

WSR 20-11-003
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed May 8, 2020, 8:27 a.m.]

Continuance of WSR 20-10-010.

Preproposal statement of inquiry was filed as WSR 20-05-090.

Title of Rule and Other Identifying Information: WAC 182-501-0165 Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment.

Hearing Location(s): On June 23, 2020, at 10:00 a.m.

In response to the governor's extended orders for *Stay Home, Stay Safe*, this public hearing will be held virtually. This will not be an in-person hearing and there is not a physical location available.

You must register for the public hearing at: <https://attendee.gotowebinar.com/register/6057562907361355533>.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than June 24, 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 June 23, 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 June 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to the governor's extended orders for *Stay Home, Stay Safe* and to protect the public's health due to the COVID-19 pandemic, the agency is not able to hold the originally scheduled in-person public hearing on May 26, 2020, filed under WSR 20-10-010. The date of this public hearing is being moved to June 23, 2020, and the location of the public hearing is changed from an in-person hearing to a virtual public hearing.

The health care authority (HCA) is updating this rule to further implement full integration of behavioral health in HCA's medicaid program by replacing the term "mental health" with "behavioral health." This change will ensure clarity that clients receiving behavioral health services under HCA's medicaid fee-for-service program receive appropriate notices and opportunities for hearings based on adverse benefit decisions resulting from prior authorization.

Reasons Supporting Proposal: See purpose above.

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: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Josh Morse, P.O. Box 42712, Olympia, WA 98504-2712, 360-725-0839.

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. This rule does not impose any costs on businesses.

May 8, 2020
 Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-15-053, filed 7/9/15, effective 8/9/15)

WAC 182-501-0165 Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment. (1) This section applies to fee-for-service (FFS) requests for medical or dental services and medical equipment that:

- (a) Are identified as covered services or early and periodic screening, diagnosis, and treatment services; and
 - (b) Require prior authorization by the medicaid agency.
- (2) The following definitions and those found in chapter 182-500 WAC apply to this section:

"Controlled studies" - Studies in which defined groups are compared with each other to reduce bias.

"Credible evidence" - Type I-IV evidence or evidence-based information from any of the following sources:

- Clinical guidelines
- Government sources
- Independent medical evaluation (IME)
- Independent review organization (IRO)
- Independent technology assessment organizations
- Medical and hospital associations
- Policies of other health plans
- Regulating agencies (for example, the Federal Drug Administration or Department of Health)
- Treating provider
- Treatment pathways

"Evidence-based" - The ordered and explicit use of the best evidence available (see "hierarchy of evidence" in subsection (6)(a) of this section) when making health care decisions.

"Health outcome" - Changes in health status (mortality and morbidity) which result from the provision of health care services.

"Institutional review board (IRB)" - A board or committee responsible for reviewing research protocols and determining whether:

- (1) The rights and welfare of human subjects are adequately protected;
- (2) The risks to people are minimized and are not unreasonable;
- (3) The risks to people are outweighed by the potential benefit to them or by the knowledge to be gained; and
- (4) The proposed study design and methods are adequate and appropriate in the light of stated study objectives.

"Independent review organization (IRO)" - A panel of medical and benefit experts intended to provide unbiased,

independent, clinical, evidence-based reviews of adverse decisions.

"Independent medical evaluation (IME)" - An objective medical examination of the client to establish the medical facts.

"Provider" - The person who is responsible for diagnosing, prescribing, and providing medical, dental, or (~~men-~~~~tal~~) behavioral health services to agency clients.

(3) The agency authorizes, on a case-by-case basis, requests described in subsection (1) of this section when the agency determines the service or equipment is medically necessary as defined in WAC 182-500-070. The process the agency uses to assess medical necessity is based on:

(a) The evaluation of submitted and obtainable medical, dental, or (~~mental~~) behavioral health evidence as described in subsections (4) and (5) of this section; and

(b) The application of the evidence-based rating process described in subsection (6) of this section.

(4) The agency reviews available evidence relevant to a medical, dental, or (~~mental~~) behavioral health service or equipment to:

(a) Determine its efficacy, effectiveness, and safety;

(b) Determine its impact on health outcomes;

(c) Identify indications for use;

(d) Evaluate pertinent client information;

(e) Compare to alternative technologies; and

(f) Identify sources of credible evidence that use and report evidence-based information.

(5) The agency considers and evaluates all available clinical information and credible evidence relevant to the client's condition. The provider responsible for the client's diagnosis, or treatment, or both, must submit with the request credible evidence specifically related to the client's condition including, but not limited to:

(a) A physiological description of the client's disease, injury, impairment, or other ailment;

(b) Pertinent laboratory findings;

(c) Pertinent X-ray and/or imaging reports;

(d) Individual patient records pertinent to the case or request;

(e) Photographs, or videos, or both, if requested; and

(f) Objective medical/dental/(~~mental~~) behavioral health information such as medically/dentally acceptable clinical findings and diagnoses resulting from physical or (~~mental~~) behavioral health examinations.

(6) The agency uses the following processes to determine whether a requested service described in subsection (1) is medically necessary:

(a) **Hierarchy of evidence - How defined.** The agency uses a hierarchy of evidence to determine the weight given to available data. The weight of medical evidence depends on objective indicators of its validity and reliability including the nature and source of the evidence, the empirical characteristics of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies. The hierarchy (in descending order with Type I given the greatest weight) is:

(i) Type I: Meta-analysis done with multiple, well-designed controlled studies;

(ii) Type II: One or more well-designed experimental studies;

(iii) Type III: Well-designed, quasi-experimental studies such as nonrandomized controlled, single group pre-post, cohort, time series, or matched case-controlled studies;

(iv) Type IV: Well-designed, nonexperimental studies, such as comparative and correlation descriptive, and case studies (uncontrolled); and

(v) Type V: Credible evidence submitted by the provider.

(b) **Hierarchy of evidence - How classified.** Based on the quality of available evidence, the agency determines if the requested service is effective and safe for the client by classifying it as an "A," "B," "C," or "D" level of evidence:

(i) **"A" level evidence:** Shows the requested service or equipment is a proven benefit to the client's condition by strong scientific literature and well-designed clinical trials such as Type I evidence or multiple Type II evidence or combinations of Type II, III or IV evidence with consistent results (An "A" rating cannot be based on Type III or Type IV evidence alone).

(ii) **"B" level evidence:** Shows the requested service or equipment has some proven benefit supported by:

(A) Multiple Type II or III evidence or combinations of Type II, III or IV evidence with generally consistent findings of effectiveness and safety (A "B" rating cannot be based on Type IV evidence alone); or

(B) Singular Type II, III, or IV evidence in combination with agency-recognized:

(I) Clinical guidelines;

(II) Treatment pathways; or

(III) Other guidelines that use the hierarchy of evidence in establishing the rationale for existing standards.

(iii) **"C" level evidence:** Shows only weak and inconclusive evidence regarding safety, or efficacy, or both. For example:

(A) Type II, III, or IV evidence with inconsistent findings; or

(B) Only Type V evidence is available.

(iv) **"D" level evidence:** Is not supported by any evidence regarding its safety and efficacy, for example that which is considered investigational or experimental.

(c) **Hierarchy of evidence - How applied.** After classifying the available evidence, the agency:

(i) Approves "A" and "B" rated requests if the service or equipment:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; and

(B) Is not more costly than an equally effective alternative treatment.

(ii) Approves a "C" rated request only if the provider shows the requested service is the optimal intervention for meeting the client's specific condition or treatment needs, and:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment;

(B) Is less costly to the agency than an equally effective alternative treatment; and

(C) Is the next reasonable step for the client in a well-documented tried-and-failed attempt at evidence-based care.

(iii) Denies "D" rated requests unless:

(A) The requested service or equipment has a humanitarian device exemption from the Food and Drug Administration (FDA); or

(B) There is a local institutional review board (IRB) protocol addressing issues of efficacy and safety of the requested service that satisfies both the agency and the requesting provider.

(7) Within fifteen days of receiving the request from the client's provider, the agency reviews all evidence submitted and:

(a) Approves the request;

(b) Denies the request if the requested service is not medically necessary; or

(c) Requests the provider submit additional justifying information. The agency sends a copy of the request to the client at the same time.

(i) The provider must submit the additional information within thirty days of the agency's request.

(ii) The agency approves or denies the request within five business days of the receipt of the additional information.

(iii) If the provider fails to provide the additional information, the agency will deny the requested service.

(8) When the agency denies all or part of a request for a covered service or equipment, the agency sends the client and the provider written notice, within ten business days of the date the information is received, that:

(a) Includes a statement of the action the agency intends to take;

(b) Includes the specific factual basis for the intended action;

(c) Includes reference to the specific WAC provision upon which the denial is based;

(d) Is in sufficient detail to enable the recipient to:

(i) Learn why the agency's action was taken; and

(ii) Prepare an appropriate response.

(e) Is in sufficient detail to determine what additional or different information might be provided to challenge the agency's determination;

(f) Includes the client's administrative hearing rights;

(g) Includes an explanation of the circumstances under which the denied service is continued or reinstated if a hearing is requested; and

(h) Includes examples(s) of "lesser cost alternatives" that permit the affected party to prepare an appropriate response.

(9) If an administrative hearing is requested, the agency or the client may request an independent review organization (IRO) or independent medical examination (IME) to provide an opinion regarding whether the requested service or equipment is medically necessary. The agency pays for the independent assessment if the agency agrees that it is necessary, or an administrative law judge orders the assessment.

WSR 20-11-004
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed May 8, 2020, 8:47 a.m.]

Continuance of WSR 20-10-007.

Preproposal statement of inquiry was filed as WSR 19-16-020.

Title of Rule and Other Identifying Information: WAC 182-546-0001 (repeal) Definitions, 182-546-0050 (new) Ambulance transportation—General, 182-546-0100 The MAA ambulance transportation program, 182-546-0125 (new) Ambulance transportation—Definitions, 182-546-0150 Client eligibility for ambulance transportation, 182-546-0200 Scope of coverage for ambulance transportation, 182-546-0250 Ambulance services the agency does not cover, 182-546-0300 General requirements for ambulance providers, 182-546-0400 General limitations on payment for ambulance services, 182-546-0425 Ambulance coverage during inpatient hospital stays, 182-546-0450 Payment for ground ambulance services, 182-546-0500 Payment for ground ambulance services in special circumstances, 182-546-0505 (repeal) GEMT definitions, 182-546-0510 GEMT program overview, 182-546-0515 GEMT provider participation and qualifications, 182-546-0520 GEMT supplemental payments, 182-546-0525 GEMT claim submission and cost reporting, 182-546-0545 GEMT auditing, 182-546-0600 Procedure code modifiers, 182-546-0700 Payment limitations for air ambulance services, 182-546-0800 Payment for ambulance services provided in another state or U.S. territory, 182-546-0900 Ambulance coverage in Canada, Mexico, and other countries, 182-546-1000 Coverage for nonemergency ground ambulance transportation, 182-546-1500 Coverage for non-emergency air ambulance transportation, 182-546-2500 Transportation to or from out-of-state treatment facilities—Coordination of benefits, 182-546-3000 Transporting qualified trauma cases, 182-546-4000 (repeal) Transportation coverage under the Involuntary Treatment Act (ITA), 182-546-4100 (new) Ambulance transportation—Behavioral health treatment—General, 182-546-4200 Ambulance transportation—Behavioral health treatment—Coverage, 182-546-4300 Ambulance transportation—Behavioral health treatment—Reimbursement, and 182-546-4600 (repeal) Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act.

Hearing Location(s): On June 23, 2020, at 10:00 a.m.

In response to the Governor's extended orders for *Stay Home, Stay Safe*, this public hearing will be held virtually. This will not be an in-person hearing and there is not a physical location available.

You must register for the public hearing at: <https://attendee.gotowebinar.com/register/6057562907361355533>.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than June 24, 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 June 23, 2020.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecom-

munication relay services 711, email amber.lougheed@hca.wa.gov, by June 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to the governor's extended orders for *Stay Home, Stay Safe*, and to protect the public's health due to the COVID-19 pandemic, the agency is not able to hold the originally scheduled in-person public hearing on May 26, 2020, filed under WSR 20-10-007. The date of this public hearing is being moved to June 23, 2020, and the location of the public hearing is changed from an in-person hearing to a virtual public hearing.

The agency is revising these sections to update ambulance program policies, clarify existing policies and coverage, remove outdated information, update erroneous rule citations, reorganize sections for clarity, and perform other housekeeping fixes.

Specifically, the agency added new definitions; updated client eligibility; added certificate requirements for air ambulance providers; clarified documentation requirements for medical necessity, clarified coverage for inpatient hospital stays; clarified payment for transport provided in another state, clarified nonemergency air payment, and added a new behavioral health section to align with integrated care.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; SHB 1721, chapter 157, Laws of 2015; ESSHB [E2SHB] 1358, chapter 273, Laws of 2017; E3SHB 1713, chapter 29, Laws of 2016.

Statute Being Implemented: RCW 41.05.021, 41.05.160; SHB 1721, chapter 157, Laws of 2015; ESSHB [E2SHB] 1358, chapter 273, Laws of 2017; E3SHB 1713, chapter 29, Laws of 2016.

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

Name of Proponent: Health care authority (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: Abigail Cole, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1835.

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 additional costs on businesses.

May 8, 2020
Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-546-0050 Ambulance transportation—General. See WAC 182-546-0100 through 182-546-4300 for

ambulance transportation and WAC 182-546-5000 through 182-546-6200 for brokered/nonemergency transportation.

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

WAC 182-546-0100 ((The MAA)) Ambulance transportation—Program. (1) The provisions of this chapter take precedence with respect to ambulance ((coverage)) services in cases of ambiguity in, or conflict with, other agency rules governing eligibility for ((medical)) health care services.

(2) The ((medical assistance administration (MAA) covers medically necessary)) medicaid agency covers emergency and nonemergency ambulance transportation to and from ((the provider of MAA covered services that is closest and most appropriate to meet the client's medical need. See WAC 388-546-0150 through 388-546-4000 for ambulance transportation and WAC 388-546-5000 through 388-546-5600 for brokered/nonemergency transportation)) a covered health care service, subject to the limitations and requirements in this chapter.

NEW SECTION

WAC 182-546-0125 Ambulance transportation—Definitions. The following definitions and those found in chapter 182-500 WAC apply to ambulance transportation services.

"Advanced life support (ALS)" - See RCW 18.73.030.

"Advanced life support (ALS) assessment" - Means an assessment performed by ALS trained personnel as part of an emergency response that was necessary because the client's reported conditions at the time of dispatch was such that only an ALS crew was qualified to perform the assessment. An ALS assessment does not necessarily result in an ambulance transport or determination that the client requires an ALS level of service or that the transport will be reimbursed at the ALS rate.

"Advanced life support, Level 1 (ALS1)" - Means the transportation by ground ambulance vehicle and the provision of medically necessary supplies and services including the provision of an ALS assessment or at least one ALS intervention.

"Advanced life support, Level 1 (ALS1) emergency" - Means medically necessary ALS1 services, as previously specified, in the context of an emergency response. An emergency response is one that, at the time the ambulance provider is called, it responds immediately.

"Advanced life support, Level 2 (ALS2)" - Means transportation by ground ambulance vehicle and the provision of medically necessary supplies and services including at least three separate administrations of one or more medications by intravenous push/bolus or by continuous infusion (excluding crystalloid fluids) or ground ambulance transport, medically necessary supplies and services, and the provision of at least one of the ALS2 procedures listed below:

- (a) Endotracheal intubation;
- (b) Cardiac pacing;
- (c) Chest decompression;
- (d) Creation of a surgical airway;
- (e) Manual defibrillation/cardioversion;

(f) Placement of central venous line; or

(g) Placement of intraosseous line.

"Advanced life support (ALS) intervention" - Means a procedure that is in accordance with state and local laws, required to be done by an emergency medical technician intermediate, emergency medical technician advanced, or paramedic.

"Aid vehicle" - See RCW 18.73.030.

"Air ambulance" - Means a helicopter or airplane designed and used to provide transportation for the ill and injured, and to provide personnel, facilities, and equipment to treat clients before and during transportation. Air ambulance is considered an ALS service.

"Allowable costs" - For the ground emergency medical transportation (GEMT) program only, allowable costs means an expenditure that meets the test of the appropriate Executive Office of the President of the United States, Office of Management and Budget (OMB) Circular.

"Ambulance" - Means a ground vehicle or aircraft designed and used to transport the ill and injured, provide personnel, facilities, and equipment to treat clients before and during transportation, and licensed in accordance with RCW 18.73.140.

"Bariatric patient" - Means a patient whose weight, height, or width exceeds the capacity standards of a normal ambulance gurney.

"Bariatric transport unit" - Means a specially equipped ambulance designed for the transportation of bariatric patients.

"Base rate" - Means the agency's minimum payment amount per covered trip, which includes allowances for emergency medical personnel and their services, the costs of standing orders, reusable supplies and equipment, hardware, stretchers, oxygen and oxygen administration, intravenous supplies and IV administration, disposable supplies, waiting time, and the normal overhead costs of doing business. The base rate excludes mileage.

"Basic life support (BLS)" - Means transportation by ground ambulance vehicle and the provision of medically necessary supplies and services, including BLS ambulance services as defined in chapter 18.73 RCW. The ambulance must be staffed by a person qualified as an emergency medical technician-basic (EMT basic) according to department of health (DOH) regulations. BLS does not require the ability to provide or deliver invasive medical procedures and services.

"Basic life support (BLS) emergency" - BLS services provided in an emergency response.

"Bed-confined" - Means the client is unable to perform all of the following actions:

- (a) Get up from bed without assistance;
- (b) Unable to bear weight or ambulate;
- (c) Sit in a chair or wheelchair.

"Behavioral health disorder" - Means mental disorders and substance use disorders.

"Bordering city hospital" - Means a licensed hospital in a designated bordering city (see WAC 182-501-0175).

"Brokered transportation" - Means nonemergency transportation arranged by a broker under contract with the agency, to or from covered health care services for an eligible

client (also, see "Transportation provider" in WAC 182-546-5100).

"By report" - See WAC 182-500-0015.

"Chemical dependency professional (CDP)" - See substance use disorder professional (SUDP).

"Children's long-term inpatient program (CLIP)" - Means psychiatric residential treatment provided as a result of judicial commitment or review of the CLIP committee for children five through seventeen years of age.

"Closest and most appropriate" - The agency-contracted facility or level of care in which the expected clinical benefits (e.g., improved symptoms) outweigh the expected negative effect (e.g., adverse reactions) to such an extent that the treatment or transportation is justified. This facility may not necessarily be the closest provider based solely on driving distance.

"Conditional release" - Means a period of time the client is released from inpatient care to outpatient care, provided that the client continues to meet certain conditions according to RCW 71.05.340.

"Cost allocation plan (CAP)" - Means a document that identifies, accumulates, and distributes allowable direct and indirect costs to cost objectives. The document also identifies the allocation methods used for distribution to cost objectives, based on relative benefits received.

"Designated crisis responder (DCR)" - Means a behavioral health professional appointed by the county or other authority authorized in rule to perform duties specified in chapter 71.05 RCW and who has received chemical dependency training as determined by the division of behavioral health and recovery.

"Detention" or **"detain"** - Means the lawful confinement of a person, under chapter 71.05 RCW.

"Direct costs" - Means all costs identified specifically with a particular final cost objective in order to meet emergency medical transportation requirements. This includes unallocated payroll costs for personnel work shifts, medical equipment and supplies, professional and contracted services, travel, training, and other costs directly related to delivering covered medical transportation services.

"Emergency medical service" - Means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting a client in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

"Emergency medical transportation" - Means ambulance transportation during which a client receives necessary emergency medical services immediately prior to, or in transit to, an appropriate medical facility.

"Emergency response" - Means a BLS or ALS level of service that has been provided in immediate response to a 911 call or the equivalent.

"Evaluation and treatment facility" - See RCW 71.05.020.

"Federal financial participation (FFP)" - Means the portion of medical assistance expenditures for emergency medical services that are paid or reimbursed by the Centers for Medicare and Medicaid Services (CMS) according to the state plan for medical assistance. Clients under Title 19, U.S.

Health Resources and Services Administration (HRSA) are eligible for FFP.

"Gravely disabled" - Means a condition in which a person, as a result of a mental disorder, or as the result of the use of alcohol or other psychoactive chemicals:

(a) Is in danger of serious physical harm as a result of being unable to provide for personal health or safety; or

(b) Shows repeated and escalating loss of cognitive control over personal actions and is not receiving care essential for personal health or safety.

"Ground ambulance" - Means a ground vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat clients before and during transportation.

"Indirect costs" - Means the costs for a common or joint purpose benefiting more than one cost objective and allocated to each objective using an agency-approved indirect rate or an allocation methodology.

"Initial detention" - Means the period, up to seventy-two hours, in which a person is involuntarily placed in an evaluation and treatment facility under RCW 71.05.150 or 71.05.153 (see RCW 71.05.160). This period begins on the date and time the evaluation and treatment facility provisionally accepts the client for admission. See definition for "petition for initial detention."

"Interfacility" - Means transportation services between hospitals.

"Invasive procedure" - Means a medically necessary operative procedure in which skin or mucous membranes and connective tissues are cut or an instrument is introduced through a natural body orifice, e.g., an intubation tube. Invasive procedures include a range of procedures from minimally invasive (biopsy, excision) to extensive (organ transplantation). This does not include use of instruments for examinations or very minor procedures such as drawing blood.

"Involuntary Treatment Act (ITA)" - See chapters 71.05 and 71.34 RCW.

"Less restrictive alternative treatment" - Means a program of individualized treatment in a less restrictive setting than inpatient treatment and that includes the services described in RCW 71.05.585.

"Lift-off fee" - Means either of the two base rates the agency pays to air ambulance providers for transporting a client. The agency establishes separate lift-off fees for helicopters and airplanes.

"Loaded mileage" - Means the distance the client is transported in the ambulance.

"Medical control" - Means the medical authority upon which an ambulance provider relies to coordinate prehospital emergency services, triage, and trauma center assignment/destination for the person being transported. The medical control is designated in the trauma care plan, by the department of health's (DOH) contracted medical program director, of the region in which the ambulance service is provided.

"Medical attestation" - Means the medical professional is attesting to the fact that the client has a condition that justifies medical transportation and the level of care that is specified by BLS or ALS services and supplies. The condition must also be such that other means of transportation

(such as taxi, bus, car, or other means) would be harmful to the client. (See WAC 182-500-0070 for additional information - Medically necessary definition.)

"Nonemergency ambulance transportation" - Means the use of a ground ambulance to carry a client who may be confined to a stretcher but typically does not require the provision of emergency medical services in transit, or the use of an air ambulance to or from an out-of-state health care service when the out-of-state health care service and air ambulance transportation are prior authorized by the agency. Nonemergency ambulance transportation is usually scheduled or prearranged. See definitions for "prone or supine transportation."

"Parent" - For the purpose of family initiated treatment under RCW 71.34.600 through 71.34.670, means a legal guardian, a person that has been given authorization to make health care decisions for the adolescent, a kinship caregiver who is involved in caring for the adolescent, or another relative who is responsible for the health care of the adolescent who may be required to provide a declaration under penalty of perjury stating that they are a relative responsible for the health care of the adolescent under RCW 9A.72.085.

"Petition for initial detention" - A document required by the superior court of Washington for admission of the client by the evaluation and treatment facility. This form is available on the Washington state superior court mental proceedings rules web page.

"Petition for revocation of a conditional release or less restrictive treatment" - Means a document completed by a designated crisis responder (DCR).

"Point of destination" - Means a health care facility generally equipped to provide the necessary medical, nursing, or behavioral health care necessary to treat the client's injury, illness, symptoms, or complaint.

"Point of pickup" - Means the location of the client at the time the client is placed on board the ambulance or transport vehicle.

"Prehospital care" - Means an assessment, stabilization, and emergency medical care of an ill or injured client by an emergency medical technician, paramedic, or other person before the client reaches the hospital.

"Prone or supine transportation" - Means transporting a client confined to a stretcher or gurney, with or without emergency medical services being provided in transit.

"Public institution" - Means a facility that is either an organizational part of a government entity or over which a governmental unit exercises final administrative control, (e.g., city/county jails and state correctional facilities).

"Publicly owned or operated" - Means an entity that is owned or operated by a unit of government. The unit of government is a state, city, county, special purpose district, or other governmental unit in the state that has taxing authority, has direct access to tax revenues, or is an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, Section 4.

"Qualifying expenditure" - Means an expenditure for covered services provided to an eligible beneficiary.

"Secure withdrawal management and stabilization facility" - Means a facility operated by either a public or private agency or by the program of an agency which provides

care to voluntary individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder.

"Service period" - Means July 1st through June 30th of each Washington state fiscal year.

"Shift" - Means a standard period of time assigned for a complete cycle of work as set by each participating provider.

"Specialty care transport (SCT)" - Means interfacility (hospital-to-hospital or hospital-to-skilled nursing facility) transportation of a critically injured or ill client by a ground ambulance vehicle under the command of ALS-trained personnel with additional training above the level of a paramedic.

"Standing order" - Means an order remaining in effect indefinitely until canceled or modified by an approved medical program director (regional trauma system) or attending physician.

"Substance use disorder professional (SUDP)" - Means a person certified as a substance use disorder professional by the department of health (DOH) under chapter 18.205 RCW.

"Transfer-down" - Means a transfer from a higher level facility to a facility of lower or equivalent level of care, or back to the original point of pickup (e.g., referring hospital or skilled nursing facility).

"Transfer-up" - Means a transfer from one hospital to a hospital of higher level care when the transfer and discharging hospital has inadequate facilities or care, or appropriate personnel to provide the necessary medical services required by the client.

"Trip" - Means a transportation one-way from the point of pickup to the point of destination by an authorized transportation provider.

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

WAC 182-546-0150 Ambulance transportation—Client eligibility ((for ambulance transportation)). (1) ~~((Except for people in the Family Planning Only and TAKE CHARGE programs, fee-for-service clients are eligible for ambulance transportation to covered services with the following limitations:))~~ Clients are eligible for ambulance transportation to covered services subject to the requirements and limitations in this chapter.

(a) ~~((People))~~ Clients in the following ~~((Washington apple health))~~ programs are eligible for ambulance services within Washington state or bordering cities only, as designated in WAC 182-501-0175:

(i) Medical care services (MCS) as described in WAC 182-508-0005;

(ii) Alien emergency medical (AEM) services as described in ~~((chapter 182-507))~~ WAC 182-507-0115.

(b) ~~((People in the apple health))~~ Clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and ((apple health)) medically needy/qualified medicare beneficiary (MN/QMB) programs are covered by medicare and medicaid, with the payment limitations described in WAC 182-546-0400((5)) (4).

(2) ~~((People enrolled in an agency contracted managed care organization (MCO) must coordinate:~~

(a) ~~Ground ambulance services through the agency under fee-for-service, subject to the coverage and limitations within this chapter; and~~

(b) ~~Air ambulance services through the agency under fee-for-service, subject to the coverage and limitations within this chapter.~~

~~((3))~~ Clients enrolled in the agency's primary care case management (PCCM) program are eligible for ambulance services that are emergency medical services or that are approved by the PCCM in accordance with the agency's requirements. The agency pays for covered services for these ~~((people))~~ clients according to the agency's published billing guides ~~((and provider alerts))~~ including, but not limited to, the Tribal Health Billing Guide.

~~((4))~~ (3) People under the Involuntary Treatment Act (ITA) are not eligible for ambulance transportation coverage outside the state of Washington. This exclusion from coverage applies to people who are being detained involuntarily for ~~((mental))~~ behavioral health treatment and being transported to or from bordering cities. See ~~((also WAC 182-546-4000))~~ WAC 182-546-4100 through 182-546-4300.

~~((5))~~ (4) See WAC 182-546-0800 and 182-546-2500 for additional limitations on out-of-state coverage and coverage for ~~((people))~~ clients with other insurance.

~~((6))~~ (5) The agency does not pay for ambulance services for ~~((jail inmates and people))~~ persons living in ~~((a))~~ public institutions, correctional ((facility)) facilities, and local jails, including people in work-release status with the following exceptions:

(a) If an incarcerated person is put on a legal ITA hold, the ITA eligibility supersedes the incarcerated status;

(b) If an incarcerated person is admitted to an inpatient care facility (not the emergency department), and must be transported to a second inpatient care facility to obtain the services needed. See WAC 182-503-0505(5).

(6) Clients in family planning only programs are not eligible for ambulance transportation services.

AMENDATORY SECTION (Amending WSR 19-19-090, filed 9/18/19, effective 10/19/19)

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

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

(b) Medically necessary as defined in WAC ~~((182-500-0005))~~ 182-500-0070 based on the client's condition at the time of the ambulance trip and as documented in the client's record;

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

(d) To one of the following destinations:

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

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

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

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

(a) ~~((Report))~~ Attach the third-party determination ~~((on))~~ to the claim; and

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

(4) The agency covers the following ambulance transportation:

(a) Ground ambulance when the eligible client:

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

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

(iii) Must be transported by stretcher or gurney.

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

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

AMENDATORY SECTION (Amending WSR 19-19-090, filed 9/18/19, effective 10/19/19)

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

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

(b) Refused by the client (see exception for ITA clients in WAC ~~((182-546-4000(2)))~~ 182-546-4100 through 182-546-4300);

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

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

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

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

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

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

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

(j) Not to the nearest appropriate medical facility.

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

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

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

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

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

WAC 182-546-0300 Ambulance transportation—General requirements for ambulance providers. (1) Ambulances must be licensed, operated, and equipped according to applicable federal, state, and local statutes, ordinances and regulations. An air ambulance provider must have a current Federal Aviation Administration (FAA) air carrier operating certificate, or have a contractual relationship with an operator with a valid medical certificate.

(2) Ambulances must be staffed and operated by appropriately trained and certified personnel ~~((Personnel who provide any invasive procedure/emergency medical services for a client during an ambulance trip must be properly authorized and trained per RCW 18.73.150 and 18.73.170.~~

~~((3) The medical assistance administration (MAA) requires providers of ambulance services to document medical justification for transportation and related services billed to MAA. Documentation in the provider's client record must include adequate descriptions of the severity and complexity of the client's condition (including the circumstances that made the conditions acute and emergent) at the time of the transportation. MAA may review the client record to ensure MAA's))~~ in accordance with chapter 18.73 RCW.

(3) Providers of ambulance services must:

(a) Meet the requirements of chapter 182-502 WAC and this chapter; and

(b) Document the medical necessity for transportation and related services billed to the medicaid agency. This documentation must be kept in the provider's file and include

adequate descriptions of the severity and complexity of the client's condition at the time of the transportation and services, interventions, and supplies provided to the client prior to loading and in transit. The documentation must be made available for the agency to review upon request to ensure the agency's medical necessity criteria ((were)) are met.

AMENDATORY SECTION (Amending WSR 19-19-090, filed 9/18/19, effective 10/19/19)

WAC 182-546-0400 ~~Ambulance transportation—~~ General limitations on payment for ambulance services.

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

~~(2) ((The agency:—~~

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

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

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

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

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

~~((4))~~ (3) The agency does not pay for ambulance services if:

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

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

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

~~((5))~~ (4) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs, the agency's payment is as follows:

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

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

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

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

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

WAC 182-546-0425 ~~Ambulance ((coverage)) transportation—~~During inpatient hospital((s)) stays. (1) The ~~((medical assistance administration (MAA)))~~ medicaid agency does not ~~((cover))~~ pay separately for ambulance transportation ((services under fee for service)) when a client remains as an inpatient client ~~((in a))~~ at the admitting hospital and the transportation to ((and/or)) or from another facility is for diagnostic or treatment services (e.g., MRI scanning, kidney dialysis). Transportation of an inpatient client for such services is the responsibility of the admitting hospital, ((whether MAA pays the hospital under the diagnosis-related group (DRG) or ratio of costs to charges (RCC) method)) regardless of the payment method the agency uses to pay the hospital.

(2) **Hospital-to-hospital transfers.** Except as provided in subsections (3) and (5) of this section, ~~((MAA))~~ the agency does not ~~((cover hospital to hospital))~~ pay for hospital-to-hospital transfers of ((clients under fee for service)) a client when ambulance transportation is requested solely to:

(a) Accommodate a physician's or other health care provider's preference for facilities;

(b) Move the client closer to family or home (i.e., for personal or family convenience); or

(c) Meet insurance requirements or hospital/insurance agreements.

(3) ~~((MAA covers under fee for service))~~ **Transfer-up services.** The agency pays for transfer-up ambulance transportation ((for a client being transferred from one hospital to another when the transferring or discharging hospital has inadequate facilities to provide the necessary medical services required by the client. MAA covers)) services as follows:

(a) Air ambulance transportation ((for hospital transfers only if)) only when transportation by ground ambulance would cause sufficient delay as to endanger the client's life or ((health)) substantially impair the client's health (e.g., in major trauma cases).

(b) Air ambulance transportation for medical and surgical procedures only and not for diagnostic purposes.

(c) The reason for ~~((transferring a client from one hospital to another, as well as the need for air ambulance transport, if applicable;))~~ the transfer-up must be clearly documented in the client's hospital chart and in the ambulance trip report.

(4) ~~((MAA does not cover under fee for service ambulance transportation for a client being transferred from a hospital providing a higher level of care to a hospital providing a lower level of care, except as allowed under subsection (5) of this section.~~

~~(5) MAA considers requests for fee for service ambulance coverage under the provisions of WAC 388-501-0160 (exception to rule) for transportation of a client from an intervening hospital to the discharging hospital. MAA evaluates such requests based on clinical considerations and cost effectiveness. MAA's decision under the provisions of WAC 388-501-0160 is final. The reason for transferring a client from a hospital to another medical facility must be clearly documented in the client's hospital chart and in the ambulance trip record.~~

~~(6)) **Transfer-down services.** The agency pays for ground ambulance transfer-down services with a signed physician certification statement (PCS) or a nonphysician certification statement (NPCS).~~

~~(5) **Specialty care transport (SCT)** ~~(is hospital to hospital transportation by ground ambulance of a critically injured or ill client, at a level of service beyond the scope of a paramedic. MAA).~~ The agency pays an ambulance provider the advanced life support (ALS) rate for an SCT-level transport, provided:~~

~~(a) The criteria for covered hospital transfers ~~(under fee-for-service)~~ are met; and~~

~~(b) ~~(There is a written reimbursement agreement between the ambulance provider and SCT personnel. If there is no written reimbursement agreement between the ambulance provider and SCT personnel, MAA pays the provider at the basic life support (BLS) rate.)~~ The SCT is from an acute care hospital to another acute care hospital.~~

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

WAC 182-546-0450 ~~((Payment for)) Ambulance transportation—Ground ambulance ~~((services))—Payment.~~~~ (1) The ~~((medical assistance administration (MAA)))~~ medicaid agency pays for two levels of service for ground ambulance transportation: Basic life support (BLS) and advanced life support (ALS):

(a) A BLS ambulance trip is one in which the client ~~((requires and))~~ receives basic, noninvasive medical services at the scene ~~((and/or en route from the scene of the acute and emergent illness or injury)), point-of-pickup, or in transit~~ to a hospital or other appropriate treatment facility. ~~((Examples of basic medical services are: Controlling bleeding, splinting fracture(s), treating for shock, and performing cardiopulmonary resuscitation (CPR).))~~

(b) An ALS ambulance trip is one in which the client requires ~~((and receives))~~ more complex life-saving services at the scene ~~((and/or en route from the scene of the acute and emergent illness or injury)), point-of-pickup, or in transit~~ to a hospital or other appropriate treatment facility. To qualify for payment at the ALS level, certified paramedics or other ALS-qualified personnel ~~((on board))~~ must provide the advanced medical services ~~((in))~~ on board a properly equipped vehicle as defined by chapter ~~((18.83))~~ 18.73 RCW. Examples of complex medical services or ALS procedures ~~((are))~~ include, but are not limited to, the following:

(i) Administration of medication, not to include saline flush, by intravenous push/bolus or by continuous infusion;

(ii) Airway intubation;

(iii) Cardiac pacing;

(iv) Chemical restraint;

(v) Chest decompression;

(vi) Creation of surgical airway;

(vii) Initiation of intravenous therapy;

(viii) Manual defibrillation/cardioversion;

(ix) Placement of central venous line; and

(x) Placement of intraosseous line.

(2) ~~((MAA))~~ The agency pays for ambulance services (BLS or ALS) based on the client's ~~((actual))~~ medical condi-

tion and the ~~((level of))~~ medical services ~~((needed and))~~ provided immediately prior to or during the trip.

(a) Local ordinances or standing orders that require all ambulance vehicles be ALS-equipped do not qualify ~~((a))~~ an ambulance trip for ~~((MAA))~~ the agency's payment at the ALS level of service unless ALS services were provided on-scene or in transit to the treatment facility.

(b) A ground ambulance trip is classified and paid at a BLS level, even if certified paramedics or ALS-qualified personnel are on board the ambulance, if no ALS-type interventions were provided ~~((en route))~~ on-scene or in transit to the treatment facility.

(c) An ALS assessment does not qualify as an ALS transport if no ALS-type interventions were provided to the client ~~((en route))~~ in transit to the treatment facility.

(3) ~~((MAA's base rate includes: Necessary personnel and services; oxygen and oxygen administration; intravenous supplies and IV administration reusable supplies, disposable supplies, required equipment, and waiting time. MAA does not pay separately for chargeable items/services that are provided to the client based on standing orders.~~

(4) MAA pays ground ambulance providers the same mileage rate, regardless of the level of service. Ground ambulance mileage is paid when the client is transported to and from medical services within the local community only, unless necessary medical care is not available locally. The provider must fully document in the client's record the circumstances that make medical care outside of the client's local community necessary.

(5) MAA pays for extra mileage when sufficient justification is documented in the client's record and the ambulance trip report. Acceptable reasons for allowable extra mileage include, but are not limited to:

(a) A hospital was on "divert" status and not accepting patients; or

(b) A construction site caused a detour, or had to be avoided to save time.

(6) When multiple ambulance providers respond to an emergency call, MAA pays only the ambulance provider that actually furnishes the transportation.

(7) MAA pays for an extra attendant, when the ground ambulance provider documents in the client's file the justification for the extra attendant, and that the extra attendant is on-board for the trip because of one or more of the following:

(a) The client weighs three hundred pounds or more;

(b) The client is violent or difficult to move safely;

(c) The client is being transported for Involuntary Treatment Act (ITA) purposes and the client must be restrained during the trip; or

(d) More than one client is being transported, and each requires medical attention and/or close monitoring.

(8) MAA pays ambulance providers "by report" for ferry and bridge tolls incurred when transporting MAA clients. To be paid, providers must document the toll(s) by attaching the receipt(s) for the toll(s) to the claim.) An assessment and other intervention performed on-scene with no resulting transport does not qualify for payment from the agency, except when the client dies after treatment but before transport as provided in WAC 182-546-0500(2).

(4) The agency pays ground ambulance providers for mileage as follows:

(a) Loaded mileage only.

(b) Actual mileage incurred for covered trips (i.e., from the point-of-pickup to the destination) based on trip odometer readings.

(i) The agency uses the Washington state department of transportation's (WSDOT) mileage chart. The WSDOT mileage chart indicates shortest distance between points, including the use of the ferry system.

(ii) The agency uses alternative sources to calculate distance traveling when the origin or destination points are not listed in the WSDOT's mileage chart.

(iii) If the ferry system is the normal route for travel but is not used, the reason must be documented on the claim form when billing the agency. In this case, normal means the shortest route.

(iv) Miles traveled by the ferry. To be paid, providers must report by statute miles using the Washington state department of transportation (WSDOT) ferry route mileage chart located on the WSDOT website. Providers must thoroughly document the ferry route used, including a copy of the ferry ticket.

(5) The agency's base rate includes:

(a) Necessary personnel and services;

(b) Oxygen and oxygen administration; and

(c) Intravenous supplies and intravenous administration reusable supplies, disposable supplies, required equipment, and waiting time.

(6) The agency pays ground ambulance providers the same rate for mileage, regardless of the level of service (ALS or BLS). An odometer reading showing a fraction of a mile (partial mile) at the conclusion of a transport must be rounded up to the next whole unit (one mile). The agency pays for mileage when the client is transported to and from medical services within the local community only, unless necessary medical care is not available locally. The provider must fully document in the client's record the circumstances that make medical care outside of the client's local community necessary.

(7) The agency pays for extra mileage when sufficient justification is documented in the client's record and the ambulance trip report. All records are subject to agency review. Acceptable reasons for allowable extra mileage include, but are not limited to:

(a) The initial destination hospital was on "divert" status and not accepting patients; or

(b) A road construction project or other major obstacle caused a detour, or had to be avoided to save time.

(8) When multiple ambulance providers respond to an emergency call, the agency pays only the ambulance provider who actually provides the transportation.

(9) The agency pays for an extra attendant when the ground ambulance provider documents in the client's file the justification for the extra attendant and the extra attendant is on board for the trip because of one or more of the following:

(a) The client weighs three hundred pounds or more;

(b) The client is violent or difficult to move safely;

(c) The client is being transported for ITA purposes and the client must be restrained during the trip; or

(d) More than one client is being transported, and each requires medical attention or close monitoring.

(10) The agency pays ambulance providers "by report" for ferry and bridge tolls incurred when transporting clients. Receipts must be attached to the claim submission for reimbursement. All ferry and bridge toll documentation must be kept in the client's file and made available to the agency for six years from the date of service in accordance with WAC 182-502-0020.

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

WAC 182-546-0500 Ambulance transportation—Ground ambulance—Payment ((for ground ambulance services)) in special circumstances. (1) When more than one client is transported in the same ground ambulance at the same time, the ~~((provider must bill the medical assistance administration (MAA)))~~ medicaid agency:

(a) Pays the ambulance providers at a reduced base rate for the ((additional)) second client((-and)) who is being transported in the ambulance for medical treatment. This rate is set at seventy-five percent of the base rate for the applicable level of service (ALS or BLS) for the first client;

(b) ((No mileage charge for the additional client.)) Does not pay the ambulance provider a separate mileage charge for the second client being transported in the ambulance for medical treatment. The total payable mileage for the transport is from the first point of pickup.

(2) ((MAA)) The agency pays an ambulance provider at the appropriate base rate (BLS or ALS) if no transportation takes place because the client died ((at the scene of the illness or injury but)) before transport could occur but after the ambulance crew provided medical interventions/supplies to the client at the scene prior to the client's death. ((See WAC 388-546-0450(1) for examples of medical interventions associated with each base rate.)) The intervention(s)/supplies provided must be documented in the client's record. No mileage charge is allowed with the base rate when the client dies ((at the scene of the illness or injury)) after medical interventions/supplies are provided but before transport takes place.

(3) In situations where a BLS entity provides the transport of the client and an ALS entity provides a service that meets ((MAA's)) the agency's fee schedule definition of an ALS intervention, the BLS provider may bill ((MAA)) the agency the ALS rate for the transport, provided a written reimbursement agreement between the BLS and ALS entities exists. The provider must give ((MAA)) the agency a copy of the agreement upon request. If ((there is no)) a written agreement does not exist between the BLS and ALS entities, ((MAA)) the agency will pay only for the BLS level of service. Only one ambulance provider may bill the agency for the transport.

(4) In ((areas)) ambulance service areas/jurisdictions that distinguish between residents and nonresidents, ((MAA must be billed)) the provider must bill the agency the same rate for ambulance services provided to a client in a particular jurisdiction as would be billed ((by that provider to the general public in)) for ambulance services to residents of the same jurisdiction.

AMENDATORY SECTION (Amending WSR 19-08-058, filed 3/29/19, effective 5/1/19)

WAC 182-546-0510 GEMT program overview. (1)

The ground emergency medical transportation (GEMT) program permits publicly owned or operated providers to receive cost-based payments for emergency ground ambulance transportation of ~~((medicaid fee for service))~~ clients as described in subsection (2) of this section.

(2) This program is for clients under Title XIX of the federal Social Security Act and the Affordable Care Act (ACA) only. Participating providers do not receive supplemental payments for transporting:

- (a) Medicaid applicants; or
- (b) Medicare/medicaid ~~((recipients))~~ clients with dual eligibility.

(3) The cost-based payment, when combined with the amount received from all other sources of reimbursement for medicaid, must not exceed one hundred percent of allowable costs.

(4) Fire departments/districts must use the approved CAP of their local government. If the local government does not have a CAP, they must use the Centers for Medicare and Medicaid Services (CMS)-approved cost report.

(5) The state general fund cannot be used for GEMT cost-based payments.

AMENDATORY SECTION (Amending WSR 19-08-058, filed 3/29/19, effective 5/1/19)

WAC 182-546-0515 GEMT provider participation and qualifications. (1) Participation in the program by a GEMT provider is voluntary.

(2) To qualify under this program and receive supplemental payments, a participating provider must:

(a) Provide ground emergency transportation services to ~~((medicaid fee for service))~~ clients as described in WAC 182-546-0510(2).

(b) Be publicly owned or operated as defined in WAC ~~((182-546-0505))~~ 182-546-0125.

(c) Be enrolled as a medicaid provider, with an ~~((active))~~ approved core provider agreement, for the service period specified in the claim.

(d) Submit a participation agreement.

(e) Renew GEMT participation annually by submitting ~~((a participation agreement and))~~ the Centers for Medicare and Medicaid Services (CMS)-approved cost report to the agency.

AMENDATORY SECTION (Amending WSR 19-08-058, filed 3/29/19, effective 5/1/19)

WAC 182-546-0520 GEMT supplemental payments.

(1) The agency makes supplemental payments for the uncompensated and allowable costs incurred while providing GEMT services to ~~((medicaid fee for service))~~ clients, as defined by the United States Office of Management and Budget (OMB).

(a) The amount of supplemental payments, when combined with the amount received from all other sources of

reimbursement from the medicaid program, will not exceed one hundred percent of allowable costs.

(b) If the participating provider does not have any uncompensated care costs, then the participating provider will not receive payment under this program.

(2) The total payment is equal to the participating provider's allowable costs of providing the services.

(a) The participating provider must certify the uncompensated expenses using the cost reporting process described under WAC 182-546-0525. This cost reporting process allows medicaid to obtain federal matching dollars to be distributed to participating providers.

(b) The participating provider must:

(i) Include the expenditure in its budget.

(ii) Certify that the claimed expenditures for the GEMT services are eligible for FFP and that the costs were allocated to the appropriate cost objective according to the cost allocation plan.

(iii) Provide evidence, specified by the agency, supporting the certification.

(iv) Submit data, specified by the agency, determining the appropriate amounts to claim as expenditures qualifying for FFP.

AMENDATORY SECTION (Amending WSR 19-08-058, filed 3/29/19, effective 5/1/19)

WAC 182-546-0525 GEMT claim submission and cost reporting. (1) Each participating provider is responsible for submitting claims to the agency for services provided to eligible clients. Participating providers must submit the claims according to the rules and billing instructions in effect at the time the service is provided.

(2) On an annual basis, participating providers must certify and allocate their direct and indirect costs as qualifying expenditures eligible for FFP.

(3) The claimed costs must be necessary to carry out GEMT.

(4) Participating providers must complete cost reporting according to the Centers for Medicare and Medicaid Services (CMS)-approved cost identification principles and standards such as the most current editions of the CMS *Provider Reimbursement Manual* and the United States Office of Management and Budget Circular (OMB) Circular A-87.

(5) Participating providers must completely and accurately document the CMS-approved cost report as required under OMB Circular A-87 Attachment A.

(6) Participating providers must allocate direct and indirect costs to the appropriate cost objectives as indicated in the cost report instructions.

(7) Reported personnel costs including wages, salaries, and fringe benefits must be exclusively attributable to ground emergency ambulance services provided. Services do not include fire suppression.

(8) Revenues received directly, such as foundation grants and money from private fund-raising, are not eligible for certification because such revenues are not expenditures of a government entity.

(9) The sum of a participating provider's allowable direct and indirect costs are divided by the number of ground emer-

agency medical transports to determine a participating provider's average cost per qualifying transport.

(10) Participating providers must complete an annual cost report documenting the participating provider's total CMS-approved, ~~((medicaid-allowable,))~~ direct and indirect costs of delivering medicaid-covered services using a CMS-approved cost-allocation methodology. Participating providers must:

(a) Submit the cost report within five months after the close of the service period.

(b) Request an extension to the cost report deadline in writing to the agency, if needed. The agency will review requests for an extension on a case-by-case basis.

(c) Provide additional documentation justifying the information in the cost report, upon request by the agency.

(d) Assure the agency receives the cost report or additional documentation according to WAC 182-502-0020.

(i) Participating providers must comply with WAC 182-502-0020 to receive the supplemental payment under this program.

(ii) The agency pays the claims for the following service period according to the agency's current ambulance fee schedule.

(11) The costs associated with releasing a client on the scene without transportation by ambulance to a medical facility are eligible for FFP and are eligible expenditures.

(12) Other expenses associated with the prehospital care are eligible costs associated with GEMT.

(13) Expenditures are not eligible costs until the services are provided.

AMENDATORY SECTION (Amending WSR 19-08-058, filed 3/29/19, effective 5/1/19)

WAC 182-546-0545 GEMT auditing. (1) ~~((Participating providers must follow the terms and conditions outlined in the agency's core provider agreement.~~

(2)) The agency may conduct audit or investigation activities, as described under chapters 74.09 RCW and 182-502A WAC, to determine compliance with the rules and regulations of the core provider agreement, as well as of the GEMT program.

~~((3))~~ (2) If an audit or investigation is initiated, the participating provider must retain all original records and supporting documentation until the audit or investigation is completed and all issues are resolved, even if the period of retention extends beyond the required six-year period required under WAC 182-502-0020.

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

WAC 182-546-0600 Ambulance transportation—Procedure code modifiers. When billing the medicaid agency for ambulance trips, ambulance providers must use procedure code modifiers ~~((published by MAA when billing MAA for ambulance trips. The appropriate modifiers must be used for all services related to the same trip for the same client)).~~

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

WAC 182-546-0700 Ambulance transportation—Air ambulance—Payment ~~((limitations for air ambulance services)).~~ (1) ~~((MAA))~~ The medicaid agency pays for air ambulance ~~((services only when all of the following apply:~~

(a) ~~The necessary medical treatment is not available locally or the client's point of pick up is not accessible by ground ambulance;~~

(b) ~~The vehicle and crew meet the provider requirements in WAC 388-546-0300 and 388-546-0800;~~

(c) ~~The client's destination is an acute care hospital; and~~

(d) ~~The client's physical/medical condition requires immediate and rapid ambulance transportation that cannot be provided by ground ambulance; or~~

(e) ~~The client's physical or medical condition is such that traveling on a commercial flight is not safe.~~

(2) MAA pays providers for one lift-off fee per client, per trip.

(3) Air mileage is based on loaded miles flown, as expressed in statute miles.

(4) ~~Except as provided in WAC 388-546-0800(6), MAA pays for extra air mileage with sufficient justification. The reason for the added mileage must be documented in the client's record and the ambulance trip report. Acceptable reasons include, but are not limited to:~~

(a) ~~Having to avoid a "no fly zone"; or~~

(b) ~~Being forced to land at an alternate destination due to severe weather.~~

(5) MAA pays a lift-off fee for each client when two or more clients are transported on a single air ambulance trip. In such a case, the provider must divide equally the total air mileage by the number of clients transported and bill MAA for the mileage portion attributable to each eligible client.

(6) If a client's transportation requires use of more than one ambulance to complete the trip to the hospital or other approved facility, MAA limits its payment as follows:

(a) If air ambulance is used and the trip involves more than one lift-off, MAA pays only one lift-off fee per client and the total of air miles. If an air ambulance transport for the same client involves both rotary and fixed-wing aircraft, the lift-off fee and mileage payment will be based on the mode of air transport used for the greater distance traveled.

(b) If both air and ground ambulances are used, MAA pays one lift-off fee and total air miles to the air ambulance provider, and the applicable base rate and ground mileage to each ground ambulance provider involved in the trip, except when ground ambulance fees are included in the negotiated trip payment as provided in WAC 388-546-0800(6).

(7) MAA does not pay separately for individual services or an extra attendant for air ambulance transportation. MAA's lift-off fee and mileage payment includes all personnel, services, supplies, and equipment related to the transport.

(8) MAA does not pay private organizations for volunteer medical air ambulance transportation services, unless the organization has MAA's prior authorization for the transportation services and fees. If authorized, MAA's payment is based on the actual cost to provide the service or at MAA's established rates, whichever is lower. MAA does not pay sep-

arately for items or services that MAA includes in the established rate(s):

(9) If MAA determines, upon review, that an air ambulance trip was not:

(a) Medically necessary, MAA may deny or recoup its payment and/or limit payment based on MAA's established rate for a ground ambulance trip provided ground ambulance transportation was medically necessary; or

(b) To the nearest available and appropriate hospital, MAA may deny or recoup its payment and/or limit its maximum payment for the trip based on the nearest available and appropriate facility.

(10) Providers must have prior authorization from MAA for any nonemergency air transportation, whether by air ambulance or other mode of air transportation. Nonemergency air transportation includes scheduled transports to or from out-of-state treatment facilities.

(11) MAA uses commercial airline companies (i.e., MAA does not authorize air ambulance transports) whenever the client's medical condition permits the client to be transported by nonmedical and/or scheduled carriers.

(12) MAA does not pay for air ambulance services if no transportation is provided.) transportation for clients only when all of the following conditions are met:

(a) The client's medical condition requires immediate and rapid transportation beyond what ground ambulance can provide;

(b) The client's destination is an acute care hospital or appropriate trauma designated facility; and

(c) The vehicle and crew meet the requirements in WAC 182-502-0016 and this chapter.

(2) Other factors the agency may consider in payment decisions for air ambulance include:

(a) The point-of-pickup is not accessible by ground ambulance (e.g., mountain rescue);

(b) The necessary medical care is not available locally and time is of the essence; and

(c) The use of other means of air travel (e.g., commercial flight) is medically contraindicated.

(3) **Lift-off fee.** The agency pays a lift-off fee for each client being transported by air ambulance to an acute care facility for medical treatment.

(a) When more than one client is transported in the same ambulance at the same time, each client must meet medical necessity criteria for the provider to receive a lift-off fee for each client transported.

(b) The agency does not pay a lift-off fee:

(i) For a client onboard an air ambulance when the client is not being transported for medical treatment (e.g., a mother accompanying a child to the hospital).

(ii) When the air ambulance is dispatched in response to a call but the client is not transported by the aircraft.

(4) **Statute miles.** The agency pays an air ambulance provider for statute miles incurred for covered trips by paying from the client's point-of-pickup to the point of destination.

(a) When more than one client requiring medical treatment is transported in the same air ambulance at the same time, the ambulance provider must divide the statute miles traveled by the number of clients being transported for medi-

cal treatment and bill the agency the mileage portion attributable to each client.

(b) The agency does not pay for mileage for a client who is traveling in an air ambulance but is not being transported for medical treatment (e.g., a mother accompanying a child to the hospital). Only the statute miles directly associated with the client transported for treatment may be billed to the agency.

(5) **Extra mileage.** The agency does not pay for extra mileage incurred during an air ambulance transport, except in an unusual circumstance. The unusual circumstance must be clearly described and documented in the ambulance trip report and the client's file. The exception for an unusual circumstance does not apply to nonemergency air transports that are prior authorized by the agency. Unusual circumstances for incurring additional air miles include, but are not limited to:

(a) Having to avoid a no fly zone;

(b) Being forced to land at an alternate destination due to severe weather; and

(c) Being diverted to another designated trauma facility.

(6) **Lift-off fee plus mileage.** The agency's payment for an air ambulance transport (lift-off fee plus mileage) includes all necessary personnel, services, supplies, and equipment. The agency does not make separate payment to air ambulance providers for unbundled services (e.g., pediatric ventilators).

(7) **More than one travel segment.** When an ambulance transport requires more than one travel segment (leg) to complete, the agency limits its payment for the transport as follows:

(a) If a fixed-wing aircraft is used and the transport involves more than one lift-off for the same client on the same trip (e.g., transportation from Spokane to Portland, but the aircraft makes a stop in the Tri-Cities), the agency pays the air ambulance provider for one lift-off fee for the client and the total air miles.

(b) For nonemergency air ambulance transports that are prior authorized by the agency, the negotiated rate includes both air and ground ambulance services, unless the agency's authorization letter specifically allows for ground ambulance services to be billed separately.

(8) **Nonemergency air transportation - Prior authorization and negotiated rate.** Nonemergency air ambulance transportation must be prior authorized by the agency.

(a) Nonemergency air ambulance transportation includes scheduled transports to or from out-of-state treatment facilities (see WAC 182-546-1500).

(b) Nonemergency air ambulance transportation that is prior authorized by the agency are paid a negotiated rate. The negotiated rate is an all-inclusive rate and may include transportation for a legally responsible family member or legal guardian accompanying the client being transported for medical treatment.

(9) The agency does not pay:

(a) For food, lodging, and other expenses of air ambulance personnel when a scheduled transport is delayed because of changes in the medical status of the client to be transported, weather conditions, or other factors;

(b) For fuel, maintenance and other aircraft-related expenses resulting from transportation delays because of

changes in the medical status of the client to be transported, weather conditions, or other factors;

(c) Separately for ground ambulance services to and from airports and treatment facilities when these transportation services are specifically included in the negotiated air ambulance rate; and

(d) For canceled air ambulance transports, for any reason.

(10) The agency does not pay private organizations for volunteer medical air ambulance transportation services unless no other air ambulance option is available. The use of private, volunteer air transportation must be prior authorized by the agency to be payable. If authorized by the agency, the agency's payment for the transport is the lesser of:

(a) The provider's actual incurred and documented cost (e.g., fuel); or

(b) The agency's established rate (fee schedule).

(11) If the agency determines, upon review, that an air ambulance transport was not:

(a) Medically necessary, the agency may deny, recoup, or limit its payment to the amount the agency would have paid to a ground ambulance provider for the same distance traveled; or

(b) To the closest, most appropriate agency-contracted hospital, the agency may deny, recoup, or limit its payment to the maximum amount it would have paid an air ambulance provider for a transport to the nearest, most appropriate agency-contracted facility.

(12) The agency uses commercial airline companies whenever the client's medical condition permits the client to be transported safely by nonmedical or scheduled carriers.

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

WAC 182-546-0800 Ambulance transportation— Provided in another state or U.S. territory—Payment ((for ambulance services provided in another state or U.S. territory)). (1) The ~~((department))~~ medicaid agency pays for emergency ambulance transportation provided to ~~((eligible Washington state fee-for-service medical assistance))~~ clients who are in another state or U.S. territory ~~((when the emergency medical situation occurs))~~ according to the provisions of WAC ~~((388-501-0180, 388-501-0182, and 388-502-0120))~~ 182-501-0180, 182-501-0182, and 182-502-0120.

(2) To receive payment from the ~~((department))~~ agency, an out-of-state ambulance provider must:

(a) Meet the licensing requirements for Washington state and of the ambulance provider's home state or province; ~~((and))~~

(b) Have ~~((a signed))~~ an approved core provider agreement with the ((department)) agency.

(3) The ~~((department))~~ agency pays for emergency ambulance transportation provided out-of-state for ~~((an))~~ eligible ~~((Washington state medical assistance client under fee-for-service))~~ clients when the transport is:

(a) Within the scope of the client's medical care program;

(b) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070; and

(c) To the ~~((nearest))~~ closest, most appropriate treatment facility.

(4) The ~~((department))~~ agency does not pay for an ambulance transport provided in another state for a ~~((fee-for-service Washington state medical assistance))~~ client when:

(a) The client's medical eligibility program covers ~~((medical))~~ health care services within Washington state ~~((and/or))~~ or designated bordering cities only. See WAC ~~((388-546-0150 and 388-546-0200(5)))~~ 182-546-0150 and 182-546-0200(5);

(b) The ~~((ambulance))~~ transport was ~~((nonemergency))~~ nonemergency and was not prior authorized by the ~~((department))~~ agency.

(5) The ~~((department))~~ agency pays for emergency ambulance transportation at the lower of:

(a) The provider's billed amount; or

(b) The rate established by the ~~((department))~~ agency.

(6) ~~((To receive payment from the department for a nonemergency transport, an ambulance provider, who transports a Washington state medical assistance client to a facility that is out of state or brings a client into the state from a location that is out of state, must obtain prior authorization from the department.~~

(7) The department pays a negotiated rate for a medically necessary nonemergency interstate ambulance transport that the department has prior authorized. The ambulance provider is responsible for ensuring that all medical services necessary for the client's safety during the transport are available on-board the vehicle or aircraft. The contractual amount for a nonemergency air ambulance transport may include:

(a) The cost of medically necessary ground ambulance transport from the discharging facility to the point of pickup (airstrip); and

(b) The cost of medically necessary ground ambulance transport from the landing point (airstrip) to the receiving facility.

(8) The department does not pay to transport clients under the Involuntary Treatment Act (ITA) program to or from locations outside the state of Washington. For ITA purposes, transports to or from designated bordering cities are not covered. See WAC 388-546-4000.

(9) The department requires out-of-state ground ambulance providers who transport a Washington state medical assistance client into, within, or outside the state of Washington, to comply with RCW 18.73.180 regarding stretcher transportation.) The agency does not pay for nonemergency (ground or air ambulance) transportation outside the state of Washington (i.e., both origin and destination points are outside the state's borders).

(7) An ambulance provider who transports a client to a facility outside the state (excluding designated bordering cities) or brings a client into the state from a location outside the state (excluding designated border cities) must obtain prior authorization from the agency for a nonemergency transport in order to be paid. See WAC 182-546-4000 for transports under the ITA.

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

WAC 182-546-0900 Ambulance (~~coverage in Canada, Mexico, and other countries~~) transportation—Provided outside the United States and U.S. territories—Payment. The ~~((department))~~ medicaid agency does not ~~((cover))~~ pay for ambulance transportation for eligible ~~((medical assistance))~~ clients traveling outside of the United States and U.S. territories. See WAC ~~((388-501-0184))~~ 182-501-0184 for ambulance coverage in British Columbia, Canada.

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

WAC 182-546-1000 (~~Coverage for nonemergency ground~~) Ambulance transportation—Nonemergency ground—Payment. ~~((1))~~ The medical assistance administration (MAA) pays for nonemergency ground ambulance transportation at the BLS ambulance level of service under the following conditions:

(a) The client is bed confined and must be transported by stretcher or gurney (in the prone or supine position) for medical or safety reasons. Justification for stretcher or gurney must be documented in the client's record; or

(b) The client's medical condition requires that he or she have basic ambulance level medical attention available during transportation, regardless of bed confinement.

(2) MAA requires ambulance providers to thoroughly document the circumstances requiring nonemergency ground ambulance transportation as follows:

(a) For nonemergency, scheduled ambulance services that are repetitive in nature, the ambulance provider must obtain a written physician certification statement (PCS) from the client's attending physician certifying that the ambulance services are medically necessary. The PCS must specify the expected duration of treatment or span of dates during which the client requires repetitive nonemergency ambulance services. The PCS must be dated no earlier than sixty days before the first date of service. A PCS for repetitive, non-emergency ambulance services is valid for sixty days as long as the client's medical condition does not improve. Kidney dialysis clients may receive nonemergency ground ambulance transportation to and from outpatient kidney dialysis services for up to three months per authorization span.

(b) For nonemergency ambulance services that are either unscheduled or scheduled on a nonrepetitive basis, the ambulance provider must obtain from the client's attending physician a signed PCS within forty-eight hours after the transport. The PCS must certify that the ambulance services are medically necessary.

(c) If the ambulance provider is not able to obtain a signed PCS from the attending physician, a signed certificate of medical necessity form must be obtained from a qualified provider who is employed by the client's attending physician or by the hospital or facility where the client is being treated and who has personal knowledge of the client's medical condition at the time the ambulance service was furnished. In lieu of the attending physician, one of the following may sign the certification form: a physician assistant, a nurse practitioner, a registered nurse, a clinical nurse specialist, or a hos-

pital discharge planner. The signed certificate must be obtained from the alternate provider no later than twenty-one calendar days from the date of service.

(d) If, after twenty-one days, the ambulance provider is unable to obtain the signed PCS from the attending physician or alternate provider for nonemergency ambulance services that are either unscheduled or scheduled on a nonrepetitive basis, the ambulance provider may submit a claim to MAA, as long as the provider is able to show acceptable documentation of the attempts to obtain the PCS.

(e) In addition to the signed certification statement of medical necessity, all other program criteria must be met in order for MAA to pay for the service.

(3) Ground ambulance providers may choose to enter into contracts with MAA's transportation brokers to provide nonemergency transportation at a negotiated payment rate. Any such subcontracted rate may not exceed the costs MAA would incur under subsection (1) of this section. (1) The medicaid agency pays for nonemergency ground ambulance transportation when a client is transferred to a higher level facility, or when all of the following requirements are met:

(a) The ambulance transportation is medically necessary. See subsection (3) of this section for documentation requirements.

(b) The agency pays for nonemergency ground ambulance transportation with a completed PCS or NPCCS form.

(i) All requests for nonemergency transports must be directed to the client's primary or attending physician or health care team who will complete the physician certification statement (PCS) form or nonphysician certification statement (NPCCS) form. See subsection (3) of this section. The PCS/NPCCS form or medical documentation must be maintained in the client's file.

(ii) In the event that the provider is unable to obtain the PCS or NPCCS, the provider must maintain evidence of the attempts to obtain the PCS or NPCCS in the client's file.

(2) The agency pays for nonemergency ground ambulance transportation at the BLS ambulance level of service under the following conditions:

(a) The client is bed-confined and must be transported by stretcher or gurney (in the prone or supine position) for medical or safety reasons. Justification for stretcher or gurney must be documented in the client's record; or

(b) The client's medical condition requires that they have basic ambulance level medical attention available during transportation, regardless of bed confinement.

(3) For nonemergency ambulance services from a psychiatric unit within a hospital to a behavioral health facility, the ambulance provider must obtain a licensed mental health professional (LMHP) (e.g., psychiatrist, MSW) signed PCS or NPCCS within forty-eight hours after the transport.

(4) The agency covers medically necessary nonemergency ambulance services that are either unscheduled or that are scheduled on a nonrepetitive basis under the following circumstances:

(a) From any point of origin to the nearest hospital with the ability to provide the type and level of care necessary for the client's illness or injury.

(b) From a hospital to the client's home when the place of residence is a residential care facility, the client must be

transported by stretcher in a prone or supine position, the client is morbidly obese, or medical attention/monitoring is required in transit.

(c) For a bed-confined client who is receiving renal dialysis for treatment of end stage renal disease (ESRD), from the place of origin to the nearest facility with the ability to provide renal dialysis, including the return trip.

(5) The agency requires ambulance providers to thoroughly document the medical necessity for use of non-emergency ground ambulance transportation as follows:

(a) For scheduled, nonemergency ambulance services that are repetitive in nature, the ambulance provider must obtain a signed PCS from the client's attending physician or other designated medical professional certifying that the ambulance services are medically necessary. The PCS must specify the place of origin, destination, and the expected duration of treatment or span of dates during which the client requires repetitive nonemergency ambulance services.

(b) A PCS for repetitive, nonemergency ambulance services (e.g., wound treatment center) is valid for sixty calendar days as long as the agency's medical necessity requirement for use of ambulance transportation is met. A new PCS is required every thirty calendar days after the initial sixty-day period for a client using repetitive, nonemergency ambulance services. Kidney dialysis clients may receive nonemergency ground ambulance transportation to and from outpatient kidney dialysis services for up to three months per authorization span.

(c) For unscheduled, nonrepetitive, nonemergency ambulance services, the ambulance provider must obtain a signed PCS or NPCS within forty-eight hours after the transport. The PCS or NPCS must specify the place of origin and destination and certify that the ambulance services are medically necessary. If the provider is unable to obtain the signed PCS or NPCS within twenty-one calendar days following the date of transport from the attending physician or alternate provider, the provider must submit a claim to the agency. The provider must be able to show acceptable documentation of the attempts to obtain the PCS or NPCS.

(d) For an unscheduled, nonrepetitive, nonemergency ambulance service, if the ambulance provider is not able to obtain a signed PCS from the attending physician, a signed nonphysician certification statement (NPCS) form must be obtained from a qualified provider who is employed by the client's attending physician or by the hospital or facility where the client is being treated and who has knowledge of the client's medical condition at the time the ambulance service was furnished. One of the following members of the client's health care team may sign the certification form:

- (i) A physician assistant;
- (ii) A nurse practitioner;
- (iii) A registered nurse;
- (iv) A clinical nurse specialist;
- (v) A hospital discharge planner;
- (vi) A licensed practical nurse;
- (vii) A social worker; or
- (viii) A case manager.

(e) A copy of the signed PCS or NPCS must accompany the claim submitted to the agency.

(f) In addition to the signed PCS or NPCS, all other program criteria must be met in order for the agency to pay for the service.

(g) A signed PCS or NPCS must be attached to the claim submission for the following conditions:

(i) Altered mental status (i.e., alzheimer, dementia, acute psychosis, and suicide ideation - Not services that fall under the Involuntary Treatment Act;

(ii) Bariatric;

(iii) Bedbound (not able to stand or bear weight unassisted);

(iv) Continuous cardiac monitoring;

(v) Quadriplegic;

(vi) Requires a ventilator;

(vii) Requires continuous oxygen usage in transit; and

(viii) Tracheostomy (needed for prolonged respiratory support).

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

WAC 182-546-1500 (~~Coverage for~~) **Ambulance transportation—Nonemergency air (ambulance transportation)—Payment.** (1) The (~~medical assistance administration (MAA)~~) medicaid agency pays for a nonemergency air ambulance transport only when the transport is prior authorized by (~~MAA~~) the agency.

(2) (~~MAA~~) The agency authorizes a nonemergency air ambulance transport only when the following conditions are met:

(a) The client's destination is an acute care hospital or approved rehabilitation facility; and

(b) The client's physical or medical condition is such that travel by any other means endangers the client's health; or

(c) Air ambulance is less costly than ground ambulance under the circumstances.

(3) (~~MAA~~) The agency requires providers to thoroughly document the circumstances requiring a nonemergency air ambulance transport. The medical necessity justification and all supporting documentation must be (~~submitted to MAA prior to transport and must be documented in the client's medical record and ambulance trip report. Documentation must include adequate descriptions of the severity and complexity of the client's condition at the time of transportation~~) received, evaluated, and approved by the agency before the air ambulance transport takes place.

(4) The agency pays a negotiated rate for a medically necessary nonemergency interstate air ambulance transportation that the agency has prior authorized. The air ambulance provider is responsible for ensuring that all medical services necessary for the client's health and safety during the transport are available on board the vehicle or aircraft.

(5) Unless otherwise specified in the agency's authorization letter, the contractual amount for a nonemergency air ambulance transport includes:

(a) The cost of medically necessary ground transportation from the discharge facility to the point-of-pickup (airstrip); and

(b) The cost of medically necessary ground ambulance transportation from the landing point (airstrip) to the receiving facility.

(6) Payment for nonemergency air ambulance transportation clients may not exceed published fee schedule amounts, except when the agency expressly allows payment of a negotiated rate for a prior authorized nonemergency transport.

(7) Billing documentation must include a copy of the agency's authorization letter, adequate descriptions of the severity and complexity of the transport, and the medical interventions provided in transit.

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

WAC 182-546-2500 Ambulance transportation to ~~(or from)~~ out-of-state treatment facilities—Coordination of benefits. (1) The ~~((medical assistance administration (MAA)))~~ medicaid agency does not pay for a client's ambulance transportation to ~~((or from))~~ an out-of-state treatment facility when the medical service, treatment, or procedure sought by the client is available from an in-state facility or in a designated bordering city, whether or not the client has other insurance coverage.

(2) For clients who are otherwise eligible for out-of-state coverage under WAC ~~((388-546-0150))~~ 182-546-0150, but have other third-party insurance, ~~((MAA does))~~ the agency may not pay for transportation to or from out-of-state treatment facilities when the client's primary insurance:

(a) Denies the client's request for medical services out-of-state ~~((for lack of medical necessity; or))~~ as not medically necessary;

(b) Denies the client's request for transportation ~~((for lack of medical necessity))~~ as not medically necessary; or

(c) Denies the client's requested mode of transportation as not medically necessary.

(3) For clients who are otherwise eligible for out-of-state coverage under WAC ~~((388-546-0150))~~ 182-546-0150, but have other third-party insurance, ~~((MAA))~~ the agency does not consider requests for transportation to or from out-of-state treatment facilities unless the client has ~~((tried all of the following:~~

~~((a)))~~ requested coverage of the benefit from ~~((his/her))~~ their primary insurer and been denied

~~((b))~~ Appealed the denial of coverage by the primary insurer; and

~~((c))~~ Exhausted his/her administrative remedies through the primary insurer).

(4) If ~~((MAA))~~ the agency authorizes transportation to or from an out-of-state treatment facility for a client with other third-party insurance, ~~((MAA's))~~ the agency's liability is limited to the cost of the least costly means of transportation that does not jeopardize the client's health, as determined by ~~((MAA))~~ the agency in consultation with the client's referring physician.

(5) For clients eligible for out-of-state coverage but have other third-party insurance, ~~((MAA))~~ the agency considers requests for transportation to or from out-of-state treatment

facilities under the provisions of WAC ~~((388-501-0165))~~ 182-501-0165.

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

WAC 182-546-3000 Ambulance transportation—Transporting qualified trauma cases. The ~~((department))~~ medicaid agency does not pay ambulance providers who meet department of health (DOH) criteria for participation in the statewide trauma network an additional amount for transports involving qualified trauma cases described in WAC ~~((388-550-5450))~~ 182-550-5450. Subject to the availability of trauma care fund (TCF) monies allocated for such purpose, the ~~((department))~~ agency may make supplemental payments to these ambulance providers, also known as verified prehospital providers.

NEW SECTION

WAC 182-546-4100 Ambulance transportation—Behavioral health treatment—General. The medicaid agency pays for medically necessary ambulance transportation to and from a covered behavioral health service (see WAC 182-546-4300) subject to the conditions and limitations within this chapter. For purposes of Involuntary Treatment Act (ITA) and voluntary behavioral health services:

(1) The agency pays for transportation services for people involuntarily detained for behavioral health services when they have been assessed by a DCR and found to be one of the following:

(a) A danger to self;

(b) A danger to others;

(c) At substantial risk of inflicting physical harm upon the property of others; or

(d) Gravely disabled as a result of their behavioral health condition.

(2) The agency pays for ambulance transportation to take a client to and from an inpatient facility for behavioral health admission under the ITA.

(3) The agency pays for ambulance transportation services to take a client to the hospital for a voluntary inpatient behavioral health stay when medically necessary.

(4) The DCR authorizes the treatment destination based on the client's legal status.

NEW SECTION

WAC 182-546-4200 Ambulance transportation—Behavioral health treatment—Coverage. (1) To be considered an Involuntary Treatment Act (ITA) transport, a client's involuntary status must have resulted from:

(a) A petition for initial detention filed by a DCR (seventy-two hour hold); and

(b) Continued hospitalization (fourteen-day, ninety-day, or one hundred eighty-day holds) under order of the superior court in a community hospital (not for clients residing in western or eastern state hospitals); or

(c) A petition for revocation of a conditional release or less restrictive treatment agreement.

(2) ITA transportation for a client is covered:

(a) From:

- (i) The site of initial detention;
- (ii) A court competency hearing;
- (iii) A local emergency room department;
- (iv) An evaluation and treatment facility;
- (v) A state hospital; and
- (vi) A secured detoxification facility or crisis response center.

(b) To:

- (i) A state hospital;
- (ii) A less restrictive alternative setting (except home);
- (iii) A court competency hearing;
- (iv) A local emergency room department;
- (v) An evaluation and treatment facility; and
- (vi) A secured detoxification facility or crisis response center.

(c) When provided by an ambulance transportation provider or law enforcement.

(d) When transported to the closest and most appropriate destination or a place designated by the DCR and/or courts. The reason for a diversion to a more distant facility must be clearly documented in the client's file.

(3) **Children's long-term inpatient program (CLIP)** - Transportation provided to a children's long-term inpatient program (CLIP) facility is considered a form of non-emergency medical transportation and requires a physician certification statement (PCS) or nonphysician certification statement (NPCS).

(4) **Parent initiated treatment (PIT)** - Use of non-emergency ambulance transportation to an inpatient psychiatric facility for voluntary inpatient admission must be medically necessary at the time of transport. The agency requires a PCS or NPCS signed by a psychiatric registered nurse, psychiatric advanced registered nurse practitioner (ARNP), or psychiatric physician's assistant (PA). The PCS or NPCS form documents the client's medical condition at the time of the transport.

(5) **Persons without apple health or other coverage** -

If the person does not have apple health or any third-party health insurance, and the person or the person's family cannot pay for transportation related to services in RCW 71.05.150 through 71.05.310 and 71.05.340:

(a) The ambulance provider may submit a claim to the agency for that person; and

(b) The claim must be accompanied by back-up documentation consistent with Washington superior court mental proceeding Rule 2.2 and show that the transport occurred within three days of the person's detention.

NEW SECTION

WAC 182-546-4300 Ambulance transportation—Behavioral health treatment—Reimbursement. (1) The agency, as payer of last resort, pays the transportation costs for clients that a Washington designated crisis responder (DCR) detains under the ITA on a seventy-two hour initial detention or five-day revocation hold until the client is discharged from the evaluation and treatment facility or admitted to a state-managed inpatient facility.

(2) The agency pays only when it determines that the involuntarily detained client:

(a) Does not have any other third-party liability (TPL) payment source; and

(b) When requiring the client to pay would result in a substantial hardship upon the client or the client's family. Refer to WAC 182-502-0160.

(3) The DCR must complete and sign a copy of the agency's authorization of Secure Ambulance Transportation Services to/from Behavioral Health Services form (HCA 42-0003) and must keep it in the client's file.

(4) The agency establishes payment for behavioral health related transportation services when the transportation provider complies with the agency's requirements for drivers, driver training, vehicle and equipment standards and maintenance. Providers must clearly identify ITA transportation on the claim when billing the agency.

(5) The agency does not pay for transportation costs to or from out-of-state or bordering cities for clients under the ITA program under any circumstance.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-546-0001 Definitions.

WAC 182-546-0505 GEMT definitions.

WAC 182-546-4000 Transportation coverage under the Involuntary Treatment Act (ITA).

WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act.

WSR 20-11-009

PROPOSED RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed May 11, 2020, 8:30 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: Foundational quality standards for early learning programs: WAC 110-300-0011 License transfers. Licensed school-age child care standards: WAC 110-305-1001 License transfers.

Hearing Location(s): On June 23, 2020, telephonic.

Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including June 23 will be considered.

Date of Intended Adoption: June 25, 2020.

Submit Written Comments to: Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax

360-902-7903, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/> online, by June 23, 2020.

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov, by June 19, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules allow the department to transfer a full child care license to a new licensee in the event of a transfer of ownership of a child care operation; identify criteria the department will consider before transferring a license; and grant administrative hearing rights to appeal the denial of a license transfer.

Reasons Supporting Proposal: Section 5, chapter 343, Laws of 2020, authorizes transfers of child care licenses in the event of a transfer of ownership of a child care operation. Rules are necessary to clarify what conditions must be met for a transfer to occur and to clarify that license transfer decisions are subject to the Administrative Procedure Act, chapter 34.05 RCW.

Statutory Authority for Adoption: RCW 43.216.065.

Statute Being Implemented: RCW 43.216.305.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Seattle, 360-628-2151; 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 listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed 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 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.

May 11, 2020
Brenda Villarreal
Rules Coordinator

NEW SECTION

WAC 110-305-1001 License transfers. (1) Pursuant to RCW 43.216.305(1) and subject to this chapter, a full license issued under chapter 43.216 RCW may be transferred to a new licensee in the event of a transfer of ownership of a child care operation.

(2) A full license will remain valid and may be transferred to a new licensee if:

(a) The new licensee meets the requirements in RCW 43.216.305(2); and

(b) The department determines before the license transfer the new licensee's child care operation is substantially

similar to or an improvement of the originally licensed child care operation.

(3) To determine whether the new licensee's child care operation is substantially similar to or an improvement of the original child care operation, the department must assess the following factors of the new child care operation:

(a) The physical environment and all anticipated changes or updates;

(b) The qualifications and number of all retained and newly hired staff members;

(c) The program operations and all anticipated changes or updates;

(d) The relation or connection, if any, between the original and new licensee; and

(e) Whether the new child care operation is able to comply with the licensing requirements described in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(4) The department will determine and disclose to the current licensee, and new licensee, whether the license is in good standing prior to transferring the license. Such disclosure must include:

(a) A description of any valid complaints;

(b) A description of any instances that the department found noncompliance with the requirements contained in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC;

(c) Safety plans (historical or in effect);

(d) Facility licensing compliance agreements (historical or in effect); and

(e) Enforcement actions levied or pending against this license.

(5) An applicant or licensee has the right to appeal the denial of a license transfer by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules codified in chapter 110-03 WAC.

WSR 20-11-010

PROPOSED RULES

DEPARTMENT OF

VETERANS AFFAIRS

[Filed May 11, 2020, 10:03 a.m.]

Continuance of WSR [20-07-026].

Preproposal statement of inquiry was filed as WSR 20-03-011.

Title of Rule and Other Identifying Information: WAC 484-10-010 State veterans institutions.

Hearing Location(s): On July 1, 2020, at 11:30 [a.m.], at Washington Department of Veterans Affairs (WDVA), 1102 Quince Street S.E., 3rd Floor Conference Room, Olympia, WA 98504.

Please RSVP for in-person meeting to ensure space is available for appropriate social distancing. Meeting will be broadcast via Skype. Join Skype meeting.

Date of Intended Adoption: July 2, 2020.

Submit Written Comments to: WDVA, Heidi Audette, P.O. Box 41150, email heidia@dva.wa.gov, fax 360-725-2197, by June 30, 2020.

Assistance for Persons with Disabilities: Contact Heidi Audette, phone 360-725-2154, fax 360-725-2197, TTY 360-725-2199, email heidia@dva.wa.gov, by June 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: General updates to language from superintendent to administrator and removing provision allowing a superintendent in training to be hired.

Reasons Supporting Proposal: Compliance with RCW 72.36.020.

Statutory Authority for Adoption: RCW 43.60A.070. RCW 72.36.020.

Statute Being Implemented: RCW 72.36.020.

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

Name of Proponent: WDVA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Heidi Audette, 1102 Quince Street S.E., Olympia, WA 98504, 360-725-2154.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not considered a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

May 11, 2020
Heidi Audette
Communications and
Legislative Director

AMENDATORY SECTION (Amending WSR 10-04-027, filed 1/26/10, effective 2/26/10)

WAC 484-10-010 State veterans institutions. (1) The Washington soldiers home and colony, the Washington veterans home, ~~((and))~~ the eastern Washington veterans home, and the Walla Walla veterans home shall have, respectively, a chief executive officer to be called ~~((a superintendent))~~ an administrator. The ~~((superintendent))~~ administrator shall be directly responsible to the director or designee, of the department of veterans affairs ~~((; and as such shall be an honorably discharged veteran))~~.

(2) The ~~((superintendent))~~ administrator shall be a licensed nursing home administrator in the state of Washington. ~~((In situations where a candidate is identified who is an honorably discharged veteran but not yet a licensed nursing home administrator in the state of Washington, the director may appoint the candidate to the position of superintendent-in-training, providing time for the candidate to complete an administrator-in-training program, approved by the Washington state department of health, and pass the nursing home administrators licensing examination. The candidate is eligible for appointment to the position of superintendent once he or she becomes a licensed nursing home administrator. The director will ensure that the facility is directed by an interim on-site, full-time superintendent who is a licensed nursing~~

~~home administrator and who may or may not be a veteran, while the candidate is in training, or whenever a suitable candidate is not available.))~~

WSR 20-11-011
PROPOSED RULES
DEPARTMENT OF
VETERANS AFFAIRS

[Filed May 11, 2020, 10:03 a.m.]

Continuance of WSR [20-07-027].

Preproposal statement of inquiry was filed as WSR 20-03-007.

Title of Rule and Other Identifying Information: Public disclosure process including statement of costs.

Hearing Location(s): On July 1, 2020, at 11:30 a.m., at Washington Department of Veterans Affairs (WDVA), 1102 Quince Street S.E., 3rd Floor Conference Room, Olympia, WA 98504. Please RSVP for in-person meeting to ensure space is available for appropriate social distancing. Meeting will be broadcast via Skype. Join Skype meeting.

Date of Intended Adoption: July 2, 2020.

Submit Written Comments to: WDVA, Heidi Audette, P.O. Box 41150, email heidia@dva.wa.gov, fax 360-725-2197, by June 30, 2020.

Assistance for Persons with Disabilities: Contact Heidi Audette, phone 360-725-2154, fax 360-725-2197, TTY 360-725-2199, email heidia@dva.wa.gov, by June 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates existing sections regarding disclosure and exemptions to comply with chapter 42.56 RCW. Creates new sections related to how WDVA is organized, charges for copies of records, and notification of individuals.

Reasons Supporting Proposal: Compliance with chapter 42.56 RCW.

Statutory Authority for Adoption: RCW 42.56.040, [42.56.]070, [42.56.]090, [42.56.]120.

Statute Being Implemented: RCW 42.56.040, [42.56.]070, [42.56.]090, [42.56.]120.

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

Name of Proponent: WDVA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Heidi Audette, 1102 Quince Street S.E., Olympia, WA 98504, 360-725-2154.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not considered a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

May 11, 2020

Heidi Audette
Communications and
Legislative Director

NEW SECTION

WAC 484-50-001 How is DVA organized? (1) WDVA is organized into the following areas:

- (a) Veterans homes;
- (b) Veterans services;
- (c) Counseling and wellness;
- (d) Cemetery; and
- (e) Administration.

(2) Additional information on agency organization and operation is available at <https://www.dva.wa.gov/about-wdva/about-us> or by writing:

WDVA Communications Office
P.O. Box 41150
Olympia, WA 98504

AMENDATORY SECTION (Amending Order 7659, filed 7/28/77)

WAC 484-50-005 (~~Disclosure~~) How do I request and inspect public records? (1) All public records of the department of veterans affairs are available for public inspection and copying from 9:00 a.m. - 12:00 p.m. and 1:30 p.m. - 4:30 p.m. Monday through Friday, excluding legal holidays, pursuant to these rules except as otherwise provided in chapter 42.56 RCW ((42.17.310 and WAC 484-50-010.

(2) ~~Requests for any identifiable public record may be initiated at the headquarters of the department of veterans affairs, in Olympia), other applicable laws, and these rules.~~

(2) The public records officer for WDVA shall be responsible for responses to requests for public records. Requests for public records shall be submitted to the WDVA public records officer using the following contact information:

WDVA Public Records Officer
P.O. Box 41150
Olympia, WA 98504
Phone: 1-800-562-2308 (ask for the public records officer)

Additional contact information is available via the WDVA website at www.dva.wa.gov search "Public Disclosure"

AMENDATORY SECTION (Amending Order 7659, filed 7/28/77)

WAC 484-50-010 (~~Exemptions~~) What if the public record contains information that is exempt from public disclosure? ((1) The department of veterans affairs reserves the right to determine that a public record requested is exempt under the provisions of RCW 42.17.310 or federal or other state laws and regulations.

(2) Pursuant to RCW 42.17.260, the department of veterans affairs reserves the right to delete identifying details when it makes available or publishes any public record, in any case in which there is reason to believe that disclosure of

such details may be unreasonable invasion of personal privacy. The public records officer shall fully justify such deletion in writing.) (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for WDVA clients. Personal information includes, but is not limited to:

- (i) Names;
- (ii) Telephone numbers;
- (iii) Fax numbers;
- (iv) Email addresses;
- (v) Social Security numbers;
- (vi) VA claim numbers;
- (vii) VA disability percentages;
- (viii) DOD type of military separation, characterization of service, narrative reason for separation, reentry code, separation code;

(ix) Account numbers;

(x) Certificate or license numbers;

(xi) Vehicle identifiers and serial numbers, including license plate numbers;

- (xii) Device identifiers and serial numbers;
- (xiii) Web universal resource locators (URLs);
- (xiv) Internet protocol (IP) address numbers;
- (xv) Biometric identifiers, including finger and voice prints;

(xvi) Full face photographic images and any comparable images;

(xvii) Any other unique identifying number, characteristic, or code;

(xviii) All geographic subdivisions smaller than a state, including street address, mailing address, city, county, precinct, geocodes, and zip code, except for the initial three digits of a zip code; and

(xix) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death.

(b) Under chapter 70.02 RCW and related federal laws, protected health care information and medical records.

(c) Under RCW 42.56.230(3), personal information in files maintained for WDVA employees or elected officials to the extent that disclosure would violate their right to privacy.

(d) Under RCW 42.56.230(5), credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial information as defined in RCW 9.35.005 including Social Security numbers, except when disclosure is expressly required by or governed by other law.

(e) Under RCW 42.56.250, the following information from personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency:

- (i) Residential addresses;
- (ii) Residential phone numbers;
- (iii) Personal wireless telephone numbers;
- (iv) Personal email addresses;
- (v) Social Security numbers;
- (vi) Driver's license numbers;

(vii) Identocard numbers;

(viii) Emergency contact information; and

(ix) Names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal email addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency.

(f) Under RCW 42.56.235, records that relate to or contain personally identifying information about an individual's religious beliefs, practices, or affiliation.

(g) Effective July 1, 2020, agency employee records described under RCW 42.56.660.

(h) Effective July 1, 2020, lists of state agency employee names under RCW 42.56.675.

(i) Under RCW 42.56.640 and 43.17.410, sensitive personal information of vulnerable individuals and in-home caregivers for vulnerable populations, except as allowed under subsection (3) of this section.

(2) If the requested public record contains information that is exempt from public disclosure, WDVA may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record, sending a written explanation and citing the exemption that applies to the denial; or

(c) Neither confirm or deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed, when a denial would reveal information that is confidential and must not be disclosed.

(3) Sensitive personal information under subsection (1)(i) of this section may be disclosed or produced if WDVA determines that the requestor:

(a) Meets the criteria under RCW 42.56.645; and

(b) Has complied with any procedures developed by WDVA to protect the confidentiality of the information.

NEW SECTION

WAC 484-50-020 Does WDVA charge for inspecting or providing public records? (1) There is no fee for inspecting public records.

(2) Pursuant to RCW 42.56.120 (2)(b), WDVA does not calculate the actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) WDVA does not have the resources to conduct a study to determine all of its actual copying costs; and

(b) To conduct such a study would interfere with other essential agency functions.

(3) WDVA may do one or more of the following:

(a) Charge for copies of records according to the default fees in RCW 42.56.120 (2)(b), (c), and (d);

(b) Charge for customized services pursuant to RCW 42.56.120(3);

(c) Charge other copy fees authorized by statutes outside of chapter 42.56 RCW;

(d) Enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) WDVA may waive copying fees in one or more of the following circumstances:

(a) Clients receiving the first copy of their file;

(b) Producing records assists in managing a program;

(c) The expense of billing exceeds the cost of producing records.

NEW SECTION

WAC 484-50-030 If a public record identifies or pertains to an individual or organization, other than the requestor, is that individual or organization notified? (1) If records responsive to a public records request identify or pertain directly to an individual or organization other than the requestor, WDVA may notify the named individual or organization about the request.

(2) WDVA's third-party notice may include:

(a) A copy of the original request;

(b) If appropriate, the records that identify or pertain to the third party;

(c) The date WDVA intends to release the record; and

(d) A statement that the third party may prevent release of the record by agreement or by bringing a lawsuit and getting an injunction against WDVA and the requestor under RCW 42.56.540 prior to the intended release date.

(3) WDVA may inform the requestor that:

(a) A third party has been notified of the request;

(b) WDVA provided the third party with a due date for objecting to disclosure; and

(c) In the absence of an agreement with the requestor, the third party may bring a lawsuit against the requestor and WDVA under RCW 42.56.540 to stop disclosure.

WSR 20-11-012

PROPOSED RULES

DEPARTMENT OF

VETERANS AFFAIRS

[Filed May 11, 2020, 10:03 a.m.]

Continuance of WSR [20-07-025].

Preproposal statement of inquiry was filed as WSR 20-03-010.

Title of Rule and Other Identifying Information: Veterans estate management program, chapter 484-40 WAC.

Hearing Location(s): On July 1, 2020, at 11:30 [a.m.], at the Washington Department of Veterans Affairs (WDVA), 1102 Quince Street S.E., 3rd Floor Conference Room, Olympia, WA 98504. Please RSVP for in-person meeting to ensure space is available for appropriate social distancing. Meeting will be broadcast via Skype. Join Skype meeting.

Date of Intended Adoption: July 2, 2020.

Submit Written Comments to: WDVA, Heidi Audette, P.O. Box 41150, email heidia@dva.wa.gov, fax 360-725-2197, by June 30, 2020.

Assistance for Persons with Disabilities: Contact Heidi Audette, phone 360-725-2154, fax 360-725-2197, TTY 360-725-2199, email heidia@dva.wa.gov, by June 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: General updates to

language for clarity and updates to maximum estate size of beneficiaries.

Reasons Supporting Proposal: Compliance with RCW 73.04.130.

Statutory Authority for Adoption: RCW 43.60A.70 [43.60A.070]. Other references are RCW 43.60A.70 [43.60A.070], 73.04.130.

Statute Being Implemented: RCW 73.04.130.

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

Name of Proponent: WDVA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Heidi Audette, 1102 Quince Street S.E., Olympia, WA 98504, 360-725-2154.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not considered a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

May 11, 2020

Heidi Audette

Communications and
Legislative Director

AMENDATORY SECTION (Amending WSR 80-09-069, filed 7/17/80)

WAC 484-40-005 Scope of services. As authorized by RCW 43.60A.070, the director of the department of veterans affairs, or ~~((his))~~ designee, is authorized to act as:

(1) Executor under the last will of the estate of any deceased veteran.

(2) Administrator of the estate of any deceased veteran.

(3) The ~~((guardian or))~~ duly appointed federal fiduciary of the estate of any ~~((insane or incompetent))~~ veteran deemed by the U.S. Department of Veterans Affairs or the Social Security Administration to be incompetent to handle their own finances.

(4) ~~((Guardian or))~~ Duly appointed federal fiduciary of the estate of any person who is a bona fide resident of the state of Washington and who is certified by the ~~((veterans administration))~~ U.S. Department of Veterans Affairs or the Social Security Administration as having money due from the ~~((veterans administration))~~ U.S. Department of Veterans Affairs or the Social Security Administration, the payment of which is dependent upon the appointment of a ~~((guardian or other type))~~ fiduciary.

~~((No estate larger than \$15,000.00, authorized by RCW 73.04.130 shall be eligible for any of the preceding categories.))~~

AMENDATORY SECTION (Amending Order 7659, filed 7/28/77)

WAC 484-40-015 Case level. (1) The director of the department of veterans affairs, or ~~((his))~~ designee, is authorized to provide the scope of services enumerated under WAC 484-40-005. ~~((He is not required to do so.))~~

(2) The director of veterans affairs shall determine when the case level is commensurate with available personnel and funding.

(3) The director of the department may refuse the provision of further services, under this chapter, whenever ~~((he deems appropriate for whatever reasons he deems))~~ appropriate.

AMENDATORY SECTION (Amending WSR 80-09-069, filed 7/17/80)

WAC 484-40-020 Auditing. (1) All funds received and disbursed in conjunction with services afforded under this chapter shall be accounted for by generally accepted accounting standards.

(2) The director of the department of veterans affairs or ~~((his))~~ designee shall cause a fiscal audit to be performed on all records and documents pertaining to the funds for which conservatorship is afforded under this chapter.

(3) Such audit may be performed by accountants within the department of veterans affairs or accountants from another governmental agency.

~~((4) Such audit shall be performed at time intervals not to exceed fourteen months and shall ensure that no period of time shall be unaudited.))~~

WSR 20-11-031

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 14, 2020, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-06-065.

Title of Rule and Other Identifying Information: WAC 182-513-1363 Evaluating an asset transfer for clients applying for or receiving long-term care (LTC) services.

Hearing Location(s): On June 23, 2020, at 10:00 a.m.

In response to the Governor's extended orders for *Stay Home, Stay Safe*, this public hearing will be held virtually. This will not be an in-person hearing and there is not a physical location available.

You must register for the public hearing at: <https://attendee.gotowebinar.com/register/6057562907361355533>.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than June 24, 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 June 23, 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 June 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending subsection (3) to provide clarity that certain asset transfers can still cause a penalty, even if compensation is made.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 74.09.585, 42 U.S.C. 1396p(c).

Statute Being Implemented: RCW 41.05.021, 41.05.160, 74.09.585, 42 U.S.C. 1396p(c).

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

Name of Proponent: Health care authority (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: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

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 pertains to clients and therefore does not impose any costs on businesses.

May 14, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-12-118, filed 6/5/19, effective 7/6/19)

WAC 182-513-1363 Evaluating an asset transfer for clients applying for or receiving long-term care (LTC) services. (1) When determining a client's eligibility for long-term care (LTC) services, the medicaid agency or the agency's designee evaluates the effect of an asset transfer made within the sixty-month period before the month that the client:

(a) Attained institutional status, or would have attained institutional status but for a period of ineligibility; and

(b) Applied for LTC services.

(2) The agency or the agency's designee evaluates all transfers for recipients of LTC services made during or after the month the recipient attained institutional status.

(3) The agency or the agency's designee establishes a period of ineligibility during which the client is not eligible for LTC services if the client, the client's spouse, or someone acting on behalf of either:

(a) Transfers an asset within the time period under subsection (1) or (2) of this section; and

(b) ~~((Does not receive))~~ There is uncompensated value because:

(i) Adequate consideration was not received for the asset, unless the transfer meets one of the conditions in subsection (4)~~((a) through (g))~~ of this section;

(ii) The transfer was compensated, but fails a requirement under subsection (4)(d)(iv) or (f) of this section; or

(iii) The transfer was determined to be an uncompensated asset transfer under chapter 182-516 WAC.

(4) The agency or the agency's designee does not apply a period of ineligibility for uncompensated value if:

(a) The total of all asset transfers in a month does not exceed the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later;

(b) The transferred asset was an excluded resource under WAC 182-513-1350 except a home, unless the transfer of the home meets the conditions under (d) of this subsection;

(c) The asset was transferred for less than fair market value (FMV), and the client can establish one of the following:

(i) An intent to transfer the asset at FMV. This intent is established by providing convincing evidence to the agency or the agency's designee;

(ii) The asset was transferred exclusively for a purpose other than to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery.

(A) An asset transfer is presumed to be for the purpose of establishing or continuing medicaid eligibility, avoiding estate recovery, or both;

(B) A client can rebut this presumption by providing convincing evidence that the transfer of an asset was exclusively for a purpose other than to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery.

(iii) All assets transferred for less than FMV have been returned to the client or the client's spouse; or

(iv) Denial of eligibility results in an undue hardship under WAC 182-513-1367.

(d) The transferred asset was a home, if the home was transferred to the person's:

(i) Spouse;

(ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iii) Child who was under age twenty-one; or

(iv) Child who lived in the home and provided care, but only if:

(A) The child lived in the person's home for at least two years;

(B) The child provided verifiable care to that person during the time period in (d)(iv)(A) of this subsection for at least two years;

(C) The period of care under (d)(iv)(B) of this subsection was immediately before that person's current period of institutional status;

(D) The care was not paid for by medicaid;

(E) The care enabled that person to remain at home; and

(F) The physician's documentation verifies that the in-home care was necessary to prevent that person's current period of institutional status; or

(v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person attained institutional status.

(e) The asset was transferred to the client's spouse; or to the client's or their spouse's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer was to a family member before the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer, regardless of consideration received:

(i) The transfer is in exchange for care services the family member provided to the client or their spouse;

(ii) The client or their spouse had a documented need for the care services provided by the family member;

(iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community-based waiver services;

(iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(v) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(vi) The time for which care services are claimed is reasonable based on the kind of services provided; and

(vii) The assets were transferred as the care services were performed, with no more time delay than one calendar month between the provision of the service and the transfer.

(g) The transfer meets the conditions under subsection (5) of this section, and the asset is transferred:

(i) To another party for the sole benefit of the client's spouse;

(ii) From the client's spouse to another party for the sole benefit of the client's spouse;

(iii) To a trust established for the sole benefit of the client's or their spouse's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c); or

(iv) To a trust established for the sole benefit of a person who is under age sixty-five who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) An asset transfer or establishment of a trust is for the sole benefit of a person under subsection (4)(g) of this section if the document transferring the asset:

(a) Was made in writing;

(b) Is irrevocable;

(c) States that the client's spouse, their blind or disabled child, or another disabled person can benefit from the transferred assets; and

(d) States that all assets involved must be spent for the sole benefit of the person over an actuarially sound period, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets the conditions of a trust established under Section 42 U.S.C. 1396p (d)(4)(A) or Section 42 U.S.C. 1396 (d)(4) (C) as described under chapter 182-516 WAC.

(6) To calculate the period of ineligibility under subsection (3) of this section:

(a) Add together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Divide the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the

time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility.

(7) The period of ineligibility under subsection (6) of this section begins:

(a) For an LTC services applicant: The date the client would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For an LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous period of ineligibility has ended.

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, pass from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer was to the client's spouse, from the client's spouse to the client, and it included the right to receive an income stream, the agency or the agency's designee determines availability of the income stream under WAC 182-513-1330.

(10) If the transferred asset, for which adequate consideration was not received, included the right to receive a stream of income not generated by a transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy in months of the previous owner of the income. The actuarial life expectancy is based on age of the previous owner in the month the transfer occurs. If the client and their spouse co-owned the asset, the longer actuarial life expectancy is used. This product is the FMV of the asset;

(b) Any consideration received in return for the FMV of the asset under (a) of this subsection is subtracted to calculate the uncompensated value;

(c) The uncompensated value in (b) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

(d) The period of ineligibility begins under subsection (7) of this section and ends under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency or the agency's designee divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) Throughout this section, the date of an asset transfer is:

(a) For real property:

(i) The day the deed is signed by the grantor if the deed is recorded; or

(ii) The day the signed deed is delivered to the grantee.

(b) For all other assets, the day the intentional act or the failure to act resulted in the change of ownership or title.

(13) If a client or their spouse disagrees with the determination or application of a period of ineligibility, a hearing may be requested under chapter 182-526 WAC.

(14) Additional statutes that apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

WSR 20-11-050
PROPOSED RULES
SECRETARY OF STATE

[Filed May 18, 2020, 3:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-026.

Title of Rule and Other Identifying Information: Permanent adoption of WAC changes related to acceptable mailing dates for ballots returned using commercial mailing services instead of the Postal Service and addressing the responsibility for filing reconciliation reports.

Hearing Location(s): On June 23, 2020, at 3:00 p.m., at 520 Union Avenue, Olympia, 98504.

The hearing will be conducted using WebEX, to join the hearing a person can call the following telephone number (408-418-9388) and enter the attendance code (963 207 030). People will be able to hear and comment.

Date of Intended Adoption: June 24, 2020.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email sheryl.moss@sos.wa.gov, fax 360-664-4169, by June 22, 2020.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-902-4146, fax 360-664-4169, email Sheryl.moss@sos.wa.gov, by June 22, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules in conformance with recent legislation.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

May 18, 2020

Mark Neary

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 19-12-115, filed 6/5/19, effective 7/6/19)

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

(a) The voter has not already cast a ballot that has been accepted in the election;

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

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

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

(c) The signature has been verified by the county of current registration pursuant to WAC 434-379-020; and

(d)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The mailing date of a ballot sent through a commercial mailing service, such as FedEx or UPS, may be considered a postmark. The postmark on the envelope is the official date of mailing. If there are two postmarks, the earlier postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40-110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

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

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. Only service and overseas voters can submit ballots by fax or email.

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

the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) Consistent with WAC 434-250-080, the voter's current ballot and signed declaration shall be accepted for initial processing; ballots previously or subsequently received are not counted nor rejected by the county canvassing board. Such ballots shall be invalid and categorized as informational only.

(a) If the first ballot received is identical to the voter's current ballot because the voter submitted a replacement ballot, the replacement ballot shall be referred to signature verification for initial processing.

(b) If the first ballot received is suspended because of a voter registration update, the suspended ballot shall be held by the county of current registration. The county of registration may choose to manually check the suspended ballot for signature issues and send a cure form, while allowing time for the current ballot to be received and accepted.

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-13-063, filed 6/13/16, effective 7/14/16)

WAC 434-262-070 Official county canvass report. (1)

Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon;

(b) Provides the total number of registered voters and votes cast in the county;

(c) Contains the oath required by RCW 29A.60.200, signed by the county auditor and attested to by the chair or designee who administered the oath; and

(d) Shall have a space where the official seal of the county shall be attached.

(2) The official county canvass report shall include:

(a) The certification;

(b) The auditor's abstract of votes as described in WAC 434-262-030. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court. The vote totals therein shall constitute the official returns of that election; and

(c) ~~((The reconciliation report required by RCW 29A.60.235, which must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received, and any additional information necessary to explain variances; and~~

~~(d))~~ If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The certification shall be signed by all members of the county canvassing board or their designees.

(4) The official county canvass report ~~((is the cumulative report referenced in RCW 29A.60.230. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court. The vote totals contained therein shall constitute the official returns))~~ of state primaries and general elections must be submitted to the secretary of state on the day the election was certified.

(5) The county auditor must prepare a reconciliation report for every primary and election as required by RCW 29A.60.235 and state rule, and submit the complete report as directed by the secretary of state. The secretary of state shall review the reconciliation for each county and work with the county auditor to resolve discrepancies. If a discrepancy is resolved, the county auditor shall submit a correct reconciliation report to the secretary of state seven days following the certification of the election. The corrected report then

becomes the official reconciliation report for that election. The county auditor shall post the corrected report on the county auditor website.

WSR 20-11-055
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed May 19, 2020, 9:52 a.m.]

Supplemental Notice to WSR 20-02-013.

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

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements, amending the following sections: 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, 388-76-10550 Resident rights—Adult family home staffing—Notification required, 388-76-10560 Resident rights—Adult family home management of resident financial affairs, 388-76-10561 Resident rights—Resident security deposit account, 388-76-10585 Resident rights—Examination of inspection results, 388-76-10595 Resident rights—Advocacy access and visitation rights, 388-76-10600 Resident rights—Mail and telephone privacy, 388-76-10605 Resident rights—Personal property and storage space, 388-76-10615 Resident rights—Transfer and discharge, 388-76-10620 Resident rights—Quality of life—General, 388-76-10685 Bedrooms, 388-76-10715 Doors—Ability to open, 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring, 388-76-10725 Electronic monitoring equipment—Resident requested use, 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, 388-76-10825 Space heaters, fireplaces, and stoves, 388-76-10830 Emergency and disaster plan—Required, 388-76-10840 Emergency food supply, 388-76-10850 Emergency medical supplies, 388-76-10865 Resident evacuation from adult family home, 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. It would also repeal sections: 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. This proposal will also add a new section, WAC 388-76-10616 Resident rights—Transfer and discharge notice.

Hearing Location(s): On July 7, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., 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 July 8, 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., July 7, 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 June 23, 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.

During the first public comment period, the department received multiple comments which resulted in substantial changes. The department is filing this supplemental CR-102 Proposed rule making to allow for a second public comment period on the changes made to the proposed rules.

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 impose more-than-minor costs on businesses.

The costs associated with this proposal are mainly administrative or update to 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. The small business economic impact statement outlines those costs, how they were calculated, and that the benefits outweigh the costs. [No further information supplied by agency.]

A copy of the statement 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.

May 14, 2020

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)) must 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; and

(c) Keep a copy that has been signed and dated by the resident in the resident's record.

(3) These forms do not replace the notice of rights and 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))~~ the notice of rights and services 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))~~ which general care management decisions they will make and which will be made by the resident or their representative; 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.

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)) (c) 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((;)). 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) 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~~((;))~~ 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))~~ When a bedroom will be shared by two residents, the home must:

(a) Document through the notice of rights and services that the resident's bedroom is a shared bedroom; and

(b) Allow residents to express their preference of roommate and allow residents who mutually consent to share a bedroom to live in a double occupancy bedroom together, unless this will pose a health or safety risk for any resident in the home;

~~((5))~~ (6) 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))~~ (7) 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))~~ (8) Ensure there are no more than two residents to a bedroom((;)).

~~((10))~~ (9) 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))~~ (10) Do not use the upper bunk of double-deck beds for a resident's bed((;)).

~~((12))~~ (11) 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))~~ (12) Ensure that members of the household((; other than residents;)) and staff do not share bedrooms with residents((; and)).

~~((14))~~ (13) 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((; and))

(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
- ~~((v))~~ (3) The home ~~((notifies))~~ must notify all residents in writing of the video monitoring equipment. The home must:

- (a) Identify in the written notification each person or organization with access to electronic monitoring; and
- (b) Retain an acknowledgment that has been signed and dated by both the resident and the home that states in writing that the resident has received this notification.
- (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 in their bedrooms to specific times or situations, 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;

(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.

~~((e))~~ (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) above))~~ (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 pur-

suant 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) Keep 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;)) in locked storage and in their original containers;

(8) Grant a resident access to and use of toxic substances and hazardous materials only with direct supervision, unless the resident has been assessed as safe to use the substance or material without direct supervision and if the use is documented in the negotiated care plan;

~~((7))~~ (9) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each resident;

~~((8))~~ (10) Keep all firearms locked and accessible only to authorized persons; and

~~((9))~~ (11) 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)

((e)) (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, 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. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm.

((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 any 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:

- ~~((1))~~ (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))~~ (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))~~ develop 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 ~~((it))~~ 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)) conduct:

((1)) (a) Partial emergency evacuation drills which 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) All residents take part in)) (b) A full emergency evacuation drill at least once each calendar year, with all residents participating in the drill together and at the same time ((at least one emergency evacuation drill each calendar year that includes full evacuation from the home to a safe location)); and

(c) Emergency evacuation drills even if there are no residents living in the home for the purpose of staff practice.

(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 ((to a 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 20-11-060

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed May 19, 2020, 1:38 p.m.]

Continuance of WSR 20-06-035 [20-07-104].

Preproposal statement of inquiry was filed as WSR 19-15-047.

Title of Rule and Other Identifying Information: WAC 308-101-030 Computation of time.

Hearing Location(s): On June 17, 2020, at 11:00 a.m., at Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504.

See the "Purpose of the Proposal" section below. Public audio hearing available through Skype: 1 (360) 407-3815.

Date of Intended Adoption: June 18, 2020.

Submit Written Comments to: Marguerite Friedlander, Administrator, Department of Licensing, Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504, email mfriedland@dol.wa.gov, by June 16, 2020.

Assistance for Persons with Disabilities: Contact Marguerite Friedlander, administrator, department of licensing (DOL), phone 360-664-1523 or 360-902-0105, email mfriedland@dol.wa.gov, by June 15, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to the COVID-19 outbreak in our state, DOL, hearings and interviews unit has changed the following hearings and interviews public rules hearing:

From: June 17, 2020, at 11:00 a.m., at Department of Licensing, Highways-Licenses Building, Conference Room 430, 1125 Washington Street S.E., Olympia, WA 98504.

To: June 17, 2020, at 11:00 a.m., Telephonic Public Rules Hearing, Call In Number: (360) 407-3815, Conference ID: 7391584.

Reasons Supporting Proposal: This rule will avoid inconsistency in calculations and reduce the number of hearings that would be dismissed for being scheduled beyond the statutory thirty days.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.308.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Marguerite Friedlander, 421 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1444.

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

A cost-benefit analysis is not required under RCW 34.05.328. No cost is associated with this rule change.

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 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.

May 19, 2020
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-101-030 Computation of time. (1) In computing any period of time prescribed or allowed by any applicable statute or rule, RCW 1.12.040 shall apply;

(2) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation;

(3) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "notice is given" by the department under Title 46 RCW or 308 WAC, such notice is deemed to be given on the third day after the notice is deposited into the state mailing service;

(4) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "receiving notice" from the department under Title 46 RCW or 308 WAC, such notice is deemed to be "received" by a person on the third day after the notice is deposited into the state mailing service(-);

(5) A request for a hearing or interview under Title 46 RCW is deemed complete on the day the request is post-marked or, if sent electronically, the date the request is received by the department, and the department is deemed to

be in receipt of the hearing or interview request on the third day after the request is postmarked.

WSR 20-11-061

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed May 19, 2020, 1:45 p.m.]

Continuance of WSR 20-05-085 [20-07-101].

Preproposal statement of inquiry was filed as WSR 20-02-081.

Title of Rule and Other Identifying Information: WAC 308-104-145 Driving record abstracts—Release to insurance companies.

Hearing Location(s): On Wednesday, June 17, 2020, at 10:00 a.m., at Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507.

See the "Purpose of the Proposal" section below. Public audio hearing available through Skype: 1 (360) 407-3815.

Date of Intended Adoption: June 18, 2020.

Submit Written Comments to: Chante El, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email chel@dol.wa.gov, fax 360-570-7070, by June 16, 2020.

Assistance for Persons with Disabilities: Contact Chante El, phone 360-902-3776, fax 360-570-7070, email chel@dol.wa.gov, by June 12, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to the COVID-19 outbreak in our state, the department of licensing (DOL), hearings and interviews unit has changed the following hearings and interviews public rules hearing:

From: June 17, 2020, at 10:00 a.m., at Department of Licensing, Highways-Licenses Building, Conference Room 430, 1125 Washington Street S.E., Olympia, WA 98504.

To: June 17, 2020, at 10:00 a.m., Telephonic Public Rules Hearing, Call In Number: (360) 407-3815, Conference ID: 818917.

Reasons Supporting Proposal: We are proposing to repeal WAC 308-104-145 since we no longer issue these separate abstracts.

Statutory Authority for Adoption: RCW 46.01.110 and 46.25.140.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Chante El, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-3776; and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-3839.

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

A cost-benefit analysis is not required under RCW 34.05.328. The changes to this rule add no additional costs to stakeholder.

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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

May 19, 2020
Damon Monroe
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-104-145 Driving record abstracts—Release to insurance companies.

WSR 20-11-069

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed May 20, 2020, 8:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-087.

Title of Rule and Other Identifying Information: Revisions to chapter 16-390 WAC, Fruit and vegetable inspection fees and other charges. The department is proposing to increase the apple maggot survey fee specified in WAC 16-390-230. The survey fee is used to fund annual apple maggot survey efforts and is assessed on all apples grown or packed in Washington state and introduced into commerce for sale or shipment as fresh apples.

Hearing Location(s): On July 7, 2020, at 1:00 p.m.

Webex Conference Line, Join by link: <https://watech.webex.com/watech/j.php?MTID=mab40afdc4fcfe78e91c5261a4d338c7>. Meeting password: 12083396. **Join by phone:** +1-415-655-0001 US Toll, +1-206-207-1700 United States Toll (Seattle), Attendee access code: 120 833 96; and

On July 8, 2020, at 5:00 p.m.

Webex Conference Line, Join by link:

<https://watech.webex.com/watech/j.php?MTID=ma15dfef1cd9170cbdd47fc20b056f181>. Meeting password: 12083396. **Join by phone:** +1-415-655-0001 US Toll, +1-206-207-1700 United States Toll (Seattle), Attendee access code: 120 833 96.

Due to the mandated social distancing requirements in place during the current COVID-19 outbreak, the public hearings will be held solely over video and teleconference.

Date of Intended Adoption: July 15, 2020.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., July 8, 2020.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email dpainter@agr.wa.gov, by June 30, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 17.24.131 requires Washington state department of agriculture (WSDA) to set fees at a level that "...as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved." The current apple maggot survey fee is \$0.015 per CWT (hundredweight). The fee was last increased in 2006 in order to conduct expanded apple maggot surveys to comply with international standards. In recent years, the apple maggot survey fund balance has decreased to the point that the program cannot continue to provide the same level of survey. Additionally, the program has recently experienced increased operational costs. Growers and packers benefit from the survey, as it allows the department to monitor the movement of apple maggot and address any necessary changes to the quarantine or other measures that may be required to further protect the apple industry.

Under the proposed rule amendment, businesses which grow or pack apples in Washington state and introduce them into commerce for sale or shipment as fresh apples will be required to pay an increased fee of \$0.020 per CWT (a \$0.005 increase). On the first business day of February each year, the minimum operating fund balance (MOFB) for the program will be determined. If the program fund balance falls below the MOFB at the time it is established, the fee rate shall increase to \$0.025 per CWT beginning July 1 of that year. Once the fee has been set at \$0.025 per CWT, it will remain at that rate and the MOFB will no longer be determined. The MOFB is six months of the projected operating expenses for the apple maggot survey program. The expenses used to calculate this figure include projected program staff salary and benefits, costs of the program's goods and services, transportation costs, administrative support costs, and any additional costs associated with the program. In addition to expected future costs, WSDA may consider previously incurred operating expenses to estimate projected operating expenses. By February 10 of each year, WSDA will post notice on their website of the rate established for that year. The MOFB will also be posted on the WSDA website by February 10th of each year, until the \$0.025 per CWT rate is established.

Reasons Supporting Proposal: Apple maggot, specifically the larval stage, is a pest that threatens commercial and homegrown fruit, especially apples. Over time, apple maggot species have spread throughout much of North America, threatening fruit crops from coast to coast. Apple maggot hosts include apples, crabapples, native and ornamental hawthorns, cherries, prunes, plums, pears, and quinces. Apple maggot adults look similar to and disperse like small house flies. In Washington, the active adults mate and lay their eggs in July and August. Apple maggot females puncture the skin of host fruit and lay their eggs under the surface. While the initial damage is easily overlooked, it eventually leads to dimpling of the fruit surface. In three to seven days, the eggs hatch and apple maggot larvae emerge. The larvae eat and tunnel their way through the fruit, leaving brown trails behind. Once mature, the larvae exit the fruit and drop to the

ground. They overwinter as pupae in the soil, emerging the next summer as adults, starting the cycle over again. Apple maggot has the potential to survive in the soil as a pupae for at least two years, if not longer. Once apple maggot has become established, treatment is costly. Apples are the top agricultural commodity in Washington. This makes the threat of apple maggot significant, as fruit from the pest free areas has greater access to international markets.

In 2019, WSDA presented to the industry advisory committee, the apple maggot working group (AMWG), on the fiscal deficit of the program. After some discussion, it was agreed that less traps would be used in the coming survey season in an effort to conserve funds. For the 2019 season, apple maggot traps were reduced by 3,124 traps. Unfortunately, this reduction was not enough to prevent a deficit in funds available to continue the annual survey. Due to repeated annual budget deficits caused by increased operational costs, it has become necessary to increase the fee in order to maintain the current standard of survey trapping. The additional revenue will be used to manage and prevent the possible movement of apple maggot from infested areas into pest free areas, secure continued access to international and interstate markets, and protect the commercial tree fruit industry from an economically significant pest.

Statutory Authority for Adoption: RCW 17.24.101 and 17.24.131.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Washington state tree fruit association, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Greg Haubrich, 1111 Washington Street, Olympia, WA 98504, 360-902-2071.

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. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

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

Small Business Economic Impact Statement

Chapter 16-390 WAC

Fruit and Vegetable Inspection Fees and Other Charges

Apple Maggot Survey Fees

May 13, 2020

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

Chapter 17.24 RCW mandates "a strong system" to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and infestations. The Washington state department of agriculture (WSDA) is charged with implementing that mandate by excluding plant and bee pests and diseases from the pest free

areas of the state through regulation of movement and quarantine of infested areas. RCW 17.24.101 authorizes WSDA to conduct surveys to determine the presence, absence, or distribution of a pest if there is reason to believe it may adversely impact the forestry, agricultural, horticultural, floricultural, or related industries of the state.

Apple maggot, specifically the larval stage, is a pest that threatens commercial and homegrown fruit, especially apples. Over time, apple maggot species have spread throughout much of North America, threatening fruit crops from coast to coast. Apple maggot hosts include apples, crabapples, native and ornamental hawthorns, cherries, prunes, plums, pears, and quinces. Apple maggot adults look similar to and disperse like small house flies. In Washington, the active adults mate and lay their eggs in July and August. Apple maggot females puncture the skin of host fruit and lay their eggs under the surface. While the initial damage is easily overlooked, it eventually leads to dimpling of the fruit surface. In three to seven days, the eggs hatch and apple maggot larvae emerge. The larvae eat and tunnel their way through the fruit, leaving brown trails behind. Once mature, the larvae exit the fruit and drop to the ground. They overwinter as pupae in the soil, emerging the next summer as adults, starting the cycle over again. Apple maggot has the potential to survive in the soil as a pupae for at least two years, if not longer (Sansford, Mastro, & Reynolds, 2016).

Apple maggot was first detected in Washington in 1980. WSDA initiated a survey to determine how widespread the apple maggot infestation was and to secure continued access to international and interstate markets for Washington's apple industry. Now, each year WSDA conducts apple maggot detection surveys to determine which areas of Washington meet the official "pest free" designation, conducts certification monitoring in or around apple orchards, and implements a detection response plan. While several counties in Washington (primarily in western Washington) have been quarantined, not all counties have apple maggot. Most notably, most of central Washington's prime fruit growing region remains pest free.

Apples are Washington state's top commodity, producing around fifty-eight percent of the total apples grown in the United States, with around thirty percent of the crop being exported to international markets (WSU Extension, n.d.). It's estimated that the apple industry contributes between \$4.38 billion and \$4.58 billion in value added contributions to the Washington economy (Galinato, Gallardo, Granatstein, & Willett, 2018). Left unchecked, apple maggot could have far reaching impacts on the tree fruit industry and the general economy of Washington state. These impacts could include an increased cost of pesticide control in apple orchards, apples requiring additional time in cold storage, and losses due to the effects on export markets (Galinato, Gallardo, Granatstein, & Willett, 2018). It is estimated that if apple maggot were to spread into pest free areas of the state, it could cost the apple industry anywhere between \$510 million to \$557 million annually (Galinato, Gallardo, Granatstein, & Willett, 2018).

Why the Rule Change is Needed: WAC 16-390-230 specifies the currently applicable apple maggot survey fee, which is used to fund the annual apple maggot survey efforts.

The fee is assessed on all apples grown or packed in Washington state and introduced into commerce for sale or shipment as fresh apples. Growers and packers benefit from the survey, as it allows the department to monitor the movement of apple maggot and address any necessary changes to the quarantine or other measures that may be required to further protect the apple industry. The apple maggot survey fee is used to fund apple maggot detection across the state. WSDA uses the funds to purchase apple maggot traps, employ staff to deploy and monitor the traps, employ lab technicians to analyze suspect specimens, inspect threatened apple orchards, collect and manage program data, as well as other costs associated with travel and equipment. WSDA also uses the funds to conduct general survey trapping, which assists county pest boards in tracking the movement of apple maggot in their area; allowing them to more effectively treat and control the spread of this pest.

RCW 17.24.131 requires WSDA to set fees at a level that "...as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved." The current apple maggot survey fee is \$0.015 per CWT (hundredweight). The fee was last increased in 2006 in order to conduct expanded apple maggot surveys to comply with international standards. In recent years, the apple maggot survey fund balance has decreased to the point that the program's ability to administer the apple maggot survey program is jeopardized. Additionally, the program has recently experienced increased operational costs.

In 2019, WSDA presented to the industry advisory committee, AMWG, on the fiscal deficit of the program. After some discussion, it was agreed that less traps would be used in the coming survey season in an effort to conserve funds. For the 2019 season, apple maggot traps were reduced by 3,124 traps. Unfortunately, this reduction was not enough to prevent a deficit in funds available to continue the annual survey. Due to repeated annual budget deficits caused by increased operational costs, it has become necessary to increase the fee in order to continue administering the survey program at a level sufficient to accurately detect apple maggot.

Table 1 shows the projected decrease in traps and personnel that will be required if the fee stays at the current amount of \$0.015 per CWT. The projected program cuts shown in Table 1 for 2020, would equal around \$211,588 in cost savings.

Table 1: Annual Apple Maggot Survey Program Stats and Projections at Current Fee Rate

Program Requirements	2018	2019	2020
Trappers	25	22	11
Field supervisors	4	4	2
Laboratory technicians	1	3*	2
Trap sites	10,139	7,015	5,069
Trap visits per site	4.86	6.04	4

* Two additional laboratory technicians were added in 2019 due to changes in protocols.

These program cuts will result in a weakened survey program that could leave pest free areas of the state at risk for the spread of apple maggot. Under the 2020 projections, the number of traps deployed will be decreased by another 1,946 traps from the 2019 season. This reduction in trap deployment density could result in limited access to international and domestic markets for some businesses. Additionally, all trapping programs will likely be negatively impacted. This includes general survey trapping in the quarantine area, which helps county pest boards identify infested host material so it can be treated or removed. General survey trapping in the pest free area will also be impacted. It may become necessary for pest free counties to implement trapping every other year. All of this could impact a county pest board's effectiveness at slowing the spread of or preventing apple maggot infestations. Due to staffing cuts, general survey traps will be visited less frequently. Rather than every two weeks, traps will be checked every four weeks. This could reduce the efficiency of traps, as they become dirty and compromised from the longer period of exposure to the elements. In addition, trapping in the area of low pest prevalence (ALPP) would be at a minimum, with only four traps used per registered block. These reductions could result in some apple maggot flies going undetected, allowing them to more easily spread to pest free areas of the state.

Probable Compliance Requirements: Under the proposed rule amendment, businesses which grow or pack apples in Washington state and introduce them into commerce for sale or shipment as fresh apples will be required to pay an increased fee of \$0.020 per CWT (a \$0.005 increase). On the first business day of February each year, the minimum operating fund balance (MOFB) for the program will be determined. If the program fund balance falls below the MOFB at the time it is established, the fee rate shall increase to \$0.025 per CWT beginning July 1 of that year. Once the fee has been set at \$0.025 per CWT, it will remain at that rate and the MOFB will no longer be determined. The MOFB is six months of the projected operating expenses for the apple maggot survey program. The expenses used to calculate this figure include projected program staff salary and benefits, costs of the program's goods and services, transportation costs, administrative support costs, and any additional costs associated with the program. In addition to expected future costs, WSDA may consider previously incurred operating expenses to estimate projected operating expenses. By February 10 of each year, WSDA will post notice on their website of the rate established for that year. The MOFB will also be posted on the WSDA website by February 10 of each year, until the \$0.025 per CWT rate is established.

No professional services will be required for businesses to comply with the proposed rule amendment.

SECTION 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	Number of Impacted Businesses in Washington	±Minor Cost Threshold = 1% of Average Annual Payroll	*Minor Cost Threshold = 0.3% of Average Annual Revenue
111331	Apple orchards	7	\$8,511.33	\$3,400.20
111339	Other noncitrus fruit farming	3	\$2,970.82	\$752.41
111998	All other miscellaneous crop farming	2	\$9,118.76	\$1,179.40
115114	Postharvest crop activities (except cotton ginning)	23	\$43,600.39	\$13,850.91
115116	Farm management services	1	\$18,534.89	\$728.98
325612	Polish and other sanitation good manufacturing	1	\$4,493.60	\$10,291.75
424480	Fresh fruit and vegetable merchant wholesalers	13	\$15,475.73	\$39,111.14
425120	Wholesale trade agents and brokers	1	\$4,382.51	\$5,812.67
484230	Specialized freight (except used goods) trucking, long-distance	1	\$5,855.32	\$2,794.46
488991	Packing and crating	1	N/A	\$7,493.94
493120	Refrigerated warehousing and storage	6	\$17,374.75	\$23,068.16
493130	Farm product warehousing and storage	4	\$8,450.79	\$9,117.33
493190	Other warehousing and storage	1	\$7,801.82	\$11,754.96
541930	Translation and interpretation services	1	\$3,162.67	\$240.08
541990	All other professional, scientific, and technical services	1	\$4,801.34	\$2,535.65

* Data source: 2018 Dataset from the Washington state employment security department (ESD).

± Data source: 2018 Dataset from the Washington state department of revenue (DOR).

** These codes reflect the NAICS codes that affected businesses chose when registering with DOR.

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Proposed amendments to chapter 16-390 WAC increase the apple maggot survey fee from \$0.015 per CWT to \$0.020 per CWT until the first business day of February 2021, after which the fee will be established annually based on the MOFB. If the program fund balance is below the determined MOFB, then the fee rate will be \$0.025 per CWT beginning on July 1 of that year. Once the \$0.025 per CWT rate is set, the MOFB will no longer be determined and the fee will stay at the established rate. The fee increase will not cause businesses to lose sales or decrease their revenue; however, it will likely increase overall expenses for each business. Additionally, there will be no increased cost for businesses to comply with the proposed rule in terms of extra costs for equipment, supplies, labor, professional services, or administrative costs.

Under the increased fee, the total cost to businesses will depend on the amount of fresh apples they ship annually. The overall financial impact to each business will depend on the proportion of apples sold in relation to other inventory. For some businesses, fresh apples may consist of only a small portion of their inventory, whereas others may only grow or pack apples. Small and large businesses will be assessed based on the amount of fresh apples shipped. Apple maggot survey fees collected from individual businesses in 2019 ranged from \$0.02 to \$55,541.11, with the total amount collected from all businesses equaling \$742,426.06. There were an estimated sixteen small businesses which paid the fee, with the cost paid by each business ranging from \$0.02 to \$18,293.48. An estimated forty-one large businesses also paid the fee, with the cost paid by each business ranging from \$802.45 to \$55,541.11.

After February 2021, the fee assessed will either be \$0.020 per CWT or \$0.025 per CWT depending on the established MOFB and fund balance. Table 3.1 shows the estimated low and high costs for individual small and large businesses under the

proposed rule amendment. The projected totals for all apple maggot survey fees collected from businesses under the \$0.020 and \$0.025 rates would be \$989,901.41 and \$1,203,916.17, respectively.

Table 3.1: Estimated Cost Range for Small and Large Businesses

Business Size	\$0.015 per CWT (current fee)	\$0.020 per CWT (\$0.005 increase)	\$0.025 per CWT (\$0.010 increase)
Small	\$0.02 - \$18,293.48	\$0.026 - \$24,391.31	\$0.033 - \$30,489.13
Large	\$802.45 - \$55,541.11	\$1,069.93 - \$74,054.81	\$1,337.42 - \$92,568.52

Calculations based on fees collected in 2019.

The increased totals would enable the apple maggot survey program to function at the current level without making further reductions in the number of traps or staff. In turn, this would more effectively prevent the possible movement of apple maggot into pest free areas of the state; securing continued access to international and interstate markets, and protecting the commercial tree fruit industry from an economically significant pest.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

Businesses that paid the \$0.015 per CWT fee in 2019 were analyzed. The estimated annual revenue for small businesses which paid the fee averaged around \$14,672,635 and for large businesses averaged around \$55,834,238 (calculated using data from Buzzfile). The total projected costs for each business were calculated under the proposed increases of the fee to \$0.020 per CWT (\$0.005) and \$0.025 per CWT (\$0.010). These calculated totals were averaged by size and industry type. Tables 4.1 (large businesses) and 4.2 (small businesses) show the estimated average fee costs for each NAICS category compared to the minor cost thresholds. The tables show the average fee cost per NAICS category, as well as the cost difference between the current fee cost (\$0.015) and the proposed fee increases (\$0.020 and \$0.025). When comparing the estimated average fee costs to the minor cost thresholds listed for each category, there is indication that the proposed fee increase will impose more than minor costs on large and small businesses in some of the business classifications.

Small business classifications with costs expected to exceed minor cost thresholds at the \$0.020 fee level include: 425120 - Wholesale trade agents and brokers. When the fee increases to the \$0.025 level, the cost for the following business classifications is expected to exceed the minor cost threshold identified: 425120 - Wholesale trade agents and brokers; and 484230 - Specialized freight (except used goods) trucking, long-distance.

Large business classifications with costs expected to exceed minor cost thresholds at the \$0.020 fee level include: 111331 - Apple orchards and 111339 - Other noncitrus fruit farming. When the fee increases to the \$0.025 level, the cost for the following business classifications is expected to exceed the minor cost threshold identified: 111331 - Apple orchards; 111339 - Other noncitrus fruit farming; 493190 - Other warehousing and storage; and 541930 - Translation and interpretation services.

The costs will not exceed the minor cost threshold identified for other business classifications affected by the proposed rule amendments.

Minor cost thresholds listed in tables 4.1 and 4.2 are based off average annual payroll, except for those used for NAICS code 488991 which is based off revenue due to lack of data available regarding payroll.

Table 4.1: Average 2019 and Predicted Fee Costs* per NAICS Category for Large Businesses Compared with the Minor Cost Thresholds

NAICS Code and Category for Businesses Identified as Large (greater than 50 employees)	Minor Cost Threshold = 1% of Average Annual Payroll	Average Current Cost at \$0.015 per CWT	Average Cost at \$0.020 per CWT	Difference of \$0.015 (current fee) & \$0.020	Average Cost at \$0.025 per CWT	Difference of \$0.015 (current fee) & \$0.025
111331 - Apple Orchards	\$8,511.33	\$28,551.56	\$38,068.74	\$9,517.19	\$47,585.93	\$19,034.37
111339 - Other Noncitrus Fruit Farming	\$2,970.82	\$23,669.96	\$31,559.94	\$7,889.99	\$39,449.93	\$15,779.97
111998 - All Other Miscellaneous Crop Farming	\$9,118.76	\$9,488.51	\$12,651.35	\$3,162.84	\$15,814.18	\$6,325.67
115114 - Postharvest Crop Activities (except Cotton Ginning)	\$43,600.39	\$13,277.34	\$17,703.12	\$4,425.78	\$22,128.91	\$8,851.56

NAICS Code and Category for Businesses Identified as Large (greater than 50 employees)	Minor Cost Threshold = 1% of Average Annual Payroll	Average Current Cost at \$0.015 per CWT	Average Cost at \$0.020 per CWT	Difference of \$0.015 (current fee) & \$0.020	Average Cost at \$0.025 per CWT	Difference of \$0.015 (current fee) & \$0.025
115116 - Farm Management Services	\$18,534.89	\$4,758.01	\$6,344.01	\$1,586.00	\$7,930.02	\$3,172.01
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	\$15,475.73	\$18,340.54	\$24,454.05	\$6,113.51	\$30,567.57	\$12,277.03
493120 - Refrigerated Warehousing and Storage	\$17,374.75	\$14,805.98	\$19,741.31	\$4,935.33	\$24,676.64	\$9,870.66
493130 - Farm Product Warehousing and Storage	\$8,450.79	\$6,653.24	\$8,870.99	\$2,217.75	\$11,088.74	\$4,435.50
493190 - Other Warehousing and Storage	\$7,801.82	\$20,340.72	\$27,120.96	\$6,780.24	\$33,901.20	<i>\$13,560.48</i>
541930 - Translation and Interpretation Services	\$3,162.67	\$5,981.08	\$7,974.77	\$1,993.69	\$9,968.47	\$3,987.39

* All averages based on fees collected for 2019 and self-reported NAICS category by business. Businesses in which NAICS category could not be identified were not included in this average.

Sources: DOR and ESD.

Italicized text indicates costs will exceed the minor cost threshold.

Table 4.2: Average 2019 and Predicted Fee Costs* per NAICS Category for Small Businesses Compared with the Minor Cost Thresholds

NAICS Code and Category for Businesses Identified as Small (less than 50 employees)	±Minor Cost Threshold = 1% of Average Annual Payroll	Average Current Cost at \$0.015 per CWT	Average Cost at \$0.020	Difference of \$0.015 (current fee) & \$0.020	Average Cost at \$0.025	Difference of \$0.015 (current fee) & \$0.025
111331 - Apple Orchards	\$8,511.33	\$3,250.39	\$4,333.86	\$1,083.46	\$5,417.33	\$2,166.93
111339 - Other Noncitrus Fruit Farming	\$2,970.82	\$2,884.25	\$3,845.67	\$961.42	\$4,807.08	\$1,922.83
111998 - All Other Miscellaneous Crop Farming	\$9,118.76	\$376.65	\$502.20	\$125.55	\$627.75	\$251.10
115114 - Postharvest Crop Activities (except Cotton Ginning)	\$43,600.39	\$3,927.78	\$5,237.04	\$1,309.26	\$6,546.30	\$2,618.52
325612 - Polish and Other Sanitation Good Manufacturing	\$4,493.6[0]	\$0.02	\$0.026	\$0.006	\$0.033	\$0.013

NAICS Code and Category for Businesses Identified as Small (less than 50 employees)	±Minor Cost Threshold = 1% of Average Annual Payroll	Average Current Cost at \$0.015 per CWT	Average Cost at \$0.020	Difference of \$0.015 (current fee) & \$0.020	Average Cost at \$0.025	Difference of \$0.015 (current fee) & \$0.025
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	\$15,475.73	\$1,861.42	\$2,481.90	\$620.47	\$3,102.37	\$1,240.95
425120 - Wholesale Trade Agents and Brokers	\$4,382.51	\$18,293.48	\$24,391.31	<i>\$6,097.83</i>	\$30,489.13	<i>\$12,195.65</i>
484230 - Specialized Freight (except Used Goods) Trucking, Long-Distance	\$5,855.32	\$12,825.81	\$17,101.08	\$4,275.27	\$21,376.35	<i>\$8,550.54</i>
488991 - Packing and Crating	\$7,493.94**	\$376.65	\$502.20	\$125.55	\$627.75	\$251.10
493120 - Refrigerated Warehousing and Storage	\$17,374.75	\$9,572.37	\$12,763.16	\$3,190.79	\$15,953.94	\$6,381.58
541990 - All Other Professional, Scientific, and Technical Services	\$4,801.34	\$1,895.92	\$2,527.89	\$631.97	\$3,159.87	\$1,263.95

* All averages calculated using collected fee totals for 2019 and self-reported NAICS category by business. Businesses in which NAICS category could not be identified were not included in this average.

** Average annual revenue used for minor cost threshold due to no payroll data available.

Sources: DOR and ESD.

Italicized text indicates costs will exceed the minor cost threshold.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the largest ten percent of businesses affected by the proposed rule amendment. One or more of the following methods can be used as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per one hundred dollars of sales. The department used the cost per employee method to determine if the proposed fee increase will have a disproportionate impact on small businesses. Since the proposed rule amendment affects multiple industry classifications, the costs are analyzed separately for each NAICS code.

As demonstrated in Table 5.1 the cost per employee is lower for small businesses in NAICS code 111339 - Other noncitrus fruit farming. This means that costs are not expected to disproportionately impact small businesses in this industry classification.

Small businesses in the following classifications are expected to be disproportionately impacted by the proposed fee increase: 111331 - Apple orchards; 111998 - All other miscellaneous crop farming; 115114 - Postharvest crop activities (except cotton ginning); 424480 - Fresh fruit and vegetable merchant wholesalers; and 493120 - Refrigerated warehousing and storage.

There are no large businesses impacted by this rule in the following classifications: 325612 - Polish and other sanitation good manufacturing; 425120 - Wholesale trade agents and brokers; 484230 - Specialized freight (except used goods) trucking, long-distance; 488991 - Packing and crating; and 541990 - All other professional, scientific, and technical services. Since there are no large businesses in these classifications, the proposed fee increase is expected to disproportionately impact small businesses in these classifications.

There are no small businesses impacted by this rule in the following classifications: 493130 - Farm product warehousing and storage; 493190 - Other warehousing and storage; and 541930 - Translation and interpretation services. Since there are no small businesses in these classifications, the proposed fee increase is not expected to disproportionately impact small businesses in these classifications.

Table 5.1: Average Cost per Employee

NAICS Code and Description	Average Cost Per Employee at \$.020 Rate		Average Cost Per Employee at \$.025 Rate	
	Small	Large	Small	Large
111331 - Apple Orchards	\$115.44	\$63.66	\$230.89	\$127.31
111339 - Other Noncitrus Fruit Farming	\$20.46	\$62.62	\$40.91	\$125.24
111998 - All Other Miscellaneous Crop Farming	\$41.85	\$5.50	\$83.70	\$11.00
115114 - Postharvest Crop Activities (except Cotton Ginning)	\$69.76	\$25.30	\$139.52	\$50.60
115116 - Farm Management Services	*	\$19.83	*	\$39.65
325612 - Polish and Other Sanitation Good Manufacturing	\$0.00	*	\$0.00	*
424480 - Fresh Fruit and Vegetable Merchant Wholesalers	\$103.33	\$20.16	\$206.67	\$40.31
425120 - Wholesale Trade Agents and Brokers	\$203.26	*	\$406.52	*
484230 - Specialized Freight (except Used Goods) Trucking, Long-Distance	\$142.51	*	\$285.02	*
488991 - Packing and Crating	\$41.85	*	\$83.70	*
493120 - Refrigerated Warehousing and Storage	\$295.09	\$28.92	\$590.18	\$57.84
493130 - Farm Product Warehousing and Storage	*	\$11.30	*	\$22.60
493190 - Other Warehousing and Storage	*	\$67.80	*	\$135.60
541930 - Translation and Interpretation Services	*	\$33.23	*	\$66.46
541990 - All Other Professional, Scientific, and Technical Services	\$25.28	*	\$50.56	*

* No businesses in size category for the specified NAICS code.

Data pertaining to the number of employees for all impacted businesses was obtained from Buzzfile and Infogroup.

The apple maggot survey fee is assessed on all apples which are grown or packed in Washington state and introduced into commerce for sale or shipment as fresh apples. Under the increased fee, the total cost to businesses will depend on the amount of fresh apples they ship annually. The overall financial impact to each business will depend on the proportion of apples sold in relation to other inventory. For some businesses, apples may consist of only a small portion of their inventory, whereas others may only grow or pack apples. The amount a business will pay is based on the amount of fresh apples shipped.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* Any reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of the entry of apple maggot into the pest free area, according to the findings of the pest risk analysis. This could potentially close international and domestic markets to some businesses in Washington state, leading to reductions in revenue. Additionally, any reduction or modification to the proposed rule may result in

lower standards of survey, which will increase the risk of entry of apple maggot into pest free areas of the state.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) *Reducing the frequency of inspections:* There are no inspection requirements associated with the proposed rule amendment.

(d) *Delaying compliance timetables:* Delaying compliance timetables is not a viable mitigation measure. RCW 17.24.131 requires WSDA to set fees at a level that "...as closely as practical, cover the cost of the service rendered, including the salaries and expenses of the personnel involved."

Budgetary concerns were discussed with the AMGW meeting in early 2019. The AMGW is comprised of member associations that represent both small and large businesses in the affected industry. At that time, the group asked WSDA to delay any fee increase. Concerns were again discussed with the AMGW in early 2020. At this meeting, WSDA shared budgetary records showing that the cost of conducting the survey program at an acceptable trapping and staffing level to meet regulatory standards exceeds program revenue. Current projections show that the apple maggot survey fund balance will be in the red during the 2021 survey season. Any delay in adopting a higher fee to sustain the program will result in a longer time to recover a healthy [healthy] fund balance. If the

program is not able to fund the level of trap deployment necessary to demonstrate pest free status, the shipment of fresh apples to foreign markets may be jeopardized.

(e) *Reducing or modifying fine schedules for noncompliance:* Chapter 17.24 RCW specifies the penalty for violations of the chapter and rules adopted thereunder. Reducing or modifying fine schedules would involve a legislative change and is not part of this rule making.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* The AMWG suggested an initial fee increase and then a secondary increase dependent on the program's fund balance. In response to their suggestion, the proposed rule amendment reflects a two tiered fee approach that is based on the program's fund balance. If the program's fund balance exceeds the MOFB on the first business day in February, then the lower fee rate will be in effect the following July. If the program's fund balance is less than the established MOFB, then the higher fee rate will be in effect. Once the higher fee rate is triggered, the fee will continue at the higher level. The program is currently mitigating costs at the recommendation of the AMWG by decreasing the number of traps used, reducing the frequency in which traps are checked, and reducing the number of staff employed. Any further decrease in trap deployment may undermine the program's ability to demonstrate pest free status to trading partners which may limit access to international and domestic markets.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

AMWG, which consists of members that represent both large and small businesses within the affected industry, was consulted throughout the development of the proposed rule.

At the February 2019 AMWG meeting, WSDA notified the working group of the low fund balance for the apple maggot survey program and the possibility of a rule amendment to increase the fee. After some discussion, the AMWG recommended cutting costs and streamlining the program rather than raising the fee. WSDA followed this recommendation and made adjustments to the program.

In January 2020, WSDA spoke with key stakeholder representatives in the tree fruit industry to discuss the continued budget deficit for the program, despite the recommended adjustments made the previous year, and the possibility of increasing the fee.

Also in February 2020, WSDA sent out a mass email to the AMWG, notifying them of the need for a fee increase in order to continue operating the survey program at the standard necessary to prevent the spread of apple maggot.

At the February 2020 AMWG meeting, WSDA informed the working group of the program's impending negative fund balance and the necessity to increase the fee, despite the recommended adjustments that were made the previous year. A discussion was held and the AMWG supported the fee increase.

On April 16, 2020 the Washington state tree fruit association sent a letter to WSDA stating that a fee increase was necessary. The letter outlined recommendations for the new fee rate and a timeline for a possible secondary increase.

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

No jobs are expected to be created or lost as a result of compliance with the proposed rule amendment. However, job losses may occur if apple maggot were to spread to pest free areas of the state. According to a 2016 study conducted by Community Attributes Inc., an estimated two thousand nine hundred jobs would be at risk if apple maggot were to spread. Of these, nine hundred seventy jobs would be at risk due to shortfalls in domestic sales, with a further one thousand nine hundred forty at risk due to shortfalls in export sales (Community Attributes Inc., 2016). This could result in a potential loss of \$125 million in lost wages.

References

Buzzfile. (2020). *Buzzfile Information Database*. Retrieved from Buzzfile: <https://www.buzzfile.com/Home/Basic>.

Community Attributes Inc. (2016). *Economic Impact of Invasive Species: Direct Costs Estimates and Economic Impact for Washington State*. Seattle: Community Attributes Inc.

Galinato, S., Gallardo, K., Granatstein, D., & Willett, M. (2018). *Economic Impact of a Potential Expansion of Pest Infestation: Apple Maggot in Washington State*. HortTechnology.

Infogroup. (2010). *Find Washington State Employers web page*. Retrieved from Employment Security Department Washington State - Search data provided by Infogroup: <https://esd.wa.gov/find-an-employer#/>.

Sansford, C., Mastro, V., & Reynolds, J. (2016). *Pest Risk Analysis (PRA) for apple maggot (Rhagoletis pomonella) moving on municipal green waste into the Pest-Free Area (PFA) of the state of Washington, USA*. Olympia: Washington State Department of Agriculture.

WSU Extension. (n.d.). *Apples in Washington State*. Retrieved from Washington State University Extension: https://extension.wsu.edu/chelan-douglas/agriculture/treefruit/horticulture/apples_in_washington_state/.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

May 13, 2020

Brad White
Assistant Director

AMENDATORY SECTION (Amending WSR 14-24-086, filed 12/1/14, effective 1/1/15)

WAC 16-390-005 Definitions. "Certificate" means an official document issued by the director which reports certification results.

"Certificate of compliance" means a shipping document issued by the fruit and vegetable industry attesting that the identified fruits or vegetables are known to be in full compliance with provisions of chapter 15.17 RCW. The member of the fruit and vegetable industry issuing the certificate of

compliance has the sole responsibility of fairly and accurately representing the quality and quantity of fruits and vegetables listed on the certificate of compliance.

"**Certification**" means the complete service performed by the director, from inspection through the issuance of any applicable documentation of the results of the inspection.

"**Customer assisted inspection program (CAIP)**" means a quality or condition inspection performed by industry using the United States Department of Agriculture (USDA) standards with verification and oversight by the director.

"**CWT**" means a hundredweight, a unit of measure equaling one hundred pounds.

"**Director**" means the director of the department of agriculture or the director's designated representative. As used in this chapter, WSDA refers to the director unless the context states otherwise.

"**Grade and condition certificate**" means an official note sheet issued by the director confirming the results of an inspection.

"**Hourly fee**" means the fee charged for services based on the hours documented by each WSDA inspector providing the service. Hourly fees are charged based on increments of fifteen minutes, with time rounded up or down to the next fifteen minute interval as follows: Eight minutes into a quarter hour is rounded up to the full quarter hour. Less than eight minutes into a quarter hour is rounded down and not billed.

"**Inspection**" means the inspection by the director of any fruits or vegetables for the purpose of certification at any time prior to, during, or subsequent to harvest.

"**Inspection service notification**" means customer notification to the director of any request for inspection services.

"**Lot**" means, unless otherwise stated in this chapter, a distinct unit of fruits or vegetables.

"**Minimum operating fund balance**" or "**MOFB**" means six months of projected apple maggot survey program operating expenses. The factors that the department considers when setting the MOFB under WAC 16-390-230 include the projected program staff salary and benefits; costs of the program's goods and services, including transportation; costs associated with the department's administrative support of the program; and any additional costs associated with the program. In addition to expected future costs, the department may consider previously incurred operating expenses to estimate projected operating expenses.

"**Regular business hours**" means the hours between 8:00 a.m. and 5:00 p.m. Pacific time Monday through Friday except state holidays.

"**Shipping permit**" means a shipping document issued by the director attesting that the fruits or vegetables are known to be in compliance with the provisions of chapter 15.17 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 14-24-086, filed 12/1/14, effective 1/1/15)

WAC 16-390-230 Apple maggot survey fees. The fee for the apple maggot survey program on all apples grown or packed in Washington state and introduced into commerce for sale or shipment as fresh apples is (~~\$.015 per CWT~~)

\$.020 per CWT, unless and until the program fund balance falls below the minimum operating fund balance. This fee is assessed by the director on all certificates of compliance and all shipping permits.

(1) The department shall establish the minimum operating fund balance amount on the first business day of February each year unless the fee has been previously set at \$.025 per CWT.

(2) At the time the minimum operating fund balance amount is established, if the program fund balance is below the new minimum operating fund balance, the fee rate shall be set at \$.025 per CWT beginning July 1st of that year.

(3) The department shall post notice of the minimum operating fund balance on the department's website by February 10th of each year unless the fee has been previously set at \$.025 per CWT.

(4) The department shall post notice of the apple maggot survey fee by February 10th of each year.

WSR 20-11-071

PROPOSED RULES

EDMONDS COMMUNITY COLLEGE

[Filed May 20, 2020, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-157.

Title of Rule and Other Identifying Information: Chapter 132Y-100 WAC, Traffic rules.

Hearing Location(s): On August 6, 2020, at 9:30 - 11:30 a.m., at Edmonds College, Mukilteo Hall Black Box Theater, 20310 68th Avenue West, Lynnwood, WA 98036. This meeting may take place remotely, if necessary due [to] COVID-19 stay home orders and/or social distancing requirements.

Date of Intended Adoption: September 10, 2020.

Submit Written Comments to: Jade Jeter-Hill, 20000 68th Avenue West, Lynnwood, WA 98036-5999, email jade.jeter-hill@edcc.edu.

Assistance for Persons with Disabilities: Contact Cinda Lewis, phone 425-640-1411, email cinda.lewis@edcc.edu, by July 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These updates are meant to achieve three goals.

(1) Reduce redundancy in WAC previously entered twice.

(2) To update and clarify rules regarding parking permits, and use of bicycle and foot propelled vehicles on pedestrian walkways.

(3) To ensure the college has the latitude to update policy and procedure as needed while maintaining good WAC oversight.

Reasons Supporting Proposal: The college administration anticipates that these proposed rules will provide guidance, clarity and consistency in traffic rules.

Statutory Authority for Adoption: RCW 28B.50.140(7), (10).

Statute Being Implemented: Chapter 132Y-100 WAC.

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

Name of Proponent: Edmonds [Community] College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jade Jeter-Hill, Director SSEPI, WWY 222, 425-640-1877.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable as a listed agency under RCW 34.05.328(5).

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 sections are amending the already existing chapter 132Y-100 WAC, Traffic rules. The purpose is to clarify and update information in the existing rule. The new sections do not impose any cost on businesses.

May 20, 2020
Mushka Rohani

Executive Director of Human Resources

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-003 Definitions. For the purpose of this chapter, the following terms and definitions shall apply:

(1) Board: The board of trustees of Edmonds ((Community)) College, state of Washington.

(2) Campus: Any or all real property owned, operated, controlled, or maintained by Edmonds ((Community)) College ((state of Washington)).

(3) ((Car pool)) Carpool: Any group of two or more faculty, staff or students who commute to the college in the same vehicle.

(4) College: Edmonds ((Community)) College or any additional community college hereafter established with Edmonds ((Community)) College, an agency of the state of Washington, and collectively, those responsible for its control and operations.

(5) Faculty members: Any employee of Edmonds ((Community)) College who is employed on a full-time or part-time basis as a teacher, counselor, librarian or other position for which the training, experience, and responsibilities are comparable as determined by the appointing authority, including administrative appointment.

(6) Foot propelled device: Wheeled devices including, but not limited to, skateboards, roller skates, roller blades, etc., designed or used for recreation and/or transportation purposes.

(7) Security office: The office designated for the safety ((and)), security ((department office)) and emergency preparedness department operations.

(8) Security officers: Employees of the college accountable to the ((vice president of finance and operations)) senior college security authority and responsible for campus safety, security, ((safety, and)) parking ((and)), traffic control, and emergency response and recovery.

(9) Staff: The administrative and classified members employed by the college.

(10) Student: Any person enrolled in the college.

(11) Vehicle: ((A)) A motorized automobile, truck, or motorcycle ((, scooter or bicycle, both engine-powered and nonengine-powered)).

(12) Visitor(s): Person(s) who come on campus as guest(s) or person(s) who lawfully visit the campus for purposes in keeping with the college's role as an institution of higher learning in the state of Washington that are neither employees nor registered students of the institution.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

WAC 132Y-100-004 Applicable traffic rules. The traffic rules which are applicable upon state lands devoted mainly to the educational activities of Edmonds ((Community)) College are as follows:

(1) The motor vehicle and other traffic laws of the state of Washington; and

(2) The traffic code of Lynnwood, Washington, and Snohomish County; and

(3) Rules set forth in chapter 132Y-100 WAC.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-008 Permits required for ((employee)) all vehicles ((in designated lots)) parked on campus. Except as provided in WAC 132Y-100-012 and 132Y-100-052 no ((employee)) person shall leave any vehicle unattended ((in a designated staff lot,)) on the college campus ((of the college,)) without a permit issued by the ((security office unless such employee is in the process of loading and unloading)) college.

Permits shall not be utilized by any person except by the person ((registered to said permit. The college reserves the right to deny any application, or to revoke any permit at any time, if actions resulting from such application or permission constitute present or imminent danger or unlawful activity, or if a prospective user has previously violated the provisions of these parking policies or other written rules or regulations of the college)) to whom the permit is registered. Outstanding parking fines must be paid before a parking permit may be issued or renewed.

Parking permits are transferable from vehicle to vehicle when used by the permit holder.

((If a vehicle is sold or traded, a new permit will be issued to the permit holder at no additional cost if the permit holder does the following:

(1) Records the invalid permit number; and

(2) Removes invalid permit; and

(3) Brings invalid permit or remnant thereof and permit number to the security office. The security office shall then issue the permit holder a new parking permit.

Students and visitors may park in any lot not designated as staff or car pool, without a permit.))

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-012 Permit parking on campus.

There are ~~((two))~~ three categories of valid permits:

(1) A temporary permit authorized by the ~~((security office of Edmonds Community))~~ college and displayed in accordance with instructions; ~~((or))~~

(2) A current vehicle permit issued by the ~~((security office))~~ college and displayed on the vehicle in accordance with instructions; or

(3) A special permit issued by the senior college security authority or their designee and displayed on the vehicle in accordance with instructions. The special permit allows for parking in any legal parking spot. This permit is meant to be limited to those who need immediate access for college business that cannot be met by other means.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

WAC 132Y-100-024 Right to refuse permit. The college reserves the right to refuse the issuance of a parking permit, or to revoke any permit at any time, if actions resulting from such application or permission constitute present or imminent danger or unlawful activity, or if a prospective user has previously violated the provisions of these parking policies or other written rules or regulations of the college.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-028 Issuance of permits. ~~((+))~~ All permits are issued by the security office or their designees. Permit procedures and requirements can be found at www.edcc.edu/safety. Presentation of valid college identification ~~((, vehicle make, model, color, license number))~~ is required to be issued a current vehicle permit.

~~((2))~~ Employees may be issued a parking permit by the security office, upon registration of his/her vehicle with said office at the beginning of full-time employment.

(3) Part-time employees must obtain permits each quarter.

(4) Carpool permits are issued quarterly.

(5) The security office may issue visitor parking permits when such permits are necessary.

~~((6))~~ Temporary and special permits may be issued by the security office when such permits are necessary to enhance the business operation of the college.) Temporary visitor parking permits are coordinated through the security office or their designees. A special permit is issued by the senior college security authority or their designee.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-032 Display of permits. All ~~((permanent))~~ parking permits shall be displayed as provided in the directions supplied with the parking permit. ~~((A special or temporary parking permit shall be placed within the vehicle where it can be plainly seen from the outside of the driver's~~

~~side of the windshield. Permits not displayed in accordance with the provisions of this section shall not be valid.))~~ Permits not displayed in accordance with the provisions of this section shall not be valid.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-066 Carpool parking permit. Carpool permits are available to ~~((staff and students who qualify. To qualify for a carpool permit, the individual must designate at least one other regular rider in addition to the driver. This permit must be renewed each quarter and allows the holder to park in designated carpool lots/areas. The permit can be obtained from the security office))~~ faculty, staff and students who qualify under college policy. College policies and procedures are available at edcc.edu/policies.

AMENDATORY SECTION (Amending WSR 92-09-055, filed 4/13/92, effective 5/14/92)

WAC 132Y-100-072 ((Handicapped)) Disabled parking. No vehicle shall park in a ~~((handicapped zone))~~ space designated for disabled persons without a current, valid, state issued ((handicapped)) disability permit. Enforcement of ~~((handicapped))~~ disability parking is accomplished by either the college ~~((or))~~, the police department ~~((of))~~, or the city of Lynnwood.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

WAC 132Y-100-076 ((Disabled or)) Inoperative and abandoned vehicles. ~~((No disabled or inoperative vehicle shall be parked on the campus without permission from the security office. Vehicles which have been parked in excess of forty-eight hours and which appear to be inoperative or abandoned may be impounded and stored at the expense of either or both owner and operator thereof.))~~ Inoperative or abandoned vehicles may not be parked on the campus without permission from the senior college security authority or their designee. Vehicles parked in excess of forty-eight hours will be impounded and stored at the expense of the owner.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-080 Regulatory signs and directions. Edmonds ~~((Community))~~ College will erect and place signs, barricades, and other structures and paint marks and other directions upon the streets and roadways for the regulation of traffic and parking upon state lands devoted mainly to the educational or research activities of Edmonds ~~((Community))~~ College. Such signs, barricades, structures, markings, and directions shall be so made and placed as to be legible and in the opinion of the college president or ~~((his/her))~~ their designee will best effectuate the objectives stated in WAC 132Y-100-001.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-084 Speed. No vehicle shall be operated on designated campus roadways or parking lots at a speed in excess of ten miles per hour, or the posted speed limit. No vehicle of any type shall at any time use the campus and/or lands devoted to educational, research, recreational, or parking for Edmonds ((Community)) College for ((testing, racing, or other)) any unlawful activities.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-088 Pedestrian's right of way. (1) The operator of a vehicle shall yield to any pedestrian, but no pedestrian((s)) shall leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible or unsafe for the driver to yield.

(2) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such vehicle.

(3) Where a sidewalk is provided, pedestrians shall ((proceed upon)) use such sidewalk.

AMENDATORY SECTION (Amending WSR 81-17-042, filed 8/14/81)

WAC 132Y-100-092 Report of accident. The operator of any vehicle involved in an accident on campus shall within twenty-four hours report such accident to the campus security office. This does not relieve any person so involved in an accident from ((his)) their responsibility to file a ((state of Washington motor vehicle accident report)) State of Washington Vehicle Accident Report (SF137) within twenty-four hours after such accident.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-096 Special traffic/parking rules. During special occasions or emergencies, ((causing)) that cause additional and/or heavy traffic, the ((director of safety and security)) senior college security authority is authorized to impose additional traffic and parking regulations to achieve the specified objectives of this chapter.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-100 Enforcement of parking and traffic rules and regulations. ((The vice president of finance and operations is responsible for parking and traffic management on campus and delegates the authority to enforce the parking and traffic regulations to the director of safety and security-)) The senior college security authority, or their designee, is responsible for parking and traffic policies, procedures, and management of the same, on all college property, or college controlled properties.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-106 Fines, penalties and impounding. (1) The current schedule of fines shall be published by the college and made available for review in the security office and is also available on the college's website at www.edcc.edu/safety.

(2) In addition to imposing fines, the ((director of safety and security)) senior college security authority and duly appointed security officers are authorized to issue citations, impound, immobilize, and take to such place of storage as the ((director of safety and security)) senior college security authority selects, any vehicles parked on college property in violation of these regulations. The expenses of such impounding, immobilization, and storage shall be charged to the owner/operator of the vehicle and must be paid prior to the vehicle's release.

(a) The college shall not be liable for loss or damage of any kind resulting from such impounding, immobilization, or storage.

(b) Impoundment of a vehicle does not remove the obligation for any fines associated with the violation itself.

(c) Vehicles left unattended on college property for ((a period greater than seventy-two hours)) longer than forty-eight hours may be impounded.

(d) Grounds for impounding vehicles shall include, but not be limited to, the following:

(i) Blocking a roadway so as to impede the flow of traffic;

(ii) Blocking a walkway so as to impede the flow of pedestrian traffic;

(iii) Blocking a fire hydrant or fire lane;

(iv) Creating a safety hazard ((in the opinion of a campus security officer));

(v) Blocking another legally parked vehicle; or

(vi) Parking in a marked ((“tow-away” zone)) tow-away and/or load/unload zones.

(3) All fines must be paid within twenty calendar days from the date of the citation. All fines are payable as designated on the citation.

(a) If any citation remains unpaid after twenty calendar days from the date of the citation, the following action may be taken by Edmonds ((Community)) College:

(i) ((Degrees, transcripts, grades, refunds, or credits may be withheld until all fines are paid;

(ii) ~~Registration for the following quarter may be delayed;~~

(iii)) Faculty, students, and staff may be denied future parking privileges.

(ii) Students may be referred to student conduct for unpaid citations.

(iii) Employees may be referred for discipline to supervisor and/or HR.

(b) An accumulation of parking and/or traffic tickets that are not responded to and resolved, by payment or appeal, may be sent to collections after such notification is provided to the registered owner of the vehicle cited.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-108 Appeal of fines and penalties. Appeal of fines and penalties must be made in writing ~~(within five calendar days, to the director of safety and security department. The owner of the vehicle shall be entitled to a hearing with the director of the safety and security department or designee within two business days of any impoundment pursuant to WAC 132Y-100-106. The owner may recover the vehicle before hearing by posting a bond in the amount of the sum of any past due fines plus any fine due for the impoundment infraction plus impoundment cost. In the event that the owner is determined at hearing to be not liable for the impoundment infraction, the amount of the sum of the impoundment fine plus impoundment costs will be returned))~~ as outlined in college policy. College policies and procedures are available at www.edcc.edu/policies.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-114 Parking of trailers, campers, and similar purpose vehicles on campus. It is unlawful for any individual, firm or corporation to park any type of vehicle on the grounds of Edmonds ~~((Community))~~ College for the purpose of using such a vehicle as a living unit. Any exception must be submitted in writing and approved ~~((in writing,))~~ by the ~~((director of safety and security))~~ senior college security authority.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-115 Damage to state property. The cost of repair/replacement of college property damaged by negligent operations, or as the result of indiscriminate acts, must be paid in addition to assessed fines.

AMENDATORY SECTION (Amending WSR 07-16-039, filed 7/24/07, effective 8/24/07)

WAC 132Y-100-116 Prohibition of literature on vehicles. Distribution of literature by placement on motor vehicles parked on Edmonds ~~((Community))~~ College campus is hereby prohibited. Literature includes but is not limited to:

- (1) Pamphlets;
- (2) Flyers; and/or
- (3) Stickers.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132Y-100-006 Visitor parking.
- WAC 132Y-100-014 Free parking by disabled persons.
- WAC 132Y-100-020 Permit revocation.
- WAC 132Y-100-044 Additional vehicles.
- WAC 132Y-100-054 Parking—Operator's responsibility.

WAC 132Y-100-056 Parking within designated spaces.

WAC 132Y-100-060 Locating legal parking space.

WAC 132Y-100-064 Motorcycle parking.

WAC 132Y-100-067 Motorcycle parking.

WAC 132Y-100-068 Bicycle parking and traffic regulations.

WAC 132Y-100-070 Alternative transportation regulations.

WAC 132Y-100-082 Disabled or inoperative vehicles.

WSR 20-11-079

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 20, 2020, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-06-048.

Title of Rule and Other Identifying Information: WAC 182-537-0100 Purpose, 182-537-0200 Definitions, 182-537-0350 Provider qualifications, 182-537-0400 Covered services, 182-537-0600 School district requirements for billing and payment, and 182-537-0700 School district documentation requirements.

Hearing Location(s): On June 23, 2020, at 10:00 a.m.

In response to the Governor's extended orders for Stay Home, Stay Safe, this public hearing will be held virtually. This will not be an in-person hearing and there is not a physical location available.

You must register for the public hearing at <https://attendee.gotowebinar.com/register/6057562907361355533>.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than June 24, 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 June 23, 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 June 12, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this chapter to clarify approved place of service for school-based health care services, to add and update definitions, add additional eligible provider types, and remove outdated language.

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: Health care authority (HCA), governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Shanna Muirhead, P.O. Box 45530, Olympia, WA 98504-2716, 360-725-1153.

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 changes to the proposed rules do not impose any costs, and therefore does not impose a more than minor cost on business.

May 20, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0100 Purpose. The medicaid agency pays contracted school districts, educational service districts, charter schools, and tribal schools for school-based health care services provided to medicaid-eligible children who require early intervention or special education and related services consistent with Sections 1903(c) and 1905(a) of the Social Security Act. The agency pays school districts through fee-for-service. Covered services must:

- (1) Identify, treat, and manage the disabilities of a child who requires early intervention or special education and related services;
- (2) Be prescribed or recommended by licensed physicians or other licensed health care providers within their scope of practice under state law;
- (3) Be medically necessary;
- (4) Be included in the child's current individualized education program (IEP) or individualized family service plan (IFSP); and
- (5) Be provided in a school setting, the natural environment, an alternate placement in accordance with the Individuals with Disabilities Education Act (IDEA), or by telemedicine.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"Agency" - See WAC 182-500-0010.

"Assessment" - For the purposes of this chapter, an assessment is made-up of medically necessary tests given to an individual child by a licensed health care provider to evaluate whether a child with a disability is in need of early intervention services or special education and related services. Assessments are a part of the individualized education pro-

gram (IEP) and individualized family service plan (IFSP) evaluation and reevaluation processes.

"Charter school" - A public school governed by a charter school board and operated according to the terms of the charter school contract. Charter schools are open to all students, do not charge tuition, and do not have special entrance requirements.

"Child with a disability" - For purposes of this chapter, a child with a disability is a child evaluated and determined to need early intervention services or special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;
- Deaf-blindness;
- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;
- Hearing loss (including deafness);
- Intellectual disability;
- Multiple disabilities;
- Orthopedic impairment;
- Other health impairment;
- Serious emotional disturbance (emotional behavioral disturbance);
- Specific learning disability;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment (including blindness).

"Core provider agreement" - See WAC 182-500-0020.

"Early intervention services" - Means developmental services provided to children ages birth through two. For the purposes of this chapter, early intervention services include:

- Audiology services;
- Health services;
- Nursing services;
- Occupational therapy;
- Physical therapy;
- Psychological services; and
- Speech-language pathology.

"Educational service district" - A regional agency which provides cooperative and informal services to local school districts within defined regions of the state.

"Electronic signature" - See WAC 182-500-0030.

"Evaluation" - Procedures used to determine whether a child has a disability, and the nature and extent of the early intervention or special education and related services needed. (See WAC 392-172A-01070 and 34 C.F.R. Sec. 303.321.)

"Fee-for-service" - See WAC 182-500-0035.

"Handwritten signature" - A scripted name or legal mark of an individual on a document to signify knowledge, approval, acceptance, or responsibility of the document.

"Health care-related services" - For the purposes of this chapter, means developmental, corrective, and other supportive services required to assist a student ages three through twenty eligible for special education and include:

- Audiology;
- Counseling;
- School health services and school nurse services;
- Occupational therapy;

- Physical therapy;
- Psychological assessments and services; and
- Speech-language therapy.

"Individualized education program (IEP)" - A written educational program for a child who is age three through twenty-one and eligible for special education. An IEP is developed, reviewed and revised according to WAC 392-172A-03090 through 392-172A-03115.

"Individualized family service plan (IFSP)" - A plan for providing early intervention services to a child birth through age two, with a disability or developmental delay and the child's family. The IFSP:

- Is based on the evaluation and assessment described in 34 C.F.R. Sec. 303.321;
- Includes the content specified in 34 C.F.R. Sec. 303.344; and
- Is developed under the IFSP procedures in 34 C.F.R. Secs. 303.342, 303.343, and 303.345.

~~("Interagency agreement" - Is a contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district.)~~

"Medically necessary" - See WAC 182-500-0070.

"National provider identifier (NPI)" - See WAC 182-500-0075.

"Reevaluation" - Procedures used to determine whether a child continues to need early intervention services or special education and related services. (See WAC 392-172A-03015 and 34 C.F.R. Secs. 303.342 and 303.343.)

"Related services" - See WAC 392-172A-01155.

"School-based health care services contract" - A contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district, ESD, charter, or tribal school.

"School-based health care services program" or "SBHS" - Is an agency-administered program that pays contracted school districts, educational service districts (ESDs), charter schools, and tribal schools for providing early intervention services or special education health-related services to children ages birth through twenty who have an IEP or IFSP. ~~((Services must be provided by department of health (DOH) licensed providers who are enrolled under the school district's ProviderOne account.))~~

"School district" - A group of schools administered by a particular authority within defined geographical division.

"Signature log" - A typed list that verifies a licensed provider's identity by associating each provider's signature with their name, handwritten initials, credentials, license and national provider identifier (NPI).

"Special education" - See WAC 392-172A-01175.

"Supervision" - Means supervision provided by a licensed health care provider either directly or indirectly to assist the supervisee in the administration of early intervention or health care-related services outlined in the IEP or IFSP.

"Telemedicine" - See WAC 182-531-1730.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0350 Provider qualifications. (1) School-based health care services (SBHS) must be delivered by or under the supervision of health care providers who are enrolled with the medicaid agency and who meet state licensure requirements, including active, unrestricted department of health (DOH) licensure. The following people may provide SBHS:

~~(a) Licensed audiologists ((who meet the requirements described in chapters 246-828 WAC and 18.35 RCW));~~

~~(b) Licensed ((advanced)) social workers ((LiACSW) who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;~~

~~(c) Licensed independent clinical social workers (LiCSW) who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;~~

~~(d));~~
 (c) Licensed mental health counselors (LMHC) ~~((who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;~~

~~(e));~~
 (d) Licensed mental health counselor associates (LMHCA) ~~((who meet the requirements described in chapters 246-809 WAC and 18.225 RCW and are under the direction and supervision of a qualified LiACSW, LiCSW, or LMHC;~~

~~(f) Licensed registered nurses (RN) who meet the requirements described in chapters 246-840 WAC and 18.79 RCW)) practicing under the supervision of a licensed mental health provider;~~

~~(e) Advanced registered nurse practitioners (ARNP);~~

~~(f) Registered nurses (RN);~~

~~(g) Licensed practical nurses (LPN) ((who meet the requirements described in chapters 246-840 WAC and 18.79 RCW and are)) practicing under the ((direction and)) supervision of ((a)) an ARNP or licensed RN;~~

~~(h) ((Nonlicensed school employees who are delegated certain limited health care tasks by an RN and are supervised according to professional practice standards in RCW 18.79.260, 18.79.290, and 28A.210.275;~~

~~(i)) Licensed occupational therapists (OT) ((who meet the requirements described in chapters 246-847 WAC and 18.59 RCW;~~

~~(j));~~
 (i) Licensed occupational therapist assistants (OTA) ~~((who meet the requirements described in chapters 246-847 WAC and 18.59 RCW and are under the direction and)) practicing under the supervision of a licensed OT;~~

~~((k)) (j) Licensed physical therapists (PT) ((who meet the requirements described in chapters 246-915 WAC and 18.74 RCW;~~

~~(h));~~
 (k) Licensed physical therapist assistants (PTA) ~~((who meet the requirements described in chapters 246-915 WAC and 18.74 RCW and are)) practicing under the ((direction and)) supervision of a licensed PT;~~

~~((m)) (l) Licensed psychologists ((who meet the requirements described in chapters 246-924 WAC and 18.83 RCW;~~

~~(n));~~

~~(m) Licensed speech-language pathologists (SLP) ((who meet the requirements described in chapters 246-828 WAC and 18.35 RCW; and~~

~~(o)):~~

~~(n) Speech-language pathology assistants (SLPA) ((who meet the requirements described in chapters 246-828 WAC and 18.35 RCW and who are)) practicing under the ((direction and)) supervision of a licensed SLP;~~

~~(o) Audiologist and speech language pathologist interim permit holders practicing under the supervision of a licensed audiologist or SLP; and~~

~~(p) Nonlicensed people providing services under the supervision of a licensed provider.~~

~~(2) For services provided under the supervision of a ((PT, OT, SLP, nurse, counselor, or social worker)) licensed provider, the ((supervising)) provider must:~~

~~(a) Ensure the child receives quality ((therapy)) services by providing supervision in accordance with professional practice standards; and~~

~~(b) ((Approve)) Review and cosign all treatment notes written by the supervisee before submitting claims for payment.~~

~~(3) The school district must ensure providers meet the professional licensing requirements described in the agency's SBHS billing guide and in this chapter.~~

~~((4) The licensing exemptions found in the following regulations do not apply to federal medicaid reimbursement:~~

~~(a) Counseling under RCW 18.225.030;~~

~~(b) Psychology under RCW 18.83.200;~~

~~(c) Social work under RCW 18.320.010; and~~

~~(d) Speech therapy under RCW 18.35.195.~~

~~(5) People not specifically listed in subsection (1) of this section may not participate in the SBHS program including, but not limited to:~~

~~(a) Interim permit holders;~~

~~(b) Limited permit holders; and~~

~~(c) People completing education required for DOH licensure.))~~

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0400 Covered services. ~~((All services covered under this section may be provided through telemedicine as described in WAC 182-531-1730 and in the agency's school-based health care services (SBHS) billing guide.))~~ Covered school-based health care (SBHS) services include:

(1) Evaluations when the child is determined to have a disability, and is in need of early intervention services or special education and health care-related services that result in an individualized education program (IEP) or individualized family service plan (IFSP);

(2) Health care-related services authorized in an IEP or IFSP limited to:

(a) Audiology;

~~(b) ((Counseling;~~

~~(e)) School health services and school nursing services;~~

~~((d)) (c) Occupational therapy;~~

~~((e)) (d) Physical therapy;~~

~~((f) Psychological assessments and services; and~~

~~(g)) (e) Mental health services; and~~

~~(f) Speech-language therapy.~~

(3) Reevaluations, to determine whether a child continues to need early intervention services or special education and health care-related services.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0600 School district requirements for billing and payment. To receive payment from the medicaid agency for providing school-based health care services (SBHS) to eligible children, a school district must:

(1) Enroll as a billing provider in ProviderOne and have a current, signed core provider agreement (CPA) with the agency.

(2) Have a current, signed, and executed ~~((interagency agreement))~~ SBHS contract with the agency.

(3) Meet the applicable requirements in chapter 182-502 WAC.

(4) Comply with the applicable requirements in the agency's current, published ProviderOne billing and resource guide.

(5) Bill according to the agency's current SBHS billing guide and the SBHS fee schedule.

(6) Comply with the intergovernmental transfer (IGT) process. The school district must provide its local match to the agency within one hundred twenty days of the invoice date.

(a) If local match is not received within one hundred twenty days of the invoice date, the agency will deny claims.

(b) School districts may resubmit denied claims within twenty-four months from the date of service under WAC 182-502-0150.

(7) Provide only early intervention or health care-related services identified through a current individualized education program (IEP) or individualized family service plan (IFSP).

(8) Use only licensed health care providers or nonlicensed people practicing under the supervision of a licensed provider under WAC 182-537-0350.

(9) Enroll licensed health care providers as servicing providers under the school district's ProviderOne account, and ensure providers have their own national provider identifier (NPI) number.

(10) Meet documentation requirements described in WAC 182-537-0700.

AMENDATORY SECTION (Amending WSR 19-04-095, filed 2/5/19, effective 3/8/19)

WAC 182-537-0700 School district documentation requirements. (1) Providers must document all school-based health care services as required in this section and the medicaid agency's school-based health care services (SBHS) billing guide.

(2) Documentation to justify billed claims must be maintained for at least six years from the date of service.

(3) Records for each student must include, but are not limited to:

(a) A referral or prescription for services by a physician or other licensed health care provider within their scope of practice;

(b) Assessment reports;

(c) Evaluation and reevaluation reports;

(d) Individualized education program (IEP) or individualized family service plan (IFSP);

(e) Attendance records; and

(f) Treatment notes. Treatment notes must include the:

(i) Child's name;

(ii) Child's ProviderOne client ID;

(iii) Child's date of birth;

(iv) Date of service, and for each date of service:

(A) Time-in;

(B) Time-out;

(C) A procedure code for and description of each service provided;

(D) The child's progress related to each service;

(E) Whether the occupational therapy, speech-language therapy, physical therapy or counseling service described in the note was individual or group therapy;

(F) The licensed provider's printed name, handwritten or electronic signature, and title; and

(G) Assistants and nonlicensed people, as defined in WAC 182-537-0350, who provide early intervention or health care-related services under supervision, must have ~~((their supervising))~~ a licensed provider review and cosign all treatment notes ~~((in accordance with the supervisory requirements for the provider type))~~.

(4) The agency accepts electronic records and signatures. Maintaining the records in an electronic format is acceptable only if the original records are available to the agency for program integrity activities for up to six years after the date of service. Each school district is responsible for determining what standards are consistent with state and federal electronic record and signature requirements.

(5) For a signature to be valid, it must be handwritten or electronic. Signature by stamp is acceptable only if the provider is unable to sign by hand due to a physical disability.

(6) School districts must maintain a signature log to support the provider's signature identity.

(7) The signature log must include the provider's:

(a) Printed name;

(b) Handwritten signature;

(c) Initials;

(d) Credentials;

(e) License number; and

(f) National provider identifier (NPI).

(8) Each school district must establish policies and procedures to ensure complete, accurate, and authentic records. These policies and procedures must include:

(a) Security provisions to prevent the use of an electronic signature by anyone other than the licensed provider to whom the electronic signature belongs;

(b) Procedures that correspond to recognized standards and laws and protect against modifications;

(c) Protection of the privacy and integrity of the documentation;

(d) A list of which documents will be maintained and signed electronically; and

(e) Verification of the signer's identity at the time the signature was generated.

WSR 20-11-080

PROPOSED RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed May 20, 2020, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-131.

Title of Rule and Other Identifying Information: Washington state patrol retirement system, reportable compensation, WAC 415-103-100 Are payments I receive reportable compensation?

Hearing Location(s): On June 23, 2020, at 10:30 a.m.

The hearing will be conducted by telephone conference only: 360.407.3830 or 855.682.0796 (toll free). Conference ID: 435261.

Date of Intended Adoption: June 24, 2020.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by June 16, 2020.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, email drs.rules@drs.wa.gov, by June 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapter 97, Laws of 2020 (SB 6218), modifying the definition of salary for Washington state patrol retirement system Plan 1 members who entered the system on or after July 1, 2001, to include lump sum payments for holiday pay and unused vacation leave for the purpose of calculating pension benefits.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 43.43.120.

Name of Proponent: Department of retirement systems (DRS), governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

May 20, 2020
 Jilene Siegel
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-20-036, filed 9/28/17, effective 10/29/17)

WAC 415-103-100 Are payments I receive reportable compensation? The following table will help you determine whether certain types of payments are reportable compensation. The department determines reportable compensation based upon the nature of the payment, not the name applied. See "salary" as defined in RCW 43.43.120.

Type of Payment	Commission Date: Prior to ((7/1/2001)) <u>1/1/2003</u>	Commission Date: On or after ((7/1/2001)) <u>1/1/2003</u>
Overtime related to RCW 47.46.040 or voluntary overtime, earned prior to 7/1/2001	Yes	((No)) <u>N/A</u>
Overtime related to RCW 47.46.040 or voluntary overtime, earned on or after 7/1/2001 and before 7/1/2017	No	No
Overtime up to 70 hours per year ¹ in total related to either RCW 47.46.040 or voluntary overtime, earned on or after 7/1/2017 ²	Yes	Yes
Overtime in excess of 70 hours per year ¹ in total related to either RCW 47.46.040 or voluntary overtime, earned on or after 7/1/2017	No	No
Fringe benefits including, but not limited to, any type of insurance, or contributions for insurance, such as medical, dental, or life insurance, for members and/or their dependents	No	No
Lump sum payments for:		
Deferred annual sick leave ³	No	No
Unused accumulated annual leave - 240 hour maximum ⁴	Yes	No
Holiday pay - 80 hour maximum	Yes	No

¹ "Year" means "state fiscal year," which is the twelve-month period that begins on July 1st and ends on June 30th of the next calendar year.
² The combined total of overtime included in the average final salary, related to either RCW 47.46.040 or voluntary overtime, may not exceed one hundred forty hours for WSPRS Plan 1, or three hundred fifty hours for WSPRS Plan 2.
³ See also RCW 41.04.340(4).
⁴ See also RCW 43.43.263, 43.01.040 and 43.01.044.

WSR 20-11-081
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed May 20, 2020, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-060.

Title of Rule and Other Identifying Information: WAC 392-121-182 Alternative learning experience requirements; chapter 392-550 WAC, Alternative learning experience requirements.

Hearing Location(s): On June 24, 2020, at 10:00 a.m.
 Webinar and/or conference call.

Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will take place by webinar and/or conference call (there will be no

physical location for the hearing). The public may participate in the hearing. For information on participating, please visit the office of superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policy-funding/ospirule-making-activity-for-instructions-on-how-to-join-the-meeting>. For questions on participating in this hearing, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: June 29, 2020.

Submit Written Comments to: Anissa Sharratt, OSPI, Alternative Learning Department, P.O. Box 47200, Olympia, WA 98504, email Anissa.Sharratt@k12.wa.us, by June 24, 2020.

Assistance for Persons with Disabilities: Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.Murphy@k12.wa.us, by June 17, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to amend WAC 392-121-182 to remove nonfiscal alternative

learning experience (ALE) provisions, recodify those provisions in a new standalone WAC chapter governing ALE, define truancy expectations in ALE settings, and remove the current requirement to obtain a parent signature documenting their understanding of the difference between home-based instruction and ALE.

Reasons Supporting Proposal: The proposed changes implement SSHB [2SHB] 1170 (2017), which authorizes OSPI to adopt rules and bring consistency to truancy definitions in ALE settings. The inclusion of truancy definitions within the ALE rules widens the scope of the rules beyond the topic of finance, which supports recodifying the nonfiscal requirements of WAC 392-121-182 into a standalone WAC chapter. The proposed rule making also addresses barriers to accessing ALE and makes technical revisions to the current rule language.

Statutory Authority for Adoption: Chapter 28A.232 RCW; RCW 28A.232.030.

Statute Being Implemented: Chapter 28A.232 RCW; RCW 28A.232.030.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anissa Sharatt, OSPI, 600 Washington Street S.E., Olympia, 360-725-4954.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.030.

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

May 20, 2020
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 18-19-040, filed 9/13/18, effective 10/14/18)

WAC 392-121-182 Alternative learning experience requirements. ~~((1) Purposes:~~ The purposes of this section are the following:

~~(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public charter school have available to them educational opportunities designed to meet their individual needs;~~

~~(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools;~~

~~(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.~~

~~(2) General requirements:~~ A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to ~~WAC 392-121-107~~. This section applies solely to school districts and charter schools claiming state funding pursuant to ~~WAC 392-121-107~~ for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

~~(3) Definitions:~~ For the purposes of this section the following definitions apply:

~~(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:~~

~~(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;~~

~~(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and~~

~~(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.~~

~~(ii) The categories of alternative learning experience courses are:~~

~~(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.~~

~~(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the written student learning plan for the course does not include a requirement for in-person instructional contact time.~~

~~(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the written student learning plan for the course includes a requirement for in-person instructional contact time.~~

~~(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work;~~

~~(c) "Certificated teacher" means an employee of a school district or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;~~

~~(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:~~

~~(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other~~

learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "Full-day kindergarten" means a program that is eligible for state-funded full-day kindergarten, as provided for in RCW 28A.150.315 in which any student's alternative learning experience enrollment is claimed as greater than 0.50 full-time equivalent.

(f) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(g) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(h) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(i) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(j) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session or when a charter school is in session;

(k) "School-based support staff" means an employee of a school district or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school con-

tractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(l) "Substantially similar experiences and services" means that for each purchased or contracted instructional or co-curricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(m) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(n) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

(o) "WaKIDS" means the Washington kindergarten inventory of developing skills assessment provided under RCW 28A.655.080.

(p) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives,

and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school; and

(ix) For students enrolled in full-day kindergarten:

(A) A description of curriculum activities that assist students in:

(I) Developing initial skills in the academic areas of reading, mathematics, and writing;

(II) Developing a variety of communication skills;

(III) Providing experiences in science, social studies, arts, health, physical education, and a world language other than English;

(IV) Acquiring large and small motor skills;

(V) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(VI) Learning through hands-on experiences.

(B) A description of learning environments that are developmentally appropriate and promote creativity.

(4) Alternative learning experience program requirements:

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not

required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

(d) Alternative learning experience programs providing full-day kindergarten must have:

(i) Multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week WaKIDS assessment window.

(ii) At least a one thousand annual hour instructional program.

(5) Required school district or charter school board policies for alternative learning experiences: The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors or charter school board on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

(6) Alternative learning experience implementation requirements:

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are

identified in the alternative learning experience written student learning plan.

(d) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be consistent in quality with those available to the district's or charter school's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide

substantially similar experiences and services under this subsection:

(j)(i) A school district or charter school that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district or charter school does not obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district, school district contractor, charter school, or charter school contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district or charter school.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a

high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts and charter schools offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's or charter school's alternative learning experience courses by the office of the state auditor.

(7) Enrollment reporting procedures: Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district or charter school must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district or charter school in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro-rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the require-

ments of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(c) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

(8) Assessment requirements:

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to

participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(d) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten under RCW 28A.150.315 must administer WaKIDS to identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

To maintain fidelity to the state WaKIDS assessment protocol, the WaKIDS assessment requires multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week assessment window.

(9) Reporting requirements:

(a) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's or charter school's regular instructional program.

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(iii) The number of students enrolled in full-day kindergarten at any time during the school year.

(iv) The number of students enrolled in full-day kindergarten who participated in the WaKIDS assessment prior to the assessment deadline.

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(10) Documentation and record retention requirements: School districts and charter schools claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts and charter schools must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors or charter school board as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.) **(1) Scope.** This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience.

(2) Requirements. A school district or charter school must meet the requirements of this section and chapter 392-550 WAC to count an alternative learning experience as a course of study pursuant to WAC 392-121-107.

(3) Student eligibility. A student enrolled in an alternative learning experience course must meet the following conditions:

(a) The student must meet the definition of an enrolled student under WAC 392-121-106;

(b) The student must not meet any of the enrollment exclusions in WAC 392-121-108;

(c) The student's residence must be in Washington state as provided in WAC 392-137-115; and

(d) For students whose residence is not located in the school district providing an alternative learning experience course (nonresident student), the district must:

(i) Document the school district in which the nonresident student's residence is located;

(ii) Establish procedures that address, at a minimum, the coordination of student counting for state funding so that no enrolled student is counted for more than one full-time equivalent in the aggregate. The procedure must include, but not be limited to, the following:

(A) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts must execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(B) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC, the district may not claim funding for the student until after a release transfer is completed by the resident district and the nonresident serving district.

(4) Enrollment count dates.

(a) Alternative learning experience enrollment is claimed based on the monthly count dates as defined in WAC 392-121-119.

(b) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan pursuant to WAC 392-550-025(1) has an ending date that is the last school day in May.

(c) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May; and

(ii) The student's written student learning plan pursuant to WAC 392-550-025(1) includes an end date that is the last day of school for graduating students in May.

(5) Reporting of student enrollment.

(a) For the first time a student's alternative learning experience enrollment is claimed for state funding, the following requirements must be met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place with a start date that is before the monthly count day; and

(ii) There is documented evidence of student participation as required by WAC 392-121-106(4).

(b) On subsequent monthly count dates, a student's alternative learning experience course(s) can be claimed for state funding if the following requirements are met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place on the monthly count date;

(ii) The contact requirement pursuant to WAC 392-550-025(2) was met in the prior month;

(iii) The monthly progress evaluation requirement pursuant to WAC 392-550-025(3) was met in the prior month; and

(iv) If the monthly progress evaluation showed unsatisfactory progress, the intervention plan requirement pursuant to WAC 392-550-025(4) is met.

(c) Students must be excluded from the monthly count including students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must be excluded from the monthly count until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107.

(d) The student count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date.

(6) Student full-time equivalency.

(a) The full-time equivalency of students enrolled in alternative learning experiences is based on the estimated average weekly hours of learning activity described in the written student learning plan.

(b) Pursuant to WAC 392-121-122, twenty-seven hours and forty-five minutes each week (one thousand six hundred sixty-five weekly minutes) equal one full-time equivalent.

(c) Enrollment of part-time alternative learning experience students is subject to the provisions of chapter 392-134 WAC and generates a pro rata share of full-time funding based on the estimated average weekly minutes of learning activity described in the written student learning plan divided by one thousand six hundred sixty-five weekly minutes.

(d) Kindergarten students claimed for more than a 0.50 full-time equivalent must meet the state-funded full-day kindergarten requirements, as provided for in RCW 28A.150.-315.

(e) The full-time equivalent limitations outlined in WAC 392-121-136 and the nonstandard school year limitations outlined in WAC 392-121-123 apply to alternative learning enrollment.

Chapter 392-550 WAC

**ALTERNATIVE LEARNING EXPERIENCE
REQUIREMENTS**

NEW SECTION

WAC 392-550-005 Purpose. (1) The purposes of this chapter are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public charter school have available to them educational opportunities designed to meet their individual needs; and

(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools.

(2) This chapter applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This chapter does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

NEW SECTION

WAC 392-550-010 Authority. The authority for this chapter is RCW 28A.232.010, 28A.150.315, 28A.150.290, and 28A.710.220.

NEW SECTION

WAC 392-550-020 Definitions. For the purposes of this chapter the following definitions apply:

(1)(a) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(i) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(ii) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

(iii) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.

(b) The categories of alternative learning experience courses are:

(i) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(ii) "Remote course" means an alternative learning experience course or course work that is not an online course where the written student learning plan for the course does not include a requirement for in-person instructional contact time.

(iii) "Site-based course" means an alternative learning experience course or course work that is not an online course

where the written student learning plan for the course includes a requirement for in-person instructional contact time.

(2) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work.

(3) "Certificated teacher" means an employee of a school district or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC.

(4) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, email, instant messaging, interactive video communication, or other means of digital communication.

(5) "Full-day kindergarten" means a program that is eligible for state-funded full-day kindergarten, as provided for in RCW 28A.150.315 in which any student's alternative learning experience enrollment is claimed as greater than 0.50 full-time equivalent.

(6) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students.

(7) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress.

(8) "Parent" has the same definition as "parent" in WAC 392-172A-01125.

(9) "Satisfactory progress" means a determination made in accordance with WAC 392-550-025 that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory.

(10) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that includes at least three days when a district's schools are in session or when a charter school is in session.

(11) "School-based support staff" means an employee of a school district or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate.

(12) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(a) At a similar grade level;

(b) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(c) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(d) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(e) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(13) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology.

(14) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan.

(15) "Valid justification" means any reason as determined by the school district or charter school board policy for which a student may miss the contact requirements of WAC 392-550-025 for the purpose of truancy pursuant to WAC 392-550-040.

(16) "WaKIDS" means the Washington kindergarten inventory of developing skills assessment provided under RCW 28A.655.080.

(17) "Written student learning plan" means a written plan for learning that includes the elements outlined in WAC 392-550-025.

NEW SECTION

WAC 392-550-025 Alternative learning experience requirements. (1) Written student learning plan.

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs.

(b) A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress.

(c) The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(d) The written student learning plan must include the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv)(A) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(B) This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan;

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan; and

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

(2) **Contact.** Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(a) Direct personal contact must:

(i) Be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) At minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(b) In-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(c) Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(3) **Monthly progress evaluation.**

(a) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section.

(b) The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student.

(c) Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan;

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher;

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame;

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan;

(vi)(A) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory.

(B) School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress.

(C) The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(4) **Intervention plan.**

(a) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student.

(b) An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher.

(c) At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(d) An intervention plan is not required if the evaluation is delivered within the last five school days of the year.

(5) **Continued enrollment.** If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

NEW SECTION

WAC 392-550-030 Program requirements. (1) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(2) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(3) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(4) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experi-

ence course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(5) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(6) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be consistent in quality with those available to the district's or charter school's overall student population.

(7) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(8) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(9)(a) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program.

(b) This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers.

(c) Nothing in this subsection shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this chapter.

(10)(a) A school district or charter school that provides alternative learning experience courses or course work to a student must include a description of the difference between

home-based instruction pursuant to chapter 28A.200 RCW and the alternative learning experience course(s).

(b) This information must be provided directly to the parent prior to the student's enrollment and in the school or program informational materials such as the student and parent handbook and website. Reasonable efforts must be made to enable parents to request and receive the information in a language in which they are fluent.

(11)(a) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent.

(b) This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district, school district contractor, charter school, or charter school contractor to all households in the district.

(12) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(13) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. For the purpose of this section, "proctored" means directly monitored by an adult authorized by the school district or charter school.

(14) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(15) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(16) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(17) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

NEW SECTION

WAC 392-550-035 Full-day kindergarten requirements. Alternative learning experience programs providing full-day kindergarten must:

(1) Have multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week WaKIDS assessment window.

(2) Have at least a one thousand annual hour instructional program.

(3) Have written student learning plans that include at least the following elements:

(a) A description of curriculum activities that assist students in:

(i) Developing initial skills in the academic areas of reading, mathematics, and writing;

(ii) Developing a variety of communication skills;

(iii) Providing experiences in science, social studies, arts, health, physical education, and a world language other than English;

(iv) Acquiring large and small motor skills;

(v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(vi) Learning through hands-on experiences.

(b) A description of learning environments that are developmentally appropriate and promote creativity.

(4) Implement WaKIDS in accordance with WAC 392-550-050.

NEW SECTION

WAC 392-550-040 Truancy. (1) This section provides the process for determining truancy, required interventions, and a threshold for filing a truancy petition for students enrolled in alternative learning experience courses. Beginning January 1, 2021, this process should be used in place of the thresholds provided in RCW 28A.225.030. All other requirements of compulsory attendance outlined in chapter 28A.225 RCW apply.

(2) If a child required to attend school under RCW 28A.225.010 fails to meet the contact requirements of an alternative learning experience under this chapter without valid justification, the school district or charter school in which the child is enrolled must perform the following procedures:

(a)(i) The school district or charter school must inform the child's parent by a notice through direct personal contact whenever the child has failed to make weekly contact without valid justification.

(ii) The notice must inform the parent of the potential consequences of additional missed weekly contacts.

(iii) The school district or charter school must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(b)(i) After the second consecutive week of missed contact without valid justification or third cumulative week of missed contact without valid justification, the school district or charter school must schedule a conference with the parent and child to discuss the missed contact, administer a screener, and develop a data-based intervention plan to reduce the child's missed contacts.

(ii) The purpose of the conference is to understand the underlying reasons for the missed contact and to develop an intervention plan to address them.

(iii) In middle school and high school, the conference must include the application of the Washington assessment of the risks and needs of students (WARNS), or other screener that identifies barriers to attendance, by a school district's designee under RCW 28A.225.026.

(iv) The conference may take place in-person, by phone, or through interactive video communication.

(v) The conference must take place within one calendar week.

(vi) If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. The parent must be notified of the steps to be taken to eliminate the child's missed weekly contacts.

(3)(a)(i) If the actions performed under subsection (2) of this section are not successful in substantially reducing an enrolled student's missed weekly contacts without valid justification, the school district or charter school must file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010 by the parent, the child, or the parent and the child.

(ii) The petition must be filed no later than the fifth consecutive or sixth cumulative missed weekly contact without valid justification. The petition may be filed earlier and it may include the student's previous history of unexcused absences.

(b) A petition filed under this section must include the supporting documentation as provided in RCW 28A.225.030(1).

(c) For nonresident students, the petition must be filed in the county juvenile court that is most accessible for the student and parent. When determining the appropriate county court in which to file a truancy petition for nonresident students, the following must be considered:

(i) Proximity to the student or parents' primary place of residence;

(ii) The guidance from the juvenile court closest to the student or parents' primary place of residence; and

(iii) Preference stated by the student or parent, if communication with the parent(s) has been established.

(4) The petition must follow the requirements of RCW 28A.225.035.

(5)(a) Pursuant to RCW 28A.225.035, the petition must be stayed and the child and the child's parents must be referred to a community truancy board or other coordinated means of intervention.

(b) The school district or charter school offering alternative learning experience course(s), or program designee, is responsible for coordinating with the juvenile court to determine whether a community truancy board is the best intervention for the child or if another coordinated means of intervention will be more likely to support the student to return to school.

NEW SECTION

WAC 392-550-045 Required school district or charter school board policies for alternative learning experiences. (1) The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences.

(2) The policy must include at least the following:

(a) Each alternative learning experience program and program provider;

(b) A list of valid justifications why a student may miss the weekly contact requirement pursuant to WAC 392-550-025 for the purpose of truancy pursuant to WAC 392-550-040;

(c) A designation, by title, of one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs who will:

(i) Monitor compliance with this chapter; and

(ii) Report at least annually to the school district board of directors or charter school board on the program pursuant to WAC 392-550-060.

NEW SECTION

WAC 392-550-050 Assessment requirements. (1)(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school.

(b)(i) Part-time students must be assessed at least annually.

(ii) Part-time students who are receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(2) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(3)(a) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule.

(b)(i) It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed

assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary.

(ii) The written agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering the assessments to students not enrolled in the district of physical residence.

(iii) Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

(4)(a) School districts and charter schools offering alternative learning experience courses or course work to students enrolled in full-day kindergarten under RCW 28A.150.315 must administer WaKIDS to identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

(b) To maintain fidelity to the state WaKIDS assessment protocol, the WaKIDS assessment requires multiple weekly, in-person, and on-site observations of students by certificated teachers each week during the eight-week assessment window.

NEW SECTION

WAC 392-550-055 Enrollment reporting procedures. The school district or charter school claiming apportionment for alternative learning experience courses is subject to the enrollment reporting procedures in WAC 392-121-182.

NEW SECTION

WAC 392-550-060 Reporting requirements. (1) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(2) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to WAC 392-550-030(9), along with the substantially similar experiences or services made available to students enrolled in the district's or charter school's regular instructional program.

(3) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(a) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program;

(b) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188;

(c) The number of students enrolled in full-day kindergarten at any time during the school year; and

(d) The number of students enrolled in full-day kindergarten who participated in the WaKIDS assessment prior to the assessment deadline.

(4) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

(5) Each school district or charter school offering alternative learning experience courses or course work must report annually to the school district board of directors or charter school board. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program; and

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement.

NEW SECTION

WAC 392-550-065 Documentation and record retention requirements. School districts and charter schools claiming state funding for alternative learning experiences must:

(1) Retain all documentation required in this chapter in accordance with established records retention schedules;

(2) Make such documentation available upon request for purposes of state monitoring and audit;

(3) Maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this chapter;

(b) Annual reports to the school district board of directors or charter school board as required by WAC 392-550-045;

(c) Monthly and annual reports to the superintendent of public instruction as required by WAC 392-550-050;

(d) The written student learning plans required by WAC 392-550-025; and

(e) Evidence of weekly contact required by WAC 392-550-025.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and syn-

chronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by WAC 392-550-025;

(g) The results of any assessments required by WAC 392-550-050; and

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state.

WSR 20-11-083
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed May 20, 2020, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-088.

Title of Rule and Other Identifying Information: Portability of public employment benefits, WAC 415-113-065 Can I substitute salary from one system to another?

Hearing Location(s): On June 23, 2020, at 9:30 a.m.

The hearing will be conducted by telephone conference only: 360.407.3830 or 855.682.0796 (toll free). Conference ID: 5275784.

Date of Intended Adoption: June 24, 2020.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by June 22, 2020.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by June 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 41.54.030 (2) allows members with service in more than one plan to use the base salary earned in one plan as the compensation for calculating the retirement benefit from another plan. This rule describes how the retirement benefit will be calculated when there is a break in employment.

Reasons Supporting Proposal: This rule making will clarify the process for calculating the benefit and ensure consistency between the plans.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.54.030(2).

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

Name of Proponent: Department of retirement systems (DRS), governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

May 20, 2020

Jilene Siegel

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-048, filed 12/27/07, effective 1/27/08)

WAC 415-113-065 Can I substitute salary from one system to another? (1) You can substitute base salary between systems.

(a) If you choose to retire with a multiple system benefit, you may substitute your base salary under one dual member system for your includable compensation in a second dual member system for purposes of computing a retirement allowance from the second system.

(b) Your average final compensation (AFC) will be calculated by reviewing all base salary from all periods of dual member employment and determining your highest consecutive AFC period prior to your retirement or death.

(c) Using the substituted salary, the department will compute your average compensation under each system's own requirements.

~~((Example 6: At retirement, Sandy is a member participant in PERS Plan 2 and has prior creditable service in TRS Plan 1. She earned her highest compensation during her PERS Plan 2 service. Sandy's PERS Plan 2 retirement allowance will be based on her PERS Plan 2 average compensation. For purposes of computing her TRS average compensation and retirement allowance, Sandy may substitute her PERS Plan 2 base salary earned over two consecutive fiscal years for her earnable compensation in TRS.~~

Example 7: At retirement, Pat is a member participant in TRS Plan 1 and has prior creditable service in PERS Plan 1. He earned his highest compensation during his membership in TRS Plan 1 and received a sick-leave eashout. Pat may substitute his base salary earned while a member in TRS Plan 1 for his PERS Plan 1 compensation earnable. However, because Pat may substitute only his base salary from TRS Plan 1 for his compensation earnable in PERS, his PERS average compensation will not include the eashout payments from his TRS employer.

(b) If you do not have sufficient service credit months in one dual member system to complete an average compensation period under that system, the department will substitute the appropriate number of months of base salary from another system to complete the average compensation period.

Example 8: Tim has creditable service in TRS Plan 1 and PERS Plan 2. He retires at age sixty-five after accruing twenty-four months of service in PERS Plan 2. Under PERS Plan 2, a member's average compensation period is the member's highest consecutive sixty-month period of compensation. To compute Tim's PERS Plan 2 retirement allowance, the department will substitute his highest consecutive thirty-six service credit months of TRS base salary to complete the PERS sixty-month average compensation period.))

$$\frac{\$48,000 + \$50,000 + \$60,000 + \$64,000 + \$68,000}{60 \text{ months}} = \underline{\$4,833 \text{ AFC}}$$

The same calculation will be used for the PERS average final compensation.

(2) **TRS Plan 1 adjusted full-time salary is not base salary.** A multiple system retiree's adjusted full-time salary under RCW 41.32.345 shall not constitute base salary for purposes of computing the retiree's multiple system benefit.

(3) **Includable compensation defined.** For purposes of this chapter, "includable compensation" means:

- (a) Earnable compensation under TRS Plan 1, 2 or 3 as defined in RCW 41.32.010(10);
- (b) Compensation earnable under PERS Plan 1, 2 or 3 as defined in RCW 41.40.010(8);
- (c) Compensation earnable under PSERS as defined in RCW 41.37.010(6);
- (d) Basic salary under LEOFF Plan 2 as defined in RCW 41.26.030 (13)(b);
- (e) Monthly salary under WSPRS Plan 1 or 2 as defined in RCW 43.43.120(23); and
- (f) Compensation earnable under SERS Plan 2 or 3 as defined in RCW 41.35.010(6).

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

Example: Average final compensation calculation.

Sarah became a member of TRS Plan 2 and earned two years of service credit. After a break in employment, Sarah returned to public service in a PERS Plan 2 position and worked two additional years. Sarah then returned to a TRS Plan 2 position until retiring at the age sixty-five. Sarah's career earnings were as follows:

TRS Plan 2
81-82 School Year - \$18,000 per year
82-83 School Year - \$20,000 per year

PERS Plan 2
2013 Calendar Year - \$48,000 per year
2014 Calendar Year - \$50,000 per year

TRS Plan 2
14-15 School Year - \$60,000 per year
15-16 School Year - \$64,000 per year
16-17 School Year - \$68,000 per year

As a dual member, Sarah can substitute the PERS salary when calculating the highest sixty months of earnings to be used in the TRS benefit calculation:

- (a) "Average compensation" - WAC 415-113-030.
- (b) "Base salary" - RCW 41.54.010(1).
- (c) "Dual member system" - WAC 415-113-030.
- (d) "Member participant" - WAC 415-113-030.
- (e) "Multiple system benefit" - WAC 415-113-030.
- (f) "Multiple system retiree" - WAC 415-113-030.