interns))~~ staff members, and volunteers must not have had a license or contract denied or revoked from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's safety, well-being and long-term stability.

(4) You, your ~~((employees, interns))~~ staff members, and volunteers must not have been found to have committed abuse or neglect of a child or vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(5) You must demonstrate that you, your ~~((employees, interns))~~ staff members, and volunteers have:

(a) The understanding, ability, physical health, emotional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under your care; and

(b) The ability to furnish children with a nurturing, respectful, and supportive environment.

(6) At any time, we may require you, your ~~((employees, interns))~~ staff members, and volunteers to give us additional information. We may also require an evaluation of your facility or property, or of a staff ~~((person))~~ member or volunteer working for your facility or agency, by an evaluator we recommend. Any evaluation requested by the department will be at your expense. The evaluator must be given written permission to share information with us prior to and throughout the evaluation process.

(7) Any ~~((employee, intern,))~~ staff member or volunteer who is found to have misrepresented or provided fraudulent information may be disqualified.

(8) Before granting or renewing a license, your licensor will assess your ability to provide a safe environment for children and to provide the quality of care needed by children placed in your care. Your licensor will also determine that you meet training requirements.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1400 Must prospective and current ~~((employees,))~~ staff and volunteers~~((, interns, and subcontractors))~~ be disqualified from having access to the children in my facility? (1) The department must disqualify prospective and current ~~((employees,))~~ staff and ~~((interns, and subcontractors))~~ volunteers~~((, and subcontractors))~~ if they do not meet the regulations of this chapter ~~((388-145 WAC)),~~ or cannot have unsupervised access to children because of their background check as outlined in chapter ~~((388-06A))~~ 110-04 WAC.

(2) The department must disqualify prospective and current ~~((employees, interns))~~ staff and, volunteers, and subcontractors if they have had a negative action taken on a license or contract, or have had a license denied or revoked by an agency that regulates the care of children or vulnerable adults, unless the department determines that the individual does not pose a risk to a child's safety, well-being, and long-term stability.

(3) ~~((Applicant's, employees, interns,))~~ Applicants, staff, and ~~((and subcontractors))~~ volunteers must demonstrate that they have the understanding, ability, physical health, emo-

tional stability, and personality suited to meet the physical, mental, emotional, cultural, and social needs of the children under their care.

(4) The department will notify the licensee ~~((if a))~~ when prospective ~~((or current employee, intern, volunteer, or subcontractor is))~~ staff and volunteers are disqualified from having unsupervised access to children. Hiring a person disqualified by ~~((DSHS))~~ DCYF or continuing to allow unsupervised access to children by a person disqualified by ~~((DSHS))~~ DCYF could also lead to denial, suspension, or revocation of your license issued under this chapter.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1550 What changes must I report to my licensor? ~~((+))~~ You must immediately report to your licensor changes in the original licensing application. You must report:

~~((+))~~ (1) Changes in your location, including address or phone number;

~~((+))~~ (2) Changes in your program description or population served, including the maximum number, age ranges, and sex of children you wish to serve;

~~((+))~~ (3) Changes in the structure of your facility or premises from events causing damage, such as a fire, or from remodeling;

~~((+))~~ (4) Additional staff~~((, employees, interns, contractors))~~ or volunteers~~((,))~~ who might have unsupervised contact with the children in care;

~~((+))~~ (5) Significant changes in the physical condition of you ~~((or))~~, your staff, or volunteers affecting the ability to provide care in your facility;

~~((+))~~ (6) Staff or volunteer arrests or convictions of which you are aware that occur between the date of your license and the expiration date of your license;

~~((+))~~ (7) Any staff changes including the executive director, program manager, or master's level consultants;

~~((+))~~ (8) Death, retirement, or incapacity of the person who holds the license;

~~((+))~~ (9) Changes in the name of your licensed corporation, or the name by which your facility is commonly known and/or your articles of incorporation and bylaws.

WSR 20-02-049

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed December 23, 2019, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-24-016.

Title of Rule and Other Identifying Information: Chapter 246-853 WAC, Osteopathic physicians and surgeons, the board of osteopathic medicine and surgery (board) is considering rule amendments to several sections to ensure that the rules are clear, up-to-date, and align with best practices. The board will also consider adding a new section describing the

process for issuing expedited temporary practice permits for military spouses.

Hearing Location(s): On February 7, 2020, at 9:00 a.m., at the Department of Health, Creekside at Center Point, Suite 310, Room 309, 20425 72nd Avenue South, Kent, WA 98032.

Date of Intended Adoption: February 7, 2020.

Submit Written Comments to: Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by January 31, 2020.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, fax 360-236-2901, TTY 360-833-6388 or 711, email osteopathic@doh.wa.gov, by January 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing rule amendments to chapter 246-853 WAC. The proposed amendments include implementing a process for issuing expedited temporary practice permits for military spouses. RCW 18.340.020 requires health profession disciplining authorities to establish procedures to expedite temporary practice permits for military spouses, or a registered domestic partner of a military service member.

The board's proposed amendments also include clarification of continuing education opportunities, updating and clarifying HIV/AIDS education standards, clarifying the use of public forms of advertising, updating reentry to practice requirements, and minor updates regarding use of laser, light radiofrequency, and plasma devices.

Reasons Supporting Proposal: RCW 43.70.041, passed by the legislature in 2013, requires government agencies and regulatory entities to perform periodic rule review. This followed an earlier executive order (EO 06-02) for regulatory improvement - Improve, simplify, and assist. The objective of the statute and EO is to simplify and streamline the process for permitting, licensing, and regulation. The board completed review of chapter 246-853 WAC in 2017 and identified several sections of rule that may need updates and amendments. These proposed revisions include amendments to the continuing education, advertising, mandatory reporting, HIV/AIDS training, and reentry to practice requirements, as well as the use of lasers by physicians. The proposed amendments streamline language, repeal outdated and redundant rule sections, and ensures the rules are clear for osteopathic physicians and surgeons.

Chapter 18.340 RCW directs disciplinary authorities to establish a temporary permit for military spouses. RCW 1.12.080 requires that the interpretation of the term "spouse" be applied equally to state-registered domestic partners. Military spouses and state-registered domestic partners who hold out-of-state credentials may receive temporary practice permits while completing any specific additional requirements in Washington that are not related to the profession's training or practice standard. The proposed rule adopts the secretary rule, WAC 246-12-051, by reference for qualified applicants who hold out-of-state credentials as osteopathic physicians and surgeons to obtain a temporary permit. By adopting the secretary rules, the board ensures consistent standards with

other health care professions for temporary permits for military spouses and state-registered domestic partners.

Statutory Authority for Adoption: RCW 18.57.005, 18.130.050, and 18.340.020.

Statute Being Implemented: RCW 18.340.020 and 18.57.050.

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

Name of Proponent: Board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax 360-236-2901, TTY 360-833-6388 or 711, email osteopathic@doh.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Proposed new WAC 246-853-136 is exempted under RCW 34.05.310 (4)(c). Proposed changes in WAC 246-853-070, 246-853-080, 246-853-100, 246-853-140, 246-853-230, and 246-853-630 are considered exempt under subsection (4)(d) as these changes only make clarifying changes to the rule to make them clearer for licensees.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose costs on businesses. The proposed rule may impose costs on individual providers.

December 23, 2019
Renee Fullerton, MPH
Executive Director

AMENDATORY SECTION (Amending WSR 90-24-055, filed 12/3/90, effective 1/31/91)

WAC 246-853-070 Categories of creditable continuing professional education activities. For those licensed osteopathic physicians unable to satisfy the one hundred fifty

hour continuing professional education requirement by meeting the certification options in WAC 246-853-080(2), the following are categories of creditable continuing medical education activities approved by the board. The credits must be earned in the thirty-six month period preceding application for renewal of licensure. One clock hour shall equal one credit hour ((for the purpose of satisfying the one hundred fifty hour continuing professional education requirement)).

(1) Category 1 - A minimum of sixty credit hours of the total one hundred fifty hour requirements are mandatory under this general category.

(a) Category 1-A - Formal educational programs sponsored by nationally recognized osteopathic or medical institutions, organizations and their affiliates.

Examples of recognized sponsors include, but are not limited to:

(i) Formal medical associations including, but not limited to, the American Osteopathic Association (AOA) or the American Medical Association (AMA);

(ii) Accredited osteopathic or medical schools and hospitals((-);

(iii) Osteopathic or medical societies and specialty practice organizations((-);

(iv) Continuing medical education institutes((-);

(v) Governmental health agencies and institutions((-);

(vi) Residencies, fellowships and preceptorships; or

(vii) Interactive online courses and materials that assign a specific number of credits or contact hours and are provided by nationally recognized osteopathic and medical institutions, organizations, and their affiliates.

(b) Category 1-B - Preparation in publishable form of an original scientific paper (defined as one which reflects a search of the literature, appends a bibliography, and contains original data gathered by the author) and initial presentation before a postdoctoral audience qualified to critique the author's statements. Maximum allowable credit for the initial presentation will be ten credit hours per scientific paper. A copy of the paper in publishable form shall be submitted to the board. Publication of the above paper or another paper in a professional journal approved by the board may receive credits as approved by the board up to a maximum of fifteen credit hours per scientific paper.

(c) Category 1-C - Serving as a teacher, lecturer, preceptor or moderator-participant in any formal educational program. Such teaching would include classes in colleges of osteopathic medicine and medical colleges and lecturing to hospital interns, residents and staff. Total credits allowed under Category 1-C are forty-five per three-year period, with one hour's credit for each hour of actual instruction.

~~((A))~~ (2)(a) Category 2-A - Home study - The board strongly believes that participation in formal professional education programs is essential in fulfilling a physician's total education needs. The board is also concerned that the content and educational quality of many unsolicited home study materials are not subject to impartial professional review and evaluation. It is the individual physician's responsibility to select home study materials that will be of actual benefit. For these reasons, the board has limited the number of credits which may be granted for home study, and has adopted strict guidelines in granting these credits.

(i) Reading - Credits may be granted for reading the Journal of the AOA or AMA, and other selected journals published by recognized osteopathic organizations. One-half credit per issue is granted for reading alone. An additional one-half credit per issue is granted if the quiz found in the AOA Journal is completed and returned to the division of continuing medical education. Credit for all other reading is limited to recognized scientific journals listed in *Index Medicus*. One-half credit per issue is granted for reading these recognized journals.

(ii) Listening - Credits may be granted for listening to programs distributed by the AOA audio-educational service. Other ~~((audio-tape))~~ audio programs sponsored by nationally recognized organizations and companies are also eligible for credit. One-half credit per ~~((tape))~~ audio program may be granted. An additional one-half credit may be granted for each AOA audio-educational service program if the quiz card for the tape found in the AOA Journal is completed and returned.

(iii) Other home study courses - Subject-oriented and refresher home study courses and programs sponsored by recognized professional organizations are eligible for credit. The number of credit hours indicated by the sponsor will be accepted by the board.

(b) A maximum of ninety credit hours per three-year period may be granted for all home study activities under Category 2-A.

~~((B))~~ (c) Category 2-B - Preparation and personal presentation of a scientific exhibit at a county, regional, state or national professional meeting. Total credits allowed under Category 2-B are thirty per three-year period, with ten credits granted for each new and different scientific exhibit. Appropriate documentation must be submitted with the request for credit.

~~((C))~~ (d) Category 2-C - All other programs and modalities of continuing professional education. Included under this category are informal educational activities such as observation at medical centers; programs dealing with experimental and investigative areas of medical practice, and programs conducted by nonrecognized sponsors.

(e) Total credits allowed under Category 2-C are thirty hours per three-year period.

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

WAC 246-853-080 Continuing education. (1) Licensed osteopathic physicians and surgeons must complete one hundred fifty hours of creditable continuing medical education (CME) every three years ~~((as required))~~ in accordance with chapter 246-12 WAC, Part 7.

(2) ~~((Certification of compliance with the requirement for continuing medical education of the American Osteopathic Association, or receipt of the AMA physicians recognition award or a current certification of continuing medical education from medical practice academies shall be deemed sufficient to satisfy the requirements of these regulations.~~

(3) ~~Original certification or recertification within the previous six years by a specialty board will be considered as evidence of equivalent compliance with these continuing pro-~~

professional education requirements.) To satisfy the CME requirements in subsection (1) of this section, a licensed osteopathic physician and surgeon may:

(a) Certify or recertify with the American Board of Osteopathic Medical Specialties (ABOMS) or the American Board of Medical Specialties (ABMS) within the last six years;

(b) Hold a current American Osteopathic Association (AOA) certificate of excellence in CME; or

(c) Hold a current American Medical Association (AMA) physician's recognition award (PRA).

AMENDATORY SECTION (Amending WSR 91-20-120, filed 9/30/91, effective 10/31/91)

WAC 246-853-100 Prohibited publicity and advertising. An osteopathic physician shall not use or allow to be used any form of public communications or advertising connected with his or her profession or in his or her professional capacity as an osteopathic physician which:

(1) Is false, fraudulent, deceptive or misleading;
 (2) Uses testimonials that are false, fraudulent, deceptive, unethical, misleading, or are compensated for in any form;

(3) Guarantees any treatment or result;
 (4) Makes claims of professional superiority;
 (5) States or includes prices for professional services except as provided for in WAC 246-853-110;

(6) Fails to identify the physician as an osteopathic physician as described in RCW 18.57.140;

(7) Otherwise exceeds the limits of WAC 246-853-110.

NEW SECTION

WAC 246-853-136 Temporary practice permit—Military spouse eligibility and issuance. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for osteopathic physicians and surgeons. The board adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

AMENDATORY SECTION (Amending WSR 90-24-055, filed 12/3/90, effective 1/31/91)

WAC 246-853-140 Mandatory reporting. ~~(((1)) All reports required by these regulations shall be submitted to the board as soon as possible, but no later than sixty days after a determination is made.~~

~~(2) A report should contain the following information if known:~~

~~(a) The name, address, and telephone number of the person making the report.~~

~~(b) The name, address, and telephone number of the physician or physician's assistant being reported.~~

~~(c) The case number of any patient whose treatment is a subject of the report.~~

~~(d) A brief description or summary of the facts which give rise to the issuance of the report, including dates of occurrences.~~

~~(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.~~

~~(f) Any further information which would aid in the evaluation of the report.) Osteopathic physician and surgeon licensees must comply with the uniform mandatory reporting rules found in WAC 246-16-200 through 246-16-270.~~

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

WAC 246-853-230 HIV/AIDS education and training. Applicants must complete a one-time, seven clock hour ~~((s- of))~~ course in HIV/AIDS education ~~((as required))~~ in accordance with chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 15-16-085, filed 7/31/15, effective 8/31/15)

WAC 246-853-245 Reentry to practice requirements. ~~(1) An osteopathic physician and surgeon who has not ((been in active practice))~~ actively practiced medicine for a period of at least ~~((five))~~ three years in any jurisdiction in the United States must fulfill one of the following:

~~(((1)))~~ (a) Successfully pass a board approved competency evaluation;

~~(((2)))~~ (b) Successfully pass a board approved exam;

~~(((3)))~~ (c) Successfully complete a board approved retraining program arranged by the osteopathic physician; or

~~(((4)))~~ (d) Successfully complete a board approved reentry to practice or monitoring program.

(2) For the purposes of this section, a person is considered to have actively practiced medicine if they can demonstrate that they hold an active, unrestricted license as an osteopathic physician and surgeon in the United States.

AMENDATORY SECTION (Amending WSR 15-16-085, filed 7/31/15, effective 8/31/15)

WAC 246-853-630 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue, or use high frequency ultrasound or other technologies to deliver energy to or through the skin; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities, and other physical conditions in human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician must be appropriately trained in the physics, safety, and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) An osteopathic physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a non-physician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the osteopathic physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the osteopathic physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The osteopathic physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include the following:

(a) A mechanism to identify complications and problematic effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and osteopathic physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of the treating professionals.

OSTEOPATHIC PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) An osteopathic physician who meets the requirements in subsections (1) through (9) of this section may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allows the use of a prescriptive LLRP medical device, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of osteopathic medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye;

(d) An osteopathic physician has a written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual osteopathic physician authorized to use the LLRP device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made((;)).

(e) The supervised professional has appropriate training including, but not limited to:

(i) Application techniques of each LLRP device;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for such procedures;

(iv) Preprocedural and postprocedural care;

(v) Potential complications; and

(vi) Infectious disease control involved with each treatment((;)).

(f) The delegating osteopathic physician ensures that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating osteopathic physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised professional may complete the initial treatment if the physician is called away to attend to an emergency;

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating osteopathic physician provided there is a local back-up physician, licensed under chapter 18.57 or 18.71 RCW, who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. In case of an emergency the delegating osteopathic physician or a back-up physician shall be reachable by phone and able to see the patient within sixty minutes.

(11) The use of, or the delegation of the use of, an LLRP device by an osteopathic physician assistant is covered by WAC 246-854-220.

~~((12) This section only applies to the use of LLRP devices by osteopathic physicians and osteopathic physician assistants.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-853-130 General provisions for mandatory reporting rules.
- WAC 246-853-150 Health care institutions.
- WAC 246-853-160 Medical associations or societies.
- WAC 246-853-170 Health care service contractors and disability insurance carriers.
- WAC 246-853-180 Courts.
- WAC 246-853-190 State and federal agencies.
- WAC 246-853-200 Professional review organizations.
- WAC 246-853-400 Brief adjudicative proceedings—Denials based on failure to meet education, experience, or examination prerequisites for licensure.

WSR 20-02-052
PROPOSED RULES
DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed December 23, 2019, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-01-010.

Title of Rule and Other Identifying Information: WAC 246-854-076 and 246-854-086, osteopathic physician assistants, the board of osteopathic medicine and surgery is proposing adding two new sections of rule to this chapter to establish return to practice requirements for osteopathic physician assistants (WAC 246-854-086) and implement a process for issuing an expedited temporary practice permit for military spouses (WAC 246-854-076).

Hearing Location(s): On February 7, 2020, at 9:00 a.m., at the Department of Health, Creekside at Center Pointe, Suite 310, Room 309, 20425 72nd Ave South, Kent, WA 98032.

Date of Intended Adoption: February 7, 2020.

Submit Written Comments to: Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, website <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by January 31, 2020.

Assistance for Persons with Disabilities: Contact Susan Gragg, phone 360-236-4941, fax 360-236-2901, TTY 360-833-6388 or 711, email osteopathic@doh.wa.gov, by January 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of osteopathic medicine and surgery (board) is proposing to add two new sections of rule to chapter 246-854 WAC. Proposed new WAC 246-854-076 implements a process for issuing expedited temporary practice permits for osteopathic physician assistants (OPAs). The proposed new section adopts the secretary rule, WAC 246-12-051, by reference for qualified applicants who hold out-of-state credentials as OPAs to obtain a temporary permit. By adopting the secretary rules,

the board ensures consistent standards with other health care professions.

Proposed new WAC 246-854-086 establishes reentry to practice requirements for OPAs. Establishing return to practice requirements makes sure that OPAs who have been out of practice for more than three years are properly qualified to resume caring for patients.

Reasons Supporting Proposal: Chapter 18.340 RCW directs disciplinary authorities to establish a temporary permit for military spouses. RCW 1.12.080 requires that the interpretation of the term "spouse" be applied equally to state-registered domestic partners. Military spouses and state-registered domestic partners who hold out-of-state credentials may receive temporary practice permits while completing any specific additional requirements in Washington that are not related to the profession's training or practice standard. The proposed rule adopts the secretary rule, WAC 246-12-051, by reference for qualified applicants who hold out-of-state credentials as OPAs to obtain a temporary permit. By adopting the secretary rules, the board ensures consistent standards with other health care professions for temporary permits for military spouses and state-registered domestic partners.

The board is proposing to establish reentry to practice requirements for OPAs that mirror the requirements for osteopathic physicians, which includes the amount of time the OPA can be out of practice before having to demonstrate competency prior to being relicensed in this state. The proposed amendments also specify how to demonstrate competency. Chapter 18.57A RCW describes the regulatory framework for the practice of osteopathic medicine and surgery by OPAs and provides that the overall goal of the board is to protect and promote public health and safety, with the objective of ensuring that only individuals who meet and maintain minimum standards of competence and conduct may obtain a license to provide osteopathic medical services to the public. This mandate of the board ensures that OPAs working in Washington state are qualified and provide safe care. Establishing return to practice requirements makes sure that OPAs who have been out of practice for more than three years are properly qualified to resume caring for patients. The goals and objectives of the statute are met by providing clearly written and appropriate rules in the area of reentry to practice.

Statutory Authority for Adoption: RCW 18.57A.020 and 18.340.020.

Statute Being Implemented: RCW 18.340.020 and 18.130.050(14).

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

Name of Proponent: Board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4941.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4941, fax

360-236-2901, TTY 360-833-6388 or 711, email osteopathic@doh.wa.gov.

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

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

Explanation of exemptions: This exemption applies to the proposed new WAC 246-854-076.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule WAC 246-854-086 does not impose costs on businesses. The proposed rule may impose costs on individual providers.

December 23, 2019
 Renee Fullerton, MPH
 Executive Director

NEW SECTION

WAC 246-854-076 Temporary practice permit—Military spouse eligibility and issuance. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for osteopathic physician assistants. The board adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

NEW SECTION

WAC 246-854-086 Reentry to practice requirements.

(1) An osteopathic physician assistant who has not actively practiced medicine for a period of at least three years in any jurisdiction in the United States must fulfill one of the following:

- (a) Successfully pass a board approved competency evaluation;
- (b) Successfully pass a board approved exam;
- (c) Successfully complete a board approved retraining program arranged by the osteopathic physician assistant; or

(d) Successfully complete a board approved reentry to practice or monitoring program.

(2) For the purposes of this section, a person is considered to have actively practiced medicine if they can demonstrate that they hold an active, unrestricted license as a physician assistant in the United States.

WSR 20-02-057
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed December 24, 2019, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-06-073.

Title of Rule and Other Identifying Information: Chapter 51-51 WAC, Amendments of the 2018 International Residential Code.

Hearing Location(s): On March 13, 2020, at 10:00 a.m., at the Department of Enterprise Services, Presentation Room (1213), 1500 Jefferson Street, Olympia, WA 98504.

Date of Intended Adoption: April 10, 2020.

Submit Written Comments to: Doug Orth, 1500 Jefferson Street S.E., Olympia, WA 98504, email SBCC@des.wa.gov, by March 6, 2020.

Assistance for Persons with Disabilities: Contact Carrie Toebe, phone 360-407-9255, email carrie.toebbe@des.wa.gov, by March 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address proposed state amendments to the 2018 edition of the International Residential Code (IRC), published by the International Code Council, as adopted by the Washington state building code council (SBCC). The rules will provide increased clarity and life safety measures for building construction in Washington state.

Summary of Proposed Changes:

2018 IRC
 Amendments to WAC 51-51*

	WAC	Section	Changes in 2018	Discussion
1	51-51-020	Definitions	Deleted definition for Air-Impermeable Insulation	
2			Defined Balanced Whole House Ventilation	New
3			Defined Battery System, Stationary Storage	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.

	WAC	Section	Changes in 2018	Discussion
4			Defined Building, Existing	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
5			Defined Building	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
6			Defined Distributed Whole House Ventilation	New
7			Modified the definition for Dwelling Unit	Clerical - This was an approved change but is included here because this change had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
8			Defined Egress Roof Access Window	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
9			Defined Energy Storage Systems (ESS)	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
10			Defined Floor Area	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
11			Defined Landing Platform	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
12			Defined Local Exhaust	New
13			Defined Lot	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.

	WAC	Section	Changes in 2018	Discussion
14			Defined Lot Line	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
15			Defined Sleeping Loft	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
16			Defined Townhouse	Modification addressing exposure to yard or public way.
17			Defined Townhouse Unit	Clerical - This was an approved definition but is included here because this definition had an effective date of July 1, 2020, and only one group of modifications to a WAC can have the same effective date.
18	51-51-1505	1505 Mechanical ventilation	Amendment renumbered from M1505.1 to M1503.2.1	Clerical
19		M1505.4.1 System design	Addresses ERV/HRVs. Requires ducted outdoor air	Modified model code language
20		M1505.4.1.1 Whole house system component requirements	Addresses efficiency and sound rating requirements with exceptions	New text
21		M1505.4.1.2 Exhaust fans	Addresses requirements including ducting directly to the outside	New text
22		M1505.4.1.3 Supply fans.	Addresses requirements	New text
23		M1505.4.1.4 Balanced whole house ventilation system	Addresses requirements	New text
24		M1505.4.1.5 Furnace integrated supply	Prohibits space heating and/or cooling air handler fans for outdoor air supply distribution with an exception	New text
25		M1505.4.1.6 Testing	Addresses requirements. Allows building official to require testing by a third party	New text
26		M1505.4.1.7 Certificate	Requires a posted permanent compliance certificate	New text
27		M1505.4.2 System controls	Addresses control requirements	Modified model code language
28		M1505.4.3 Mechanical ventilation rate	Gives a minimum CFM per dwelling unit	Modified model code language

	WAC	Section	Changes in 2018	Discussion
29		Table M1505.4.3(1) Whole House mechanical ventila- tion airflow rate	Modifies ranges and airflow requirements	Modified model code table
30		M1505.4.3.1 Ventila- tion quality adjust- ment	Addresses minimum whole house ventilation rate formula adjust- ments	New text
31		Table M1505.4.3(2) System coefficient	Addresses balanced and not bal- anced	New table
32		M1505.4.3.2 Intermit- tent off operation	Controls must provide for inter- mittent off operation	New text
33		Table M1505.4.3(3) Intermittent off whole house mechanical ventilation rate factors	Modifies segments	Modified model code table
34		M1505.4.4 Local exhaust rates	Clarifies reference	Clarification
35		M1505.4.4.1 Local exhaust	Addresses bathrooms, toilet rooms and kitchens	Modified model code language
36		M1505.4.4.2 Whole house exhaust con- trols	Addresses combining local exhaust with whole house ventila- tion system	New text
37		Table M1505.4.4(1) Minimum local exhaust rates	Addresses bathrooms, toilet rooms and kitchens	Modified model code language
38		M1505.4.4.3 Local exhaust fans	Addresses requirements	New text
39		Table M1505.4.4(2) Prescriptive exhaust duct sizing	Addresses exhaust duct sizing	New table
40	51-51-1507	Section - Mechanical ventilation	Reserved	Section renumbered in model code Moved to 1505.
41		M1507.1 General	Deleted	See Section 1505
42		M1507.2 Recircula- tion of air	Deleted	See Section 1505
43		M1507.3 Whole house mechanical ventilation system	Deleted	See Section 1505
44		M1507.4 Local exhaust	Moved to M1505.5	Move
45		Table M1507.4 Mini- mum required local exhaust rates	Moved to Table M1505.5	Moved
46		M1507.4.1 Local exhaust fans	Moved to M1505.5.1	Moved
47		M1507.4.2 Local exhaust controls	Moved to M1505.5.2	Moved
48		P2904.1.1 Required sprinkler locations	Addresses Uninhabitable attics	Changes "attic" to "uninhabitable attics."

Reasons Supporting Proposal: To coordinate sections of the IRC with adopted amendments to the International Mechanical Code to avoid conflicting regulations as well as to make additional modifications to coordinate adopted amendments in the IRC.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: RCW 19.27.031, 19.27.074.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; and Enforcement: Local jurisdictions having authority.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

The proposed rule does impose more-than-minor costs on businesses. There are costs imposed by the proposed rules but the costs do not fall disproportionately on small businesses. These rules will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rules do not affect employment, reporting or record keeping.

Small Business Economic Impact Statement (RCW 19.85.040)

Description: SBCC is filing a proposed rule to adopt the updated 2018 edition of the IRC (chapter 51-51 WAC). Since 1985, the SBCC has been responsible to update to new editions of the building code per RCW 19.27.074. The IRC is updated every three years by the International Code Council (ICC). The code development process conducted by the model code organization is open to all interest groups within the design and construction industry and from governmental organizations. See www.iccsafe.org for more information about the model code development process.

The administrative compliance requirements are under the authority of the local government. RCW 19.27.050. Compliance activities including permit issuance, plan review and approval, and inspections occur at the local level. Requirements for construction document submittal and other reporting requirements are determined by the local jurisdiction and are consistent with previously established policies. The proposed amendments to chapter 51-51 WAC include specific technical requirements for building construction to be consistent with national standards.

Professional Services: Washington has had a statewide building code in effect since 1974. The local enforcement authority having jurisdiction administers the codes through the building and/or fire departments. Administrative procedures for state building code compliance are established and will not be changed by the adoption of the update to the current building codes. Small businesses will employ the same types of professional services for the design and construction

of buildings and systems to comply with the state building code.

The proposed rule updates the state building code and does not require additional equipment, supplies, labor or other services. Services needed to comply with the building code are existing within the construction industry as required by the local authority having jurisdiction.

Costs of Compliance for Businesses: The cost of compliance incurred by Washington businesses includes training and educational materials. The IRC 2018 model code costs \$99 + tax, shipping and handling. This publication is also available online at <http://codes.iccsafe.org/I-Codes.html>. The ICC chapters offer training for continuing education credits to architects, engineers and building inspectors for \$285 (in 2016).

The building code technical advisory group (TAG) determined there is a cost for compliance on businesses for the following proposed state amendments.

1. All proposed changes to section M1505 will result in an estimated \$1.20/square foot (\$950/dwelling unit - multi-family only) with an anticipated full system payback in 11.2 years.

Loss of Sales or Revenue: Businesses with new products or updated test or design standards are recognized in the updated building code.

The update will result in some cost outlay for some small businesses for specific building projects, for a transition period. Other small businesses would see an increase in revenue. The amendments to all the building codes affect over twenty-five thousand (in 2012) small businesses in the state, where construction activity occurs. The primary intent of these amendments are to improve energy efficiency [efficiency] in buildings and provide consistency and fairness across the state, for a predictable business environment. The amendments should result in enhanced value in buildings.

Cost of Compliance for Small Businesses (Determine whether the proposed rule will have a disproportionate cost impact on small businesses, compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses.): The majority of businesses affected by the updates to the building codes are small businesses; over ninety-five percent of those listed in the construction and related industries have under fifty employees. The costs per employee are comparable between the largest businesses and the majority of small businesses. The cost to comply with the updated codes is not a disproportionate impact on small business. Where the council found the cost of compliance for small businesses to be disproportionate, the proposed rule mitigates the cost. The proposed rules include a definition of small business and provide exceptions for compliance with the updated rule.

Reducing the Costs of the Rule on Small Businesses: The SBCC conducted a detailed review process, including participation at the national code development hearings, to document significant economic impacts of the proposed code amendments.

Small Businesses Involved in the Development of the Rule: For the IRC, the SBCC conducted ten open public meetings of the building code technical advisory group, available via telephone conference bridge and over the inter

net, and allowed comment on every item on every agenda. For the IRC TAG the SBCC appointed six representatives of all segments of the business and construction community to serve on the technical advisory groups.

List of Industries: Below is a list of industries required to comply with the building code:

North American Industry Classification System (NAICS) Code	NAICS Code Definition	Number of Establishments in Washington State	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
236115	New single-family housing construction (except for-sale builders)	1261	\$186,272,000	---	\$147,718	---	\$1,477	---
236116	New multifamily housing construction (except for-sale builders)	45	\$54,622,000	---	\$1,213,822	---	\$12,138	---
236118	Residential remodelers	2777	\$318,180,000	\$1,536,217,000	\$114,577	\$553,193	\$1,146	\$1,660
236210	Industrial building construction	53(s)	\$99,790,000	---	---	---	---	---
236220	Commercial and institutional building construction	862	\$772,473,000	\$6,925,925,000	\$896,140	\$8,034,716	\$8,961	\$24,104
238110	Poured concrete foundation and structure contractors	511	\$144,643,000	\$479,256,000	\$283,059	\$937,879	\$2,831	\$2,814
238120	Structural steel and precast concrete contractors	68	\$93,454,000	\$336,100,000	\$1,374,324	\$4,942,647	\$13,743	\$14,828
238130	Framing contractors	417	\$79,196,000	\$279,226,000	\$189,918	\$669,607	\$1,899	\$2,009
238140	Masonry contractors	293	\$74,067,000	\$215,274,000	\$252,788	\$734,724	\$2,528	\$2,204
238150	Glass and glazing contractors	141	\$67,626,000	\$237,985,000	\$479,617	\$1,687,837	\$4,796	\$5,064
238160	Roofing contractors	537	\$179,942,000	\$660,911,000	\$335,088	\$1,230,747	\$3,351	\$3,692
238170	Siding contractors	327	\$58,557,000	\$286,471,000	\$179,073	\$876,058	\$1,791	\$2,628
238190	Other foundation, structure, and building exterior contractors	113	\$37,585,000	\$123,771,000	\$332,611	\$1,095,319	\$3,326	\$3,286
238210	Electrical contractors and other wiring installation contractors	1847	\$940,854,000	\$3,026,762,000	\$509,396	\$1,638,745	\$5,094	\$4,916
238220	Plumbing, heating, and air-conditioning contractors	1664	\$959,976,000	\$3,169,548,000	\$576,909	\$1,904,776	\$5,769	\$5,714
238290	Other building equipment contractors	81	\$117,696,000	---	\$1,453,037	---	\$14,530	---
238310	Drywall and insulation contractors	653	\$282,929,000	\$723,945,000	\$433,276	\$1,108,644	\$4,333	\$3,325
238990	All other specialty trade contractors	547	\$182,710,000	\$573,308,000	\$334,022	\$1,048,095	\$3,340	\$3,144
321213	Engineered wood member (except truss) manufacturing	11	\$14,216,000	\$79,051,000	\$1,292,364	\$7,186,455	\$12,924	\$21,559
321214	Truss manufacturing	22	---	---	---	---	---	---
321219	Reconstituted wood product manufacturing	3	---	---	---	---	---	---
321911	Wood window and door manufacturing	39	\$37,814,000	\$145,137,000	\$969,590	\$3,721,462	\$9,696	\$11,164

North American Industry Classification System (NAICS) Code	NAICS Code Definition	Number of Establishments in Washington State	TOTAL Annual Payroll	TOTAL Annual Revenue	AVG Annual Payroll	AVG Annual Revenue	1% of Avg Annual Payroll	0.3% of Avg Annual Revenue
321992	Prefabricated wood building manufacturing	18	\$6,891,000	---	\$382,833	---	\$382,833	---
327310	Cement manufacturing	7	---	---	---	---	---	---
327320	Ready-mix concrete manufacturing	93	\$74,457,000	---	\$800,613	---	\$8,006	---
327331	Concrete block and brick manufacturing	18	\$11,218,000	---	\$623,222	---	\$6,232	---
332311	Prefabricated metal building and component manufacturing	9	\$3,564,000	---	\$396,000	---	\$3,960	---
332312	Fabricated structural metal manufacturing	94	\$125,755,000	---	\$1,337,819	---	\$13,378	---
332321	Metal window and door manufacturing	16	\$23,776,000	---	\$1,486,000	---	\$14,860	---
332322	Sheet metal work manufacturing	122	\$122,956,000	\$573,443,000	\$1,007,836	\$4,700,352	\$10,078	\$14,101
335121	Residential electric lighting fixture manufacturing	9	---	---	---	---	---	---
335122	Commercial, industrial, and institutional electric lighting fixture manufacturing	8	\$2,625,000	---	\$328,125	---	\$3,281	---
335129	Other lighting equipment manufacturing	4	---	---	---	---	---	---
423720	Plumbing and heating equipment and supplies (hydronics) merchant wholesalers	168	\$82,225,000	\$897,748,000	\$489,435	\$5,343,738	\$4,894	\$16,031
541310	Architectural services	635	\$326,798,000	\$921,033,000	\$514,643	\$1,450,446	\$5,146	\$4,351
541330	Engineering services	1599	\$1,758,825,000	\$3,946,553,000	\$1,099,953	\$2,468,138	\$11,000	\$7,404
541350	Building inspection services	154	\$9,724,000	\$28,297,000	\$63,143	\$183,747	\$631	\$551
561621	Security systems services (except locksmiths)	109	\$86,072,000	\$233,388,000	\$789,651	\$2,141,174	\$7,897	\$6,424

Note: Data is blank in some fields to protect data source.
 Data Source: Economic Census of the United States

98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

Estimate of the Number of Jobs That Will Be Created or Lost: The adoption of these amendments is not expected to significantly impact the number of jobs in the construction industry. These rules are likely to be job neutral overall, i.e., they will not result in any job gains or losses. The scheduled effective date of amendments is July 1, 2020. Building permits issued prior to that date will be vested under the 2015 building code. Permits issued for projects under the 2018 code edition will generally start with the 2021 construction season.

A copy of the statement may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA

December 24, 2019
 Doug Orth
 Council Chair

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not

related by blood or marriage to the person or persons providing the services.

~~((**AIR IMPERMEABLE INSULATION.** An insulation having an air permeance equal to or less than 0.02 L/s·m² at 75 Pa pressure differential tested in accordance with ASTM E2178 or ASTM E283.))~~

ATTIC, HABITABLE. A conditioned area complying with all of the following requirements:

1. The occupiable floor area is at least 70 square feet (6.5 m²), in accordance with Section R304.
2. The occupiable floor area has a ceiling height in accordance with Section R305.
3. The occupiable space is entirely enclosed by the roof assembly above, knee walls (if applicable) on the sides, and the floor-ceiling assembly below.

A habitable attic is not considered a story.

BALANCED WHOLE HOUSE VENTILATION. Balanced whole house ventilation is defined as any combination of concurrently operating residential unit mechanical exhaust and mechanical supply whereby the total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate are exempt from the balanced airflow calculation.

BATTERY SYSTEM, STATIONARY STORAGE. This definition is not adopted.

BUILDING, EXISTING. A building or structure erected prior to the adoption of this code, or one that has passed a final inspection.

BUILDING. Any one- or two-family dwelling or townhouse, or portion thereof used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CONDITIONED SPACE. An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

DISTRIBUTED WHOLE HOUSE VENTILATION. A whole house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (living room, den, office,

interior adjoining spaces, or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.
2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m²).

~~((3. One accessory dwelling unit, which need not be considered a separated dwelling unit, provided:~~

a. The accessory dwelling unit is constructed within an existing dwelling unit.

b. Either the accessory dwelling unit or primary dwelling unit is owner-occupied.

e. All required smoke alarms in the accessory dwelling unit and the primary dwelling unit are interconnected in such a manner that the actuation of one alarm will activate all alarms in both the primary dwelling unit and the accessory dwelling unit.))

EGRESS ROOF ACCESS WINDOW. A skylight or roof window designed and installed to satisfy the emergency escape and rescue opening requirements of Section R310.2.

ENERGY STORAGE SYSTEMS (ESS). One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time.

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior lot line; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the lot.

The distance shall be measured at a right angle from the wall.

FLOOR AREA. The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a sleeping loft.

LOCAL EXHAUST. An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

LOT. A measured portion or parcel of land considered as a unit having fixed boundaries.

LOT LINE. The line which bounds a plot of ground described as a lot in the title to the property.

MEZZANINE, LOFT. An intermediate level or levels between the floor and ceiling of any story.

SALT WATER COASTAL AREA. Those areas designated as salt water coastal areas by the local jurisdiction.

SLEEPING LOFT. A sleeping space on a floor level located more than 30 inches (726 mm) above the main floor and open to the main floor one or more sides with a ceiling height of less than 6 feet 8 inches (2032 mm).

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

TOWNHOUSE. A building that contains three or more attached *townhouse units* in which each unit extends from foundation to roof. Each single-family dwelling unit shall have a *yard* or public way on not less than two sides that extends at least 50 percent of the length of each of these two sides.

TOWNHOUSE UNIT. A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a *yard* or public way on not less than two sides that extends at least 50 percent of the length of each of these two sides.

WHOLE HOUSE VENTILATION SYSTEM. A mechanical ventilation system, including fans, controls, and ducts, which replaces, by direct ((or indirect)) means, air from the habitable rooms with outdoor air.

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-1505 Section M1505—((Overhead exhaust hoods)) Mechanical ventilation.

((**M1505.1 General.** Domestic open top broiler units shall have a metal exhaust hood, having a minimum thickness of 0.0157 inch (0.3950 mm) (No. 28 gage) with 1/4 inch (6.4 mm) clearance between the hood and the underside of combustible material or cabinets. A clearance of not less than 24 inches (610 mm) shall be maintained between the cooking surface and the combustible material or cabinet. The hood shall be not less than the width of the broiler unit, extend over the entire unit, and when located inside the building envelope, shall discharge to the outdoors and be equipped with a backdraft damper or other means to control infiltration/exfiltration when not in operation. Broiler units incorporating an integral exhaust system, and *listed* and *labeled* for use without an exhaust hood, or broiler units permanently installed outside the building envelope and having the cooking surface at least 5'0" below a 1-hour fire resistance rated ceiling, need not have an exhaust hood.)) **M1505.4 Whole-house mechanical ventilation system.** Each dwelling unit shall be equipped with a ventilation system. The whole-house mechanical ventilation systems shall be designed in accordance with Sections M1505.4.1 through M1505.4.4.

M1505.4.1 System design. The whole house ventilation system shall consist of one or more supply fans, one or more exhaust fans, or an ERV/HRV with integral fans, associated

ducts and controls. Whole-house mechanical ventilation system with supply and exhaust fans per Sections M1505.4.1.2, M1505.4.1.3, M1505.4.1.4, and M1505.4.1.5. Local exhaust fans are permitted to serve as part of the whole house ventilation system when provided with the proper controls per Section M1505.4.2. The systems shall be designed and installed to supply and exhaust the minimum outdoor airflow rates per Section M1505.4.3 as corrected by the balanced and/or distributed whole house ventilation system coefficients per Section M1504.5.3.1 where applicable. The whole house ventilation system shall operate continuously at the minimum ventilation rate determined per Section M1505.4.2 unless configured with intermittent off controls per Section M1505.4.3.2.

M1505.4.1.1 Whole house system component requirements. Whole house ventilation supply and exhaust fans specified in this section shall have a minimum efficacy as prescribed in the Washington State Energy Code. Design and installation of the system or equipment shall be carried out in accordance with manufacturers' installation instructions. Whole house ventilation fans shall be rated for sound at no less than the minimum airflow rate required by Section M1505.4.3.1. Ventilation fans shall be rated for sound at a maximum of 1.0 sone. This sound rating shall be at a minimum of 0.1 in. w.c. (25 Pa) static pressure in accordance with HVI procedures specified in Sections M1505.4.1.2 and M1505.4.1.3.

EXCEPTION: HVAC air handlers, ERV/HRV units, and remote mounted fans need not meet the sound requirements. To be considered for this exception, a remote mounted fan must be mounted outside the habitable spaces, bathrooms, toilets, and hallways, and there must be at least 4 ft (1 m) of ductwork between the fan and the intake grille.

The whole house supply fan shall provide ducted outdoor ventilation air to each habitable space within the residential unit.

EXCEPTION: Interior joining spaces provided with a 30 cfm whole house transfer fan or a permanent opening with an area of not less than 8 percent of the floor area of the interior adjoining space but not less than 25 square feet do not require ducted outdoor ventilation air to be supplied directly to the space. Whole house transfer fans shall meet the sone rating of Section M1505.4.1.1 and shall have whole house ventilation controls that comply with Section M1505.4.2.

M1505.4.1.2 Exhaust fans. Exhaust fans required shall be ducted directly to the outside. Exhaust air outlets shall be designed to limit the pressure difference to the outside to limiting the outlet free area maximum velocity to 500 ft per min and equipped with backdraft dampers or motorized dampers in accordance with Washington State Energy Code. Exhaust fans shall be tested and rated in accordance with the airflow and sound rating procedures of the Home Ventilating Institute (HVI 915, HVI Loudness Testing and Rating Procedure, HVI 916, HVI Airflow Test Procedure, and HVI 920, HVI Product Performance Certification Procedure). Exhaust fans required in this section may be used to provide local ventilation. Exhaust fans that are designed for intermittent exhaust airflow rates higher than the continuous exhaust airflow rates

in Table 403.8.3 shall be provided with occupancy sensors or humidity sensors to automatically override the fan to the high speed airflow rate. The exhaust fans shall be tested and the testing results shall be submitted and posted in accordance with Section 403.8.6.7.

M1505.4.1.3 Supply fans. Supply fans used in meeting the requirements of this section shall supply outdoor air from intake openings in accordance with IMC Sections 401.4 and 401.5. Intake air openings shall be designed to limit the pressure difference to the outside to limiting the inlet free area maximum velocity to 500 ft per min and when designed for intermittent off operation shall be equipped with motorized dampers in accordance with Washington State Energy Code. Supply fans shall be tested and rated in accordance with the airflow and sound rating procedures of the Home Ventilating Institute (HVI 915, HVI Loudness Testing and Rating Procedure, HVI 916, HVI Airflow Test Procedure, and HVI 920, HVI Product Performance Certification Procedure). Where outdoor air is provided to each habitable dwelling unit or sleeping unit by supply fan systems the outdoor air shall be filtered. The filter shall be accessible for regular maintenance and replacement. The filter shall have a Minimum Efficiency Rating Value (MERV) of at least 8.

M1505.4.1.4 Balanced whole house ventilation system. A balanced whole house ventilation system shall include both supply and exhaust fans. The supply and exhaust fans shall have airflow that is within 10 percent of each other. The tested and balanced total mechanical exhaust airflow rate is within 10 percent or 5 cfm, whichever is greater, of the total mechanical supply airflow rate. The flow rate test results shall be submitted and posted in accordance with Section M1505.4.1.7. The exhaust fan shall meet the requirements of Section M1505.4.1.2. The supply fan shall meet the requirements of Section M1505.4.1.3. For dwelling units required by the Washington State Energy Code to have a balanced system, the system is required to have *balanced whole house ventilation* but is not required to have *distributed whole house ventilation* where the distributed system coefficient from Table 403.8.2 is utilized to correct the whole-house mechanical ventilation rate. Intermittent dryer exhaust, intermittent range hood exhaust, and intermittent toilet room exhaust airflow rates above the residential dwelling or sleeping unit minimum ventilation rate are exempt from the balanced airflow calculation.

M1505.4.1.5 Furnace integrated supply. Systems using space heating and/or cooling air handler fans for outdoor air supply distribution are not permitted.

EXCEPTION: Air handler fans shall have multispeed or variable speed supply airflow control capability with a low speed operation not greater than 25 percent of the rated supply airflow capacity during ventilation only operation. Outdoor air intake openings must meet the provisions of Sections R303.5 and R303.6 and must include a motorized damper that is activated by the whole house ventilation system controller. The motorized damper must be con-

trolled to maintain the outdoor airflow intake airflow within 10 percent of the whole house mechanical exhaust airflow rate. The flow rate for the outdoor air intake must be tested and verified at the minimum ventilation fan speed and the maximum heating or cooling fan speed. The results of the test shall be submitted and posted in accordance with Section M1505.4.1.7.

M1505.4.1.6 Testing. Whole-house mechanical ventilation systems shall be tested, balanced and verified to provide a flow rate not less than the minimum required by Sections M1505.4.3 and M1505.4.4. Testing shall be performed according to the ventilation equipment manufacturer's instructions, or by using a flow hood, flow grid, or other airflow measuring device at the mechanical ventilation fan's inlet terminals, outlet terminals or grilles or in the connected ventilation ducts. Where required by the building official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the building official and be posted in the dwelling unit per Section M1505.4.1.7.

M1505.4.1.7 Certificate. A permanent certificate shall be completed by the mechanical contractor, test and balance contractor or other approved party and posted on a wall in the space where the furnace is located, a utility room, or an approved location inside the building. When located on an electrical panel, the certificate shall not cover or obstruct the visibility of the circuit directory label, service disconnect label, or other required labels. The certificate shall list the flow rate determined from the delivered airflow of the whole-house mechanical ventilation system as installed and the type of mechanical whole house ventilation system used to comply with Section M1505.4.3.1.

M1505.4.2 System controls. The whole-house mechanical ventilation system shall be provided with controls that comply with the following:

1. The whole house ventilation system shall be controlled with manual switches, timers or other means that provide for automatic operation of the ventilation system that are readily accessible by the occupant;

2. Whole-house mechanical ventilation system shall be provided with controls that enable manual override off of the system by the occupant during periods of poor outdoor air quality. Controls shall include permanent text or a symbol indicating their function. Recommended control permanent labeling to include text similar to the following: "Leave on unless outdoor air quality is very poor." Manual controls shall be readily accessible by the occupant;

3. Whole house ventilation systems shall be configured to operate continuously except where intermittent off controls and sizing are provided per Section M1505.4.3.2.

M1505.4.3 Mechanical ventilation rate. The whole-house mechanical ventilation system shall provide outdoor air at a continuous rate as determined in accordance with Table M1505.4.3(1) or Equation 15-1.

Equation 15-1

Ventilation rate in cubic feet per minute = $(0.01 \times \text{total square foot area of house}) + [7.5 \times (\text{number of bedrooms} + 1)]$ but not less than 30 cfm for each dwelling unit

Table M1505.4.3(1)
Whole-House Mechanical Ventilation Airflow Rate

Dwelling Unit Floor Area (square feet)	Number of Bedrooms				
	0 - 1	2	3	4	5 or more
	Airflow in cfm				
< 500	30	30	35	45	50
501 - 1,000	30	35	40	50	55
1,001 - 1,500	30	40	45	55	60
1,501 - 2,000	35	45	50	60	65
2,001 - 2,500	40	50	55	65	70
2,501 - 3,000	45	55	60	70	75
3,001 - 3,500	50	60	65	75	80
3,501 - 4,000	55	65	70	80	85
4,001 - 4,500	60	70	75	85	90
4,501 - 5,000	65	75	80	90	95

M1505.4.3.1 Ventilation quality adjustment. The minimum whole house ventilation rate from Section 1505.4.3 shall be adjusted by the system coefficient in Table M1505.4.3(2) based on the system type not meeting the definition of a *balanced whole house ventilation system* and/or not meeting the definition of a *distributed whole house ventilation system*.

$$Q_v = Q_r * C_{\text{system}}$$

(Equation 15-2)

Where:

Q_v = Quality-adjusted ventilation airflow rate in cubic feet per minute (cfm).

Q_r = Ventilation airflow rate, cubic feet per minute (cfm) from 15-1 or Table M1505.4.3(1).

C_{system} = System coefficient from Table 1505.4.3(2).

Table M1505.4.3(2)
System Coefficient (C_{system})

System Type	Distributed	Not Distributed
Balanced	1.0	1.25
Not balanced	1.25	1.5

M1505.4.3.2 Intermittent off operation. Whole-house mechanical ventilation systems shall be provided with advanced controls that are configured to operate the system with intermittent off operation shall operate for a least two hours in each four-hour segment. The whole house ventila-

tion airflow rate determined in accordance with Section M1505.4.3 as corrected by Section M1505.4.3.1 is multiplied by the factor determined in accordance with Table M1505.4.3(3).

Table M1505.4.3(3)
Intermittent Off Whole House-Mechanical Ventilation Rate Factors^{a,b}

Run-time % in Each 4-hour Segment	50%	66%	75%	100%
Factor ^a	2	1.5	1.3	1.0

a. For ventilation system run-time values between those given, the factors are permitted to be determined by interpolation.

b. Extrapolation beyond the table is prohibited.

M1505.4.4 Local exhaust rates. Local exhaust systems shall be designed to have the capacity to exhaust the minimum airflow rate determined in accordance with Table M1505.4.4(1). If the local exhaust fan is included in the whole house ventilation system, in accordance with Section 1505.4.1, then the exhaust fan shall be controlled to operate as specified in Section M1505.4.2.

M1505.4.4.1 Local exhaust. Bathrooms, toilet rooms, and kitchens shall include a local exhaust system. Such local exhaust systems shall have the capacity to exhaust the minimum airflow rate in accordance with Table M1505.4.4(1). Fans required by this section shall be provided with controls that enable manual override or automatic occupancy sensor, humidity sensor or pollutant sensor controls. An "on/off" switch shall meet this requirement for manual controls. Man-

ual fan controls shall be readily accessible in the room served by the fan.

Table M1505.4.4(1)
Minimum Local Exhaust Rates

<u>Area to Be Exhausted</u>	<u>Exhaust Rates</u>	
	<u>Intermittent</u>	<u>Continuous</u>
<u>Kitchens</u>	<u>100 cfm</u>	<u>30 cfm</u>
<u>Bathrooms - Toilet rooms</u>	<u>50 cfm</u>	<u>20 cfm</u>

M1505.4.4.2 Local exhaust fans. Exhaust fans shall meet the following criteria:

1. Exhaust fans shall be tested and rated in accordance with the airflow and sound rating procedures of the Home Ventilating Institute (HVI 915, HVI Loudness Testing and Rating Procedure, HVI 916, HVI Airflow Test Procedure, and HVI 920, HVI Product Performance Certification Procedure).

EXCEPTION: Where a range hood or down draft exhaust fan is used for local exhaust for a kitchen, the device is not required to be rated per these standards.

2. Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table M1505.4.4(1). The airflows required refer to the delivered airflow of the system as installed and tested using a flow hood, flow grid, or other airflow measurement device. Local exhaust systems shall be tested, balanced, and verified to provide a flow rate not less than the minimum required by this section.

3. Design and installation of the system or equipment shall be carried out in accordance with manufacturers' installation instructions.

4. Fan airflow rating and duct system shall be designed and installed to deliver at least the exhaust airflow required by Table M1505.4.4(1).

- EXCEPTIONS:
1. An exhaust airflow rating at a pressure of 0.25 in. w.g. may be used, provided the duct sizing meets the prescriptive requirements of Table M1505.4.4(2).
 2. Where a range hood or down draft exhaust fan is used to satisfy the local ventilation requirements for kitchens, the range hood or down draft exhaust shall not be less than 100 cfm at 0.10 in. w.g.

Table M1505.4.4(2)
Prescriptive Exhaust Duct Sizing

<u>Fan Tested cfm at 0.25 inches w.g.</u>	<u>Minimum Flex Diameter</u>	<u>Maximum Length in Feet</u>	<u>Minimum Smooth Diameter</u>	<u>Maximum Length in Feet</u>	<u>Maximum Elbows^a</u>
<u>50</u>	<u>4 inches</u>	<u>25</u>	<u>4 inches</u>	<u>70</u>	<u>3</u>
<u>50</u>	<u>5 inches</u>	<u>90</u>	<u>5 inches</u>	<u>100</u>	<u>3</u>
<u>50</u>	<u>6 inches</u>	<u>No Limit</u>	<u>6 inches</u>	<u>No Limit</u>	<u>3</u>
<u>80</u>	<u>4 inches^b</u>	<u>NA</u>	<u>4 inches</u>	<u>20</u>	<u>3</u>
<u>80</u>	<u>5 inches</u>	<u>15</u>	<u>5 inches</u>	<u>100</u>	<u>3</u>
<u>80</u>	<u>6 inches</u>	<u>90</u>	<u>6 inches</u>	<u>No Limit</u>	<u>3</u>
<u>100</u>	<u>5 inches^b</u>	<u>NA</u>	<u>5 inches</u>	<u>50</u>	<u>3</u>
<u>100</u>	<u>6 inches</u>	<u>45</u>	<u>6 inches</u>	<u>No Limit</u>	<u>3</u>
<u>125</u>	<u>6 inches</u>	<u>15</u>	<u>6 inches</u>	<u>No Limit</u>	<u>3</u>
<u>125</u>	<u>7 inches</u>	<u>70</u>	<u>7 inches</u>	<u>No Limit</u>	<u>3</u>

a. For each additional elbow, subtract 10 feet from length.

b. Flex ducts of this diameter are not permitted with fans of this size.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 16-03-025, filed 1/11/16, effective 7/1/16)

WAC 51-51-1507 ((Section M1507—Mechanical ventilation:)) Reserved.

~~((M1507.1 General. Local exhaust and whole-house mechanical ventilation systems and equipment shall be designed in accordance with this section.~~

M1507.2 Recirculation of air. Exhaust air from bathrooms and toilet rooms shall not be recirculated within a residence

or to another dwelling unit and shall be exhausted directly to the outdoors. Exhaust air from bathrooms and toilet rooms shall not discharge into an attic, crawl space or other areas of the building.

~~**M1507.3 Whole-house mechanical ventilation system.** Whole-house mechanical ventilation systems shall be designed in accordance with Sections M1507.3.1 through M1507.3.3.~~

M1507.3.1 System design. Each dwelling unit or guestroom shall be equipped with a ventilation system complying with Section M1507.3.4, M1507.3.5, M1507.3.6 or M1507.3.7. Compliance is also permitted to be demonstrated through compliance with the International Mechanical Code or ASHRAE Standard 62.2.

M1507.3.2 Control and operation.

1. Location of controls. Controls for all ventilation systems shall be readily accessible by the occupant.

2. Instructions. Operating instructions for whole-house ventilation systems shall be provided to the occupant by the installer of the system.

3. Local exhaust systems. Local exhaust systems shall be controlled by manual switches, dehumidistats, timers, or other approved means.

4. Continuous whole-house ventilation systems. Continuous whole-house ventilation systems shall operate continuously and be equipped with an override control. A "fan on" switch shall be permitted as an override control. Controls shall be capable of operating the ventilation system without energizing other energy-consuming appliances. A clearly visible label shall be affixed to the controls that reads "Whole House Ventilation (see operating instructions)."

5. Intermittent whole-house ventilation systems. Intermittent whole-house ventilation systems shall comply with the following:

5.1. They shall be capable of operating intermittently and continuously.

5.2. They shall have controls capable of operating the exhaust fans, forced-air system fans, or supply fans without energizing other energy-consuming appliances.

5.3. The ventilation rate shall be adjusted according to the exception in Section 403.8.5.1.

5.4. The system shall be designed so that it can operate automatically based on the type of control timer installed.

5.5. The intermittent mechanical ventilation system shall operate at least one hour out of every four.

5.6. The system shall have a manual control and automatic control, such as a 24-hour clock timer.

5.7. At the time of final inspection, the automatic control shall be set to operate the whole-house fan according to the schedule used to calculate the whole-house fan sizing.

5.8. A label shall be affixed to the control that reads "Whole House Ventilation (see operating instructions)."

M1507.3.2.1 Operating instructions. Installers shall provide the manufacturer's installation, operating instructions, and a whole-house ventilation system operation description.

M1507.3.3 Mechanical ventilation rate. The whole-house mechanical ventilation system shall provide outdoor air to each dwelling unit at a continuous rate of not less than that determined in accordance with Table M1507.3.3(1).

EXCEPTION: The whole-house mechanical ventilation system is permitted to operate intermittently where the system has controls that enable operation for not less than 25 percent of each 4-hour segment and the ventilation rate prescribed in Table M1507.3.3(1) is multiplied by the factor determined in accordance with Table M1507.3.3(2).

**Table M1507.3.3(1)
Continuous Whole House Mechanical Ventilation System Airflow Rate Requirements**

Dwelling Unit Floor Area (square feet)	NUMBER OF BEDROOMS				
	0-1	2-3	4-5	6-7	≥7
	Airflow in CFM				
<1,500	30	45	60	75	90
1,501-3,000	45	60	75	90	105
3,001-4,500	60	75	90	105	120
4,501-6,000	75	90	105	120	135
6,001-7,500	90	105	120	135	150
>7,501	105	120	135	150	165

For SI: 1 square foot = 0.0929 m²; 1 cubic foot per minute = 0.0004719 m³/s.

**Table M1507.3.3(2)
Intermittent Whole House Mechanical Ventilation Rate Factors^{a,b}**

Run-Time Percentage in Each 4-Hour Segment	25%	33%	50%	66%	75%	100%
Factor ^a	4	3	2	1.5	1.3	1.0

^a For ventilation system run-time values between those given, the factors are permitted to be determined by interpolation.

^b Extrapolation beyond the table is prohibited.

M1507.3.4 Whole-house ventilation using exhaust fans. This section establishes minimum prescriptive requirements for whole-house ventilation systems using exhaust fans. A system which meets all the requirements of this section shall be deemed to satisfy the requirements for a whole-house ventilation system.

M1507.3.4.1 Whole-house ventilation fans. Exhaust fans providing whole-house ventilation shall have a flow rating at 0.25 inches water gauge as specified in Table M1507.3.3(1). Manufacturers' fan flow ratings shall be determined according to HVI 916 or AMCA 210.

M1507.3.4.2 Fan noise. Whole-house fans located 4 feet or less from the interior grille shall have a sone rating of 1.0 or less measured at 0.1 inches water gauge. Manufacturer's noise ratings shall be determined as per HVI 915 (March 2009). Remotely mounted fans shall be acoustically isolated from the structural elements of the building and from attached duct work using insulated flexible duct or other approved material.

M1507.3.4.3 Fan controls. The whole-house ventilation fan shall meet the requirements of Section M1507.3.2 and M1507.3.2.1.

M1507.3.4.4 Ventilation openings. Each habitable space shall be provided with outdoor air inlets or operable windows with an openable area not less than 4 square inches of net free area of opening for each 10 cfm of outdoor air required by Table M1507.3.3(1). Where outdoor air supplies are separated from exhaust points by doors, provisions shall be made to ensure air flow by installation of distribution ducts, undercutting doors, installation of grilles, transoms, or similar means. Doors shall be undercut to a minimum of 1/2 inch above the surface of the finish floor covering.

Individual room outdoor air inlets shall:

1. Have controllable and secure openings;
2. Be sleeved or otherwise designed so as not to compromise the thermal properties of the wall or window in which they are placed;
3. Any inlet or combination of inlets which provide 10 cfm at 10 Pascals are deemed equivalent to 4 square inches net free area.

Ventilation opening shall be screened or otherwise protected from entry by leaves or other material. Openings shall be controllable, securable and shall be designed to not compromise the thermal properties of the building envelope. Ventilation openings shall be located so as not to take air from the following areas:

1. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
2. Where it will pick up objectionable odors, fumes or flammable vapors.
3. A hazardous or unsanitary location.
4. A room or space having any fuel-burning appliances therein.
5. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
6. Attic, crawl spaces, or garages.
7. Asphalt roofs unless it is shown that no other location is permissible. In such cases the inlet opening shall be located a minimum of 2 feet from the nearest surface of the asphalt roofing, measured from the intake opening.

M1507.3.5 Whole-house ventilation integrated with a forced-air system. This section establishes minimum prescriptive requirements for whole-house ventilation systems integrated with forced-air ventilation systems. A system which meets all the requirements of this section shall be deemed to satisfy the requirements for a whole-house ventilation system.

M1507.3.5.1 Integrated whole-house ventilation systems. Integrated whole-house ventilation systems shall provide outdoor air at the rate calculated using Section M1507.3.3. Integrated forced-air ventilation systems shall distribute outdoor air to each habitable space through the forced-air system ducts. Integrated forced-air ventilation systems shall have an outdoor air inlet duct connecting a terminal element on the outside of the building to the return air plenum of the forced-air system, at a point within 4 feet upstream of the air handler. The outdoor air inlet duct connection to the return air stream shall be located upstream of the forced-air system blower and shall not be connected directly into a furnace cabinet to prevent thermal shock to the heat exchanger. The system will be equipped with a motorized damper connected to the automatic ventilation control as specified in Section M1507.3.2. The required flow rate shall be verified by field testing with a flow hood or a flow measuring station.

M1507.3.5.2 Ventilation duct insulation. All supply ducts in the conditioned space shall be insulated to a minimum of R-4.

M1507.3.5.3 Outdoor air inlets. Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

1. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
2. Where it will pick up objectionable odors, fumes or flammable vapors.
3. A hazardous or unsanitary location.
4. A room or space having any fuel-burning appliances therein.
5. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
6. Attic, crawl spaces, or garages.

M1507.3.6 Whole-house ventilation using a supply fan. This section establishes minimum prescriptive requirements for whole-house ventilation systems using an inline supply fan. A system which meets all the requirements of this section shall be deemed to satisfy the requirements for a whole-house ventilation system.

M1507.3.6.1 Outdoor air. Supply fan ventilation systems shall distribute outdoor air to each habitable space through the forced-air system ducts or through dedicated ducts to each habitable space. Supply fans shall have the capacity to provide the amount of outdoor air specified in Table M1507.3.3(1) at 0.40 inches water gauge as per HVI 916. The outdoor air must be filtered before it is delivered to habitable spaces. The filter may be located at the intake device, in line with the fan, or, in the case of a connection to the return plenum of the air handler, using the furnace filter. An outdoor air inlet shall be connected to either the supply or return air stream.

M1507.3.6.2 Ducts. An outdoor air inlet duct connection to the supply air stream shall be located downstream of the forced-air system blower. An outdoor air inlet duct connection to the return air stream shall be located at least 4 feet

upstream of the forced-air system blower and its filter. Neither type of duct shall be connected directly into a furnace cabinet to prevent thermal shock to the heat exchanger. The outdoor air inlet duct shall be prescriptively sized in accordance with Table M1507.3.6.2. The terminal element on the outside of the building shall be sized 2 inches in diameter larger than the outdoor air inlet duct.

**Table M1507.3.6.2
Prescriptive Supply Fan Duct Sizing**

Supply Fan Tested cfm at 0.40" wg		
Specified Volume from Table 1507.3.3(1)	Minimum Smooth Duct Diameter	Minimum Flexible Duct Diameter
50–90 cfm	4 inch	5 inch
90–150 cfm	5 inch	6 inch
150–250 cfm	6 inch	7 inch
250–400 cfm	7 inch	8 inch

M1507.3.6.3 Dampers. The system shall be equipped with a back-draft damper and one of the following:

1. A calibrated manual volume damper installed and set to meet the measured flow rates specified in Table M1507.3.3(1) by field testing with a pressure gauge and/or following manufacturer's installation instructions; or
2. A manual volume damper installed and set to meet the measured flow rates specified in Table M1507.3.3(1) by field testing with a flow hood or a flow measuring station; or
3. An automatic flow-regulating device sized to the specified flow rates in Table M1507.3.3(1) which provides constant flow over a pressure range of 0.20 to 0.60 inches water gauge.

M1507.3.6.4 Ventilation duct insulation. All supply ducts in the conditioned space shall be insulated to a minimum of R-4.

M1507.3.6.5 Outdoor air inlets. Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

1. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
2. Where it will pick up objectionable odors, fumes or flammable vapors.
3. A hazardous or unsanitary location.
4. A room or space having any fuel-burning appliances therein.
5. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
6. Attic, crawl spaces, or garages.

M1507.3.7 Whole-house ventilation using a heat recovery ventilation system. This section establishes minimum prescriptive requirements for whole-house ventilation using a heat recovery ventilation system.

M1507.3.7.1 Heat recovery ventilation systems. All duct work in heat recovery systems shall be sized and installed per

the manufacturer's instructions. System minimum flow rating shall be not less than that specified in Table M1507.3.3(1). Heat recovery ventilation systems shall have a filter on the upstream side of the heat exchanger in both the intake and exhaust airstreams with a minimum efficiency rating value (MERV) of 6.

M1507.3.7.2 Ventilation duct insulation. All supply ducts in the conditioned space installed upstream of the heat exchanger shall be insulated to a minimum of R-4.

M1507.3.7.3 Outdoor air inlets. Inlets shall be screened or otherwise protected from entry by leaves or other material. Outdoor air inlets shall be located so as not to take air from the following areas:

1. Closer than 10 feet from an appliance vent outlet, unless such vent outlet is 3 feet above the outdoor air inlet.
2. Where it will pick up objectionable odors, fumes or flammable vapors.
3. A hazardous or unsanitary location.
4. A room or space having any fuel-burning appliances therein.
5. Closer than 10 feet from a vent opening of a plumbing drainage system unless the vent opening is at least 3 feet above the air inlet.
6. Attic, crawl spaces, or garages.

M1507.4 Local exhaust. Local exhaust shall be provided in each kitchen, bathroom, water closet, laundry room, indoor swimming pool, spa, and other rooms where water vapor or cooking odor is produced. *Local exhaust systems* shall be designed to have the capacity to exhaust the minimum air flow rate determined in accordance with Table M1507.4.

**Table M1507.4
Minimum Required Local Exhaust Rates
For One and Two Family Dwellings**

Area to Be Exhausted	Exhaust Rates
Kitchens	100 cfm intermittent or 25 cfm continuous
Bathrooms – Toilet rooms Laundry rooms, indoor swimming-pools, and spas	Mechanical exhaust capacity of 50 cfm intermittent or 20 cfm continuous

For SI: 1 cubic foot per minute = 0.0004719 m³/s.

M1507.4.1 Local exhaust fans. Exhaust fans providing local exhaust shall have a minimum fan flow rating not less than 50 cfm at 0.25 inches water gauge for bathrooms, laundries, or similar rooms and 100 cfm at 0.25 inches water gauge for kitchens. Manufacturers' fan flow ratings shall be determined as per HVI 916 (April 1995) or AMCA 210.

EXCEPTION: Where a range hood or down draft exhaust fan is used to satisfy the local exhaust requirements for kitchens, the range hood or down draft exhaust shall not be less than 100 cfm at 0.10 inches water gauge.

M1507.4.2 Local exhaust controls. Local exhaust systems shall be controlled by manual switches, dehumidistats, tim-

ers, or other approved means. Local exhaust system controls shall be readily accessible.)

NEW SECTION

WAC 51-51-2904 Section 2904—Dwelling unit fire-sprinkler systems.

P2904.1.1 Required sprinkler locations. Sprinklers shall be installed to protect all areas of a *dwelling unit*.

- EXCEPTIONS:
1. Uninhabitable attics, crawl spaces and normally unoccupied concealed spaces that do not contain fuel-fired appliances do not require sprinklers. In uninhabitable attics, crawl spaces and normally unoccupied concealed spaces that contain fuel-fired equipment, a sprinkler shall be installed above the equipment; however, sprinklers shall not be required in the remainder of the space.
 2. Clothes closets, linen closets and pantries not exceeding 24 square feet (2.2 m²) in area, with the smallest dimension not greater than 3 feet (915 mm) and having wall and ceiling surfaces of gypsum board.

**WSR 20-02-065
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY**
[Filed December 24, 2019, 1:51 p.m.]

Continuance of WSR 19-21-040.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Proposed Regulation IV of the Puget Sound Clean Air Agency, Clean Fuel Standard (hereinafter "CFS"), webpage <http://www.pscleanair.org/CleanFuelStandard>.

Hearing Location(s): On January 30, 2020, at 4 - 7:00 p.m., at Everett Public Library, Main Branch Auditorium, 2702 Hoyt Avenue, Everett, WA 98201, public comment will be taken from 4:00 to 7:00 p.m.; on February 4, 2020, at 4:00 to 7:00 p.m., at the Kitsap Conference Center Ballroom, 100 Washington Avenue, Bremerton, WA 98337, public comment will be taken from 4:00 to 7:00 p.m.; and on February 5, 2020, at 4 - 7:00 p.m., at the Tacoma Public Library, Olympic Room, 1102 Tacoma Avenue South, Tacoma, WA 98402, public comment will be taken from 4:00 to 7:00 p.m.

Date of Intended Adoption: The agency estimates no sooner than March 26, 2020.

Submit Written Comments to: Kathy Strange, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email CleanFuels@psccleanair.org, fax 206-343-7522, by February 10, 2020.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email christinab@psccleanair.org, by January 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to create additional opportunities for public comment.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Strange, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4095.

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

December 24, 2019

Craig Kenworthy
Executive Director

**WSR 20-02-073
PROPOSED RULES
HEALTH CARE AUTHORITY**
[Filed December 26, 2019, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-098.

Title of Rule and Other Identifying Information: WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act.

Hearing Location(s): On February 4, 2020, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 5, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 4, 2020.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.loughheed@hca.wa.gov, by January 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to clarify that as part of participation in the 340B program, providers must agree, via an annual attestation form, that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. The agency is amending subsection (4) to include under the medicaid fee-for-service program.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-

2716, 360-725-1344; Implementation and Enforcement: Natalia Oxford Wilson, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1861.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

December 26, 2019

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-001, filed 3/1/17, effective 4/1/17)

WAC 182-530-7900 Drugs purchased under the Public Health Service (PHS) Act. (1) Providers dispensing or administering 340B drugs to Washington apple health clients are required to submit their valid medicaid provider number(s) or national provider identification (NPI) number to the PHS health resources and services administration, office of pharmacy affairs. See WAC 182-530-7500 for information on the drug rebate program.

(2) Drugs purchased under section 340B of the Public Health Service (PHS) Act can be billed to Washington apple health only by PHS-qualified entities. The Washington medicaid rebate process excludes 340B claims from invoicing only when the drug is billed by a medicaid provider number or national provider identification (NPI) number listed on the PHS office of pharmacy affairs national medicaid exclusion file. See WAC 182-530-7500 for information on the drug rebate program.

(3) As part of participation in the 340B program, providers must submit a completed annual attestation form (HCA 13-0047) to the agency acknowledging that all claims for Washington apple health clients in both fee-for-service and managed care are subject to their respective 340B rules. Providers who fail to submit a completed attestation form to the agency may receive a compliance audit and be at risk of duplicate discounts.

(4) With the exception of claim types identified in subsection ~~((4))~~ (5) of this section, all 340B purchased drugs under the medicaid fee-for-service program must be billed to the medicaid agency at the 340B actual acquisition cost (340B AAC).

~~((4))~~ (5) Exceptions to the 340B AAC billing requirement are only made for:

(a) Outpatient hospital claims paid under the enhanced ambulatory payment group (EAPG) methodology (see WAC 182-550-7000); and

(b) Ambulatory surgery claims paid under payment groups methodology.

WSR 20-02-078

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 27, 2019, 1:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-22-071.

Title of Rule and Other Identifying Information: WAC 182-530-4050 Drug use and claims review.

Hearing Location(s): On February 4, 2020, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 5, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 4, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by January 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this rule to comply with the requirements of section 1004 of the Support for Patients and Communities Act under 42 U.S.C. 1396a(a) by more accurately detailing the drug use review (DUR) activities to include reference to prior authorization requirements adding subsections (1)(a)(iv) and (2)(c) and include the activities of prescribing practitioners in addition to dispensing pharmacies in subsections (2) and (2)(b). The agency is also revising subsection (1)(b) to update language in accordance with the Support Act including prescribing billing practices that indicate abuse or excessive utilization.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, H.R. 6, Section 1004, 42 U.S.C. 1396a(a) and 42 U.S.C. 1396r-8(g).

Statute Being Implemented: RCW 41.05.021, 41.05.160, H.R. 6, Section 1004, 42 U.S.C. 1396a(a) and 42 U.S.C. 1396r-8(g).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Charles Agte, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1301.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

December 27, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

WAC 182-530-4050 Drug use and claims review. (1)

The agency's drug use review (DUR) consists of:

(a) A prospective drug use review (Pro-DUR) that requires all pharmacy providers to:

(i) Obtain patient histories of allergies, idiosyncrasies, or chronic condition or conditions which may relate to drug utilization;

(ii) Screen for potential drug therapy problems; ~~((and))~~

(iii) Counsel the patient in accordance with existing state pharmacy laws and federal regulations; and

(iv) Obtain authorization prior to dispensing when required by the agency or an agency designee.

(b) A retrospective drug use review (Retro-DUR), in which the agency provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, ~~((or))~~ excessive utilization, inappropriate or medically unnecessary care, or prescribing billing practices that indicate abuse or excessive utilization among physicians, pharmacists, and individuals receiving benefits.

(2) The agency reviews a periodic sampling of claims to determine if drugs are appropriately ordered, prescribed, administered, dispensed, and billed. If a review of the sample finds that a provider is inappropriately ordering, prescribing, administering, dispensing, or billing for drugs, the agency may implement corrective action that includes, but is not limited to:

(a) Educating the provider regarding the problem practice or practices;

(b) Requiring the provider to maintain specific documentation in addition to the normal documentation requirements regarding the provider's ordering, prescribing, administering, dispensing, or billing ~~((actions))~~ practices;

(c) Applying additional provider-specific requirements for obtaining authorization prior to ordering, prescribing, administering, dispensing, or billing for drugs;

(d) Recouping the payment for the drug or drugs; or

~~((e))~~ (e) Terminating the provider's core provider agreement (CPA).

Preproposal statement of inquiry was filed as WSR 19-22-021 on October 28, 2019.

Title of Rule and Other Identifying Information: The department is amending several regulations in WAC chapters that affect harvesting clams and oysters for personal use and include WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons and 220-330-140 Oysters—Areas and seasons.

Hearing Location(s): On February 4, 2020, at 5:30 p.m., at the Washington Department of Fish and Wildlife (WDFW) Port Townsend District Office, 375 Hudson Street, Port Townsend, WA 98368.

Date of Intended Adoption: February 5, 2020.

Submit Written Comments to: WDFW Rules Coordinator, P.O. Box 43152, Olympia, WA 98501, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by February 4, 2020.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by February 4, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In accordance with recent clam and oyster survey data, recreational harvest projections, comanagement agreements, and public health considerations, recreational clam and oyster seasons require extension or shortening on some public beaches. This rule proposal reflects these changes.

Reasons Supporting Proposal: The amendments to the rules will perpetuate shellfish resources while maximizing recreational fishing opportunity and protecting public health.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

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

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: [WDFW], governmental.

Name of Agency Personnel Responsible for Drafting: Camille Speck, 375 Hudson Street, Port Townsend, WA 98368, 360-302-3030; Implementation: Kelly Cunningham, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2325; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rule changes clarify dates for anticipated open and closed periods and areas for harvesting clams and oysters for personal use. There are no anticipated professional services required to comply.

Based on the department's analysis, the proposed rules do not require any additional equipment, supplies, labor, or administrative costs on the part of the public or businesses.

**WSR 20-02-082
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed December 27, 2019, 3:31 p.m.]

Original Notice.

December 27, 2019
Jacalyn M. Hursey
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-044, filed 3/29/19, effective 4/29/19)

WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons. It is ~~((permissible))~~ lawful to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open ~~((year-round))~~ January 1 through May 31 and August 1 through December 31 only.
- (7) Blaine Marine Park: Closed year-round.
- (8) Blake Island State Park Marina: Closed year-round.
- (9) Blowers Bluff North: Closed year-round.
- (10) Brown's Point Lighthouse: Closed year-round.
- (11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn ~~((due west))~~ from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- (12) Cama Beach State Park: Closed year-round.
- (13) Camano Island State Park: Closed year-round.
- (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the ~~((BNSF))~~ railroad trestle are closed year-round.
- (15) Coupeville: Closed year-round.
- (16) Cultus Bay: Closed year-round.
- (17) Dave Mackie County Park: Closed year-round.
- (18) Des Moines City Park: Closed year-round.
- (19) Discovery Park: Closed year-round.
- (20) DNR-142: Closed year-round.
- (21) DNR-144 (Sleeper): Closed year-round.
- (22) Dockton County Park: Closed year-round.
- (23) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is open ~~((August))~~ June 15 through September ((7)) 30 only.
- (24) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- (25) Drayton ~~((West))~~ Harbor: All public tidelands of Drayton Harbor are ~~((closed))~~ open year-round, except tidelands identified as ~~((approved))~~ prohibited or unclassified by the department of health and defined by boundary markers and signs posted on the beach are ~~((open))~~ closed year-round.
- (26) Duckabush: Open November 1 through April 30 only.
- (27) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.
- (28) Eagle Creek: Open June 1 through August 31 only.

- (29) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- (30) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- (31) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- (32) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- (33) Fay Bainbridge Park: Closed year-round.
- (34) Fort Flagler State Park: Open January 1 through April 15 and July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- (35) Freeland County Park: Open October 1 through May 31 only.
- (36) Frye Cove County Park: Open May 1 through May 31 only.
- (37) Fudge Point State Park: Closed year-round.
- (38) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- (39) Golden Gardens: Closed year-round.
- (40) Graveyard Spit: Closed year-round.
- (41) Guss Island: All tidelands of Guss Island are closed year-round.
- (42) Hoodspout: Tidelands at Hoodspout Salmon Hatchery are closed year-round.
- (43) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- (44) Howarth Park/Darlington Beach: Closed year-round.
- (45) Illahee State Park: Open April 1 through July 31 only.
- (46) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September ~~((7))~~ 30 only.
- (47) Joemma Beach State Park: Closed year-round.
- (48) Kayak Point County Park: Closed year-round.
- (49) Kitsap Memorial State Park: Closed year-round.
- (50) Kopachuck State Park: Open April 1 through May 31 only.
- (51) Lent Landing (Port Washington Narrows): Closed year-round.
- (52) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- (53) Lincoln Park: Closed year-round.
- (54) Lions Park (Bremerton): Closed year-round.
- (55) Lofall: Closed year-round.
- (56) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

- (57) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.
- (58) Long Point West: Closed year-round.
- (59) Lower Roto Vista Park: Closed year-round.
- (60) March Point Recreation Area: Closed year-round.
- (61) McNeil Island: All tidelands of McNeil Island are closed year-round.
- (62) Meadowdale County Park: Closed year-round.
- (63) Mee-Kwa-Mooks Park: Closed year-round.
- (64) Monroe Landing: Closed year-round.
- (65) Mukilteo: Closed year-round.
- (66) Mystery Bay State Park: Open October 1 through April 30 only.
- (67) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.
- (68) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.
- (69) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.
- (70) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through September 30, from one hour before official sunrise until one hour after official sunset only.
- (71) North Beach County Park: Closed year-round.
- (72) Oak Bay County Park: (~~Open April 1 through April 30 only~~) Closed year-round.
- (73) Oak Harbor: Closed year-round.
- (74) Oak Harbor Beach Park: Closed year-round.
- (75) Oak Harbor City Park: Closed year-round.
- (76) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.
- (77) Old Mill County Park (Silverdale): Closed year-round.
- (78) Olympia Shoal: Closed year-round.
- (79) Pat Carey Vista Park: Closed year-round.
- (80) Penrose Point State Park: Open March 1 through April 30 only, except that portion of Mayo Cove within the commercially prohibited growing area is closed year-round.
- (81) Picnic Point County Park: Closed year-round.
- (82) Pitship Point: Closed year-round.
- (83) Pitt Island: All tidelands on Pitt Island are closed year-round.
- (84) Pleasant Harbor State Park: Closed year-round.
- (85) Pleasant Harbor WDFW Boat Launch: Closed year-round.
- (86) Point Defiance: Closed year-round.
- (87) Point No Point South: Closed year-round.
- (88) Point Whitney Lagoon: Open January 1 through (~~April 15~~) May 31 only.
- (89) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through (~~April 15~~) May 31 only.
- (90) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.
- (91) Port Gamble Heritage Park Tidelands: Open (~~year-round~~) January 1 through May 15 and July 15 through December 31 only.
- (92) Port Gardner: Closed year-round.
- (93) Port Townsend Ship Canal/Portage Beach: Open January 1 through (~~May 31~~) April 15 only.
- (94) Post Point: Closed year-round.
- (95) Potlatch DNR tidelands: Open April 1 through July (~~7~~) 31 only.
- (96) Potlatch State Park: Open April 1 through July (~~7~~) 31 only.
- (97) Priest Point County Park: Closed year-round.
- (98) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.
- (99) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.
- (100) Retsil: Closed year-round.
- (101) Richmond Beach Saltwater Park: Closed year-round.
- (102) Salt Creek Recreation Area (DNR-419): Closed year-round.
- (103) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- (104) Saltwater State Park: Closed year-round.
- (105) Samish Bay: Public tidelands of Samish Bay between Scotts Point and (~~an unnamed~~) a point on the shore (~~(latitude N48.5745°; longitude W122.4440°)~~) (48° 34.47'N, 122° 26.64'W) are closed year-round.
- (106) Scenic Beach State Park: Closed year-round.
- (107) Seahurst County Park: Closed year-round.
- (108) Semiahmoo County Park: Closed year-round.
- (109) Semiahmoo Marina: Closed year-round.
- (110) Sequim Bay State Park: Open January 1 through June 30 only.
- (111) Shine Tidelands State Park: Open January 1 through May 15 only.
- (112) Silverdale Waterfront Park: Closed year-round.
- (113) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.
- (114) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.
- (115) South Carkeek Park: Closed year-round.
- (116) Southworth: Closed year-round.
- (117) Spencer Spit State Park: Open March 1 through July 31 only.
- (118) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

(119) Taylor Bay: Closed year-round.

(120) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

(121) Triton Cove Tidelands: Open June 1 through August 31 only.

(122) Twanoh State Park: Open August ~~((+))~~ 15 through September 30 only.

(123) Walker County Park: Closed year-round.

(124) West Dewatto: DNR Beach 44A open July 1 through September 30 only.

(125) West Pass Access: Closed year-round.

(126) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open ~~((July 15))~~ August 1 through September ~~((+5))~~ 30 only.

(127) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

(128) Wolfe Property State Park: Open January 1 through May 15 only.

(129) Woodard Bay Natural Resource Conservation Area: Closed year-round.

~~(130) It is ((permissible)) lawful to take, dig for, and possess clams((, cockles, borers,)) and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.~~

~~((Violation of the provisions of this section shall be an infraction, punishable under RCW 77.15.160.))~~

AMENDATORY SECTION (Amending WSR 19-08-044, filed 3/29/19, effective 4/29/19)

WAC 220-330-140 Oysters—Areas and seasons. It is ~~((permissible))~~ lawful to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

(6) Belfair State Park: Open January 1 through May 31 and August 1 through December 31 only.

(7) Blaine Marine Park: Closed year-round.

~~((7))~~ (8) Blake Island State Park Marina: Closed year-round.

~~((8))~~ (9) Blowers Bluff North: Closed year-round.

~~((9))~~ (10) Brown's Point Lighthouse: Closed year-round.

~~((+0))~~ (11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary

of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.

~~((+1))~~ (12) Cama Beach State Park: Closed year-round.

~~((+2))~~ (13) Camano Island State Park: Closed year-round.

~~((+3))~~ (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the ~~((BNSF))~~ railroad trestle are closed year-round.

~~((+4))~~ (15) Coupeville: Closed year-round.

~~((+5))~~ (16) Cultus Bay: Closed year-round.

~~((+6))~~ (17) Dave Mackie County Park: Closed year-round.

~~((+7))~~ (18) Des Moines City Park: Closed year-round.

~~((+8))~~ (19) Discovery Park: Closed year-round.

~~((+9))~~ (20) DNR-142: Closed year-round.

~~((+0))~~ (21) DNR-144 (Sleeper): Closed year-round.

~~((+1))~~ (22) Dockton County Park: Closed year-round.

~~((+2))~~ (23) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

~~((+3))~~ (24) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.

~~((+4))~~ (25) Drayton ~~((West))~~ Harbor: All public tidelands of Drayton Harbor are ~~((closed))~~ open year-round, except the tidelands identified as ~~((approved))~~ prohibited or approved by the department of health and defined by boundary markers and signs posted on the beach are ~~((open))~~ closed year-round.

~~((+5))~~ (26) Duckabush: Open November 1 through April 30 only.

~~((+6))~~ (27) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.

~~((+7))~~ (28) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((+8))~~ (29) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.

~~((+9))~~ (30) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.

~~((+0))~~ (31) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

~~((+1))~~ (32) Fay Bainbridge Park: Closed year-round.

~~((+2))~~ (33) Fort Flagler State Park: Open January 1 through April 15 and July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((+3))~~ (34) Freeland County Park: Open October 1 through May 31 only.

~~((+4))~~ (35) Frye Cove County Park: Open May 1 through May 31 only.

~~((+5))~~ (36) Fudge Point State Park: Closed year-round.

~~((+6))~~ (37) Gertrude Island: All tidelands of Gertrude Island are closed year-round.

~~((+7))~~ (38) Golden Gardens: Closed year-round.

~~((+8))~~ (39) Graveyard Spit: Closed year-round.

~~((39))~~ (40) Guss Island: All tidelands of Guss Island are closed year-round.

~~((40))~~ (41) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed year-round.

~~((41))~~ (42) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

~~((42))~~ (43) Howarth Park/Darlington Beach: Closed year-round.

~~((43))~~ (44) Illahee State Park: Open April 1 through July 31 only.

~~((44))~~ (45) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September ~~((7))~~ 30 only.

~~((45))~~ (46) Joemma Beach State Park: Closed year-round.

~~((46))~~ (47) Kayak Point County Park: Closed year-round.

~~((47))~~ (48) Kitsap Memorial State Park: Closed year-round.

~~((48))~~ (49) Kopachuck State Park: Open April 1 through May 31 only.

~~((49))~~ (50) Lent Landing (Port Washington Narrows): Closed year-round.

~~((50))~~ (51) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.

~~((51))~~ (52) Lincoln Park: Closed year-round.

~~((52))~~ (53) Lions Park (Bremerton): Closed year-round.

~~((53))~~ (54) Lofall: Closed year-round.

~~((54))~~ (55) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

~~((55))~~ (56) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

~~((56))~~ (57) Long Point West: Closed year-round.

~~((57))~~ (58) Lower Roto Vista Park: Closed year-round.

~~((58))~~ (59) March Point Recreation Area: Closed year-round.

~~((59))~~ (60) McNeil Island: All tidelands of McNeil Island are closed year-round.

~~((60))~~ (61) Meadowdale County Park: Closed year-round.

~~((61))~~ (62) Mee-Kwa-Mooks Park: Closed year-round.

~~((62))~~ (63) Monroe Landing: Closed year-round.

~~((63))~~ (64) Mukilteo: Closed year-round.

~~((64))~~ (65) Mystery Bay State Park: Open October 1 through April 30 only.

~~((65))~~ (66) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.

~~((66))~~ (67) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((67))~~ (68) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((68))~~ (69) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through September 30, from one hour before official sunrise until one hour after official sunset only.

~~((69))~~ (70) North Beach County Park: Closed year-round.

~~((70))~~ (71) Oak Bay County Park: ~~((Open April 1 through April 30 only))~~ Closed year-round.

~~((71))~~ (72) Oak Harbor: Closed year-round.

~~((72))~~ (73) Oak Harbor Beach Park: Closed year-round.

~~((73))~~ (74) Oak Harbor City Park: Closed year-round.

~~((74))~~ (75) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

~~((75))~~ (76) Old Mill County Park (Silverdale): Closed year-round.

~~((76))~~ (77) Olympia Shoal: Closed year-round.

~~((77))~~ (78) Pat Carey Vista Park: Closed year-round.

~~((78))~~ (79) Penrose Point State Park: Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is closed year-round.

~~((79))~~ (80) Pitship Point: Closed year-round.

~~((80))~~ (81) Picnic Point County Park: Closed year-round.

~~((81))~~ (82) Pitt Island: Closed year-round.

~~((82))~~ (83) Pleasant Harbor State Park: Closed year-round.

~~((83))~~ (84) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((84))~~ (85) Point Defiance: Closed year-round.

~~((85))~~ (86) Point No Point South: Closed year-round.

~~((86))~~ (87) Point Whitney Lagoon: Open January 1 through July 31 only.

~~((87))~~ (88) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through July 31 only.

~~((88))~~ (89) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((89))~~ (90) Port Gamble Heritage Park Tidelands: Open ~~((year-round))~~ January 1 through May 15 and July 15 through December 31 only.

~~((90))~~ (91) Port Gardner: Closed year-round.

~~((91))~~ (92) Port Townsend Ship Canal/Portage Beach: Open January 1 through ~~((May 31))~~ April 15 only.

~~((92))~~ (93) Post Point: Closed year-round.

~~((93))~~ (94) Potlatch DNR Tidelands: Open April 1 through July ~~((7))~~ 31 only.

~~((94))~~ (95) Potlatch State Park: Open April 1 through July ~~(7)~~ 31 only.

~~((95))~~ (96) Priest Point County Park: Closed year-round.

~~((96))~~ (97) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

~~((97))~~ (98) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.

~~((98))~~ (99) Retsil: Closed year-round.

~~((99))~~ (100) Richmond Beach Saltwater Park: Closed year-round.

~~((100))~~ (101) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((101))~~ (102) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((102))~~ (103) Saltwater State Park: Closed year-round.

~~((103))~~ (104) Samish Bay: Public tidelands of Samish Bay between Scotts Point and ~~(an unnamed)~~ a point on the shore ~~((latitude N48.5745°; longitude W122.4440°))~~ (48°34.47'N, 122°26.64'W) are closed year-round.

~~((104))~~ (105) Scenic Beach State Park: Closed year-round.

~~((105))~~ (106) Seahurst County Park: Closed year-round.

~~((106))~~ (107) Semiahmoo County Park: Closed year-round.

~~((107))~~ (108) Semiahmoo Marina: Closed year-round.

~~((108))~~ (109) Sequim Bay State Park: Open January 1 through June 30 only.

~~((109))~~ (110) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((110))~~ (111) Silverdale Waterfront Park: Closed year-round.

~~((111))~~ (112) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((112))~~ (113) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((113))~~ (114) South Carkeek Park: Closed year-round.

~~((114))~~ (115) Southworth: Closed year-round.

~~((115))~~ (116) Spencer Spit State Park: Open March 1 through July 31 only.

~~((116))~~ (117) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

~~((117))~~ (118) Taylor Bay: Closed year-round.

~~((118))~~ (119) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

~~((119))~~ (120) Walker County Park: Closed year-round.

~~((120))~~ (121) West Pass Access: Closed year-round.

~~((121))~~ (122) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open ~~((July 15))~~ August 1 through September ~~((45))~~ 30 only.

~~((122))~~ (123) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

~~((123))~~ (124) Wolfe Property State Park: Open January 1 through May 15 only.

~~((124))~~ (125) Woodard Bay Natural Resource Conservation Area: Closed year-round.

(126) It is ~~((permissible))~~ lawful to take and possess oysters for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

~~((Violation of the provisions of this section shall be an infraction, punishable under RCW 77.15.160.))~~

WSR 20-02-083

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed December 30, 2019, 7:11 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-16-017 When must the employer provide the salary range or management band for a position?, 357-16-215 May an employer seek the wage or salary history of an individual for employment?, 357-16-220 May an employer confirm an individual's wage or salary history?, and 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure?

Hearing Location(s): On February 13, 2020, at 8:30 a.m., at the Office of Financial Management (OFM), Raad Building, 5th Floor, Room 512, 128 10th Avenue S.W., Olympia, WA 98501.

Date of Intended Adoption: February 20, 2020.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by February 6, 2020.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by February 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 1696 was passed during the 2019 legislative session with an effective date of July 28, 2019. ESHB 1696 prohibits an employer from seeking the wage or salary history of an applicant for employment from the applicant or a current or former employer or requiring that the applicant's prior wage or salary history meet certain criteria. This bill also requires employers, upon request of an applicant for employment, to provide

the wage scale or salary range for the job title for the position for which the applicant is applying.

Reasons Supporting Proposal: To be in compliance with the law and place new provisions in Title 357 WAC so there are clear expectations of what is and what is not acceptable for seeking the wage or salary information from an applicant or an applicant's employers until the applicant has voluntarily disclosed their wage history after the employer has negotiated salary and made an offer of employment.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 49.58 RCW.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-407-4136.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 30, 2019

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

NEW SECTION

WAC 357-16-017 When must the employer provide the salary range or management band for a position? In accordance with RCW 49.58.110, the employer must provide the salary range or management band in the following circumstances:

(1) Upon request of an individual for employment after the employer has initially offered the individual the position; and

(2) Upon request of a current employee who is offered an appointment to another position.

If no salary range or management band exists, the employer must provide the minimum wage set by the employer prior to posting the position or appointing an employee to another position.

For the purposes of this section "employer" includes those employers with less than fifteen employees.

NEW SECTION

WAC 357-16-215 May an employer seek the wage or salary history of an individual for employment? In accordance with RCW 49.58.100, an employer may not:

(1) Seek the wage or salary history of an individual applying for employment, including current employees, from

the individual or the individual's current or former employer; or

(2) Require that an individual's prior wage or salary history meet certain criteria, except as provided in WAC 357-16-220.

For the purposes of this section "employer" includes those employers with less than fifteen employees.

NEW SECTION

WAC 357-16-220 May an employer confirm an individual's wage or salary history? In accordance with RCW 49.58.100, an employer may confirm an individual's wage or salary history if:

(1) The individual has voluntarily disclosed their wage or salary history; or

(2) After the employer has negotiated an offer and made an offer of employment including compensation to the individual.

For the purposes of this section "employer" includes those employers with less than fifteen employees.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Ensure that hiring decisions are not based on patronage or political affiliation;

(6) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

(7) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;

(8) Ensure compliance with requirements governing wage and salary information in accordance with state law and WAC 357-16-017, 357-16-215, and 357-16-220.

WSR 20-02-085

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed December 30, 2019, 7:15 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 357-49-023 How must director's review requests be filed with the director? and 357-52-225 How must appeal requests be filed with the board?

Hearing Location(s): On February 13, 2020, at 8:30 a.m., at the Office of Financial Management (OFM), Raad Building, 5th Floor, Room 512, 128 10th Avenue S.W., Olympia, WA 98501.

Date of Intended Adoption: February 20, 2020.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by February 6, 2020.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by February 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 357-49-023 and 357-52-225 are to allow an individual to file director's review requests and personnel resources board (PRB) appeals online. Filing by fax, by mail or in person are still acceptable avenues for filing. The proposed amendment to WAC 357-49-023(2) and 357-52-225(2) are to update the fax filing requirements. The proposed amendment to WAC 357-49-023(3) and 357-52-225(3) removes email as an option for filing director's review requests and PRB appeals because of the new online filing capabilities and to state requests are considered filed when a legible copy is received.

Reasons Supporting Proposal: To align Title 357 WAC with the online filing request capabilities for director's review requests and PRB appeal requests.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-407-4136.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 18, 2019

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 16-11-058, filed 5/13/16, effective 6/20/16)

WAC 357-49-023 ((For purposes of this chapter,)) How must ((documents)) director's review requests be

filed with the director? ((~~(1) Filing by mail:~~)) Director's review requests must be filed with the director by filing online through the director's website, by fax, by mail, or in person.

(1) Director's review requests are considered filed when received in the director's review office in Olympia, Washington, during the office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Documents received in the director's review office in Olympia, Washington, outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) ((~~Filing by fax:~~

(a) Documents by fax are considered filed when a legible copy of the documents is received. If transmission begins after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Documents)) Director's review requests filed by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone ((and fax)) number; and the review to which the documents ((relates; the date of transmission; and the total number of pages included in the transmission.

(c) The person attempting to file by fax bears the risk that the papers may not be timely received or legibly printed, regardless of the cause. If the fax is not legible, it will not be considered sent.

(3) Filing by electronic mail (email): If the document is sent after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day)) are related.

(3) Director's review requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 05-01-191, filed 12/21/04, effective 7/1/05)

WAC 357-52-225 How must ((~~written documents~~)) appeal requests be filed with the board? ((~~(1) Filing generally. Papers that must be filed with the board~~)) Appeal requests must be filed with the board by filing online through the board's website, by fax, by mail, or in person.

(1) Appeal requests are considered ((to be)) filed ((only)) when ((the papers are actually)) received in the board's office in Olympia, Washington, during the office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Documents received in the board's office in Olympia, Washington, outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) ((~~Filing by telephone facsimile.~~

(a) Written documents filed with the board by telephone facsimile are considered received when a legible copy of the document is reproduced on the board's telephone facsimile equipment in the board's office. If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Any document filed with the board by telephone facsimile should be preceded by)) Appeals filed by fax must

~~have a cover page identifying the addressee; the ((party)) person making the transmission, including the address, telephone ((and telephone facsimile)) number ((of such party)); and the appeal to which the documents ((relates; the date of transmission; and the total number of pages included in the transmission.~~

~~(e) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.~~

~~(d) The original of any document filed by telephone facsimile should be mailed to the board within twenty-four hours of the time that the telephone facsimile was sent.~~

~~(e) The filing of papers by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows) are related.~~

(3) Appeal requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.

**WSR 20-02-088
PROPOSED RULES**

**OFFICE OF
FINANCIAL MANAGEMENT**

[Filed December 30, 2019, 9:53 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-28-110 Must an employee who is promoted receive a salary increase?, 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?, 357-46-035 What option for placement in a position does a permanent employee have when the employee is scheduled for layoff?, 357-46-036 What if the employee does not have an option under WAC 357-46-035?, 357-46-037 When identifying layoff options, what happens when a class in which the employee previously held permanent status has been revised or abolished?, 357-46-038 Does an employee have layoff option rights as provided in WAC 357-46-035 to classes the employee held permanent status in prior to any breaks in state service?, and 357-58-040 Which manager positions or managerial employees are excluded from WMS and not covered by chapter 357-58 WAC?

Hearing Location(s): On February 13, 2020, at 8:30 a.m., at the Office of Financial Management (OFM), Raad Building, 5th Floor, Room 512, 128 10th Avenue S.W., Olympia, WA 98501.

Date of Intended Adoption: February 20, 2020.

Submit Written Comments to: Name: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by February 6, 2020.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by February 6, 2019 [2020].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 357-28-110 and 357-28-115 are to state that an employee who is promoted or is reallocated to a class with a higher salary range must advance to a step of the range for the new class that is nearest to five percent above their prepromotional or previous salary. The information technology professional structure (ITPS) salary schedules for ranges 1-11 are not square which mean that the current two step promotional language does not work for those employees who move in and out of the ITPS. The purpose of the proposed amendment to WAC 357-28-110(2) is to clarify that if an employer grants a higher increase for internal alignment, retention or other business needs it is done so in accordance with WAC 357-28-090. The proposed amendment to WAC 357-46-035 adds language to address when an employee has held permanent status in any abolished information technology classes, for layoff purposes, they are considered to have held permanent status in any class at the same or lower salary range maximum within the ITPS. In addition, the proposed amendments to WAC 357-46-035 is to break up subsections (2) through (4) and create new sections. The proposed new section WAC 357-46-036 is to address what happens if the employee does not have an option under WAC 357-46-035. This language was taken and removed from WAC 357-46-035(2). The proposed new section WAC 357-46-037 is to address what happens when a class in which the employee previously held permanent status has been revised or abolished. This language was taken and removed from WAC 357-46-035(3). The proposed new section WAC 357-46-038 is to address if an employee has layoff option rights to classes they held permanent status in prior to any breaks in state service. This language was taken and removed from WAC 357-46-035(4). The proposed amendment to WAC 357-58-040 is to clarify that manager positions or managerial employees that are included in the professional structures are excluded from the Washington management system and are not covered by chapter 357-58 WAC.

Reasons Supporting Proposal: These changes are stemming from the new ITPS implementation that went into effect on July 1, 2019.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 18, 2019
Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-110 Must an employee who is promoted receive a salary increase? An employee who is promoted must ~~((receive a minimum increase of two steps))~~ advance to a step of the range for the new class that is nearest to five percent above their prepromotional salary, not to exceed step M of the salary range. If the employee's prepromotional salary is set above the maximum of the salary range in accordance with WAC 357-28-040, the promotional increase will be based off of the maximum of the salary range of the class the employee is promoting from. The employer may grant ~~((more than an increase of two steps not to exceed step E))~~ a higher increase if:

- (1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;
- (2) The increase is necessary for internal salary alignment, retention of the employee~~((;))~~ or other documented business needs in accordance with WAC 357-28-090; or
- (3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase? An employee occupying a position that is reallocated to a class with a higher salary range must ~~((receive a minimum increase of at least two steps))~~ advance to a step of the range for the new class that is nearest to five percent above their previous salary, not to exceed step M of the salary range in accordance with WAC 357-28-110. When the employee's previous salary was set above the maximum of the salary range in accordance with WAC 357-28-040, the employee's salary will be determined as follows:

- (1) When the employee's previous salary is the same or lower than the maximum of the new salary range, the salary increase will be based off the maximum of the salary range the employee is reallocated from, not to exceed step M of the salary range in accordance with WAC 357-28-110.
- (2) When the employee's previous salary is above the salary range of the new class, the employee will retain their current salary in accordance with WAC 357-28-040.

AMENDATORY SECTION (Amending WSR 19-11-134, filed 5/22/19, effective 7/1/19)

WAC 357-46-035 ((Layoff option.)) What option for placement in a position does a permanent employee have

when the employee is scheduled for layoff? ((1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?))

(1) The employer will identify a position, if available, within the layoff unit~~((;))~~ for a permanent employee who is scheduled for layoff ~~((must be offered the option to take a position, if available,))~~ that meets the following criteria:

- (a) The position is comparable to the employee's current position as defined by the employer's layoff procedure;
- (b) For revised or abolished job classes, the employer must identify the closest matching class in accordance with WAC 357-46-037;
- (c) The employee satisfies the competencies and other position requirements; and
- (d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) The employer will consider positions in the following order:

- (a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that has the same salary range maximum. If an employee has held permanent status in any abolished information technology (IT) class, for layoff purposes they will have layoff options in any class within the information technology professional structure (ITPS) with the same salary range maximum in accordance with subsection (1) of this section.

(b) If the employee ~~((has no))~~ does not have an option to take a position that has the same salary range maximum, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

~~((b))~~ The position is comparable to the employee's current position as defined by the employer's layoff procedure.

- (c) The employee satisfies the competencies and other position requirements.
- (d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) What if the employee has no option under subsection (1) of this section?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

- (i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;
- (ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;
- (iii) The position is comparable or less than comparable; and
- (iv) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

~~(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?~~

~~(a) If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.~~

~~(b) For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT Assessment form along with any other documentation to determine the closest matching class to offer as a layoff option.~~

~~(4) Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?~~

~~General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.~~

~~Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.)~~

NEW SECTION

WAC 357-46-036 What if the employee does not have an option under WAC 357-46-035? (1) If a permanent employee does not have an option available under WAC 357-46-035, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(a) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(b) The position is vacant, held by a nonpermanent employee or held by a probationary employee;

(c) The position is comparable or less than comparable; and

(d) The position is one for which the employee meets the competencies and other position requirements.

(2) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

NEW SECTION

WAC 357-46-037 When identifying layoff options, what happens when a class in which the employee previously held permanent status has been revised or abolished? If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or

lower salary range maximum as the class from which the employee is being laid off.

If an employee has previously held permanent status in any abolished information technology (IT) class and it has been determined that the closest matching class falls within the information technology professional structure (ITPS), the employee will have layoff options in any class within the ITPS with the same or lower salary range maximum in accordance with WAC 357-46-035. To determine the closest matching class to offer, an employer may use the IT assessment form and any other documentation which will aid in determining the closest matching class.

NEW SECTION

WAC 357-46-038 Does an employee have layoff option rights as provided in WAC 357-46-035 to classes the employee held permanent status in prior to any breaks in state service? General government employees have layoff option rights as provided in WAC 357-46-035 to classes the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-040 ~~((Are there any))~~ Which manager positions or managerial employees ~~((that are not included in the))~~ are excluded from WMS and not covered by chapter 357-58 WAC? The following manager positions or managerial employees are excluded from WMS and not covered by chapter 357-58 WAC:

(1) Manager positions or managerial employees that are exempt from civil service ~~((and))~~;

(2) Manager positions or managerial employees that are included in professional structures; and

(3) Manager positions or managerial employees of institutions of higher education and related boards ~~((are not included in WMS or covered by chapter 357-58 WAC))~~.

WSR 20-02-102

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 31, 2019, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-108.

Title of Rule and Other Identifying Information: WAC 182-546-5100 Nonemergency transportation (NEMT)—Definitions, 182-546-5550 NEMT—Exclusions and limitations, 182-546-5900 NEMT—Meals, lodging, escort/guardian, and 182-546-6200 NEMT—Reimbursement.

Hearing Location(s): On February 4, 2020, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue

Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 5, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 4, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by January 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these sections as follows:

WAC 182-546-5100:

- (1) Adding "and related" to broker definition;
- (2) Revising the definition of "extended stay" to mean a period of time spanning thirty consecutive days, revising the definition of "short stay" to mean a period of time up to twenty-nine days, and adding a definition for service animal;
- (3) Revising transportation mode definition to public bus and commercial bus.

WAC 182-546-5550:

- (1) Revising subsection (1)(e) to include "such as braces/crutches, wheelchairs" for durable medical equipment;
- (2) Revising WAC 182-546-5550 (exclusion and limitations) to include substance use disorder;
- (3) Revising where nonemergency transportation is not provided;
- (4) Clarifying that nonemergency transportation for clients in the program of all-inclusive care for elderly (PACE) program is the responsibility of the PACE contractor and is not provided through brokers;
- (5) Removing medical care services (MCS) limitations to avoid confusion about MCS program's scope of coverage;
- (6) Adding that service animals can be transported with clients.

WAC 182-546-5900:

- (1) Adding a requirement that brokers may not authorize payment for alcohol, cannabis, or other nonfood items;
- (2) Clarifying that for short stays, the cost of meals may not exceed the state per diem rate.

WAC 182-546-6200:

- (1) Revising subsection (3) to "transportation-related services" require itemized receipts.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 42 C.F.R. 431.53, 42 C.F.R. 440.170.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 42 C.F.R. 431.53, 42 C.F.R. 440.170.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: James Walters, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1721.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose any costs on businesses.

December 31, 2019

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-022, filed 5/20/16, effective 6/20/16)

WAC 182-546-5100 Nonemergency transportation—Definitions. The following definitions and those found in chapter 182-500 WAC apply to nonemergency medical brokered transportation. Unless otherwise defined in WAC 182-546-5200 through 182-546-6000, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

"Ambulance" - See WAC 182-546-0001.

"Broker" - An organization or entity contracted with the medicaid agency to arrange nonemergency transportation and related services for clients.

"Drop off point" - The location authorized by the transportation broker for the client's trip to end.

"Escort" - A person authorized by the transportation broker to accompany and be transported with a client to a health care service. An escort's transportation may be authorized depending on the client's age, mental state or capacity, safety requirements, mobility skills, communication skills, or cultural issues.

"Extended stay" - A period of time spanning ~~((seven))~~ thirty consecutive days or longer for which a client receives health care services outside of ~~((his or her))~~ their local community and for which ~~((he or she))~~ they may request assistance with meals and lodging.

"Guardian" - A person who is legally responsible for a client and who may be required to be present when a client is receiving health care services.

"Local community" - The client's city or town of residence or nearest location to residence.

"Local provider" - A provider, as defined in WAC 182-500-0085, who delivers covered health care service within the client's local community, and the treatment facility where the services are delivered within the client's local community.

"Lodging and meals" - Temporary housing and meals provided during a client's out-of-area medical stay.

"Mode" - A method of transportation assistance used by the general public that an individual client can use in a spe-

cific situation. Methods that may be considered include, but are not limited to:

- Air transport;
- ~~((Bus fares))~~ Public bus;
- Commercial bus;
- Ferries/water taxis;
- Gas vouchers/gas cards;
- Grouped or shared-ride vehicles;
- Mileage reimbursement;
- Parking;
- Stretcher vans or cars;
- Taxi;
- Tickets;
- Tolls;
- Train;
- Volunteer drivers;
- Walking or other personal conveyance; and
- Wheelchair vans.

"Noncompliance or noncompliant" - When a client:

- Fails to appear at the pickup point of the trip at the scheduled pickup time;
- Misuses or abuses agency-paid medical, transportation, or other services;
- Fails to comply with the rules, procedures, or policies of the agency or those of the agency's transportation brokers, the brokers' subcontracted transportation providers, or health care service providers;
- Poses a direct threat to the health or safety of self or others; or
- Engages in violent, seriously disruptive, or illegal conduct.

"Pickup point" - The location authorized by the agency's transportation broker for the client's trip to begin.

"Return trip" - The return of the client to the client's residence, or another authorized drop-off point, from the location where a covered health care service has occurred.

"Service animal" - An animal individually trained to work or perform tasks for an individual with a disability. The work or task an animal has been trained to provide must be directly related to the individual's disability. Animals whose sole function is to provide comfort or emotional support do not qualify as service animals under the American with Disabilities Act.

"Short stay" - A period of time (~~((spanning one to six))~~ up to twenty-nine days for which a client receives health care services outside of (~~((his or her))~~ their local community and for which (~~((he or she))~~ they may request assistance with meals and lodging.

"Stretcher car or van" - A vehicle that can legally transport a client in a prone or supine position when the client does not require medical attention en route.

"Stretcher trip" - A transportation service that requires a client to be transported in a prone or supine position without medical attention during the trip. This may be by stretcher, board, gurney, or other appropriate device. Medical or safety requirements must be the basis for transporting a client in the prone or supine position.

"Transportation provider" - A person or company under contract with a broker to provide trips to eligible clients.

"Trip" - Transportation one-way from the pickup point to the drop off point by an authorized transportation provider.

"Urgent care" - An unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

AMENDATORY SECTION (Amending WSR 16-12-022, filed 5/20/16, effective 6/20/16)

WAC 182-546-5550 Nonemergency transportation— Exclusions and limitations. (1) The following service categories listed in WAC 182-501-0060 are subject to the following exclusions and limitations:

(a) Adult day health (ADH) - Nonemergency transportation for ADH services is not provided through the brokers. ADH providers are responsible for arranging or providing transportation to ADH services.

(b) Ambulance - Nonemergency ambulance transportation is not provided through the brokers except as specified in WAC 182-546-5200 (2)(e).

(c) Emergency department (ED) - When a client is discharged from the ED, brokers may provide transportation to another medicaid-covered service or to the client's residence only.

(d) Hospice services - Nonemergency transportation is not provided through the brokers when the health care service is related to a client's hospice diagnosis. See WAC 182-551-1210.

(e) Medical equipment, durable (DME) - Nonemergency transportation is not provided through the brokers for DME services, except for complex rehabilitation technology (CRT) and DME equipment that needs to be fitted to the client (such as braces/crutches, wheelchairs).

(f) Medical nutrition services - Nonemergency transportation is not provided through the brokers to pick up medical nutrition products.

(g) Medical supplies/equipment, nondurable (MSE) - Nonemergency transportation is not provided through the brokers for MSE services.

(h) The following mental health and substance use disorder services:

(i) Nonemergency transportation brokers generally provide one round trip per day (~~((to or from a mental health service))~~). The broker must request agency approval for additional trips for off-site activities.

(ii) Nonemergency transportation of an involuntarily detained person under the Involuntary Treatment Act (ITA) is not a service provided or authorized by transportation brokers. Involuntary transportation is a service provided by an ambulance or a designated ITA transportation provider. (~~((See WAC 182-546-4000.~~

~~((i) Chemical dependency services—))~~ (iii) Nonemergency transportation is not provided through the brokers to or from (~~((the following:~~

~~((i) Residential treatment, intensive inpatient, or long-term treatment at certified facilities which are institutes for mental diseases (IMDs), as defined in WAC 182-500-0050;~~

~~((ii) Recovery house; and~~

~~(iii) Information and assistance services which include)~~
information and assistance services which include:

- (A) Alcohol and drug information school;
- (B) Information and crisis services; and
- (C) Emergency service patrol.

(i) Program of all-inclusive care for the elderly (PACE)-nonemergency transportation for clients in the PACE program is not provided through the brokers. The PACE contractor is responsible for transportation to PACE services.

~~(2) ((Transportation may be provided to facilities identified by the agency as non-IMDs, and therefore eligible to receive medicaid funds (refer to the Catalog of Federal Domestic Assistance (CFDA) program number 93.778).~~

~~(3) The state-funded medical care services (MCS) program has a limitation on trips. Nonemergency transportation for mental health services and substance abuse services is not provided through the brokers. The medicaid agency does pay for nonemergency transportation to and from medical services listed in WAC 182-501-0060, excluding mental health services and substance abuse services, and subject to any other limitations in this chapter or other program rules)) Service animals as defined in WAC 182-546-5100 may be transported with clients.~~

~~((4)) (3) The following programs do not have a benefit for brokered nonemergency transportation through the agency:~~

- (a) Federal medicare savings and state-funded medicare buy-in programs (see chapter 182-517 WAC);
- (b) Family planning services - Nonemergency transportation is not provided for clients that are enrolled only in ~~((TAKE CHARGE-OR))~~ family planning only services; and
- (c) Alien emergency medical (AEM) - See WAC 182-507-0115.

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-5900 Nonemergency transportation—Meals, lodging, escort/guardian. (1) The medicaid agency may pay for meals and lodging for clients who must be transported to health care services outside of the client's local community. The agency's transportation brokers determine when meals and lodging are necessary based on a client's individual need.

(2) Brokers may authorize payment for meals and lodging for up to one calendar month. Extensions beyond the initial calendar month must be prior authorized by the broker on a month-to-month, week-to-week, or as-needed basis.

(3) Brokers may not authorize payment for alcohol, cannabis, or other nonfood items.

(4) Brokers follow the agency's guidelines in determining the reasonable costs of meals and lodging. The agency's guidelines are:

- (a) The reasonable cost of lodging for short and extended stays is measured against state per diem rates.
- (b) For short stays, the cost of meals ~~((is measured against))~~ may not exceed the state per diem rate.
- (c) For extended stays, the reasonable cost of meals is measured against the state's basic food program. The maximum monthly allowable meal cost for extended stays is not to

exceed the client's calculated monthly food benefit ~~((or state per diem rates))~~.

~~((4)) (5) The agency pays for the transportation of an authorized escort, including meals and lodging, when all of the following apply:~~

(a) The client is present, except as stated in subsection (5) of this section; and

(b) The broker determines the transportation costs of an escort is necessary based upon the client's age, mental state or capacity, safety requirements, mobility requirements, communication or translation requirements, or cultural issues.

~~((5)) (6) The agency may authorize and pay for the transportation of an authorized escort or guardian, with or without the presence of the client, if the broker determines, and documents, that the presence of the authorized escort or guardian is necessary to ensure that the client has access to medically necessary care.~~

~~((6)) (7) Lodging and meals for all out-of-state non-emergency transportation must be prior authorized by the agency. Border areas as defined by WAC 182-501-0175 are considered in-state under this section and subsequent sections.~~

AMENDATORY SECTION (Amending WSR 15-03-050, filed 1/14/15, effective 2/14/15)

WAC 182-546-6200 Nonemergency transportation—Reimbursement. (1) To be reimbursed for trips, meals, or lodging, the requestor must receive prior authorization from the broker at least two business days in advance of the client's travel.

(2) A client must request reimbursement of preauthorized expenditures for trips, meals, or lodging within thirty days after ~~((his or her))~~ their medical appointment. The broker may consider reimbursement requests beyond thirty days if a client shows good cause as defined in WAC 388-02-0020 for having not requested reimbursement within thirty days.

(3) To be reimbursed for ~~((mileage, fuel, parking, bridge tolls, or ferry fees))~~ transportation-related services, the requestor must provide the broker with legible copies of:

- (a) Itemized receipt(s);
- (b) The operator's valid driver's license;
- (c) Valid vehicle registration; and
- (d) Proof of insurance for the vehicle/operator at the time of the trip.

(4) The medicaid agency or the broker may retroactively authorize and reimburse for transportation costs, including meals and lodging when:

(a) A client is approved for a delayed certification period as defined in WAC 182-500-0025, or for a retroactive eligibility period as defined in WAC 182-500-0095, or is retroactively eligible for a medically needy program which requires a spenddown as defined in WAC 182-500-0100;

(b) The transportation costs were not used to meet a client spenddown liability in accordance with WAC 182-519-0110;

(c) The transportation costs for which retroactive reimbursement is requested falls within the period of retroactive eligibility or delayed certification;

(d) The client received medically necessary services that were covered by the client's medical program for the date(s) of service for which retroactive reimbursement is requested; and

(e) The request for retroactive reimbursement is made within sixty days from the date of eligibility notification (award letter), not to exceed eight months from the date(s) of service for which reimbursement is requested.

(5) When transportation cost(s) are retroactively authorized, the reimbursement amount must not exceed the reimbursement amount that would have been authorized prior to the date(s) of service.

(6) To be paid by the broker for nonemergency transportation services:

(a) Ambulance providers must be subcontracted with the broker in accordance with WAC 182-546-5200.

(b) Nonambulance providers must be subcontracted with the broker in accordance with WAC 182-546-5200.

(7) The agency, through its contracted brokers, does not pay for nonemergency transportation when:

(a) The health care service the client is requesting transportation to or from is not a service covered by the client's medical program;

(b) The covered health care service is within three-quarters of a mile from the pick-up point, except when:

(i) The client's documented and verifiable medical condition and personal capabilities demonstrates that the client is not able to walk three-quarters mile distance;

(ii) The trip involves an area that the broker determines is not physically accessible to the client; or

(iii) The trip involves an area that the agency's broker considers to be unsafe for the client, other riders, or the driver.

(c) The client has personal or informal transportation resources that are available and appropriate to the clients' needs;

(d) Fixed-route public transportation service is available to the client within three-quarters of a mile walking distance. Exceptions to this rule may be granted by the transportation broker when the need for more specialized transportation is documented. Examples of such a need may be the client's use of a portable ventilator, a walker, or a quad cane; or

(e) The mode of transport that the client requests is not necessary, suitable, or appropriate to the client's medical condition.

Must an employer have a policy for requesting and approving leave?, 357-31-130 When may an employee use accrued sick leave?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When may an employee use accrued compensatory time?, 357-31-247 May an employee use leave if the employee is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW?, 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, recognition leave or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW?, 357-31-249 May a higher education employer deny an employee's request to use accrued leave in accordance with WAC 357-31-248 as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW?, 357-31-327 When must an employer grant leave without pay?, 357-31-335 How long can an employee remain on leave without pay?, 357-31-490 Will time off for parental leave be paid or unpaid?, 357-31-515 Will time off during the period of disability leave due to pregnancy and/or childbirth be paid?, and 357-31-520 How does the Family and Medical Leave Act of 1993 and the Washington Paid Family and Medical Leave Act interact with the civil service rules?

Hearing Location(s): On February 13, 2020, at 8:30 a.m., at the Office of Financial Management (OFM), Raad Building, 5th Floor, Room 512, 128 10th Avenue S.W., Olympia, WA 98501.

Date of Intended Adoption: February 20, 2020.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by February 6, 2020.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by February 6, 2019 [2020].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new section, WAC 357-31-247, is to allow an employee the option to choose whether or not they want to use their accrued paid leave as a supplemental benefit. The proposed new section, WAC 357-31-248, addresses which accrued leave an employee may use as a supplemental benefit. The proposed amendments incorporate the ability for an employee to request to use their accrued leave as a supplemental benefit, required updates to employers leave policies and removing the Washington family leave law from WAC 357-31-520. The proposed amendments to WAC 357-31-490 and 357-31-515 are to add shared leave as a type of leave an employee can request for a pregnancy related disability and for parental reasons in accordance with WAC 357-31-390 (1)(g) and (h).

Reasons Supporting Proposal: The Washington's paid family and medical leave, or PFML insurance program, as codified in Title 50A RCW, became effective on October 19, 2017. Beginning January 1, 2020, the PFML program provides a partial wage replacement for Washington workers for an employee's own medical condition, to care for family members, bonding with a child or for certain military-related events. Under the PFML program, the employment security department will replace up to ninety percent of an employee's

WSR 20-02-103

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed December 31, 2019, 11:26 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100

average weekly wage (up to \$1,000 per week). During the 2019 legislative session, the law was amended to allow the employer to offer a "supplemental benefit" to employees while they are on approved PFML.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 50A.15.060.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 30, 2019

Roselyn Marcus

Assistant Director of

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

(1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; ~~((6))~~

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call

or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; or

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

AMENDATORY SECTION (Amending WSR 19-11-135, filed 5/22/19, effective 7/1/19)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to designate accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

~~((4))~~ (5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond eighteen weeks in accordance with WAC 357-31-130;

~~((5))~~ (6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; and

~~((6))~~ (7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC.

AMENDATORY SECTION (Amending WSR 19-11-135, filed 5/22/19, effective 7/1/19)

WAC 357-31-130 When may an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(f) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(h) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault((;)) or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

((h)) (i) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

((i)) (j) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to eighteen weeks.

Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement;

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255; or

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through ((f)) (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-31-230 When ((can)) may an employee use accrued compensatory time? (1) Employees must request

to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

~~((6))~~ (7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

~~((7))~~ (8) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

NEW SECTION

WAC 357-31-247 May an employee use leave if the employee is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW? An employee who is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW may choose to receive partial wage replacement for paid family and/or medical leave exclusively, use accrued paid leave exclusively, or combine the partial wage replacement for paid family and/or medical leave and accrued paid leave as a supplemental benefit.

NEW SECTION

WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, recognition leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW? An employee may use vacation leave, sick leave, personal holiday compensatory time, recognition leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title 50A RCW as a supplemental benefit.

NEW SECTION

WAC 357-31-249 May a higher education employer deny an employee's request to use accrued leave in accordance with WAC 357-31-248 as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW? A higher education employer may deny an employee's request to use accrued leave in accordance with WAC 357-31-248 as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW from May 1, 2020, to August 1, 2020, to allow for system readiness.

AMENDATORY SECTION (Amending WSR 14-24-024, filed 11/21/14, effective 12/22/14)

WAC 357-31-327 When must an employer grant leave without pay? An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.

(5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for

employment protection in accordance with RCW 50A.35.010.

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

WAC 357-31-335 How long can an employee remain on leave without pay? The employer determines the length of time an employee may remain on leave without pay. The employer's leave policy must address any limitations on the length of time for which leave without pay will be approved. When an employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010, an employee must remain on leave without pay while receiving a partial wage replacement.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-490 Will time off for parental leave be paid or unpaid? (1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC 357-31-130 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

(2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The employer designates when during the month paid leave will be interspersed to maintain benefits.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-515 Will time off during the period of disability leave due to pregnancy and/or childbirth be paid? Disability leave due to pregnancy and/or childbirth may be a combination of sick leave, vacation leave, personal holiday, compensatory time, shared leave and leave without pay. The combination and use of paid and unpaid leave must be per the choice of the employee.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-520 How does the Family and Medical Leave Act of 1993 and the ~~((family leave law))~~ Washington Paid Family and Medical Leave Act interact with the civil service rules? Benefits provided through state laws and civil service rules must not be diminished or withheld in complying with the Family and Medical Leave Act of 1993 ~~((FMLA)).~~

~~Washington's family leave law (chapter 49.78 RCW) generally is similar to and runs concurrently with the federal FMLA for those provisions outlined in WAC 357-31-525 (1)(a) through (e) but also allows leave to be taken for the~~

~~care of an employee's registered domestic partner with a serious health condition. However, Washington's family leave law does not address exigency leave, described in WAC 357-31-525 (1)(d), or leave for a covered service member, described in WAC 357-31-525(2). Therefore, an employer is not required to provide exigency leave or leave for a covered service member for a registered domestic partner.~~

~~Because the FMLA does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner is not counted towards the twelve weeks of the FMLA entitlement described in WAC 357-31-525. For example:~~

~~If an employee uses twelve weeks of leave to care for their registered domestic partner during a twelve-month period, and no other FMLA leave was used, the employee is still entitled to his or her full twelve-week FMLA entitlement during the same twelve-month period, as the leave used was provided for a purpose not covered by FMLA; however, if an employee uses twelve weeks of leave to care for their parent or for another FMLA qualifying reason, then during that same twelve-month period the employer would not be required to provide additional leave under Washington's family leave law to care for the employee's registered domestic partner because the twelve-week entitlement under FMLA and Washington's family leave law has been exhausted)) or the Washington Paid Family and Medical Leave Act.~~

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; ~~((and))~~

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; and

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be

subject to verification that the condition or circumstance exists.

(3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

WSR 20-02-107
PROPOSED RULES
WASHINGTON STATE UNIVERSITY

[Filed January 2, 2020, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-171.

Title of Rule and Other Identifying Information: Chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): On February 5, 2020 at 4:00 p.m., at Lighty 401, Washington State University (WSU) Pullman, Pullman, Washington; SPBS 125A, WSU Spokane, Spokane, Washington; TFLO 210, WSU Tri-Cities, Richland, Washington; DEN 301, WSU Vancouver, Vancouver, Washington; Seminar 261, WSU Everett, Everett, Washington; 1-720-707-2699 or 1-646-558-8856 for call-in attendees. Join Zoom meeting from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/896935775>, meeting ID 896 935 775.

Date of Intended Adoption: March 13, 2020.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by February 5, 2020.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by February 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is modifying, clarifying, and updating the university's standards of conduct for students.

Reasons Supporting Proposal: The proposed amendments decrease the number of student conduct board members from five to three and remove the option for storage of student firearms at the WSU police department.

The rules regarding the composition of a conduct board are updated because the amount of time required for WSU to schedule and complete student conduct hearings with five conduct board members presents potential Title IX (of the Civil Rights Act) compliance concerns and may negatively impact both reporting and responding students awaiting a conduct hearing. Therefore, WSU proposes changes to WAC 504-26-110 to reduce the number of conduct board members required to hear a case. These changes will reduce the difficulty in scheduling cases for a hearing, reduce waiting times, and reduce the risk of noncompliance with Title IX's timely resolution requirements, while also promoting the well-being of reporting and responding students awaiting a conduct board hearing.

WSU's student conduct code regarding firearms is updated to reflect the discontinuation of student firearm stor-

age by the WSU police department. Recent amendments to RCW 9.41.345 made the university's firearms storage program unfeasible and thus the university discontinued the program. Accordingly, WAC 504-26-213 must be amended to reflect this change in university policy.

Statutory Authority for Adoption: RCW 28B.30.150.

Statute Being Implemented: RCW 9.41.345(5).

Rule is necessary because of federal law, Title IX of the Civil Rights Act of 1964.

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Senior Assistant Attorney General, Attorney General's Office, WSU Division, French Administration 332, Pullman, WA 99164-1031, 509-335-2636; Implementation and Enforcement: Mary Jo Gonzales, Vice President, Student Affairs, French Administration 134, Pullman, WA 99164-1013, 509-335-4531, or Terry Boston, Acting Vice President, Student Affairs, French Administration 134, Pullman, WA 99164-1013, 509-335-4531.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider these rules to be significant legislative rules.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025.

Explanation of exemptions: The amendments to WSU student conduct code only apply to students at WSU, and therefore do not affect business or commerce in any way.

January 2, 2020

Deborah L. Bartlett, Director
Procedures, Records and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-110 Composition of conduct board. A conduct board must consist of (~~five~~) three members. A quorum of (~~five~~) three is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining whether there is a quorum. A (~~majority of~~) minimum of one conduct board member(~~s~~) hearing a matter must be an enrolled WSU student(~~s~~) (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served

on a board in a case involving the same complainant or respondent.

January 2, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-213 Firearms and dangerous weapons.

No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university premises or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. ~~((Students wishing to maintain a firearm on campus for hunting or sporting activities must store the firearm with the Washington State University department of public safety.))~~

WSR 20-02-108

PROPOSED RULES

HORSE RACING COMMISSION

[Filed January 2, 2020, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-035.

Title of Rule and Other Identifying Information: WAC 260-70-545 Prohibited practices.

Hearing Location(s): On February 14, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: February 14, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by February 7, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by February 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prohibits the use of bisphosphonates on horses under the age of four and restricts time frame for older horses that receive treatment from racing for six months.

Reasons Supporting Proposal: Use of bisphosphonates have been shown to be detrimental to younger horses and research is still being conducted on its overall usage.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

AMENDATORY SECTION (Amending WSR 18-07-016, filed 3/9/18, effective 4/9/18)

WAC 260-70-545 Prohibited practices. The following are prohibited practices:

(1) The possession or use of any drug, substance, or medication if the use may endanger the health or welfare of the horse or endanger the safety of the rider, or which may adversely affect the integrity of racing; or

(2) The possession or use of a drug or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in human or animal without the approval of the official veterinarian, or any substance forbidden by an official veterinarian.

(3) The possession and/or use of blood doping agents including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission:

- (a) Aminoimidazole carboxamide ribonucleotide (AICAR);
- (b) Darbepoetin;
- (c) Equine growth hormone;
- (d) Erythropoietin;
- (e) Hemopure;
- (f) Myo-inositol trispyrophosphate (ITPP);
- (g) Oxyglobin;
- (h) Thymosin beta; and
- (i) Venoms or derivatives thereof.

(4) No person shall at any time administer any other doping agent to a horse except pursuant to a valid therapeutic, evidence-based treatment plan.

(a) Other doping agent means a substance that has a pharmacologic potential to alter materially the performance of a horse and has no generally accepted medical use in a horse when treated, and is:

(i) Capable at any time of causing an action or effect, or both, within one or more of the blood, cardiovascular, digestive, endocrine, immune, musculoskeletal, nervous, reproductive, respiratory, or urinary mammalian systems including, but not limited to, endocrine secretions and their synthetic counterparts, masking agents, oxygen carriers, and agents that directly or indirectly affect or manipulate gene expression; but

(ii) Not a substance that is considered to have no effect on the physiology of a horse except to improve nutrition or treat or prevent infections or parasite infestations.

(b) Evidence-based treatment plan means a planned course of treatment written and prescribed by an attending veterinarian before the horse is treated that describes the medical need of the horse for the treatment, the evidence-based scientific or clinical justification for using the doping agent and a determination that recognized therapeutic alternatives do not exist and is developed in good faith to treat a medical need of a horse.

(5) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy unless the following conditions are met:

(a) Any treated horse may not race or workout for a minimum of ten days following treatment;

(b) Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines may only be used by veterinarians licensed by the commission and only approved machines at a previously disclosed location may be used;

(c) The practicing veterinarian has filed a report with an official veterinarian notifying the commission that an Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machine is on association grounds;

(d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments are reported to an official veterinarian on the prescribed form not later than twenty-four hours after treatment.

The horse will be added to a list of ineligible horses. This list will be kept in the race office and be posted in an accessible location.

(6) The use of a nasogastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered and without the prior approval of an official veterinarian.

(7) The use of bisphosphonates to any horse under four years of age is prohibited. Horses four years of age or older may only be administered bisphosphonates as follows:

(a) Only bisphosphonates that are FDA approved for use in horses may be administered according to label requirements and only for diagnosed cases of navicular disease;

(b) Administration of bisphosphonates must be reported to the commission as required in WAC 260-70-540; and

(c) The horse will be placed on the official veterinarian's list for a minimum of six months after the last administration. The horse must work as required in WAC 260-70-580 prior to return to racing.

WSR 20-02-110
PROPOSED RULES
HORSE RACING COMMISSION

[Filed January 2, 2020, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-031.

Title of Rule and Other Identifying Information: WAC 260-28-295 Trainer responsibility.

Hearing Location(s): On February 14, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: February 14, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by February 7, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by February 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Would require trainers of horses not stabled on the grounds to provide four-

teen days veterinarian records of horses when entered prior to racing.

Reasons Supporting Proposal: Provides regulatory veterinarians equal information when assessing a horse's condition for racing at the same level of those horses stabled on the grounds.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

January 2, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-07-019, filed 3/9/18, effective 4/9/18)

WAC 260-28-295 Trainer responsibility. The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer will immediately notify the owner(s) of any horses in the trainer's care of any pending rule violations involving their horse(s) including, but not limited to, alleged medication violations. Notice to the trainer will be deemed notice to the owner.

(4) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

(5) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(6) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(7) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

WSR 20-02-111
PROPOSED RULES
HORSE RACING COMMISSION
 [Filed January 2, 2020, 9:38 a.m.]

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) If a colt or horse has been gelded, promptly submit a completed gelding report to The Jockey Club Office, or report the fact to the racing secretary;

(h) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

(i) Maintaining knowledge of the medication record and medication status of horses in his/her care;

(j) Providing a fourteen day record of any procedure or medication administered to any horse entered to race that is not present on the grounds upon request of the official veterinarian;

(k) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

~~((l))~~ (l) Ensuring the fitness to perform creditably at the distance entered;

~~((m))~~ (m) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in WAC 260-70-570;

~~((n))~~ (n) Ensuring proper bandages, equipment and shoes;

~~((o))~~ (o) Attending the collection of a hair, urine, or blood sample or delegating a licensed employee or the owner to do so; and

~~((p))~~ (p) Ensuring that all the trainer's employees wear a safety helmet and safety vest while on horseback, in compliance with WAC 260-12-180.

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-022.

Title of Rule and Other Identifying Information: WAC 260-70-685 Alphabetical listing of all drugs, medications, and foreign substances.

Hearing Location(s): On February 14, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: February 14, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by February 7, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by February 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates classification of substances and adds new substances as classified by the model rules of racing.

Reasons Supporting Proposal: Several new substances have been classified and numerous current substances have been reclassified since the last amendment to this section.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

January 2, 2020
 Douglas L. Moore
 Executive Secretary

AMENDATORY SECTION (Amending WSR 17-07-055, filed 3/10/17, effective 4/10/17)

WAC 260-70-685 Alphabetical listing of all drugs, medications, and foreign substances. This section contains an alphabetical listing of all drugs, medications and foreign substances classified in WAC 260-70-680.

Drug	Trade Name	Class	Penalty Class
<u>Δ-1-androstene-3, 17-diol</u>		<u>3</u>	<u>A</u>
<u>Δ-1-androstene-3, 17-dione</u>		<u>3</u>	<u>A</u>
<u>Δ-1-dihydrotestosterone</u>		<u>3</u>	<u>A</u>
<u>1-androstenediol (5α-androst-1-ene-3β, 17β-diol)</u>		<u>3</u>	<u>B</u>

Drug	Trade Name	Class	Penalty Class
<u>1-androstenedione (5α-androst-1-ene-3, 17-dione)</u>		<u>3</u>	<u>B</u>
<u>1-testosterone (17β-hydroxy-5α-androst-1-en-3-one)</u>		<u>3</u>	<u>A</u>
<u>19-Norandrostenediol</u>		<u>3</u>	<u>B</u>
<u>19-Norandrostenedione</u>		<u>3</u>	<u>B</u>
<u>19-Noretiocholanolone</u>		<u>3</u>	<u>B</u>
2-Aminoheptane	Tuamine	4	B
3,4-methylenedioxypropylvalerone	MDPV, "bath salts"	1	A
3-Methoxytyramine	3-MT	2	A
<u>4-androstene-3, 6, 17-trione (6-oxo)</u>		<u>3</u>	<u>B</u>
<u>4-androstenediol (androst-4-ene-3β, 17β-diol)</u>		<u>3</u>	<u>B</u>
<u>4-Hydroxytestosterone</u>		<u>3</u>	<u>B</u>
<u>5-androstenedione (androst-5-ene-3, 17-dione)</u>		<u>3</u>	<u>B</u>
<u>5α-androstane-3α, 17α-diol</u>		<u>3</u>	<u>B</u>
<u>5α-androstane-3α, 17β-diol</u>		<u>3</u>	<u>B</u>
<u>5α-androstane-3β, 17α-diol</u>		<u>3</u>	<u>B</u>
<u>5α-androstane-3β, 17β-diol</u>		<u>3</u>	<u>B</u>
<u>5β-androstane-3α-17β-diol, androst-4-ene-3α, 17α-diol</u>		<u>3</u>	<u>B</u>
<u>7-keto-dhea; 19-</u>		<u>3</u>	<u>B</u>
<u>7α-hydroxy-dhea</u>		<u>3</u>	<u>B</u>
<u>7β-hydroxy-dhea</u>		<u>3</u>	<u>B</u>
<u>a-Cobratoxin</u>		<u>1</u>	<u>A</u>
Acebutolol	Sectral	3	(A) <u>B</u>
Acecarbromal		2	A
Acenocoumarol		5	(B) <u>C</u>
(*) Acepromazine	Atrovet, Notensil, PromAce [®]	3	B
Acetaminophen ((Phenacetin)) <u>Paracetamol</u>	Tylenol, Tempra, etc.	4	C
Acetanilid		4	B
Acetazolamide	Diamox, Vetamos	4	C
Acetophenazine	Tindal	2	A
Acetophenetidin (Phenacetin)		4	B
<u>Acetylcysteine</u>		<u>4</u>	<u>C</u>
Acetylsalicylic acid (Aspirin)		4	C
(A) <u>Acetomethasone</u>	<u>Acelovate</u>	4	(E)
<u>Activators of the AMP-activated protein kinase (AMPK) - E.g., AICAR and Peroxisome Proliferator Activated Receptor δ (pparδ) agonist (e.g., GW 1516)</u>	<u>AICAR</u>	<u>2</u>	<u>A</u>
Adinazolam		2	A
Adrenochrome ((monoremicarbazone)) <u>mono-semicarbazone salicylate</u>		4	B
(*) Albuterol (Salbutamol)	Proventil Ventolin	3	B

Drug	Trade Name	Class	Penalty Class
Alclofenac		2	B
<u>Alclometasone</u>	<u>Aclovate</u>	<u>4</u>	<u>C</u>
Alcuronium	Alloferin	2	A
Aldosterone	Aldocortin, Electro cortin	4	B
Alfentanil	Alfenta	1	A
Almotriptan	Axert	3	A
Alphaprodine	Nisentil	2	A
Alpidem	Anaxyl	2	A
Alprazolam	Xanax	2	A
Alprenolol		2	A
Althesin	Saffan	2	A
<u>Altrenogest</u>	<u>Regumate</u>	<u>4</u>	<u>C/Gelding, Colts, Intact Males only</u>
Ambenonium	Mytelase, Myeuran	3	B
Ambroxol	Ambril, etc.	4	B
Amcinonide	Cyclocort	4	C
Amiloride	Moduretic; Midamor	4	B
Aminocaproic acid	Amicar, Caprocid	4	C
((Aminodarone		<u>4</u>	<u>B</u>))
<u>Aminoglutethimide</u>		<u>3</u>	<u>B</u>
Aminophylline	Aminophyllin, etc.	3	B
Aminopyrine		4	B
Aminorex	Aminoxafen, Aminoxaphen, Apiquel, McN-742, Menocil	1	A
<u>Amiodarone</u>		<u>4</u>	<u>B</u>
Amisometradine	Rolictron	4	B
Amisulpride	Solian	2	A
Amitraz	Mitaban	3	B
Amitriptyline	Elavil, Amitril, Endep	2	A
((Amlodipine)) <u>Amlodipine</u>	Norvasc, Ammivin	3	B
Amobarbital	Amytal	2	A
Amoxapine	Asendin	2	A
Amperozide		2	A
Amphetamine		1	A
Amrinone		4	B
Amyl nitrite		2	A
<u>Anastrozole</u>		<u>3</u>	<u>B</u>
<u>Androst-4-ene-3α, 17β-diol</u>		<u>3</u>	<u>B</u>
<u>Androst-4-ene-3β, 17α-diol</u>		<u>3</u>	<u>B</u>
<u>Androst-5-ene-3α, 17α-diol</u>		<u>3</u>	<u>B</u>
<u>Androst-5-ene-3α, 17β-diol</u>		<u>3</u>	<u>B</u>
<u>Androst-5-ene-3β, 17α-diol</u>		<u>3</u>	<u>B</u>
<u>Androsta-1, 4, 6-triene-3, 17-dione (androsta-trienedione)</u>		<u>3</u>	<u>B</u>

Drug	Trade Name	Class	Penalty Class
<u>Androstenediol (androst-5-ene-3β, 17β-diol)</u>		<u>3</u>	<u>B</u>
<u>Androstenedione (androst-4-ene-3, 17-dione)</u>		<u>3</u>	<u>B</u>
<u>Androsterone (3β-hydroxy-5α-androstan-17-one)</u>		<u>3</u>	<u>B</u>
Anileridine	Leritine	1	A
Anilopam	Anisine	2	A
Anisindione		5	D
Anisotropine	Valpin	4	B
Antipyrine		4	B
Apazone (Azapropazone)	Rheumox	4	B
Apomorphine		1	A
Aprindine		4	B
Aprobarbital	Alurate	2	A
<u>ARA-290</u>		<u>1</u>	<u>A</u>
Arecoline		3	A
Arformoterol		3	B
Articaine	Septocaine; Ultracaine, etc.	2	(A) <u>B</u>
<u>Asialo EPO</u>		<u>1</u>	<u>A</u>
Atenolol	Tenormin	3	B
Atipamazole		2	B
Atomoxetine	Strattera	2	A
Atracurium	Tracrium	2	A
Atropine		3	B
Azacylonol	Frenque	2	A
Azaperone	Stresnil, Suicalm, Fentaz (with Fentanyl)	2	A
Baclofen	Lioresal	4	B
Barbital	Veronal	2	A
Barbiturates		2	A
Beclomethasone	Propaderm	4	C
Bemegrade	Megimide, Mikedimide	2	A
Benazepril	Lotrel, Lotensin	3	(B) <u>A</u>
Bendroflumethiazide	Naturetin	4	B
Benoxaprofen		2	B
Benoxinate	(Dorsacaine) <u>Dorsacaine</u>	4	C
Benperidol	Anquil	2	A
Bentazepam	Tiadipona	2	A
Benzactizine	Deprol, Bronchodiletten	2	A
Benzocaine		4	B
Benzoctamine		2	A
Benzodiazepines		2	A
Benzonatate	Tessalon, Tessalon Perles, Zonatuss	2	A
Benzphetamine	Didrex	2	A

Drug	Trade Name	Class	Penalty Class
Benzthiazide		4	B
Benztropine	Cogentin	2	A
Benzylpiperazine (BZP)		1	A
Bepriidil	Bepadin	4	B
((*)Betamethasone	Betasone, etc.	4	C
Betaxolol	Kerlone	3	B
Bethanechol	Uriecholone, ((Duvoid)) <u>Duvoid</u>	4	C
Bethanidine	Esbatal	3	A
Biperiden	Akineton	3	A
Biriperone		2	A
Bisoprolol	Zebeta, Bisobloc, etc.	3	B
<u>Bisphosphonates</u>		<u>3</u>	<u>A</u>
Bitolterol	Effectin	3	A
<u>Bolandiol (estr-4-ene-3β, 17β-diol)</u>		<u>3</u>	<u>A</u>
Bolasterone		3	A
((*)Boldenone	Equipose	3	B
Boldione		3	A
<u>Botulinum toxin</u>		<u>2</u>	<u>A</u>
Bretylum	Bretylol	3	B
Brimonidine	Alphagan	2	A
Bromazepam	Lexotan, Lectopam	2	A
Bromfenac	Duract	3	A
Bromhexine	Oletor, etc.	4	B
Bromisovalum	Diffucord, etc.	2	A
Bromocriptine	Parlodel	2	A
Bromodiphenhydramine		3	B
Bromperidol	Bromidol	2	A
Brompheniramine	Diemtane, Disomer	3	B
Brotizolam	Brotocol	2	A
Budesonide	Pulmacort, Rhinocort	4	C
Bufexamac		3	A
Bumetanide	Bumex	3	B
((*)Bupivacaine	Marcaine	2	A
Buprenorphine	Temgesic	2	A
Bupropion	Wellbutrin	2	A
Buspirone	Buspar	2	A
Butabarbital (Secbutobarbitone)	Butacaps, Butasol, etc.	2	A
Butacaine	Butyn	2	A
Butalbital (Talbutal)	Fiorinal	2	A
Butamben (butyl aminobenzoate)	Butesin	4	C
Butanilcaine	Hostacain	2	A
Butaperazine	Repoise	2	A
Butoctamide	Listomin	2	A

Drug	Trade Name	Class	Penalty Class
((*)Butorphanol	Stadol, Torbugesic	3	B
Butoxycaine	Stadacain	4	B
N-Butylscopolamine		4	C
((*)Caffeine		2	B
Calusterone	<u>Methosorb</u>	3	A
Camazepam	Paxor	2	A
Camphor		4	C
Candesartan	Atacand	3	B
Cannabidiol (CBD) (if THC content more than 0.3% penalty 1A)	<u>Anti-epileptic, analgesic</u>	<u>3</u>	<u>B</u>
<u>Canrenone</u>		<u>4</u>	<u>C</u>
<u>Capsaicin</u>		<u>2</u>	<u>B</u>
Captodiamine	Covatine	2	A
Captopril	Capolen	3	B
Carazolol	Carbacel, Conducton	3	A
Carbachol	Lentin, Doryl	3	B
Carbamezapine	Tegretol	3	B
<u>Carbamylated EPO</u>		<u>1</u>	<u>A</u>
Carbazochrome		4	B
Carbidopa + levodopa	Sinemet	2	A
Carbinoxamine	Clistin	3	B
Carbromol	Mifudorm	2	A
<u>Cardarine (GW-501516)</u>		<u>2</u>	<u>A</u>
Carfentanil		1	A
Carisoprodol	Soma, Rela	2	B
Carphenazine	Proketazine	2	A
Carpipramine	Prazinil	2	A
Carprofen	Rimadyl	4	B
Carteolol	Cartrol	3	B
Carticaine (see Articaine)	Septocaine; Ultracaine, etc.	2	((A)) <u>B</u>
Carvedilol	Coreg	3	B
Cathinone	khat, kat, qat, quat, chat, ((atha)) <u>catha</u> , Abyssinian tea, African tea	1	A
Celecoxib	Celebrex	3	B
Cetirizine	Zyrtec	4	C
Chloral betaine	Beta-Chlor	2	A
Chloral hydrate	Nactec, Oridrate, etc.	2	A
((Chloraldehyde)) <u>Chloraldehyde</u> (chloral)		2	A
Chloralose (Alpha-Chloralose)		2	A
Chlordiazepoxide	Librium	2	A
Chlorhexidol		2	A
Chlormerodrin	Neohydrin	4	B
Chlormezanone	Trancopal	2	A

Drug	Trade Name	Class	Penalty Class
Chloroform		2	A
Chlorophenesin	Maolate	4	C
Chloroprocaine	Nesacaine	2	A
Chloroquine	Avloclor	4	C
Chlorothiazide	Diuril	4	B
<u>Chlorpheniramine</u>	<u>Chlortriemton, etc.</u>	<u>4</u>	<u>B</u>
Chlorproethazine	Newiplege	2	A
((Chlorpheniramine	Chlortriemton, etc.	4	B))
Chlorpromazine	Thorazine, Largactil	1	A
Chlorprothixene	Taractan	2	A
Chlorthalidone	Hydroton	4	B
Chlorzoxazone	Paraflex	4	B
<u>Chorionic Gonadotropin (GC)</u>		<u>3</u>	<u>B</u>
Ciclesonide		4	C
Cilostazol	Pletal	4	B
Cimeterol		3	A
(*) Cimetidine	Tagamet	5	D
Cinchocaine	Nupercaine	2	((A)) <u>B</u>
Citalopram	Celex	2	A
Clanobutin		4	B
Clemastine	Tavist	3	B
(*) Clenbuterol	Ventipulmin	3	B
Clibucaine	Batrax	2	A
Clidinium	Quarezan, Clindex, etc.	3	B
Clobazam	Urbanyl	2	A
Clobetasol	Temovate	4	C
Clocapramine		2	A
Clocortolone	Cloderm	4	C
Clofenamide		4	B
Clomethiazole (Chlormethiazole)		2	A
<u>Clomiphene</u>		<u>3</u>	<u>B</u>
Clomipramine	Anafranil	2	A
Clonazepam	Klonopin	2	A
Clonidine	Catapres	3	B
Clorazepate	Tranxene	2	A
Clormecaine	Placacid	2	A
Clostebol		3	A
Clothiapine	Entermin	2	A
Clotiazepam	Trecalmo, Rize	2	A
Cloxazolam	Enadel, Sepazon, Tolestan	2	A
Clozapine	Clozaril, Leponex	2	A
<u>CNTO 530</u>		<u>1</u>	<u>A</u>
Cobalt		3	B

Drug	Trade Name	Class	Penalty Class
((a-Cobratexin		4	A))
Cocaine		1	((B⁺)) <u>A</u>
Codeine		1	A
Colchicine		4	B
Conorphone		2	A
Corticaïne	Ultracain	2	A
<u>Corticotrophind</u>		<u>3</u>	<u>B</u>
Cortisone	Cortone, etc.	4	C
Cromolyn	Intel	5	D
Crotetamide		2	A
Cyamemazine	Tercian	2	A
Cyclandelate	Cyclospasmol	3	A
Cyclizine	Merazine	3	B
Cyclobarbital	Phanodorm	2	A
Cyclobenzaprine	Flexeril	4	B
<u>Cyclofenil</u>		<u>3</u>	<u>B</u>
Cyclomethylcaine	Surfacaine	4	C
Cyclothiazide	((Anhydron)) <u>Anhydron</u> , Renazide	4	B
Cycrimine	Pagitane	3	B
Cyproheptadine	((Perieactin)) <u>Periactin</u>	3	B
Danazol	Danocrine	3	B
(([±])) Dantrolene	Dantrium	4	C
Darbepoetin	Aranesp	1	A
<u>Darbepoetin (depo)</u>		<u>1</u>	<u>A</u>
Decamethonium	Syncurine	2	A
Dehydrochloromethyltestosterone		3	A
Dembroxol (Dembrexine)	Sputolysin	4	C
Demoxepam		2	A
Deoxycorticosterone	Percortin, DOCA, Descotone, Dorcostrin	4	C
Deracoxib	Deremaxx	3	B
Dermorphin		1	A
Desipramine	Norpromine, Pertofrane	2	A
((Desonite)) <u>Desonide</u>	Des Owen	4	C
Desoximetasone	Topicort	4	C
Desoxymethyltestosterone		3	A
(([±])) Detomidine	Dormosedan	3	B
(([±])) Dexamethasone	Axium, etc.	4	C
Dextromethorphan		4	B
Dextromoramide	Palfium, Narcolo	1	A
Dextropropoxyphene	Darvon	3	B
Dezocine	Dalgan®	2	A

Drug	Trade Name	Class	Penalty Class
Diamorphine		1	A
Diazepam	Valium	3	B
Diazoxide	Proglycem	3	B
Dibucaine	Nupercainal, Cinchocaine	2	B
Dichloralphenazone	Febenol, Isocom	2	A
((Dichlorphenamide)) <u>Dichlorphenamide</u>	Daramide	4	C
((*))Diclofenac	Voltaren, Voltarol	4	C
Dicumarol	Dicumarol	5	D
Diethylpropion	Tepanil, etc.	2	A
Diethylthiambutene	Themalon	2	A
Diflorasone	Florone, Maxiflor	4	C
Diflucortolone	Flu-Cortinest, etc.	4	C
Diflunisal		3	B
Digitoxin	Crystodigin	4	B
Digoxin	Lanoxin	4	B
Dihydrocodeine	Parcodin	2	A
Dihydroergotamine		4	B
<u>Dihydrotestosterone (17β-hydroxy-5α-andros- tan-3-one)</u>		<u>3</u>	<u>B</u>
Dilorazepam	Briantum	2	A
Diltiazem	Cardizem	4	B
Dimeflin		3	A
Dimethisoquin	Quotane	4	B
((*))Dimethylsulfoxide (DMSO)	Domoso	4	C
Diphenadione		5	((B)) <u>C</u>
Diphenhydramine	Benadryl	3	B
Diphenoxylate	Difenoxin, Lomotil	4	B
Diprenorphine	M50/50	2	A
Dipyridamole	Persantine	3	B
Dipyron	Novin, Methampyrone	4	((E)) <u>B</u>
Disopyramide	Norpace	4	B
Divalproex	Depakote	3	A
Dixyrazine	Esucos	2	A
Dobutamine	Dobutrex	3	B
((Dopamine)) <u>Donepezil</u>	((Intropin)) <u>Aricept</u>	((2)) <u>1</u>	A
((Donepezil)) <u>Dopamine</u>	((Aricept)) <u>Intropin</u>	((1)) <u>2</u>	A
Doxacurium	Nuromax	2	A
Doxapram	Dopram	2	A
Doxazosin		3	A
Doxefazepam	Doxans	2	A
Doxepin	Adapin, Sinequan	2	A
Doxylamine	Decapryn	3	B

Drug	Trade Name	Class	Penalty Class
Dromostanolone	Drolban	3	B
Droperidol	Inapsine, Droleptan, Innovar-Vet (with Fentanyl)	2	A
<u>Drostanolone</u>		<u>3</u>	<u>A</u>
Duloxetine		2	A
Dyclonine	Dyclone	4	C
Dyphylline		3	B
Edrophonium	Tensilon	3	B
(Elenac		4	B)
Eletripan	Relpax	3	A
Eltenac		4	B
Enalapril (metabolite enalaprilat)	Vasotec	3	A
Enciprazine		2	A
Endorphins		1	A
Enkephalins		1	A
Ephedrine		2	A
<u>Epi-dihydrotestosterone</u>		<u>3</u>	<u>B</u>
Epibatidine		2	A
Epinephrine		2	A
<u>Epitestosterone</u>		<u>3</u>	<u>B</u>
EPO-Fc		<u>1</u>	<u>A</u>
<u>EPO-mimetic peptides (EMP)</u>		<u>1</u>	<u>A</u>
Ergoloid mesylates (dihydroergocornine mesylate, dihydroergocristine mesylate, and ((dihydroergocryptine)) <u>dihydroergocryptine</u> mesylate)		2	A
Ergonovine	Ergotrate	4	C
Ergotamine	Gynergen, ((Cafegot)) <u>Cafegot</u> , etc.	4	B
Erthryl tetranitrate	Cardilate	3	A
Erythropoietin (EPO)	Epogen, Procrit, etc.	1	A
Esmolol	Brevibloc	3	B
Esomeprazole	Nexium	5	D
Estazolam	Domnamid, Eurodin, Nuctalon	2	A
<u>Eszopiclone</u>		<u>2</u>	<u>A</u>
<u>Etacrynic acid</u>		<u>3</u>	<u>C</u>
Etamiphylline		3	B
Etanercept	Enbrel	4	B
Ethacrynic Acid	Edecrin	3	B
Ethamivan		2	A
<u>Ethamsylate</u>		<u>4</u>	<u>C</u>
Ethanol		2	A
Ethchlorvynol	Placidyl	2	A
Ethinamate	Valmid	2	A

Drug	Trade Name	Class	Penalty Class
Ethoheptazine	Zactane	2	A
Ethopropazine	Parsidol	2	A
Ethosuximide	Zarontin	3	A
Ethotoin	Peganone	4	B
Ethoxzolamide	((Cardase, Ehtamide)) <u>Cardrase, Ethamide</u>	4	C
Ethylaminobenzoate (Benzocaine)	Semets, etc.	4	C
Ethylestrenol	Maxibolin, Organon	3	B
Ethylisobutrazine	Diquel	2	A
Ethylmorphine	Dionin	1	A
Ethylnorepinephrine	Bronkephrine	3	A
Ethylphenidate		1	A
Etidocaine	Duranest	2	A
Etifoxin	Stresam	2	A
<u>Etiocholanolone</u>		<u>3</u>	<u>B</u>
Etizolam	Depas, Pasaden	2	A
Etodolac	Lodine	3	B
Etodroxizine	Indunox	2	A
Etomidate		2	A
Etorphine ((HCl)) <u>HCl</u>	M99	1	A
<u>Exemestane</u>	<u>Aromatase inhibitors</u>	<u>3</u>	<u>B</u>
Famotidine	Gaster, etc.	5	D
Felbamate	Felbatol	3	B
Felodipine	Plendil	4	B
((Fenbamate)) <u>Fenarbamate</u>	Tymium	2	A
Fenbufen	Cincopal	3	B
Fenclozic Acid	((Cincopal)) <u>Mylax</u>	2	B
Fenfluramine	Pondimin	2	A
Fenoldopam	Corlopam	3	B
Fenoprofen	Nalfon	3	B
Fenoterol	Berotec	3	B
Fenspiride	Respiride, Respan, etc.	3	B
Fentanyl	Sublimaze	1	A
Fentiazac		3	B
Fexofenadine	Allegra	4	C
<u>Fibroblast Growth Factors, (FGFs), Hepatocyte Growth Factors, (HGF), Insulin-like Growth Factor-1 (IGF) and its analogues, Mechano Growth Factors, (mgfs), Platelet-Derived Growth Factor, (PDGF), Vascular-Endothelial Growth Factor, (VEGF), and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching</u>		<u>3</u>	<u>A</u>

Drug	Trade Name	Class	Penalty Class
((*)Firocoxib		4	C
Flecainide	Idalon	4	B
Floctafenine	Idalon, Idarac	4	B
Fluanisone	Sedalande	2	A
((Flucinolone	Synalar, etc.	4	(E))
Fludiazepam	Erispam	2	A
Fludrocortisone	Alforone, etc.	4	C
Flufenamic Acid		3	B
Flumethasone	Flucort, etc.	4	C
Flumethiazide	Ademol	4	B
Flunarizine	Sibelium	4	B
Flunisolide	Bronilide, etc.	4	C
Flunitrazepam	Rohypnol, Narcozep, Darkene, Hypnodorm	2	A
((*)Flunixin	Banamine	4	C*
Fluocinolone	Synalar	4	C
Flucinonide	Licon, Lidex	4	C
Fluopromazine	Psyquil, Siquil	2	A
Fluoresone	Caducid	2	A
Fluorometholone	FML	4	C
Fluoroprednisolone	((Predef-2X))	4	B
Fluoxetine	Prozac	2	A
Fluoxymesterone	Halotestin	3	B
Flupenthixol	Depixol, Fluanxol	2	A
((*)Fluphenazine	Prolixin, Permitil, Anatensol, etc.	2	((A) B
Flupirtine	Katadolone	3	A
Fluprednisolone	Alphadrol	4	C
Flurandrenolide	Cordran	4	C
Flurazepam	Dalmane	2	A
Flurbiprofen	Froben	3	B
Fluspirilene	Imap, Redeptin	2	A
Fluticasone	Flixonase, Flutide	4	C
Flutoprazepam	Restas	2	A
Fluvoxamine	Dumirox, Faverin, etc.	2	A
Formebolone		3	((B) A
<u>Formestane</u>	<u>Aromatase inhibitors</u>	<u>3</u>	<u>B</u>
((Formoterol) <u>Formoterol</u>	Altram	3	((A) B
Fosinopril	Monopril	3	A
Fosphenytoin	Cerebyx	3	B
<u>Fulvestrant</u>		<u>3</u>	<u>B</u>
Furazabol		3	A
((*)Furosemide	Lasix	N/A	

Drug	Trade Name	Class	Penalty Class
Gabapentin	Neurontin	3	B
Galantamine	Reminyl	2	A
Gallamine	Flaxedil	2	A
Gamma Aminobutyric Acid (GABA)	Carolina Gold	3	B
Gepirone		2	A
Gestrinone		3	A
<u>GH-Releasing Peptides (ghrps), e.g., alexamorelin, GHRP-6, hexarelin and pralmorelin (GHRP-2)</u>		<u>3</u>	<u>A</u>
Glutethimide	Doriden	2	A
((*)Glycopyrrolate	Robinul	4	C
<u>Growth Hormone Releasing Hormone (GHRH) and its analogues, e.g., CJC-1295, sermorelin and tesamorelin</u>		<u>3</u>	<u>A</u>
<u>Growth Hormone Secretagogues (GHS), e.g., ghrelin and ghrelin mimetics, e.g., anamorelin and ipamorelin</u>		<u>3</u>	<u>A</u>
Guaifenesin (glycerol guaiacolate)	Gecolate	4	C
<u>Guanabenz</u>	<u>Wytensin</u>	<u>3</u>	<u>B</u>
Guanadrel	Hylorel	3	A
Guanethidine	Ismelin	3	A
((<u>Guanabenz</u>	<u>Wytensin</u>	<u>3</u>	<u>B</u>))
Halazepam	Paxipam	2	A
Halcinonide	Halog	4	C
Halobetasol	Ultravate	4	C
Haloperidol	Haldol	2	A
Haloxazolam	Somelin	2	A
Hemoglobin glutamers	Oxyglobin, Hemopure	2	A
Heptaminol	Corofundol	3	B
Heroin		1	A
Hexafluorenium	Myalexen	2	A
Hexobarbital	Evipal	2	A
Hexocyclium	Tral	4	B
Hexylcaine	Cyclaine	2	B
<u>HIF activators (e.g., Argon, xenon)</u>		<u>3</u>	<u>A</u>
Homatropine	Homapin	3	B
Homophenazine	Pelvichthol	2	A
Hydralazine	Apresoline	3	B
Hydrochlorthiazide	Hydrodiuril	4	B
Hydrocodone (((dihydrocodeinone)) <u>dihydrocodienone</u>)	Hycodan	1	A
((*)Hydrocortisone (Cortisol)	Cortef, etc.	4	C
Hydroflumethiazide	Saluron	4	B
Hydromorphone	Dilaudid	1	A

Drug	Trade Name	Class	Penalty Class
((4-Hydrox)testosterone		3	B))
Hydroxyamphetamine	Paradrine	1	A
((*)Hydroxyzine	Atarax	2	B
Ibomal	Noctal	2	A
Ibuprofen	Motrin, Advil, Nuprin, etc.	4	C
Ibutilide	Corvert	3	B
Iloprost	Ventavis	3	A
Imipramine	Imavate, Presamine, Tofranil	2	A
<u>Indapamide</u>	<u>Diuretic</u>	<u>3</u>	<u>C</u>
Indomethacin	Indocin	3	B
Infliximab	Remicade	4	B
<u>Insulins</u>		<u>3</u>	<u>B</u>
Ipratropium		3	B
Irbesaten	Avapro	3	A
Isapirone		2	A
Isocarboxazid	Marplan	2	A
Isoetharine	Bronkosol	3	B
((*)Isopflupredone	Predef <u>2x</u>	4	C
Isomethadone		2	A
Isometheptene	Octin, Octon	4	B
Isopropamide	Darbid	4	B
Isoproterenol	Isoprel	2	A
Isosorbide dinitrate	Isordil	3	B
Isoxicam	Maxicam	2	B
Isoxsuprine	Vasodilan	4	((E)) <u>D</u>
Isradipine	DynaCirc	4	B
Kebuzone		3	B
Ketamine	Ketalar, Ketaset, Vetalar	2	B
Ketazolam	Anxon, Laftram, Solatran, Lof-tran	2	A
((*)Ketoprofen	Orudis	4	C
Ketorolac	Toradol	3	A
Labetalol	Normodyne	3	B
Lamotrigine	Lamictal	3	A
Lansoprazole		5	D
Lenperone	Elanone-V	2	A
Letosteine	Viscotiol, Visiotal	4	B
<u>Letrozole</u>		<u>3</u>	<u>A</u>
Levamisole		2	B
Levobunolol	Betagan	3	B
Levomethorphan		2	A
Levorphanol	Levo-Dremoran	1	A
((*)Lidocaine	Xylocaine	2	B

Drug	Trade Name	Class	Penalty Class
Lisinopril	Prinivil, Zestril	3	A
Lithium	Lithizine, Duralith, etc.	2	A
Lobeline		2	A
Lofentanil		1	A
Loflazepate, Ethyl	Victan	((3)) <u>2</u>	((B)) <u>A</u>
Loperamide	Imodium	((2)) <u>3</u>	((A)) <u>B</u>
Loprazolam	Dormonort, Havlane	2	A
Loratidine	Claritin	4	C
Lorazepam	Ativan	2	A
Lormetazepam	Noctamid	2	A
Losartan	Hyzaar	3	B
Loxapine	Laxitane	2	A
<u>Luteinizing Hormone (LH)</u>		<u>3</u>	<u>B</u>
Mabuterol		3	A
Maprotiline	Ludomil	2	A
Mazindol	Sanorex	1	A
Mebutamate	Axiten, Dormate, Capla	2	A
Mecamylamine	Inversine	3	B
Meclizine	Antivert, Bonine	3	B
Meclofenamic Acid	Arquel	4	C
Meclofenoxate	Lucidril, etc.	2	A
Medazepam	Nobrium, etc.	2	A
Medetomidine	Domitor	3	B
Medrysone	Medriusar, etc.	4	C
Mefenamic Acid	Ponstel	3	B
Meldonium	<u>Mildronate, et al.</u>	1	A
Meloxicam	Mobic	4	B
Melperone	Eunerpan	2	A
Memantine	Namenda	2	A
((Mepenzolate		3	B))
Meparfynol	Oblivon	2	A
Mepazine	Pacatal	2	A
Mepenzolate	Cantil	3	((A)) <u>B</u>
Meperidine	Demerol	1	A
Mephesisin	Tolserol	4	B
Mephenoxalone	Control, etc.	2	A
Mephentermine	Wyamine	1	A
Mephentyoin	Mesantoin	2	A
Mephobarbital (Methylphenobarbital)	Mebaral	2	A
((*) Mepivacaine	Carbocaine	2	B
Meprobamate	Equanil, Miltown	2	A

Drug	Trade Name	Class	Penalty Class
Meralluride	Mercuryhydrin	4	B
Merbaphen	Novasural	4	B
Mercaptomerin	Thiomerin	4	B
((Mercuramalin)) <u>Mercumatilin</u>	Cumertilin	4	B
Mersalyl	Salyrgan	4	B
Mesalamine	Asacol	5	C
Mesoridazine	Serentil	2	A
Mestanolone		3	A
Mesterolone		3	A
Metaclazepam	Talis	2	A
<u>Metandienone</u>		<u>3</u>	<u>A</u>
Metaproterenol	Alupent, Metaprel	3	B
Metaraminol	Aramine	1	A
Metaxalone	Skelaxin	4	B
Metazocine		2	A
Metenolone		3	((B)) <u>A</u>
<u>Metformin</u>		<u>2</u>	<u>B</u>
((Methacholine)) <u>Methacholine</u>		3	A
Methadone	Dolophine	1	A
Methamphetamine	Desoxyn	1	A
((Methandienone		3	A))
Methandriol (<u>Methylandrostenediol</u>)	Probolac	3	A
Methandrostenolone	Dianabol	3	A
Methantheline	Banthine	3	B
Methapyrilene	Histadyl, etc.	3	B
Methaqualone	Quaalude	1	A
Metharbital	Gemonil	2	A
Methasterone		3	A
Methazolamide	Naptazane	4	C
Methcathinone		1	A
Methdilazine	Tacaryl	3	B
Methenolone	<u>Primobolan</u>	3	A
Methixene	Trest	3	A
((<u>z</u>)) Methocarbamol	Robaxin	4	C
Methohexital	Brevital	2	A
Methotrexate	Folex, Nexate, etc.	4	B
Methotrimeprazine	Levoprome, Neurocil, etc.	2	A
Methoxamine	Vasoxyl	3	A
Methoxyphenamine	Orthoxide	3	A
<u>Methoxypolyethylene glycolepoetin beta</u> <u>(CERA)</u>		<u>1</u>	<u>A</u>
Methscopolamine	Pamine	4	B

Drug	Trade Name	Class	Penalty Class
Methsuximide	Celontin	(3) 4	(A) B
<u>Methyclothiazide</u>	<u>Enduron</u>	4	B
<u>Methyl-1-testosterone</u>		3	A
Methylatropine		3	B
(Methyclothiazide	<u>Enduron</u>	4	B)
Methyldienolone		3	A
Methyldopa	Aldomet	3	A
<u>Methylergonovine</u>	<u>Methergine</u>	4	C
Methylhexanecamine (<u>Methylhexanamine</u>)	Geranamine	1	A
(Methylergonovine	<u>Methergine</u>	4	C)
Methylnortestosterone (<u>Trestolone</u>)		3	A
Methylphenidate	Ritalin	1	A
(*) Methylprednisolone	Medrol	4	C
(Methylsuxamide		4	B)
Methyltestosterone	Metandren	3	(A) B
(Methyl-1-testosterone		3	A)
Methyprylon	Noludar	2	A
Methysergide	Sansert	4	B
Metiamide		4	B
Metoclopramide	Reglan	4	C
Metocurine	Metubine	2	A
Metolazone		3	B
Metomidate	Hypnodil	2	A
Metopon (methyldihydromorphinone)		1	A
Metoprolol	Lopressor	3	B
<u>Metribolone</u>		3	A
Mexazolam	Melex	2	A
(Mexilitine)) <u>Mexiletine</u>	(Mexilitil)) <u>Mexitil</u>	4	B
Mibefradil	Posicor	3	B
Mibolerone		3	B
Midazolam	Versad	3	B
Midodrine	Pro-Amiline	3	B
Milrinone		4	B
Minoxidil	Loniten	3	B
(Mirtazapine)) <u>Mirtazapine</u>	Remeron	2	A
(Misoprostel)) <u>Misoprostol</u>	Cytotec	5	D
<u>Mitragynine</u>	<u>Kratom</u>	1	A
Mivacurium	Mivacron	2	A
Modafinil	Provigil	2	A
Moexipril (metabolite moexiprilat)	Uniretic	3	B
Molindone	Moban	2	A
Mometasone	Elocon	4	C

Drug	Trade Name	Class	Penalty Class
Montelukast	Singulair	4	C
Moperone	Luvatren	2	A
Morphine		1	A
Mosaprimine		2	A
Muscarine		3	A
Myo-Inositol ((Trispyrophosphate) <u>trispYRO-phosphate</u> (ITPP))		1	A
<u>N-butylscopolamine</u>		<u>4</u>	<u>C</u>
Nabumetone	Anthraxan, Relafen, Reclifex	3	A
Nadolol	Corgard	3	B
Naepaine	Amylsine	2	A
Nalbuphine	Nubain	2	A
Nalorphine	Nalline, Lethidrone	2	A
Naloxone	Narcan	3	B
Naltrexone	Revia	3	B
((*)Nandrolone	Nandrolin, Laurabolin, Dura-bolin	3	B
Naphazoline	Privine	4	B
Naproxen	Equiproxen, Naprosyn	4	C
Naratriptan	Amerge	3	B
Nebivolol		3	A
Nedocromil	Tilade	5	D
Nefazodone	Serzone	2	A
Nefopam		3	A
Neostigmine	Prostigmine	3	B
Nicardipine	Cardine	4	B
Nifedipine	Procardia	4	B
Niflumic Acid	Nifluril	3	B
Nikethamide	Coramine	1	A
Nimesulide		3	B
Nimetazepam	Erimin	2	A
Nimodipine	Nemotop	4	B
Nitrazepam	Mogadon	2	A
Nitroglycerin		2	B
Nizatidine	Axid	5	((C)) <u>D</u>
((19-Norandrostenediol		3	B
19-Norandrostenedione		3	B))
<u>Norandrosterone</u>		<u>3</u>	<u>B</u>
Norbolethone/ <u>Norboletone</u>		3	A
Norclostebol		3	((B)) <u>A</u>
((Norelostebol		3	A))
Nordiazepam	Calmday, ((Nordaz) <u>Nordaz</u> , etc.	2	A
Norepinephrine		2	A

Drug	Trade Name	Class	Penalty Class
Norethandrolone		3	A
Nortestosterone		3	B
Nortiptyline	Aventyl, Pamelor	2	A
Nylidrine	Arlidin	3	A
Olanzapine	Zyprexa	2	A
Olmesartan	Benicar	3	A
Olsalazine	Dipentum	5	C
((*)Omeprazole	Prilosec, Losec	5	D
Orphenadrine	Norlfex	4	B
Oxabolone		3	A
Oxandrolone	Anavar	3	B
Oxaprozin	Daypro, Deflam	4	B
Oxazepam	Serax	2	A
Oxazolam	Serenal	2	A
Oxcarbazepine	Trileptal	3	A
Oxilofrine (hydroxyephedrine)		2	A
Oxprenolol	Trasicor	3	A
Oxycodone	Percodan	1	A
Oxymesterone		3	((B)) <u>A</u>
Oxymetazoline	Afrin	4	B
Oxymetholone	Adroyd, Anadrol	3	B
Oxymorphone	Numorphan	1	A
Oxyperitine	Forit, Integrin	2	A
Oxyphenbutazone	Tandearil	4	C
Oxyphencyclimine	Daricon	4	B
Oxyphenonium	Antrenyl	4	B
Paliperidone		2	A
Pancuronium	Pavulon	2	A
Pantoprazole	Protonix	5	D
Papaverine	Pavagen, etc.	3	A
Paraldehyde	Paral	2	A
Paramethadione	Paradione	3	A
Paramethasone	Haldrone	4	C
Pargyline	Eutonyl	3	A
Paroxetine	Paxil, Seroxat	2	A
<u>Peginesatide</u>		<u>1</u>	<u>A</u>
Pemoline	Cylert	1	A
Penbutolol	Levitol	3	B
Penfluridol	Cyperon	2	A
((Pentacerythritol)) <u>Pentaerythritol</u> tetranitrate	Duotrate	3	A
Pentazocine	Talwin	3	B
Pentobarbital	Nembutal	2	A
Pentoxyfylline	Trental, Vazofirin	4	((E)) <u>D</u>

Drug	Trade Name	Class	Penalty Class
Pentylentetrazol	Metrazol, Nioric	1	A
Perazine	Taxilan	2	A
<u>Perfluorocarbons</u>		<u>2</u>	<u>A</u>
<u>Perfluorodecahydronophthalene</u>		<u>2</u>	<u>A</u>
((Perfluorodecalin)) <u>Perfluorodecalin</u>		2	A
((Perfluorodecahydronophthalene))		2	A)
Perfluorooctylbromide		2	A
Perfluorotripropylamine		2	A
((Perfluorocarbons))		2	A)
Pergolide	Permax	3	B
((Periciazine)) <u>Periciazine</u>	Alodept, etc.	2	A
Perindopril	Biprel	3	A
Perlazine	Hypnodin	2	A
Perphenazine	Trilafon	2	A
Phenacemide	Phenurone	4	B
Phenaglycodol	Acalo, Alcamid, etc.	2	A
Phenazocine	Narphen	1	A
Phencyclidine (PCP)	Sernylan	1	A
Phendimetrazine	Bontril, etc.	1	A
Phenelzine	Nardelzine, Nardil	2	A
Phenindione	Hedulín	5	D
Phenmetrazine	Preludin	1	A
Phenobarbital	Luminal	2	A
Phenoxybenzamine	Dibenzylíne	3	B
Phenprocoumon	Liquamar	5	D
Phensuximide	Milontin	4	B
Phentermine	Iomamin	2	A
Phentolamine	Regítine	3	B
((*)Phenylbutazone	Butazolidín	4	C
Phenylephrine	Isophrín, Neo-Synephrine	3	B
Phenylpropanolamine	Propadríne	3	B
Phenytoin	Dilantin	4	B
Physostigmine	Eserine	3	A
Picrotoxin		1	A
Piminodine	Alvodine, Cimadon	2	A
<u>Pimobendan</u>		<u>2</u>	<u>B</u>
Pimozide	Orap	2	A
Pinazepam	Domar	2	A
Pindolol	Viskín	3	B
Pipamperone	Dipiperon	2	A
Pipecuronium	Arduan	2	A
Pipequaline		2	A
Piperacetazine	Psymod, Quide	2	A

Drug	Trade Name	Class	Penalty Class
Piperocaine	Metycaine	2	A
Pipotiazine	Lonseren, Piportil	2	A
Pipradrol	Datril, Gerondyl, etc.	2	A
Piquindone		2	A
Pirbuterol	Maxair	3	B
Pirenzapine	Gastrozepin	5	(B) C
Piretanide	Arelix, Tauliz	3	B
Piritramide		1	A
Piroxicam	Feldene	4	B
<u>Plasma expanders (e.g., Bycerol; intravenous administration of albumin, dextran, hydroxyethyl starch and mannitol)</u>		<u>3</u>	<u>A</u>
Polyethylene glycol		5	D
Polythiazide	Renese	4	B
Pramoxine	Tronothaine	4	C
<u>Prasterone (dehydroepiandrosterone, DHEA, 3β-hydroxyandrost-5-en-17-one)</u>		<u>3</u>	<u>B</u>
Prazepam	Verstran, Centrax	2	A
Prazosin	Minipress	3	B
(*) Prednisolone	Delta-Cortef, etc.	4	C
Prednisone	Meticorten, etc.	4	C
Prilocaine	Citanest	2	(A) B
Primidone	Mysoline	3	B
Probenecid		4	C
Procainamide	Pronestyl	4	B
(*) Procaine		3	B
Procatamol	Pro Air	3	A
Prochlorperazine	Darbazine, Compazine	2	A
Procyclidine	Kemadrin	3	B
(*) Promazine	Sparine	3	B
Promethazine	Phenergan	3	B
Propafenone	Rythmol	4	B
Propanidid		2	A
Propantheline	Pro-Banthine	3	(A) B
Proparacaine	Ophthaine	4	C
Propentophylline	Karsivan	3	B
Propiomazine	Largon	2	A
Propionylpromazine	Tranvet	2	A
Propiram		2	A
Propofol	Diprivan, Disoprivan	2	A
Propoxycaine	Ravocaine	2	A
Propranolol	Inderal	3	B
Propylhexedrine	Benzedrex	4	B
Prostanazol		3	(B) A

Drug	Trade Name	Class	Penalty Class
((Prostanoel		3	A))
Prothipendyl	Dominal	2	A
Protolyolol	Ventaire	3	A
Protriptyline	Concordin, Triptil	2	A
Proxibarbital	Axeen, Centralgol	2	A
Pseudoephedrine	Cenafed, Novafed	3	B
Pryidostigmine	Mestinon, Regonol	3	B
((*))Pyrilamine	Neoantergan, Equihist	3	B
Pyrithyldione	Hybersulfan, Sonodor	2	A
Quazipam	Doral	2	A
Quetiapine	Seroquel	2	A
<u>Quinapril, Quinaprilat</u>	<u>Accupril</u>	<u>3</u>	<u>A</u>
Quinbolone		3	A
((Quinapril, Quinaprilat	Accupril	3	A))
Quinidine	Quinidex, Quinicardine	4	B
Rabeprazole	Aciphex	5	D
Racemethorphan		2	A
Racemorphan		2	A
Raclopride		2	A
Ractopamine	((Raylean)) <u>Paylean</u>	2	A
<u>Raloxifene</u>		<u>3</u>	<u>B</u>
Ramipril, metabolite Ramiprilat	Altace	3	A
((*))Rantidine	Zantac	5	D
Remifentanil	Ultiva	1	A
Remoxipride	Roxiam	2	A
Reserpine	Serpasil	2	((A)) <u>B</u>
Rilmazafone		2	A
Risperidone		2	A
Ritanserlin		2	A
Ritodrine	Yutopar	3	B
Rivastigmine	Exelon	2	A
Rizatriptan	Maxalt	3	B
Rocuronium	Zemuron	2	A
Rofecoxib	Vioxx	2	B
Romifidine	Sedivet	3	B
<u>Ropivacaine</u>	<u>Naropin</u>	<u>2</u>	<u>A</u>
<u>Roxadustat (FG-4592)</u>		<u>1</u>	<u>A</u>
((Ropivacaine	Naropin	2	A))
Salicylamide		4	C
((*))Salicylates		4	C
Salmeterol		3	B
Scopolamine (Hyoscine)	Triptone	4	C
Secobarbital (Quinalbarbitone)	Seconal	2	A

Drug	Trade Name	Class	Penalty Class
Selective Androgen Receptor Modulators (SARMs)	Andarine, Ostarine, Ligandrol, Testolone, etc.	2	B - if FDA approved A - if not FDA approved
Selegiline	Eldepryl, Jumex	2	A
Sertraline	Lustral, Zoloft	2	A
Sibutramine	Meridia	3	B
Sildenafil	Viagra	3	A
Snake Venoms		1	A
Somatrem	((Protropin) Protropin)	2	A
Somatropin	Nutropin	2	A
Sotalol	Betapace, Sotacor	3	B
Spiclomazine		2	A
Spiperone		2	A
Spirapril, metabolite Spiraprilat	Renomax	3	A
Spironalactone	Aldactone	4	B
Stanozolol	Winstrol-V	3	B
Stenbolone		3	A
Strychine		1	A
Succinylcholine	Sucostrin, Quelin, etc.	2	A
Sufentanil	Sufenta	1	A
Sulfasalazine	Axulfidine, Azaline	4	C
Sulfondiethylmethane		2	A
Sulfonmethane		2	A
Sulforidazine	Inofal	2	A
Sulindac	Clinoril	3	((A)) B
Sulpiride	Aiglonyl, Sulpitol	2	A
Sultopride	Barnetil	2	A
Sumatriptan	Imitrex	3	B
Synthetic cannabis	Spice, K2, Kronic	1	A
Tadalafil	Cialis	3	A
Talbutal	Lotusate	2	A
<u>Tamoxifen</u>		3	B
Tandospirone		2	A
TCO2		3	B
Telmisartan	Micardis	3	B
Temazepam	Restoril	2	A
Tenoxicam	Alganex, etc.	3	B
Tepoxalin		3	B
Terazosin	Hytrin	3	A
Terbutaline	Brethine, Bricanyl	3	B
Terfenadine	Seldan, Triludan	4	C
Testolactone	Teslac	3	B
((*)Testosterone		3	B
((Tetrabenazine) Tetrabenazine)	Nitoman	2	A

Drug	Trade Name	Class	Penalty Class
Tetracaine	Pontocaine	2	A
Tetrahydrogestrinone		3	A
Tetrahydrozoline	Tyzine	4	B
Tetrazepam	Musaril, Myolastin	2	A
<u>THC (tetrahydrocannabinol)</u>		<u>1</u>	<u>A</u>
Thebaine		2	A
((*) Theobromine		4	B
Theophylline	Aqualphyllin, etc.	3	B
Thialbarbital	Kemithal	2	A
Thiamylal	Surital	2	A
Thiethylperazine	Torecan	2	A
Thiopental	Pentothal	2	A
Thiopropazate	Dartal	2	A
Thiorpoperazine	Mejeptil	2	A
Thioridazine	Mellaril	2	A
Thiosalicylate		4	B
Thiothixene	Navane	2	A
Thiphenamil	Trocinate	4	B
<u>Thyroxine and thyroid modulators/hormones including, but not limited to, those containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof</u>	<u>Levothyroxine</u>	<u>3</u>	<u>C</u>
Tiapride	Italprid, Luxoben, etc.	2	A
Tiaprofenic Acid	Surgam	3	B
<u>Tibolone</u>		<u>3</u>	<u>A</u>
Tiletamine	Component of Telazol	2	A
Timiperone	Tolopelon	2	A
Timolol	Blocardrin	3	B
Tocainide	Tonocard	4	B
Tofisopam	Grandaxain, Seriel	2	A
Tolazoline	Priscoline	3	B
<u>Tolfenamic Acid</u>		<u>4</u>	<u>B</u>
Tolmetin	Tolectin	3	B
Topirimate	Topamax	2	A
<u>Toremifene</u>		<u>3</u>	<u>B</u>
Torseamide (Torasemide)	Demadex	3	A
Tramadol	Ultram	2	((A)) B
Trandolapril (and metabolite, Trandolaprilat)	Tarka	3	B
Tranexamic Acid		4	C
Tranlycypromine	((Parnate)) Parnate	2	A
((Frazonde)) Trazodone	Desyrel	2	A
Trenbolone	Finoplif	3	B
Tretoquinol	Inolin	2	A
((*) Triamcinolone	Vetalog, etc.	4	C

Drug	Trade Name	Class	Penalty Class
Triamterene	Dyrenium	4	B
Triazolam	Halcion	2	A
Tribromethanol		2	A
Tricaine methanesulfonate	Finquel	2	A
Trichlormethiazide	Naqua, Naquasone	4	C
Trichloroethanol		2	A
Trichloroethylene	Trilene, Trimar	2	A
Triclofos	Triclos	2	A
Tridihexethyl	Pathilon	4	B
Trifluomeprazine	Nortran	2	A
Trifluoperazine	Stelazine	2	A
Trifluperidol	Triperidol	2	A
Triflupromazine	Vetame, Vesprin	2	A
Trihexylphenidyl	Artane	3	A
Trimeprazine	Temaril	4	B
<u>Trimetazidine</u>		<u>3</u>	<u>B</u>
Trimethadione	Tridione	3	B
Trimethaphan	Arfonad	3	A
Trimipramine	Surmontil	2	A
Tripelennamine	PBZ	3	B
Triprolidine	Actidil	3	B
Tubocurarine (Curare)	Metubin	2	A
Tybamate	Benvil, Nospan, etc.	2	A
Urethane		2	A
Valdecoxib		2	((A)) B
Valerenic Acid		3	A
Valnoctamide	Nirvanyl	2	A
Valsartan	Diovan	3	B
Vardenafil	Levitra	3	A
Vedaprofen		4	B
Venlafaxine	Effexor	2	A
Veralipride	Accional, Veralipril	2	A
Verapamil	Calan, Isoptin	4	B
Vercuronium	Norcuron	2	A
Viloxazine	Catatrol, Vivalan, etc.	2	A
Vinbarbital	Delvinol	2	A
Vinylbital	Optanox, Speda	2	A
Warfarin	Coumadin, Coufarin	5	D
((*)Xylazine	Rompun, Bay VA 1470	3	B
Xylometazoline	Otrivin	4	B
Yohimbine		2	B
Zafirlukast	Accolate	4	C
Zaleplon	Sonata	2	A

Drug	Trade Name	Class	Penalty Class
Zeranol	Ralgro	4	C
Ziconotide		1	A
Zileuton	Zyflo	4	C
Zilpaterol hydrochloride	Zilpaterol	2	A
Ziprasidone	Geodon	2	A
Zolazepam		2	A
Zolmitriptan	Zomig	3	B
Zolpidem	Ambien, Stilnox	2	A
Zomepirac	Zomax	2	B
Zonisamide	Zonegran	3	B
Zopiclone	Imovan	2	A
Zotepine	Lodopin	2	A
Zuclopenthixol	Ciatyl, Cesordinol	2	A
(A-1 androstene-3, 17-diol		3	A
A-1 androstene-3, 17-dione		3	A
A-1 dihydrotestosterone		3	A))

¹ Penalty class "A" recommended if regulators can prove intentional administration.

**WSR 20-02-112
PROPOSED RULES
HORSE RACING COMMISSION**

[Filed January 2, 2020, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-029.

Title of Rule and Other Identifying Information: Chapter 260-84 WAC, Penalties.

Hearing Location(s): On February 14, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: February 14, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by February 7, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by February 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates penalties to reflect current practice and amended WAC.

Reasons Supporting Proposal: Adds updated and amended WACs in the current penalty structure.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

January 2, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-09-060, filed 4/16/18, effective 5/17/18)

WAC 260-84-060 Penalty matrixes. (1) Unless provided for elsewhere, the imposition of reprimands, fines and suspensions will be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace or improper conduct WAC 260-36-120 or 260-80-140	Warning to \$(200) <u>250</u> and/or suspension	Warning to \$500 and/or suspension	Suspension

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Person performing duties for which they are not licensed WAC 260-36-010 or 260-36-260	\$100	\$200	\$300
Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260	\$100	\$200	\$300
Violation of any claiming rule in chapter 260-60 WAC	\$((200) <u>250</u> to \$500 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$((75) <u>100</u>	\$((100) <u>150</u>	\$200
Failure of jockey to report correct weight WAC 260-32-150 and 260-44-080	\$100	\$200	\$300
Failure of jockey to appear for films WAC 260-24-510	\$((50) <u>100</u>	\$((100) <u>150</u>	\$200
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Jockey easing mount without cause WAC 260-52-040	\$250 and/or suspension	\$500 and/or suspension	\$1000 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$500 and/or suspension (riding days)	Suspension (riding days)	
Rider's misuse of crop WAC 260-52-045	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$((200) <u>250</u>	((\$200 to \$300) <u>\$250</u> For unauthorized late scratch, horse placed on stewards list for seven days.	((\$200 to) <u>\$500</u> For unauthorized late scratch, horse placed on stewards list for seven days.
<u>Arriving late to the paddock (jockey) WAC 260-52-010</u>	<u>Warning to \$100</u>	<u>\$100 to \$200</u>	<u>\$200 to \$500</u>
Arriving late to the paddock or receiving barn (trainer) WAC 260-28-200	Warning to \$((50) <u>100</u>	\$((50) <u>100</u> to \$((100) <u>200</u>	\$((100) <u>200</u> to \$((200) <u>500</u>
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$((50) <u>100</u>	\$((50) <u>100</u> to \$((100) <u>200</u>	\$((100) <u>200</u> to \$((200) <u>300</u>
Failure to obtain permission for equipment changes WAC 260-44-010	\$50	\$100	\$200
Failure to report performance records WAC 260-40-100	Warning to \$((50) <u>100</u>	\$((100) <u>150</u>	\$((150) <u>200</u>
Trainer failure to report proper identity of horses in their care WAC 260-28-295	\$((50) <u>100</u>	\$((100) <u>150</u>	\$((200) <u>250</u>
Failure to submit gelding report WAC 260-28-295	\$100	\$200	\$300

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Disturbing the peace <u>or improper conduct</u> WAC 260-80-140 <u>and 260-80-140</u>	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010 or 260-36-260	\$50	\$100	\$150
Unlicensed or improperly licensed personnel WAC 260-36-150 and 260-36-260	\$50	\$100	\$200
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Failure of jockey agent to honor riding engagements (call) WAC 260-32-400	\$25	\$50	\$100
Failure of jockey to report correct weight WAC 260-32-150 <u>and 260-44-080</u>	\$25	\$50	\$100
Failure of jockey to appear for films WAC 260-24-510	\$25	\$50	\$100
Failure of jockey to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Jockey easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding with no disqualification (jockey at fault) WAC 260-52-040	Warning to \$500 and/or suspension (riding days)		
Jockey failing to maintain straight course or careless riding resulting in a disqualification (jockey at fault) WAC 260-52-040	\$100 to \$500 and/or suspension (riding days)		
Rider's misuse of crop WAC 260-52-045	Warning to \$2500		
Entering ineligible horse or unauthorized late scratch chapter 260-40 WAC and WAC 260-80-030	Warning to \$50	\$100 to \$200	\$200 to \$300
<u>Arriving late to the paddock (jockey) WAC 260-52-010</u>	<u>Warning to \$25</u>	<u>\$50</u>	<u>\$100</u>
Arriving late to the paddock (<u>trainer</u>) WAC 260-28-200	Warning to \$25	\$50	\$100
Failure to deliver furosemide treatment form to official veterinarian by appointed time WAC 260-70-650	Warning to \$25	\$50	\$100
Failure to obtain permission for equipment change WAC 260-44-010	\$25	\$50	\$100
Failure to report performance records WAC 260-40-100	Warning to \$25	\$50	\$100
Failure to submit gelding report WAC 260-28-295	\$50	\$100	\$200

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$(50) <u>100</u>	\$(100) <u>200</u>	\$250 and/or suspension

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$200	\$500	\$1000 and/or suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$(50) <u>100</u>	\$(100) <u>150</u>	\$200
Failure to ride in a safe or prudent manner WAC 260-80-145	Warning to <u>\$50</u>	\$50 to <u>\$100</u>	\$(50 – subsequent offenses \$50) <u>200</u> plus possible suspensions
Use of improper, profane, or indecent language WAC 260-80-130	Warning to \$(200) <u>250</u>	(\$200 to \$300) <u>\$250</u>	(\$300 to) \$500
<u>Use of profane language and uncooperative with association security WAC 260-20-090</u>	<u>Warning to \$250</u>	<u>\$250</u>	<u>\$500</u>
Failure to complete temporary license application within fourteen days WAC 260-36-200	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Failure to register employees with the commission (trainers responsibility) WAC 260-36-250	Warning to \$(50) <u>100</u>	\$100	\$200
Failure to furnish fingerprints WAC 260-36-100	\$100 and suspension of license	\$250 and suspension of license	\$500 and suspension of license
Nonparticipation - Licensing WAC 260-36-080	License canceled		
Failure to divulge a pending felony charge or a felony conviction WAC 260-36-050 and 260-36-120	\$100 to \$250		
False information or failure to provide accurate and complete information on application WAC 260-36-050 or 260-36-120	Warning to \$250		
Failure to provide full disclosure, refusal to respond to questions, or responding falsely to stewards or commission investigators WAC 260-24-510	\$500 fine and/or denial, suspension or revocation of license		
Financial responsibility WAC 260-28-030	Suspension of license until debt is satisfied (suspension may be stayed with a mutual payment agreement and licensee remains compliant with agreement)		
Failure to appear for a ruling conference WAC 260-24-510	Suspension (conference may be held in individual's absence)		
Failure to pay fine when due (no extension granted or no request for hearing filed) WAC 260-24-510	Suspension until fine paid		
Possession or use of a stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	Immediate ejection from the grounds and permanent revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010	Immediate ejection from the grounds and permanent revocation		

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to wear proper safety equipment WAC 260-12-180 and 260-32-105	\$50	\$100	\$200
Horses shod with improper toe grabs WAC 260-44-150	Horse scratched and \$250 fine to trainer and plater	Horse scratched and \$500 fine to trainer and plater	Horse scratched and \$1000 fine to trainer and plater
Failure to ((display or)) possess license badge when in restricted area WAC 260-36-110	\$25	\$50	\$100

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee will include violations which occurred in Washington as well as any other recognized racing jurisdiction within the calendar year, absent mitigating circumstances. The stewards may impose more stringent penalties if aggravating circumstances exist. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column will apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards have discretion to impose the penalties as provided in WAC 260-24-510 (3)(a).

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty will include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the pari-mutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards will follow the penalty guidelines as set forth in WAC 260-84-090, 260-84-110, 260-84-120, and 260-84-130.

(6) The executive secretary or stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a referral will not preclude commission action in any matter. An executive secretary's or stewards' ruling will not prevent the commission from imposing a more severe penalty.

**WSR 20-02-113
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 2, 2020, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-015.

Title of Rule and Other Identifying Information: Landscape maintenance, chapter 296-127 WAC, Prevailing wage.

Hearing Location(s): On February 10, 2020, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S118, Tumwater, WA 98501. For directions <https://lni.wa.gov/agency/contact/#office-locations>.

Date of Intended Adoption: February 28, 2020.

Submit Written Comments to: Beverly Clark, L&I, Fraud Prevention and Labor Standards, P.O. Box 44400, Olympia, WA 98504-4400, email Beverly.Clark@Lni.wa.gov, fax 360-902-5292, by February 10, 2020.

Assistance for Persons with Disabilities: Contact Beverly Clark, phone 360-902-6272, fax 360-902-5292, email Beverly.Clark@Lni.wa.gov, by February 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule-making proposal amends chapter 296-127 WAC, Prevailing wage, to provide a new scope of work specific to landscape maintenance that is separate and unique from landscape construction. The landscape maintenance worker scope of work description involves the tending to and maintenance of an area of land that has been previously landscaped, when the work is not preparatory to construction. A description of specific activities that may be within the scope and activities that are not included in the scope are listed in the rule.

An initial emergency rule (WSR 19-07-014) and CR-101 Preproposal statement of inquiry (WSR 19-07-015) were filed on March 8, 2019. A second emergency rule making was filed on July 5, 2019 (WSR 19-15-004). A third emergency rule making was filed on November 1, 2019 (WSR 19-22-041).

Reasons Supporting Proposal: 2018's SSB 5493, effective June 7, 2018, revised RCW 39.12.015. Under the new law, the department is directed to "establish the prevailing rate of wage ... established in collective bargaining agreements for those trades and occupations that have collective bargaining agreements." Where no collective bargaining agreement (CBA) exists, the department is to conduct wage and hour surveys. Other methods may be used where a survey is not sufficient.

The department implemented SSB 5493 in the prevailing rates published on August 1, 2018. As a result of the new law, the rates for landscape construction ("landscape laborer") significantly increased. On February 25, 2019, the department received a petition from the Association of Washington Cities (AWC) to create a separate landscape maintenance scope of work. Due to the increase in costs, cities are deferring or

eliminating necessary maintenance to keep public areas safe, including: Preparing parks, athletic fields, trails and other recreational facilities for the spring and summer season; maintenance of critical vegetation on stormwater facilities like retention ponds; and storm related clean-up to remove dangerous debris from public spaces. Lack of adequate maintenance will result in unsafe facilities creating risks to the public and liability concerns for cities. The department has also heard from companies who contract with cities to do landscape maintenance work with concerns that contracts are not being renewed and workers will be laid off as result.

Under WAC 296-127-013, scope of work descriptions may be issued by the director or designee to determine the applicable prevailing wage and are created using authoritative sources including: Apprenticeship standards; CBAs; dictionaries of occupational titles; experts from organized labor, licensed contractors, and contractors' associations; and recognized labor and management industry practice. Under WAC 296-127-01346, the introductory paragraph of the landscape construction scope of work description is work involved in the beautification of a plot of land by changing its natural features through the addition or modification of lawns, trees, bushes, etc. Upon review of the scope of the work, the department determined that the separate scope for landscape maintenance worker is appropriate.

Statutory Authority for Adoption: Chapter 39.12 RCW.

Statute Being Implemented: Chapter 39.12 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jim Christensen, Tumwater, Washington, 360-902-5330.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Beverly Clark, L&I, Fraud Prevention and Labor Standards, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6272, fax 360-902-5292, email Beverly.Clark@Lni.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule sets a separate scope of work resulting in appropriate prevailing rates of wage specific to landscape maintenance that are distinct from higher costs for landscape construction work. Since the proposed rule is expected to result in a cost savings, it does not impose more than minor cost costs.

A copy of the detailed cost calculations may be obtained by contacting Beverly Clark, L&I, Fraud Prevention and Labor Standards Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6272, fax 360-902-5292, email Beverly.Clark@Lni.wa.gov.

January 2, 2020

Joel Sacks

Director

NEW SECTION

WAC 296-127-01345 Landscape maintenance workers. For the purpose of the Washington state public works law, chapter 39.12 RCW, landscape maintenance involves the tending to and maintenance of an area of land that has been previously landscaped, when the work is not preparatory to construction.

(1) Landscape maintenance includes:

(a) Mowing, weeding, and otherwise performing tasks associated with the maintenance of lawns, yards, gardens, athletic fields, golf courses, parks, trails, or other previously landscaped surfaces.

(b) Pruning, trimming, mulching, and composting.

(c) Maintaining decorative rock including adding material to existing areas.

(d) Incidental hauling or placement of top soil, plants, or other landscaping materials in trucks with only one rear axle.

(e) Reseeding, resodding, replanting, top dressing, aerification, and applying chemicals, fertilizers, and soil amendments.

(f) Use of power tools with a maximum of twenty horsepower such as line trimmers, edgers, mowers, and leaf blowers.

(g) Rehydroseeding using equipment with a maximum capacity of one hundred gallons.

(h) Use of riding mowers which do not exceed fifty horsepower.

(i) Minor, nonconstruction related repair and maintenance of existing irrigation systems.

(j) Debris removal, and clearing of storm drains, catch ponds, and drain grates.

(2) Landscape maintenance does not include:

(a) Any landscape or nonlandscape construction activity or work, other than incidental maintenance and repairs mentioned above.

(b) Any work that is:

(i) On land that has not been previously landscaped;

(ii) Preparatory to construction, alteration, repair, improvement, or demolition;

(iii) Included or required in the process of construction or as a part of a construction project; or

(iv) Required for the restoration of a surface area after construction.

(c) Power line clearance tree trimming or clearing;

(d) Clearing of trees;

(e) Construction or repair of existing irrigation systems other than the minor incidental work identified in subsection (1)(i) of this section;

(f) Tree falling or bucking;

(g) The use of power tools over twenty horsepower;

(h) The use of any other riding equipment regardless of horsepower, other than riding mowers which do not exceed fifty horsepower;

(i) Rehydroseeding using equipment that exceeds a one hundred gallon capacity; and

(j) Any work on backflow protection devices of any kind, when connected to a potable water system.

WSR 20-02-115
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 (Board of Boiler Rules)
 [Filed January 2, 2020, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-099.

Title of Rule and Other Identifying Information: Proposed amendments and fee increase to the boiler rules in chapter 296-104 WAC, Board of boiler rules—Substantive.

Hearing Location(s): On February 19, 2020, at 10 a.m., at the Department of Labor and Industries (L&I), 950 Broadway, Suite 200, Tacoma, WA 98402-4453.

Date of Intended Adoption: March 3, 2020.

Submit Written Comments to: Alicia Curry, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m. on February 7, 2020.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by January 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules and L&I are proposing amendments to update and clarify existing rules and increase fees in chapter 296-104 WAC, Board of boiler rules—Substantive. The board of boiler rules reviews the rules on a regular basis to ensure the rules are consistent with national safety standards for boilers and unfired pressure vessels, and industry practice. The proposed rules would:

- Reorganize requirements for control and limit devices and fuel controls for power, low-pressure, and heating boilers and HLW potable water heaters to make the installation rules easier to understand and use. Additional changes include, but are not limited to:
 - o Requiring control and limit devices to be tested or verified by a means acceptable by the jurisdiction for automatically fired power boilers, low pressure heating boilers, and HLW potable water heaters to allow for new technology;
 - o Allowing all boilers in a room to connect to an existing remote shutdown switch for the remote shutdown of all the boilers;
 - o Clarifying that all boilers in a room that meet the input requirements should be added to the remote shutdown switch when installing a new boiler to improve public safety;
 - o Requiring that all automatically fired boilers with a heating input greater than 400,000 Btu/hr., including electrical boilers with input greater than 117 kW, installed after December 2004, to have a remote shutdown switch or circuit breaker to create consistency with remote shutdown switch requirements for all boilers; and
 - o Requiring that HLW potable hot water heaters with a heating input greater than 400,000 Btu/hr. (117 kW), installed after January 1, 2018, to have a

remote shutdown switch or circuit breaker to create consistency with remote shutdown switch requirements for all boilers.

- Convert existing policies requiring entities repairing or altering boilers or pressure vessels to send a controlled copy of a quality control manual to the department prior to starting work, and to send a checklist and certain forms to the department within forty-five days of the date the work is completed, into rule.

The proposed rules also increase fees by the fiscal-growth factor of 5.08 percent. This is the office of financial management's (OFM) maximum allowable fiscal growth rate for fiscal year 2020. A fee increase is necessary to cover the program's operating expenses for inspections and other program public safety activities.

Reasons Supporting Proposal: This rule making is needed to ensure that Washington's rules are up-to-date and consistent with the national boiler and unfired pressure vessel safety standards and industry practice, and that inspection fees will support the program's operating expenses. According to RCW 70.79.330 and 70.79.350, a fee schedule for inspections is to be set by the board of boiler rules and the fees are to be used to administer the boiler program.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

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

Name of Proponent: Board of boiler rules, L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tony Oda, Program Manager, Tumwater, Washington, 360-902-5270; Implementation and Enforcement: David Puente, Jr., Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, Department of Labor and Industries, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a

rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. As discussed in the cost-benefit analysis document, those changes that are not exempt from the Regulatory Fairness Act requirement will either result in a cost savings to customers or no increased costs over current practice or the baseline. As such, the proposed rule does not impose more-than-minor-costs.

January 2, 2020
Terry Chapin, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-301 Installation—What control and limit devices are required on automatically fired power boilers after June 1989? In addition to those requirements listed in WAC 296-104-300, the following are also required:

(1) All steam power boilers (~~(that are automatically fired low pressure steam heating boilers, small power boilers, and power steam boilers without a constant attendant who has no other duties)~~) shall be equipped with:

(a) Two high steam pressure limit controls, the highest of which shall be provided with a manual reset.

(b) Two low-water fuel cutoffs, one of which shall be provided with a manual reset device and independent of the feed water controller.

~~((e))~~ (2) Coil type flash steam boilers may use two high-temperature limit controls, one of which shall have a manual reset. This is instead of the low-water fuel cutoff.

~~((d))~~ All control and limit devices shall be independently connected and electrically wired in series.

(2) All automatically fired hot water supply, low pressure hot water heating boilers, and power hot water boilers)

(3) All high temperature water (greater than 250°F) power boilers shall be equipped with:

(a) Two high-temperature limit controls, the highest of which shall be provided with a manual reset.

(b) ~~((One))~~ Two low-water fuel cutoffs ~~((with a))~~, one of which shall be provided with a manual reset device and independent of the feed water controller.

~~((e))~~ For coil type hot water boilers a low-water flow limit control installed in the circulating water line may be used instead of a low-water fuel cutoff.

~~((d))~~ (4) All controls and limit devices shall be ~~((independently connected and electrically wired in series))~~ tested or verified by means acceptable by the jurisdiction.

(5) For installations after December 2004 - All automatically fired power boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW, shall have a manually operated remote shutdown switch or circuit breaker. When an existing remote shutdown switch exists, all boilers may be connected to the existing switch to allow for remote shutdown of all boilers in the room. When

an additional boiler is added to the room where an existing remote shutdown switch does not exist, all boilers meeting the input requirements should be added to the new remote shutdown switch. Activation of the emergency shutdown switch or circuit breaker shall immediately shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations where applicable. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

AMENDATORY SECTION (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

WAC 296-104-302 Installation—What ~~((fuel controls are required on automatically fired boilers after December 1998))~~ control and limit devices are required on automatically fired hot water heating, hot water supply boilers, coil type hot water heating boilers, low pressure steam boilers, and HLW potable water heaters after June 1989? In addition to those requirements listed in WAC ~~((296-104-301))~~ 296-104-300, the following are also required ~~((with regard to installations or refits of gas, oil, or combinations of gas or oil:~~

~~(1) All boilers installed or refitted after December 1998, shall be equipped with suitable primary (flame safeguards) safety controls, safety limit switches, and burners or electrical elements as required by a nationally or internationally recognized standard.~~

~~(2) The symbol of the certifying organization that has investigated such equipment as having complied with a nationally or internationally recognized standard shall be affixed to the equipment and shall be considered evidence that the unit was manufactured in accordance with that standard. A certifying organization is one that provides uniform testing, examination, and listing procedures under established, nationally or internationally recognized standards, and that is acceptable to the authorities having jurisdiction.~~

~~(3) These devices shall be installed in accordance with jurisdictional requirements, manufacturer's recommendations, and/or industry standards as applicable.)):~~

(1) All automatically fired hot water heating, hot water supply boilers shall be equipped with:

(a) Two high temperature limit controls, the highest of which shall be provided with a manual reset when heat input is greater than 400,000 Btu/hr (117 kW).

(b) One low-water fuel cutoff with a manual reset device and independent of the fee water controller.

(c) For installations after December 2004, a means shall be provided for testing the operation of hot water heating boiler low-water fuel cutoff(s) without resorting to draining the entire system. Such means shall not render the device(s) inoperable. If the means temporarily isolates the device from the boiler during testing, it shall automatically return to its normal position.

(2) For coil type hot water boilers with heat input greater than 400,000 Btu/hr (117 kW) a low-water flow limit control installed in the circulating water line may be used instead of a low-water fuel cutoff when forced circulation is required to prevent overheating of the tubes.

(3) Automatically fired low pressure steam boilers shall be equipped with:

(a) Two high steam pressure limit controls, the highest of which shall be provided with a manual reset.

(b) Two low-water fuel cutoffs, one of which shall be provided with a manual reset device and independent of the feed water controller.

(4) HLW potable water heaters:

(a) Two temperature limit controls, one being a high-limit temperature control that will automatically cut off the fuel supply.

(b) Heaters with input greater than 400,000 Btu/hr (117 kW) installed after January 1, 2018, shall comply with all items in subsection (6) of this section.

(5) All controls and limit devices shall be tested or verified by means acceptable by the jurisdiction.

(6) For installations after December 2004, all automatically fired boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW, shall have a manually operated remote shutdown switch or circuit breaker. When an existing remote shutdown switch exists, all boilers may be connected to the existing switch to allow for the remote shutdown of all boilers in the room. When an additional boiler is added to the room where an existing remote shutdown switch does not exist, all boilers meeting the input requirements should be added to the new remote shutdown switch. Activation of the emergency shutdown switch or circuit breaker shall immediately shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations where applicable. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

AMENDATORY SECTION (Amending WSR 15-14-100, filed 6/30/15, effective 9/1/15)

WAC 296-104-303 Installation—What ~~(control and limit devices are required on automatically fired boilers after December 2004)~~ fuel controls are required on automatically fired boilers after December 1998? In addition to those requirements listed in WAC ~~((296-104-302))~~ 296-104-301 and 296-104-302, the following are ~~((also))~~ required with regard to installations or refits of gas, oil, or combinations of gas or oil:

(1) ~~((All automatically fired boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW shall have a manually operated remote shutdown switch or circuit breaker. Activation of the emergency shutdown switch or circuit breaker shall immediately~~

shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations where applicable. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

(2) A means shall be provided for testing the operation of hot water heating boiler low-water fuel cutoff(s) without resorting to draining the entire system. Such means shall not render the device(s) inoperable. If the means temporarily isolates the device from the boiler during testing, it shall automatically return to its normal position.) All boilers installed or refitted after December 1998, shall be equipped with suitable primary (flame safeguards) safety controls, safety limit switches, and burners or electrical elements as required by a nationally or internationally recognized standard.

(2) The symbol of the certifying organization that has investigated such equipment as having complied with nationally or internationally recognized standard shall be affixed to the equipment and shall be considered evidence that the unit was manufactured in accordance with that standard. A certifying organization is one that provides uniform testing, examination, and listing procedures under established, nationally or internationally recognized standards, and that is acceptable to the authorities having jurisdiction.

(3) These devices shall be installed in accordance with jurisdictional requirements, manufacturer's recommendations, and/or industry standards as applicable.

AMENDATORY SECTION (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

WAC 296-104-503 Repairs—What are the requirements for nonnuclear boilers and unfired pressure vessel repairs and alterations? Repairs and alterations to standard nonnuclear boilers and pressure vessels shall be made in accordance with the rules of the National Board Inspection Code (NBIC), Part 3 as adopted in WAC 296-104-502(1). ~~((Additionally, repairs and alterations to nonstandard boilers and pressure vessels, as addressed in WAC 296-104-215, must be authorized by the chief inspector.))~~

Repairs and alterations ~~((may))~~ shall be made by an organization in possession of a valid Certificate of Authorization for use of the national board "R" symbol stamp~~((issued by the national board provided such repairs/alterations are within the scope of authorization.~~

~~Owner/user special inspectors may only accept repairs and alterations to boilers and unfired pressure vessels operated by their respective companies per RCW 70.79.130.~~

Documentation of repairs and alterations, in accordance with the requirements of the National Board Inspection Code (NBIC) as adopted in WAC 296-104-502(1), shall be submitted to the department). The national board "R" symbol stamp organization shall comply with the following jurisdictional requirements:

(1) Assign and submit a current "controlled copy" of their quality control manual to the jurisdiction prior to starting mechanical work in Washington state.

(2) Submit a completed copy of the "process traveler/checklist" signed off by qualified company QC personnel and the national board commissioned inspector with "R" endorsement for each repair/alteration job within forty-five days of the completion of the physical work.

(3) Submit a completed copy of the completed "R-1" (for repairs, also for routine repairs) form or the completed "R-2" (for alterations) form within forty-five days of the completion of the physical work.

Repairs and alterations to nonstandard boilers and pressure vessels, as addressed in WAC 296-104-215, must be authorized by the chief inspector.

AMENDATORY SECTION (Amending WSR 19-15-120, filed 7/23/19, effective 9/1/19)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of ~~\$(56.16)~~ 59.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is ~~\$(24.23)~~ 25.40.

Hot water heaters per RCW 70.79.090, inspection fee: ~~\$(7.38)~~ 7.70.

The department shall assess a \$7.00 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

Heating boilers:	Internal	External
Cast iron—All sizes	\$(40.87)	\$(32.65)
	<u>42.90</u>	<u>34.30</u>
All other boilers less than 500 sq. ft.	\$(40.87)	\$(32.65)
	<u>42.90</u>	<u>34.30</u>
500 sq. ft. to 2500 sq. ft.	\$(81.74)	\$(40.87)
	<u>85.80</u>	<u>42.90</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(32.65)	\$(16.01)
	<u>34.30</u>	<u>16.80</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	\$(40.87)	\$(32.65)
	<u>42.90</u>	<u>34.30</u>
100 sq. ft. to less than 500 sq. ft.	\$(49.50)	\$(32.65)
	<u>52.00</u>	<u>34.30</u>
500 sq. ft. to 2500 sq. ft.	\$(81.74)	\$(40.87)
	<u>85.80</u>	<u>42.90</u>

Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(32.65)	\$(16.01)
	<u>34.30</u>	<u>16.80</u>

Pressure vessels:

Square feet shall be determined by multiplying the length of the shell by its diameter.

	Internal	External
Less than 15 sq. ft.	\$(32.65)	\$(24.23)
	<u>34.30</u>	<u>25.40</u>
15 sq. ft. to less than 50 sq. ft.	\$(48.46)	\$(24.23)
	<u>50.90</u>	<u>25.40</u>
50 sq. ft. to 100 sq. ft.	\$(56.57)	\$(32.65)
	<u>59.40</u>	<u>34.30</u>
For each additional 100 sq. ft. or any portion thereof	\$(56.47)	\$(16.01)
	<u>59.30</u>	<u>16.80</u>

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours ~~\$(49.50)~~ 52.00

For each hour or part of an hour in excess of 8 hours ~~\$(73.94)~~ 77.60

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours ~~\$(73.94)~~ 77.60

For each hour or part of an hour in excess of 8 hours ~~\$(115.64)~~ 121.50

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours ~~\$(49.50)~~ 52.00

For each hour or part of an hour in excess of 8 hours ~~\$(73.94)~~ 77.60

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours ~~\$(73.94)~~ 77.60

For each hour or part of an hour in excess of 8 hours ~~\$(115.64)~~ 121.50

Examination fee: A fee of ~~\$(91.52)~~ 96.10 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of ~~\$(49.40)~~ 51.90 for initial work card. A fee of ~~\$(30.68)~~ 32.20 for annual renewal.

If a special inspector changes companies: A work card fee of ~~\$(49.40)~~ 51.90.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the

inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$~~((460.30))~~ 483.60 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.